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Critique on Gender Egalitarianism in International Law

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ABSTRACT

This paper aims to providing distinctive answers to whether gender egalitarianism and women equality prevails in issues related with international law. As it is a patriarchal field which ends in exploiting and oppressing women, the paper mainly concentrates on basic rights and freedom of women in international disputes. The concept of gender equality is the principle based on United nations, human rights and humanitarian law. So, the paper also concentrates on international treaties, international norms and case laws related to women rights in the international disputes by covering rapidly evolving issues of international law through a distinctive theoretical approach.

Keywords*: Women, international law, Gender equality, egalitarianism, human rights.*

I. INTRODUCTION

The core principle of international law is to ensure protection of human irrespective of gender this also includes the basic rights such as right to live, right to vote, right to education and right to equal wage etc. International disputes and conflict often result in victimizing and targeting women by gender-based violence such as physical abuse, rape, oppression of freedom and more likely to be harmed by the severe medical condition of unwanted pregnancies. [3]Nearly 36 million children and 16 million women are displaced in 2017, on the base of international database of refugees and internally displaced populations. More than 10 million deaths in children younger than 5 years can be attributed to conflict between 1995 and 2015 globally. [4]More than 600 million women and girls lived in conflict-affected countries in 2022, a 50 per cent increase since 2017. The datas and statistics clearly proves that women are still regarded as weaker and oppressed in all parts of the world. There are variety of factors which causes war and conflicts which includes economic, social and political factors but ultimately results in subjection of women and children. In the after effects of conflicts women tend to lead advocacy efforts for peace and justice in the society. Many organizations and international treaties focus on women's rights and raising awareness in policy changes that address gender-based issue in

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[3] NCBI, www.ncbi.nlm.nih.gov.in
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the war and its aftermath. This shows the complexity of women in the context of international war, emphasizing the need of protection of women and children in all aspects of conflict resolution and peace building. The paper briefly analyses the issues related to why women is mistreated and objectified in international conflicts and laws protecting women from such tragedy.

II. WOMEN AND INTERNATIONAL CONFLICTS

International conflicts often refer to confederations that typically involves two states or groups that can involve military action, territorial disputes or issues of sovereignty.

[5]According to conventional international humanitarian law, this term describes armed conflicts between two or more states, cases of military occupation of all or part of the territory of a High Contracting Party, as well as wars of national liberation *(GCI-IV Common Art.2, API Act)*.

Women and Children plays a significant portion in the population thus resulting in loss of homes, livelihoods, freedom and economic insecurity. It also increases the barriers to financial independence and employment as women is always bear the brunt of economic instability after the conflicts. Women are often excluded from post-conflict decisions, limiting their involvement which directly affects their rights and needs. This exclusion and ignorance may lead to lack of gender specific issues in peacebuilding and showcase gender egalitarianism.

Women tend to experience unique and more likely severe effects during and aftermath of the international conflicts, significantly impacting and affecting their lives and communities. Often it is seen that women facing heightened risk of sexual violence, exploitation and human trafficking during the conflicts. It raises the question, is women regarded as a tool to traumatize and used as a tactic to win the war?

For instance, let's take the Taliban and Afghanistan war. The Talibans discriminated women and girls in all ways possible just for regarded as the weaker sex in the society. [6]The Taliban enforced their version of Islamic Sharia law. Women and girls are banned from various acts such as:

- Going out for education and studying
- Working
- Leaving the house without a male chaperone

[5] Guide Humanitarian Law, https://guide-humanitarian-law.org
[6] Amnesty, Amnesty.org.uk

- Showing their skin in public
- Accessing healthcare delivered by men
- Being involved in public or politics
- Showing their face in media.

[7]There were many other ways their rights were denied to them. Women were essentially invisible in public life, imprisoned in their homes. In Kabul, residents were ordered to cover their ground and first-floor windows so women inside could not be seen from the street. If a woman left the house, it was in a full body veil (burqa), accompanied by a male relative: she had no independence.

Afghan women were brutalized in the law and in nearly every aspect of their daily life. A woman in Kabul had the end of her thumb cut off for wearing nail varnish, for example, in 1996. Men defending women's rights and contravening the rules were also at risk.

