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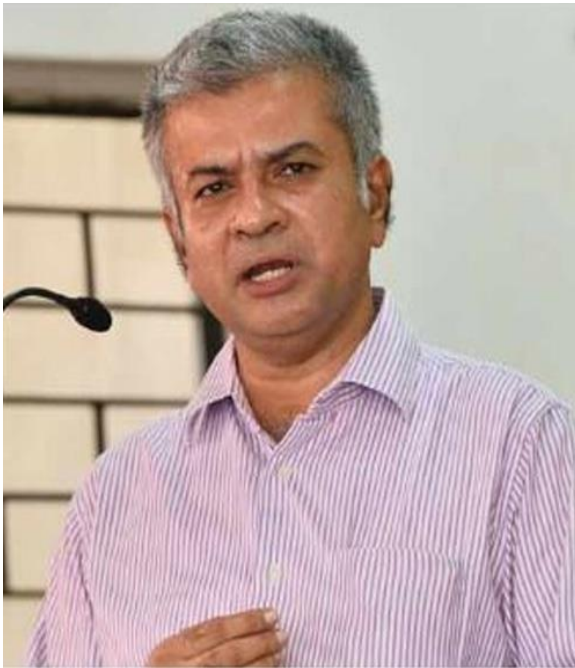
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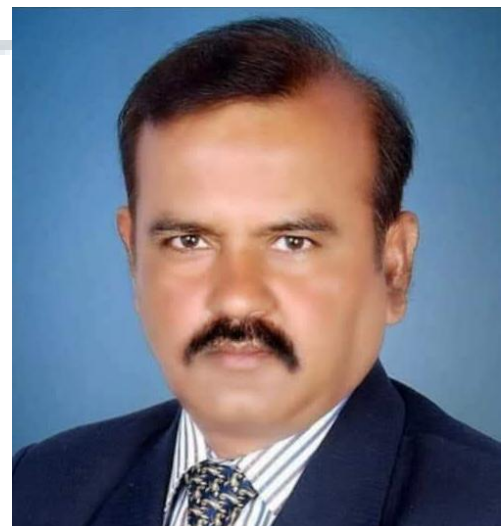
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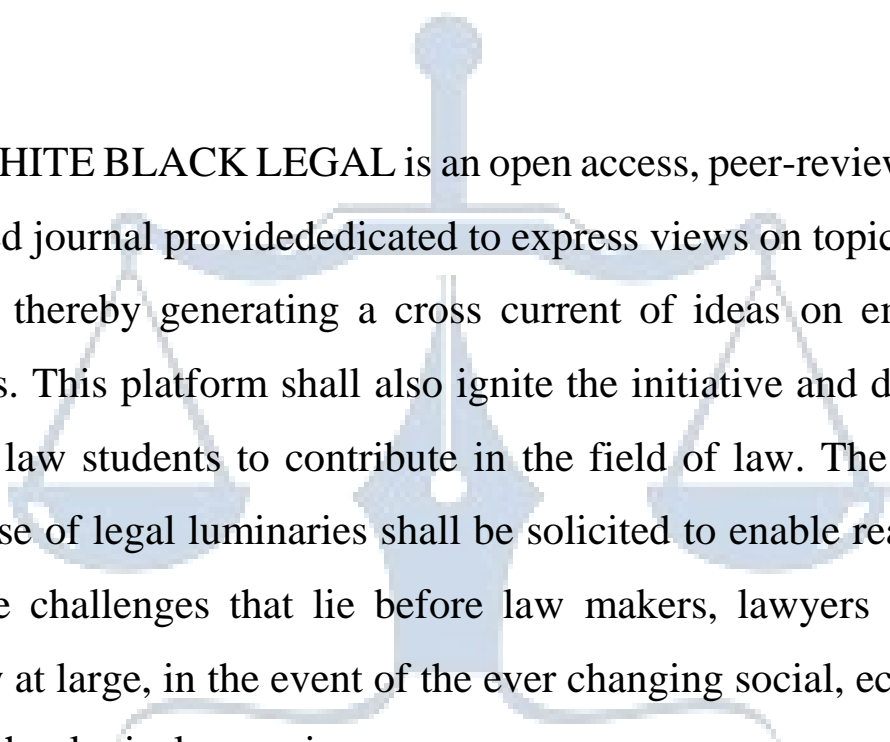


