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GENDER BASED VIOLENCE BY NON STATE ACTORS ON THE BASIS OF RELIGION

AUTHORED BY - SMEEKSHA PANDEY

The article discusses the important terms such as gender, non state actors and provides specific examples of different types of violence against women committed by non-state actors and outlines various strategies employed in different regions to combat this violence. The focus is on strategies that have been effective.

Gender pertains to the socially constructed roles assigned to men and women based on their sex, while 'sex' refers to biological and physical characteristics. Gender roles are shaped by specific socio-economic, political, and cultural contexts, and are influenced by factors such as age, race, class, and ethnicity. These roles are learned and can differ significantly within and across cultures. Unlike biological sex, gender roles are subject to change. They play a crucial role in determining women's access to rights, resources, and opportunities.¹

The concept of non-state actors and their connection to international human rights law is intricate and multifaceted. While gender violence affects both women and men (and men in different ways than women), the focus is specifically on violence against women.² Three types of non-state actors are identified:³

- **Family non-state actors:** This includes blood relatives (such as parents, siblings, and extended family members) and partners (whether in marriage or common law unions).
- **Community non-state actors:** This category encompasses neighbors, unknown individuals, medical professionals, employers, religious leaders, and educational institutions operating outside the state system (for instance, madrassas).
- **Conflict-related non-state actors — armed groups:** This involves the use of sexual violence as a war tactic and the necessity to legally hold members of armed groups accountable for committing acts of violence against women.

¹ Implementation of the outcome of the Fourth World Conference on Women, A/51/322, paras. 7–14.

² Jan Bauer and Anissa Hélie, Documenting Women's Rights Violations by Non Actors.

³ Jan Bauer and Anissa Hélie, Documenting Women's Rights Violations by Non Actors.

As the concept of the state as a unified entity becomes more distinct, the significance and influence of Non-State Actors on societal issues, including security, become more prominent. Non-State Actors encompass a variety of entities such as NGOs, charities, political parties, lobby groups, the media, multinational corporations, highly influential individuals like oligarchs, terrorist organizations, international crime syndicates, as well as diasporas and organized ethnic minorities.⁴ One effective method for defining Non-State Actors might be to compare them with the characteristics of a state. Unlike a state, a Non-State Actor does not wield formal authority over a specific population. However, this doesn't imply that they lack their own constituencies. Many Non-State Actors possess formal membership bases, employees (such as those in large corporations and NGOs), and supporters. Occasionally, Non-State Actors serve as official representatives for specific groups within a country, such as an ethnically defined political party.⁵ Additional **Protocol II to the 1949 Geneva Conventions**⁶ describes non-state armed groups in Article 1.1 as "dissident armed forces or other organized armed groups" that engage in combat with regular armed forces or against each other within the territory of one or more states. To be recognized as parties to the conflict, these groups must meet certain criteria: they must be⁷:-

- i) under a responsible command,
- ii) exercise control over part of the territory sufficient to
- iii) Conduct sustained and coordinated military operations and enforce the provisions of this Protocol.

Most modern armed conflicts occur between states and armed non-state actors (ANSAs) or among ANSAs themselves.⁸ Additionally, armed violence by ANSAs presents a considerable threat to human security even outside of armed conflict situations. While it is well recognized that ANSAs are subject to the laws of armed conflict, also known as international humanitarian law (IHL), there is ongoing debate about the extent of their obligations under human rights law (HRL) when they are involved in an armed conflict.⁹ Crimes of sexual violence during wartime

⁴ Peter Wijnnga, Willem Theo Oosterveld, Jan Hendrik Galdiga and Philipp Marten, *State and NonState Actors: Beyond the Dichotomy*.

⁵ Peter Wijnnga, Willem Theo Oosterveld, Jan Hendrik Galdiga and Philipp Marten, *State and NonState Actors: Beyond the Dichotomy*.

⁶https://www.redcross.org/content/dam/redcross/atg/PDF_s/International_Services/International_Humanitarian_Law/IHL_SummaryGenevaConv.pdf

⁷https://www.redcross.org/content/dam/redcross/atg/PDF_s/International_Services/International_Humanitarian_Law/IHL_SummaryGenevaConv.pdf

⁸ According to *The War Report 2014*, twelve of fourteen armed conflicts (excluding military occupations) are situations of non-international armed conflict in which at least one ANSA is a party. See A. Bellal (Ed), *The War Report 2014*, Oxford University Press, 2015.