Recent studies says that Taliban has introduced a new law banning women from singing or reading aloud in public, including at weddings or cultural events. These regulations further marginalize women, who have already faced significant repression under the Taliban regime since the return to power in 2021.

It's so tragic that whenever there is a communal conflict, specifically women are often the first and most impacted as their bodies are weaponized, victimized or both.

The economic dependency and lack of access to resources and other essential part and parcel of life exacerbate their vulnerable exclusion.

III. CASE LAWS RELATED TO INTERNATIONAL CONFLICT AND WOMEN

[8]*Prosecutor v. Jean-Pierre Bemba Gombo* judgment pursuant to Article 74 of the statute, the chamber considers that crime against humanity of murder, Article 7(1)(a), and rape, Article 7(1)(g), and the war crimes of murder, Article 8(2)(c)(i), rape, Article 8(2)(e) (vi), and pillaging, Article 8(2)(e)(v).

[9]*Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*, according to Article 5(c) of the ICTY statue, Article 7(1)(c) and Article 7(2)(c) of the ICC statue enslavement is a crime against humanity in customary international law

[7] Id.
[8] International Criminal Court, Trial Chamber III, NO.: ICC-01/05-01/08
[9] ICTY, The Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic, IT-96-23 and IT-96-23/1, Appeals Chamber, Judgement, 12 June 2002

[10]*Prosecutor v. Jean Paul Akayesu,* Crime against humanity is punishable by Article 3(a) of the Statute of the Tribunal.

Murder is also punishable under the Article 4(a) of the statute of the Tribunal, Crime against Humanity (Rape) is punishable by Article 3(g) of the Statute of the Tribunal, Crime against Humanity (other humane acts), is also punishable by Article 3(i) of the Statute of the Tribunal.

Article 4 (2)(e) of additional protocol which includes outrages upon personal dignity, in particular rape, degrading and humiliating treatment and indecent assault is punishable under the Statute of the Tribunal.

Article 2 (Genocide) stipulates that the Tribunal shall have the power to prosecute persons responsible for genocide, complicity to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide and complicity to genocide is also punishable.

From the above stated case laws, it is clearly seen that women are oppressed in all way possible even in the non- international armed conflicts but the legal superiority provides laws to safeguard and ensure a peaceful livelihood to women.

IV. STATICAL ANALYSIS ON GENDER EGALITARIANISM IN INTERNATIONAL CONFLICTS

The below mentioned are the statistics collected from various reports and research papers which states about the involvement of women in international conflicts and also their contribution in peace and security agenda. It also gives datas related to gender-based egalitarianism in international conflicts all over the world.

[11]In 2022, women participated as conflict party negotiators or delegates in four of five active United Nations–led or –co-led peace processes. Women's representation stood only at 16 per cent, a further drop compared to 19 per cent in 2021 and 23 per cent in 2020

[12]Trend data since 1990 show that seldom are representatives of women's groups found as signatories of peace agreements. Of 18 peace agreements reached in 2022, only one was signed or witnessed by a representative of a women's group or organization.

[13]In 2022, 6 out of 18 peace agreements reached (33 per cent) included provisions referencing women, girls, and gender. This is a proportion similar to recent years, with agreements with

[10] ICTR, The Prosecutor v. Jean Paul Akayesu, ICTR-96-4-T, Trial Chamber 1,2 September 1998
[11] United Nations (2023). Women and peace and security: Report of the Secretary-General (S/2023/725), para.9 The four processes include: the Geneva International Discussions, Libya, Sudan, Syria, but not Yemen.
[12] UNwomen.org
[13] Wise, L. and Knäussel, F. (2023). (Still) Searching for Gender Perspectives in Peace Agreements. Peace and Conflict Resolution Evidence Platform.

gender references plateauing between 20 to 35 per cent each year.

[14]Since 2022, the Women's Peace and Humanitarian Fund (WPHF) doubled the number of organizations supported through its Rapid Response Window for women's participation in peace processes and the implementation of peace agreements. As of August 2023, more than 100 civil society organizations in 22 countries have received targeted and flexible support to elevate their work for peace, de-escalate violence, and address the barriers to women's participation in peace processes.