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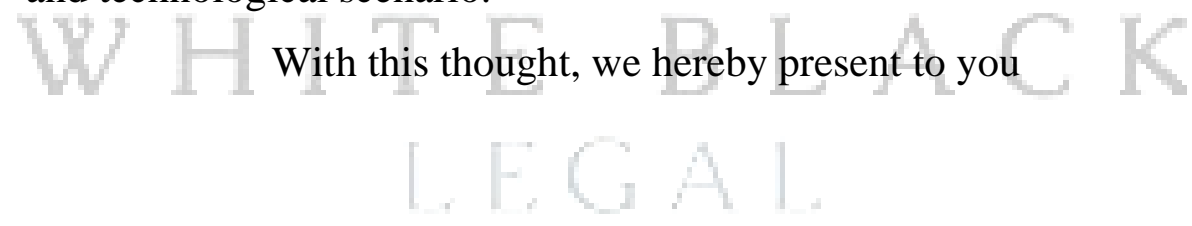
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ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you



ROLE OF WOMEN SCHOLARS IN PROMOTION OF UNIVERSAL HUMAN RIGHTS AND JUSTICE

AUTHORED BY - V.KAMALA PRIYA¹

Introduction

Naturally, women are the key players in the society. They are the identity of all the things created in the world. Unfortunately, women are the victims of the every action in the society. Though, numerous literatures have developed to strengthen the rights of the women, they are still oppressed inhumanly. At this juncture, the woman in the field of academia attracts attention. Because, the scholarship based knowledge escalates the rank of women in the society. The feelings of the women cannot be clearly explained by any person other than a fellow woman. Thus the writings of the women in the academics can facilitate the women human rights. The women who sensitize the concerns of women victim, international committee of responsibility, women equality, remedies and women legal development are named as women scholars.²

In particular, the women scholars visualise the structure, substance, norms, enforcement and institutions through the responsibility with regard to the contemporary issues of women. They may found as scholars, researcher, field worker, social activist, judges and also may self-awaken the human rights movement. Among the women scholars, the researcher has chosen the following four scholars to realise the impact they created towards the promotion of universal human rights and justice. They are, Catharine A. Mackinnon, Alison Des Forges, Hilary Charlesworth, Navanethem Pillay. Here the researcher has partly shows the biography and their contributions for the promotion of human rights and universal justice.

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² Women are the backbone to the society. The persistence of the oppression of the women indicates the less accountability towards their rights. There is a need to strengthen their rights with more effort. But the existing literatures concentrate to just voice for their rights rather than to see the impact in practice. The real solution can only be achieved when the fewer victims are emerged in the society.

Contribution of Catharine Mackinnon

Biography

Catharine Mackinnon, a well acclaimed international scholar, lawyer, teacher, writer and activist on sex equality issues domestically and internationally. Importantly, in the period of 2008-2012, she was the first special gender adviser to the prosecutor of the International Criminal Court. Her various works include *Sexual Harassment of Working Women* (1979), *Feminism Unmodified* (1987), *Toward a Feminist Theory of the State* (1989), *Only Words* (1993), *Women's Lives, Men's Laws* (2005), *Are Women Human?* (2006), *Sex Equality* (2016), and *Butterfly Politics* (2017). She truly established as a voice of women by conceiving the sexual abuse as a violation of equality rights, recognised the harms of pornography as civil rights violations.³

Catharine Mackinnon is perhaps most famous in the United States for her groundbreaking, U.S.- focused writing on sex equality, her work on pornography, and her foundational work on sexual harassment. However, since late 1991 when she was galvanized by atrocities in Bosnia-Herzegovina and Croatia, she has also been an extraordinarily important international lawyer and human rights theorist and activist. In these capacities, she has litigated and shaped groundbreaking cases with transnational dimensions authored numerous international law and human rights articles and worked with the international women's rights group. Through her work in international law, it has helped increasing work on female in the mainstream institutions.⁴

The 1999 optional protocol to the UN Convention on the Elimination of All Forms of Discrimination against Women which in turn creates an international complaints mechanism for individual women victims of discrimination.⁵ This instrument was name as the kind of legal accountability for women. Mackinnon's concerns and contributions are also clearly reflected in the protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa – one of the most cutting edge substantive standards on women's human rights in the world today. The protocol prohibits unwanted or forced sex in public and in private and requires states to take effective legislative and administrative measures to prevent the

³Generally refer, <https://hls.harvard.edu/faculty/directory/10540/MacKinnon>, Accessed on 2/08/2021.