⁹ ISBN: 978-2-9701003-0-0 © Geneva Academy of International Humanitarian Law and Human Rights, December 2016.

did not receive the attention they warranted based on their frequency. For example, the exploitation of the so-called "comfort women" by the Japanese military during World War II was not addressed until very recently.¹⁰

Gender-Based Violence (GBV) is a pervasive issue worldwide, often deeply rooted in social, cultural, and religious norms. When this violence is motivated by religious ideologies and perpetuated by Non-State Actors (NSAs), it creates a complex and multifaceted challenge. NSAs such as extremist groups, religious organizations, and culturally conservative factions play significant roles in perpetuating GBV, particularly against women. This essay explores the impact of religiously motivated GBV by NSAs, examining its causes, manifestations, and consequences on women.¹¹ Religiously motivated GBV by NSAs often stems from rigid interpretations of religious doctrines that promote patriarchal values and gender inequality. In many cases, extremist groups manipulate religious texts to justify the subjugation and control of women. These interpretations can manifest in various forms, including enforced dress codes, restricted mobility, forced marriages, and severe punishments for perceived moral transgressions.

Religious-based violence against women is a deeply rooted issue that transcends cultures and borders, impacting millions of women worldwide. This form of violence is perpetuated under the guise of religious doctrines, cultural traditions, and patriarchal interpretations of sacred texts, leading to profound physical, psychological, and social consequences for the victims. Understanding and addressing this issue requires a multifaceted approach, involving legal reforms, educational initiatives, and active engagement from religious and community leaders. Moreover, the socio-political landscape can exacerbate these issues. In regions where state control is weak, NSAs often fill the power vacuum, imposing their own rules and ideologies on the populace. This can lead to the institutionalization of GBV under the guise of religious and cultural preservation. Additionally, poverty, lack of education, and systemic gender inequality provide fertile ground for these ideologies to take root and flourish.

Many religions, when interpreted through a patriarchal lens, have been used to justify the subjugation and abuse of women. This interpretation often stems from historical contexts where

¹⁰ Peggy Kuo, Prosecuting Crimes of Sexual Violence in an International Tribunal, 34 Case W. Res. J. Int'l L. 305 (2002) Available at: <https://scholarlycommons.law.case.edu/jil/vol34/iss3/8>.

¹¹ Peggy Kuo, Prosecuting Crimes of Sexual Violence in an International Tribunal, 34 Case W. Res. J. Int'l L. 305 (2002) Available at: <https://scholarlycommons.law.case.edu/jil/vol34/iss3/8>.

patriarchal structures were dominant and were subsequently woven into religious teachings. For instance, certain interpretations of religious texts prescribe gender roles that inherently place women in subordinate positions, limiting their autonomy and subjecting them to control and violence.

The manifestations of religiously motivated GBV by NSAs are diverse and widespread. In some areas, women face physical violence, including beatings, mutilation, and even honor killings, as a means of enforcing compliance with religious norms. Sexual violence, such as rape and forced prostitution, is also a common tactic used by NSAs to terrorize and control women. For instance, extremist groups like ISIS have used sexual violence as a weapon of war, systematically enslaving and exploiting women from religious minority communities.¹²

In addition to physical violence, NSAs often employ psychological and emotional abuse to maintain dominance over women. This includes threats, intimidation, and public shaming. Women who deviate from prescribed religious norms may be ostracized or subjected to severe social stigma, further entrenching their vulnerability and marginalization.

Years later, in 1992, the legal landscape had significantly changed, which contributed to shifting attitudes towards the atrocities in the Balkans.¹³ The increased attention to the experiences of women in the Balkans was largely due to the outrage expressed by the international community, non-governmental organizations, women's groups, the media, and courageous journalists, who entered war zones, spoke with women, documented their testimonies, and shared their stories with the world. Additionally, there was a significant change because women, empowered by this newfound platform, were more willing to speak out and inform the world about the atrocities they faced.¹⁴ The U.N. Security Council passed a resolution establishing the first International Criminal Tribunal since the Nuremberg and Tokyo trials,¹⁵ specifically addressing the crimes committed in the Former Yugoslavia. Among the crimes included in the Tribunal's mandate was rape.¹⁶ In his report, the Secretary-General

¹² Holtmaat, H. M. T., & Naber, J. (2011). *Women's Human Rights and Culture; From Deadlock to Dialogue*. Cambridge-Antwerp-Portland: Intersentia. Retrieved from <https://hdl.handle.net/1887/35157>.