[15]Between May 2021 and April 2022, the Office of the High Commissioner for Human Rights (OHCHR) documented incidents of reprisals and intimidation against 172 women, girls, women human rights defenders, and civil society organizations working in the field of human rights for their cooperation with the United Nations [14].

The Office of the High Commissioner for Human Rights (OHCHR) verified the killings of 34 women human rights defenders in conflict-affected countries in 2022, but this is likely only a fraction of real cases.[16]

Data from the Armed Conflict Location and Event Data Project (ACLED) show that, in 2022, women and girls were the main targets in more than 3,200 political violence events worldwide[17], and more than half took place in conflict-affected countries, where events of political violence targeting women has increased by 1.5 times between 2020 and 2022.[18]

The United Nations verified 2,455 reported cases of conflict-related sexual violence in 2022,[19] with the highest numbers recorded in the Democratic Republic of the Congo. These numbers are an undercount, as many cases go unreported or cannot be verified.[20]

In a significant milestone, the Security Council acknowledged the climate, peace, and security nexus in the mandate of the United Nations Missions in South Sudan for the first time, explicitly urging the incorporation of "gender-sensitive risk assessment on the negative impacts of climate change".[21]

The thematic review on Climate-Security and Peacebuilding commissioned by the

[14] United Nations (2023). Women and peace and security: Report of the Secretary-General (S/2023/725), para. 18.
[15] Disaggregated data provided by OHCHR.
[16] Disaggregated data on SDG 16.10.1 provided by OHCHR.
[17] According to ACLED's methodology, these events refer to cases of direct targeting of women, such as attacks, abductions, or riots and mob violence when the victims were predominantly or entirely women or girls.
[18] Data come from the Armed Conflict Location and Event Data Project (ACLED), accessed June 2023.
[19] United Nations Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict (2023). Factsheet: 2022 Report of the Secretary-General on conflict-related sexual violence.
[20] United Nations (2023). Conflict-related sexual violence: Report of the Secretary-General (S/2023/413).
[21] United Nations (2023). Women and peace and security: Report of the Secretary-General (S/2023/725), para 71.

Peacebuilding Support Office highlights the importance of prioritizing gender-responsive approaches in future investments for climate security and peacebuilding.[22]

As per the thematic review, in 2021, 19 out of 43 climate security projects had a central or strong focus on women and girls. An additional nine projects had at least significant subcomponents or elements focused on women or girls.[23]

A UN Women climate finance study recommends a more detailed method for designing gender-specific indicators and gender tagging systems in climate mitigation and adaptation finance projects.[24]

V. LAWS RELATED TO WOMEN RIGHTS IN INTERNATIONAL CONFLICTS

There are many laws which states about the rights of women in international conflicts and also the safety measures to protect women and children from such tragedy, stated very few law and acts below for reference and for a brief analysis

(A) Convention on the elimination of Discrimination against women (CEDAW):

[25]The United Nations (UN) Convention on the Elimination of Discrimination against Women (CEDAW) is the most comprehensive treaty on the rights of women. It condemns any form of discrimination against women and reaffirms the importance of guaranteeing equal political, economic, social, cultural and civil rights to women and men. See Convention on the Elimination of all Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981), 1249 UNTS 13. As of May 2014, 188 States are party to CEDAW, out of 193 UN Member States.

[26]CEDAW provides that there should be equal political, economic, social, cultural and civil rights for women regardless of their marital status and requires States to enact national legislation banning discrimination (articles 1, 2 and 3). It permits States to take temporary special measures to accelerate the achievement of equality in practice between men and women (Article 4), and to take actions to modify social and cultural patterns that perpetuate discrimination (Article 5). States parties agree that contracts and other private instruments that restrict the legal capacity of women "shall be deemed null and void" (Article 15). The

[22] United Nations (2023). Women and peace and security: Report of the Secretary-General (S/2023/725), para. 72.
[23] United Nations Peacebuilding Fund (2023). Climate security and peacebuilding thematic review, p. 50.
[24] United Nations (2023). Women and peace and security: Report of the Secretary-General (S/2023/725), para. 72.
[25] Ijrcentre.org
[26] Ijrcentre.org

Convention also addresses the need for equal access to education (Article 10).