⁴ Refer, Karima Bennoune, "why does it matter if women are human: Catherine Mackinnon's contribution to international law," *Tulsa Law Review*, Vol. 46, no.1 pp. 107-122.

⁵ The Protocol's preamble indicates that its purpose is to ensure the full and equal enjoyment by women of all human rights and fundamental freedoms and to take effective action to prevent violations of these rights and freedoms.

exploitation and abuse of women in pornography. It also includes economic violence in its definition of violence against women. This instrument makes the first explicit mention of abortion rights found in an international human rights treaty. It requires states to protect the reproductive rights of women by authorising medical abortion in cases of sexual assault, rape, incest and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus.⁶

The – ‘Only Words’

Among the works of the Mackinnon, the notable work of the book ‘Only Words’ grabs the attention to the author. The description of the book and the review of the work enhance the vision over the Mackinnon thoughts to the society. The first part of the book deals with ‘Defamation and Discrimination’. Here Mackinnon says that the consumption of pornography devise as host of social sex inequalities, including rape and sexual harassment. According to Mackinnon, the word pornography creates inequalities indirectly, that is it indirectly assaults women. The cause and effect relationship between pornography and sex inequality was perfectly established by the scholar. Distinctively, the scholar identified that Pornography is significant cause of crime. Beautifully, she understands that the Pornography is more active term than the passive terms which indicates sexual abuse more. Mackinnon cleverly starts from the ‘Only Words’ that is only words which makes impact in the contemporary era. In the ancient era, though it is named as words, the hidden impact made by the words cannot be noticed. To explain the pornography sequence is tapped in the film or videocassette itself impacts on the life and portrays as genuine but it was originally a wrong portrayal. This dirty work like pornography consistently impacts on the women society. She correctly pointed out that pornography should be essentially treated as defamation rather than discrimination. Social inequality is created and enforced through words and images.

“In a society in which equality is a fact, not merely a word, words of racial or sexual assault and humiliation will be nonsense syllables. Sex between people and things, human beings and pieces of paper, real men and unreal women, will be a turn-off. Artifacts of these abuses will reside in a glass case next to the dinosaur skeletons in the Smithsonian. When this day comes, silence will be neither an act of power, as it is now for those who hide behind it, nor an

⁶ For the undeniable contribution to women internationally, generally refer, Karima Bennoune, “why does it matter if women are human: Catherine Mackinnon’s contribution to international law,” Tulsa Law Review, Vol. 46, no.1 pp. 107-122.

experience of imposed powerlessness, as it is now for those who are submerged in it, but a context of repose into which thought can expand, an invitation that gives speech its shape, an opening to a new conversation.”⁷

Thus the work of the author highly maintains and clarifies the impact of the words which is offended against women in the contemporary society.

The voice of the victims – Alison Desforges

Biography

Alison des forges was born in New York, she was the student at Radcliffe College in Cambridge, Massachusetts, from which she graduated in 1964. Besides, she is the PhD holder in the subject of history from the Yale University in 1972. She was a great scholar and human rights activist, hugely contributed to the society. As a senior advisor to the Africa Division of Human Rights Watch, Alison authored one of the most comprehensive, judicious and respected accounts of the Rwandan genocide, titled ‘*Leave None to Tell the Story: Genocide in Rwanda*’. The author argued in the book that the genocide was organised by the Hutu-dominated Rwandan government at the time, and was not a spontaneous outbreak of long-standing tribal animosities. The book was a landmark account of the genocide in her carrier. It served as an authoritative reference work at the United Nations International Criminal Tribunal for Rwanda (ICTR), and won prizes in Germany and Austria.⁸

She was a serious human rights activist, in 1992; Alison co-chaired an international commission to investigate human rights abuses in Rwanda and published a report warning of the early signs of genocide. When the genocide began in 1994, she worked tirelessly to save people and to exhort leaders in the world community to stop the carnage. Her tireless efforts to awaken the international community to the horrors of that event earned her a MacArthur Fellowship in 1999. In the aftermath, she served as an expert witness at trials of the perpetrators in Canada, Belgium, and Switzerland.