¹³ Aslıhan İğdir-Akarasa, *Ethnic tensions and global response: Disentangling the complexities of the Bosnian War*, *Lectio Socialis* 2024, VOL. 8, and NO. 1, pp. 57-71.

¹⁴ Peggy Kuo, *Prosecuting Crimes of Sexual Violence in an International Tribunal*, 34 *Case W. Res. J. Int'l L.* 305 (2002) Available at: <https://scholarlycommons.law.case.edu/jil/vol34/iss3/8>.

¹⁵ <https://history.state.gov/milestones/1945-1952/nuremberg>.

¹⁶ Peggy Kuo, *Prosecuting Crimes of Sexual Violence in an International Tribunal*, 34 *Case W. Res. J. Int'l L.* 305 (2002) Available at: <https://scholarlycommons.law.case.edu/jil/vol34/iss3/8>.

of the United Nations explicitly condemned the systematic rape of women, stating, "The Security Council condemned once again all violations of international humanitarian law including, in particular, the practice of 'ethnic cleansing' and the massive, organized, and systematic detention and rape of women." Thus, the Tribunal's foundation strongly emphasized addressing crimes against women, including rape. In conflict zones involving armed groups, the line between State and non-state actors can be quite blurred. Sometimes, the State employs non-state actors to carry out human rights violations. Conversely, factions opposing the State may establish their own parallel systems, including judicial and police structures.

The legal advancements in the Tribunals in both The Hague and Rwanda had paved the way for our efforts. The definition of rape was becoming more precise. A judgment in the *Furundzija case*,¹⁷ which dealt with a single instance of rape, had already been established. In that case, the Court defined rape as penetration involving force, the threat of force, or coercive circumstances. Additionally, the Akayesu case¹⁸ in the Rwanda Tribunal provided a definition of rape as a sexual violation.¹⁹ In both Akayesu and in Furundzija, as well as in Celebici, the courts found that sexual assault could constitute a war crime.

The treaties explicitly outline the obligation of states to ensure the respect, protection, and promotion of these rights. Many treaties also emphasize the duty of states to refrain from supporting, condoning, or tolerating actions by non-state actors that lead to human rights abuses.²⁰ The international community has been slow to recognize violence against women as a human rights violation and a criminal act. For instance, the statutes of the Nuremberg and Tokyo tribunals in 1945 did not include rape in armed conflict or define it as a war crime.²¹ Additionally, female genital mutilation (FGM) was viewed as a cultural practice rather than a violation of women's rights²² until recently (see article 2b of the Declaration on the Elimination of Violence against Women). It was not until late 2004 that marital rape and "honour" crimes

¹⁷ Prosecutor v. Anto Furundzija (Trial Judgement), IT-95-17/1-T, International Criminal Tribunal for the former Yugoslavia (ICTY), 10 December 1998, <https://www.refworld.org/jurisprudence/caselaw/icty/1998/en/20418> [accessed 13 June 2024]

¹⁸ Case no ICTR-96-4-T, ICL 129 (ICTR 1998), 2nd October 1998, United Nations [UN]; United Nations Security Council [UNSC]; International Criminal Tribunal for Rwanda [ICTR]; Trial Chamber I [ICTR]

¹⁹ Peggy Kuo, Prosecuting Crimes of Sexual Violence in an International Tribunal, 34 Case W. Res. J. Int'l L. 305 (2002) Available at: <https://scholarlycommons.law.case.edu/jil/vol34/iss3/8>.

²⁰ Jan Bauer and Anissa Hélie, Documenting Women's Rights Violations by Non Actors.

²¹ Peggy Kuo, Prosecuting Crimes of Sexual Violence in an International Tribunal, 34 Case W. Res. J. Int'l L. 305 (2002) Available at: <https://scholarlycommons.law.case.edu/jil/vol34/iss3/8>.

²² Awolola OO, Ilupeju NA. Female genital mutilation; culture, religion, and medicalization, where do we direct our searchlights for it eradication: Nigeria as a case study. Ci Ji Yi Xue Za Zhi. 2019 Jan-Mar; 31(1):1-4. Doi: 10.4103/tcmj.tcmj_127_18. PMID: 30692824; PMCID: PMC6334568.

were addressed within the scope of international law. The ongoing challenge is to highlight the provisions in relevant treaties and instruments that pertain to non-state actors and to ensure that states take the necessary remedial actions.²³

In order to understand the status of Women's Rights, it is important to reflect over the International treaties and laws which take into account Women's Rights.