(B) International Humanitarian law:

[27]Geneva Convention IV Article 27 states, “Women must be especially protected against any attack on their honor, particularly against rape, enforced prostitution, or any form of indecent assault”. Instances of sexual violence are considered “crimes against humanity” under the Rome Statute Article 7 and are “war crimes” under Article 8(2)(b)(xxii) applicable to international armed conflicts and Article 8(2)(e)(vi) applicable to non-international armed conflicts which prohibits the commission of rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence which also constitute a serious violation of Common Article 3.

(C) Human Rights on women in international conflicts:

[28]The 1993 Vienna Declaration and Programme of Action, adopted by the United Nations World Conference on Human Rights, confirmed that "Violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of human rights and humanitarian law" and that they require a "particularly effective response". The Programme of Action also stressed that "the equal status of women and the human rights of women" should be "integrated into the mainstream of United Nations system-wide activity" and "form an integral part of

United Nations human rights activities.

[29]In October 2020, the Human Rights Council (Resolution A/HRC/RES/45/28) recognized the crucial role of women in the prevention and resolution of conflicts and in peacebuilding and confidence-building, the importance of their full, equal and meaningful participation and full involvement in all efforts for the maintenance and promotion of peace and security. It called the High Commissioner to report to the Human Rights Council on the current state of play of the mainstreaming of the human rights of women and girls in conflict and post-conflict situations in the work of the Council.

In resolution 2467, adopted in 2019, the Security Council calls for the adoption of a survivor-centered approach in preventing and responding to sexual violence in conflict and post-conflict situations, ensuring that prevention and responses are non-discriminatory and specific, and respect the rights and prioritize the needs of survivors, including groups that are particularly

[27] Dlpforum.org
[28] Icrc.org
[29] Ohchr.org

vulnerable or may be specifically targeted, and notably in the context of their health, education, and participation. It calls for victims and survivors to receive the care required, to be free from marginalization and stigmatization and to receive assistance for their social and economic reintegration and that of their children. It calls for effort to address impunity and for full and meaningful participation of survivors at all stages of transitional justice processes, including in decision-making roles. The Resolution further calls for the establishment of a survivors' fund.

[30]Additional Protocol I Article 8(a) defines maternity cases including pregnant mothers and mothers in labor as distinctly falling under the definition of "wounded and sick" and are given protection from any act of hostility aimed towards them. Their protection extends to judicial proceedings were, under Additional Protocol II Article 6(4), the death penalty cannot be pronounced on pregnant women or mothers of young children.

[31]According to the International Committee of the Red Cross international humanitarian law is the "set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. International humanitarian law is also known as the law of war or the law of armed conflict." Humanitarian law applies during times of international and non-international armed conflict. It attempts to minimize the suffering from war and protect those in enemy hands. The focus of international humanitarian law is on the fundamental rights of civilians, the sick, the wounded, the shipwrecked, and prisoners of war during armed conflict.

VI. CONCLUSION

Women play a crucial role in international conflict dynamics, both as victims and agents of change. Their experience in conflict zone highlights the gendered impacts of war, including increased vulnerability to violence and displacement. However, women also actively participate in peace building and conflict resolution efforts, often advocating for inclusive approaches that addresses the root cause of conflict. Studies show that women involving in decision making authorities of international conflicts leads to more sustainable outcomes, emphasizing the importance of their representation in decision making. Recognizing women's role in both the escalation and resolution of conflicts is essential for fostering lasting peace and security on a global scale. It is widely seen that we are evolving in a patriarchal society where each and every woman in the world is oppressed and mistreated, no remedies could be found other then severe laws and acts to control such injustice act. Policy makers must prioritize the

[30] DLPFORUM.ORG
[31] Stopvaw.org

integration of women's voices and perspectives to foster sustainable peace and securities.

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