She testified at length at eleven trials of the United Nations International Criminal Tribunal for

⁷ Refer, the final words of Mackinnon to understand the implication of the only words, “ Catherine Mackinno, *Only Words*, Harvard University Press: Cambridge.

⁸ Available at, <https://www.theguardian.com/world/2009/feb/18/obituary-alison-des-forges>, Accessed on 2/08/2021.

Rwanda (ICTR), which met in Arusha, Tanzania.⁹ She also provided evidence about the Rwandan genocide to panels of the French National Assembly, the Belgian Senate, the British Parliament, the U.S. Congress, the Organization of African Unity and the United Nations. It is widely recognised that Alison was a major force behind the successful prosecution of those who masterminded the Rwandan genocide. She was also a leading critic of those who committed war crimes and crimes against humanity in the course of bringing the genocide to an end. Alison helps to set the historical record straight and serve the cause of justice.¹⁰

Leave None to Tell the Story in Rwanda – 1992

Leave none to tell the Story is a comprehensive, chronological anatomy of the genocide. The book combines a macroscopic overview approach with detailed microscopic accounts of events. Included are an able general summary, a thorough discussion of Rwandan history, and a careful analysis of the immediate events leading up the genocide. The book's heart is a blow-by-blow account of the genocide at a national and at a local level, with particular attention to two regions. It ends with an inspection of the international community's actions and inactions a discussion of the RPF during and immediately after the genocide, and presentation of the dual system of justice pursued by the current Rwandan government and the International Criminal Tribunal for Rwanda well. The culmination of years of work by researchers who know Rwanda well, Leave none is written in a clear, unwavering voice that zooms in on details even while judiciously evaluating them. Meticulous, even-handed, a mine of information, Leave none is destined to become the definitive reference on the genocide and an outstanding example of scholarship.¹¹

In detail, here the central argument was that the genocide was centrally planned and organised plan of the small powerful group of Rwandans. In order to counter against RPF rebel advances and also a domestic political opposition, the genocide was brought as a deliberated strategy to

⁹ After the international criminal tribunal for Yugoslavia (ICTY), the tribunal for Rwanda was established under the Chapter VII of the UN charter (enforcement measures). It was concerning the threats to peace of Rwanda. The UN members were required to cooperate fully with tribunal for Rwanda. The tribunal was established to judge persons accused of genocide, crimes against humanity and violations of Article 3 common to the Geneva Conventions and Additional Protocol II of the Geneva Convention. The jurisdiction was accorded over the persons who committed genocide in Rwanda over the Rwandans. The mandate of the tribunal extends to crimes committed from January 1, 1994 to December 31, 1994. But for the international criminal tribunal for Yugoslavia there is no time limit was fixed as fixed for the international criminal tribunal for Rwanda.

¹⁰ Available at, <https://www.alisondesforges.org/life-legacy>, Accessed on 3/08/2021.

¹¹ Refer, for detailed review of the valuable book by the author/scholar Alison des forges Scott Strauss, Genocide in Rwanda (2000), African Studies Review, Vol. 43, No. 2, pp. 126-130.

retain power. The triggering factor of the genocide was unresolved due to the strategic planning, ideological development, and military or paramilitary operation. Here the book highlights the preparation, power struggle and persuasion of genocide. This work also criticised the international community's, international actions has missed opportunities before and during genocide.

This book points out some significant factors, they are, first, is Rwanda's dense and hierarchical administration extends to every household. If the orders the commandeered of the state is refused, then every officials may be replaced, bypassed with militia. By this way the leaders converted Africa's most extensive state administrations into an efficient killing apparatus for example, they continuously keep count the number of Tutsi alive and the dead ones in their location. Second, they mobilize the major person that is mass mobilisation. This was deliberate strategy used by the genocide planners. The heavy dose of propaganda, the promulgation of fear and the promise of properties were used as a strategy. The Hutus were prepared as ready killers.

In this work, Madam Alison efficiently analyse the history to found the origin and cause of the genocide. Firstly, the meaning of the ethnic people originated in the country was clearly defined by the scholar elaborately. Namely, the Hutu, the Tutsi, and the Twa were defined by the author.¹² The author beautifully identified the root cause of the problem that is there thinking of the superiority over the other human beings.