- **Article 2 of the ICCPR²⁴** states that each State Party to the Covenant commits to respecting and ensuring the rights recognized in the Covenant to all individuals within its territory and under its jurisdiction, without any distinction based on race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.
- **The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** was adopted by the UN General Assembly in 1979 and entered into force in 1981.²⁵ States Parties denounce all forms of discrimination against women and commit to promptly pursuing a policy to eliminate discrimination against women using all appropriate means.
- **The Convention Relative to the Protection of Civilian Persons in Times of War (1949 – the Fourth Geneva Convention)** - The Geneva Conventions, adopted before 1949, focused solely on combatants, not civilians. The events of World War II highlighted the dire need for a convention to protect civilians during wartime. The 1949 Convention, influenced by World War II experiences, includes 159 articles. It has a brief section on the general protection of populations from certain war consequences, without addressing the conduct of hostilities, which was later covered in the 1977 Additional Protocols.²⁶

The Convention on the Prevention and Punishment of Genocide (1948) - According to the Convention, genocide is a crime that can occur during both war and peace. Article II of the Convention defines genocide as an act committed with the intent to destroy, in whole or in part, a national, ethnic, racial, or religious group.²⁷

²³ Jan Bauer and Anissa Hélie, Documenting Women's Rights Violations by Non Actors.

²⁴ <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/ccpr.pdf>.

²⁵ <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/cedaw.pdf>.

²⁶ https://www.redcross.org/content/dam/redcross/atg/PDF_s/International_Services/International_Humanitarian_Law/IHL_SummaryGenevaConv.pdf

²⁷ https://www.un.org/en/genocideprevention/documents/Appeal-Ratification-Genocide-FactSheet_final.pdf

The Convention relating to the Status of Refugees (1951)²⁸ - The central principle of the 1951 Convention is non-refoulement, which states that a refugee should not be sent back to a country where they face serious threats to their life or freedom.

The Convention sets forth the minimum standards for treating refugees, including rights to housing, work, and education, enabling them to live dignified and independent lives while displaced. It also details refugees' obligations to host countries and identifies specific categories of individuals, such as war criminals, who are not eligible for refugee status.

The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1951)²⁹ - This Convention, aimed at combating the exploitation of prostitution by others, was approved by the General Assembly in resolution 317 (IV) on December 2, 1949, and came into force on July 25, 1951. Under the League of Nations, several efforts were made to suppress activities related to prostitution, including the development of four international instruments in this field, beginning with the International Agreement of May 18, 1904.

When abuses are committed by non-state actors, women's rights advocates can either refer to human rights principles in their non-legal activism or choose to operate within the formal framework of human rights law. Their strategies might involve: (a) formal legal methods, such as analyzing the liability of non-state actors under existing laws, filing lawsuits, or lobbying for legal changes; (b) non-legal approaches, which include utilizing human rights concepts outside the legal system, such as organizing citizens' tribunals, initiating petition campaigns, or documenting and exposing abuses through reports.³⁰

The debate over cultural relativism has persisted for more than twenty years. Both states and non-state actors often employ the relativism argument to resist the efforts of women's rights advocates seeking justice and equality for women.³¹ This argument typically results in, whether intentionally or not, justifying violence against women and other marginalized groups under the guise of preserving cultural values.

²⁸ <https://www.unhcr.org/in/about-unhcr/who-we-are/1951-refugee-convention>

²⁹ <https://www.unodc.org/pdf/crime/uncjin/standards/Compendium/pt1i.pdf>

³⁰ Jan Bauer and Anissa Hélie, *Documenting Women's Rights Violations by Non Actors*

³¹ Holtmaat, H. M. T., & Naber, J. (2011). *Women's Human Rights and Culture; From Deadlock to Dialogue*. Cambridge-Antwerp-Portland: Intersentia. Retrieved from <https://hdl.handle.net/1887/35157>.

According to Article 8,³² "the actions of an individual or group will be regarded as acts of a State under international law if they are acting on the State's instructions or under its direction or control." The degree of control a state must have over a non-state actor (ANSA) to be held responsible has been debated in case law and has evolved over time. The standard has shifted from requiring "effective" control to "overall" control over the actions of the wrongdoer.³³ The first case prosecuted by the ICC involved Uganda. This decision was partly influenced by the Ugandan government's representations regarding the 18-year conflict in the northern part of the country. An example of the strategy developed by the WIGJ, in collaboration with ISIS-WICCE and Ugandan women activists, aimed to ensure that the perspectives and experiences of women in Northern Uganda were included in the Court's consideration of the case.