The Belgians assure the Tutsi group over the monopoly of power; by the way the Belgians set the stage for future conflict in Rwanda. The Belgians believed Tutsi, Hutu and Twa were three

¹² The word 'Tutsi' which apparently first described the status of an individual – a person rich in cattle became the term that referred to elite group as a whole and the word 'Hutu' - meaning originally a subordinate or follower of a more powerful person refer to the mass of the ordinary people. The identification of Tutsi pastoralists as power-holders and of Hutu cultivators as subjects was becoming general when Europeans first arrived in Rwanda at the turn of the century, but it was not yet completely fixed throughout the country. Rulers of small states embedded in the larger nation, important lineage heads and some power-holders within the central state hierarchy exercised authority even though they were people who would today be called 'Hutu'. The Twa, a people clearly differentiated from Hutu and Tutsi, formed the smallest component of the Rwandan population, approximately 1 percent of the total before the genocide. Originally forest dwellers who lived by hunting and gathering, Twa had in recent decades moved closer to Hutu and Tutsi, working as potters, labourers or servants. Physically distinguishable by such features as their smaller size, Twa also used to speak a distinctive form of Kinyarwanda. While the boundary between Hutu and Tutsi was flexible and permeable before the colonial era, that separating the Twa from both groups was far more rigid. Hutu and Tutsi shunned marriage with Twa and used to refuse even to share food or drink with them. During the genocide, some Twa were killed and others became killers. Because Twa so few in number and because data concerning them are so limited, this study does not examine their role.

distinct, internally divided blocks of people. Due to the absence of the knowledge over the ethnic population found in the Africa, the Europeans considered Tutsi were the superior race over the Hutu and the Hutu superior over the Twa group, which was similar to the the belief of Europeans superiority over other human beings in the world. Because Europeans thought that the Tutsi looked more like themselves than did other Rwandans, they found it reasonable to suppose them close to Europeans. They believe Tutsi to be more capable, they found it logical for the Tutsi to rule Hutu and Twa just as it was reasonable for Europeans to rule Africans. Unaware of the 'Hutu' contribution to the development of Rwanda, the Europeans saw only the complex institutions had been created by Tutsi. Simultaneously, Tutsi also welcomed this idea of superiority over other two groups.

The equal participation of the Hutu and Tutsi in building the Rwanda was being ignored by the then scholars. Moreover, the Tutsi population was given more power in administration. Finally, Tutsi survived distinctively and the Hutu group used the ground of Tutsi's distinctiveness, foreign origins and their complete control over Hutu to justify the violence of the revolution and the discriminatory measures.

Days after the revolution the major Tutsi group fled the country, where the Hutu group became the majority and Tutsi became minority. Simultaneously, the Rwandan Patriotic front was developed wisely. The Propagandists of Rwandan Patriotic front insisted that not just the freedom and prosperity of Hutu were at risk but their very lives. They warned that the Tutsi minority could not hope to re-establish their control over the majority without killing large numbers of Hutu. Rwandan Patriotic Front planned to restore the dictatorship of the extremists of the Tutsi minority by genocide, the extermination of the Hutu majority. The Hutus are the innocent victims, the president Habyarimana is the true example for Hutu as innocent victims. The killing of Tutsi by Hutu was more generalised and popularised, whereas the Hutu killed by Tutsi is the real criminal attitude which was intentionally ignored by the history.

The genocide was not done by Hutu, Tutsi or Twa but by the ideology of national unity. Virtually all persons killed by Rwandan Patriotic Front forces were Hutu, but the RPF explicitly disavowed any hostility based on ethnic distinction and from its earliest days proclaimed a national ideology. The stress on national identity made sense politically for a group drawn mostly from the minority and aspiring to political power in a situation where ethnic differences had been exaggerated.

The international responsibility over the actions of Rwandan genocide was forgotten by the international community.¹³ With full and horrifying information about a genocide where the moral and legal imperative to act was overwhelming, major actors at the UN and in various national governments had failed to intervene. Burdened with the guilt of this failure, they confronted a more complex situation when Germany revealed the apparent extent of RPF killings. Unfortunately, the UN and the international community refuse to deal with accusations of killings by the RPF. The scrutiny of the policies and practices of the RPF from reproach is reduced.

Finally, the scholar established that there must be justice for the genocide committed in Rwanda. The prevention of genocide is important and the innocent victims have to be freed from culpability and jail. Justice is required in Rwanda and its surrounding regions. The killing of civilians by the RPA soldiers has to be reconciled soon. Establishing the responsibility of individual Hutu is the only way to diminish punishment for the collective Hutus in the regime of Rwanda. Fair trials are the serious measure which has to be followed for the reconciliation.