Some of the Case studies from around the world are:-

India - Violence against Women in Kashmir

Context: In the conflict-ridden region of Kashmir, numerous instances of gender-based violence (GBV) have been reported, perpetrated by non-state actors, often justified on religious grounds. Women have faced abductions, sexual violence, and other forms of abuse by militant groups.

Solutions:

1. Legal Framework Strengthening:

- Enhancing the legal protection for women through the implementation of strict laws against GBV.
- Ensuring that these laws are in line with international human rights standards.

2. Community Engagement:

- Engaging religious leaders in advocacy and education campaigns to denounce GBV and promote women's rights.
- Creating community watch groups to monitor and report instances of GBV.

3. International Support:

- Seeking assistance from international human rights organizations to document and expose abuses.
- Leveraging international pressure to hold perpetrators accountable.

³² Human Rights Obligations of Armed Non-State Actors: An Exploration of the Practice of the UN Human Rights Council.

³³ ISBN: 978-2-9701003-0-0 © Geneva Academy of International Humanitarian Law and Human Rights, December 2016.

Case 2: Nigeria - Boko Haram's Abduction of Schoolgirls

Context: Boko Haram, an Islamist militant group in Nigeria, has targeted women and girls, most notably in the abduction of over 200 schoolgirls in Chibok in 2014. These acts are often justified by the group's interpretation of religious doctrines.

Solutions:**1. International Intervention:**

- Coordinated international military and humanitarian intervention to rescue abducted girls and dismantle Boko Haram's operations.
- Imposing sanctions and restrictions on states and entities supporting Boko Haram.

2. Rehabilitation Programs:

- Providing psychological and social support to survivors of abductions and violence.
- Implementing educational and vocational training programs for reintegration into society.

3. Policy Reform:

- Enforcing policies that protect schools and educational institutions from attacks.
- Promoting gender equality and women's rights through national legislation and policies.

Case 3: Afghanistan - Taliban's Oppression of Women

Context: The Taliban, during its rule and insurgency in Afghanistan, enforced strict religious laws that severely restricted women's rights and sanctioned GBV. Women faced public executions, floggings, and other forms of violence.

Solutions:**1. International Advocacy:**

- Utilizing international platforms like the United Nations to condemn and bring attention to the Taliban's human rights abuses.
- Implementing global campaigns to support Afghan women's rights and amplify their voices.

2. Protective Measures:

- Establishing safe havens and shelters for women at risk of GBV.
- Providing legal aid and support to women seeking justice against their abusers.

3. Long-term Strategies:

- Supporting the establishment of inclusive governance in Afghanistan that ensures the protection of women's rights.
- Encouraging educational and empowerment programs for women to build resilience against oppressive regimes.

Addressing religiously motivated GBV by NSAs requires a multifaceted approach that tackles both the immediate and underlying causes of the violence. Efforts must be made to challenge and reinterpret religious doctrines that perpetuate gender inequality and violence. Engaging religious leaders and communities in promoting gender-equitable interpretations of religious texts is crucial. Furthermore, strengthening state institutions and the rule of law can help curb the influence of NSAs. This includes ensuring that legal frameworks protect women's rights and that perpetrators of GBV are held accountable. Providing comprehensive support services for survivors, including healthcare, legal aid, and psychological support, is also essential in helping women recover and rebuild their lives.

International cooperation and support are vital in addressing the issue, particularly in conflict-affected regions where NSAs are most active. This includes funding and supporting grassroots organizations that work directly with affected communities, as well as leveraging diplomatic pressure to hold accountable states that fail to protect women from GBV. The right to freedom of religion or belief is crucially connected to achieving Agenda 2030 and the Sustainable Development Goals (SDGs), including SDG 5, which focuses on gender equality and women's empowerment. However, these connections are often misunderstood or overlooked, with a common misconception that freedom of religion or belief imposes restrictions on women's rights. To attain gender equality and empower all women and girls, their right to freedom of religion or belief must be guaranteed. This includes addressing discriminatory assumptions and practices in family law and social customs that involve violence against women and restrictions on equal rights.³⁴ Parliamentarians and religious/belief leaders have significant roles to play in this context. This paper offers a concise introduction to the connection between freedom of religion or belief and women's rights, highlighting major areas of concern and proposing specific actions that parliamentarians and religious/belief leaders can take to address these issues.³⁵

³⁴ Marie Juul Petersen, Freedom of Religion or Belief and Women's Rights

³⁵ Marie Juul Petersen, Freedom of Religion or Belief and Women's Rights

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