Moreover, the new Rwandan government must be provided with foreign assistance. By inducing hatred on the Tutsi, the solidarity was forgotten to Hutu people. The collective responsibility of the genocide was brought by the organisers intentionally to trap all the Hutu groups in Rwanda. This was truly the genocide committed by national and international actors. There is a need to find ways to increase the resistance against the vulnerable crimes committed inside and outside the society. Thus this book is one of the greatest accomplishments which overcome the practical, physical and psychological barriers which stand in the way of brutality. It takes nothing for granted, relentlessly pursues information, and resists mystification. The outcome is a complex, persuasive, factually grounded one.

The Reformation made by Hilary Charlesworth¹⁴

Biography

Hilary Charlesworth, a prominent feminist international law scholar born on 28 February 1955. She holds degrees from Melbourne and Harvard Law Schools and is a barrister and solicitor of

¹³ In May 1994, the UN Secretary-General Boutros-Ghali admitted that they failed to accord the responsibility of the Rwandan people for not halting the genocide. The US president Bill Clinton also apologized for not having responded to Rwandan cries for help and Secretary-general Kofi Annan also expressed regret towards the genocide committed in Rwanda.

¹⁴ <https://researchprofiles.anu.edu.au/en/persons/hilary-charlesworth>

the Supreme Court of Victoria. The well-known Professor of International Law and Human Rights, an Australian Research Council Laureate Fellow and Director of the Centre for International Governance and Justice in the Regulatory Institutions Network at the Australian National University. She has been a visiting professor at several law schools in the United States, France and the United Kingdom. Also, she visited the President of the Australian and New Zealand Society of International Law from 1997 to 2001. Research includes the structure of feminist approaches to international law and the art of international law. The Book entitled *The Boundaries of International Law: A Feminist Analysis* co-authored by Hilary Charlesworth was awarded a Certificate of Merit by the American Society of International Law in 2001.

She was joint winner of the American Society of International Law's 2006 Goler T Butcher Medal in recognition of 'outstanding contributions to the development or effective realization of international human rights law'. Also was a chair of the Australian Capital Territory government's inquiry into an ACT bill of rights, which led to the adoption of the ACT Human Rights Act 2004. Tremendously, she was appointed as judge ad hoc to the International Court of Justice in the Whaling in the Antarctic Case (Australia v. Japan). In 2021, the International Studies Association conferred a Distinguished Scholar award. Moreover, she was nominated for election as a judge of International Court of Justice to fill the vacant position of James Richard Crawford.

Contribution of Hilary Charlesworth

The male orientation of international law was beautifully explained by the authors Hilary Charlesworth and Christine Chinkin. Including in the international human rights regime which is considered to be general protection of all human beings in the world were partially being in support of men. Though the norm of *jus cogens* were considered to be the basis status accorded to human rights for the basis protection, wholly centered on men.¹⁵ Even it is the protection encouraged by the third world states against the powerful countries, it was actually partial. The norm of *jus cogens* does not rely on the consent of states; it was totally under the exception of statist consensual mechanism. Inconsistent principles of general international law cannot stand alongside *jus cogens* norm. But the symbolism created by the norms merely vest on male than

¹⁵ *Jus Cogens* is a peremptory norm of general international law is a norm accepted and recognised by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character. Here the *jus cogens* norm only defined for the purpose of Vienna Convention of Law of Treaties, 1969.

the female.

Although human rights were considered as the radical development in international law, it symbolizes more on men. For example, although race discrimination consistently appears in *jus cogens* inventories, discrimination on the basis of sex does not. And yet sex discrimination is an even more widespread injustice, affecting the lives of more than half the world's population. While a prohibition on sex discrimination, as racial discrimination, is included in every general human rights convention and is the subject of a specialized binding instrument, sexual equality has not been allocated the status of a fundamental and basic tenet of a communal world order. Consideration of gender should be fundamental to an analysis of international law. Feminist rethinking of *jus cogens* is much needed.

Thus the author beautifully analyses and explores the international problem of gender inequality of the world. The reformation of universal human rights and justice was perfectly enhanced by the author in a distinctive way.

Gender Neutrality- even they are named as perpetrators

The gendering of violence results in an interpretation of women's brutality that presents women as victims, rather than as agents of their acts of violence. This theoretical impression is that women's violent conduct affects how the international system legally and practically manages expressions of women's political violence, much of which erects a whole set of human rights challenges for the production of women perpetrators and other acts in the world.¹⁶ Two important presumptions are generally implicit in all investigations of international crime by a woman perpetrator. Firstly, it automatically assumes that women's violence is different from men.¹⁷ Secondly, there is an implied presumption that women's violence is atypical.¹⁸ Nevertheless, putting these two presumptions aside, if we look strictly at the narratives

¹⁶ Since women and mothers are not expected to do such things, they could not have done such things as women, and therefore are not genuine women but deviance. This is a dangerous historical or analytical approach when thinking of both men and women perpetrators—though it is sometimes done in cases of men extremists. If we demonize women perpetrators, regarding them as aberrant and unnatural, separate them and fail to confront the motives and context of their actions, denying or excusing them, and thus we will never achieve justice for victims or deter future mass killings. Refer Carrie Sperling, "Mother of Atrocities: Pauline Nyiramasuhuko's role in the Rwandan genocide" (2006), *Fordham Urban Law Journal*.

¹⁷ If it were not, there would be no reason to study the phenomenon separately; women's capacity for violence would be considered identical to men's capacity for violence. Thus no independent and distinct analysis of one, over the other, would be necessary.

¹⁸ If it were not, there would be no need to isolate it as an object for further study because it would be within the parameters of acceptable and expected conduct for women.

themselves, how they are constructed, what they say, and the underlying assumptions that they make, it is easily discernable that these stories constantly and consistently draw upon gender norms in their explanations of violent women and the brutality they perpetrate. Feminist jurisprudence is a house with many rooms: in it reflects the different movements in feminist thought. But what unites feminist legal theorists is a belief their society, and necessarily legal order, is patriarchal.¹⁹ Historically the society being patriarchal and the general feminists theory had one main core – gender neutrality, for women and men in the system, giving access to the rights and privileges they have been denied could breakdown this patriarchal system.²⁰ To understand the difference between women and women perpetrator, we should know about the gender neutrality principle. As such, the way in which certain gendered crimes against other women, legally impossible. For instance, rape is legally defines as ‘nonconsensual sexual intercourse’.²¹ The fundamental characteristics of gender-neutral reforms expand the definition of rape to recognize male victims and female perpetrators. Hence they are “neutral”, but only in the sense of including both males and females as potential rapists and victims.²² Without altering the gendered reality of rape itself, gender neutrality²³ permitted an understanding of rape different from the classic male versus female paradigm. The general neutrality will mean that the victimization of women will no longer be of central importance when considering the problem of rape.²⁴ This was the first look to see all crimes with gender neutrality where men and women can become as both victims and perpetrators. Therefore, it enhanced the clear line between the women and the women perpetrator. Women held as perpetrators, thus their deviance leads to changing nature of law to protect the women’s rights based on concept of

¹⁹ It seeks to analyze the contribution of law in constructing, maintaining, reinforcing and perpetuating patriarchy and it looks at ways in which this patriarchy can be undermined and ultimately eliminated. Refer “Introduction to Jurisprudence”, Freeman M.D.A (2001), seventh edition, Sweet & Maxwell publisher’s ltd, London, page no. 1124.

²⁰ This may be achieved by providing women with additional skills and knowledge so they may further understand their rights. Refer women psychology, chocha.R.K and Tapariya.J.H (2013) First edition, Paradise Publishers ltd, Jaipur.

²¹ This means that women because of their anatomical limitations could never be held legally or criminally liable for raping other women. It is irrefutable that such definitions failed to recognize the realities of war and conflict, and encompass the view that women’s classification as victims is absolute in the context of sexual violence.

²² Gender-neutral reforms adopted as part of a wider law refractory reform agenda in an attempt to reflect a more modern understanding of the purpose of rape law – the protection of sexual autonomy from the harm of consensual penetrative sex acts. In the context of the legal recognition of anal rape, Ruth Graham recently observed that “argue that the harm caused is comparable is not the same as arguing that the male anus, the female anus and the vagina are similar”. Male rape and the careful construction of the male victim, Ruth Graham, (2006) 15 SOC. & LEGAL STUD, Page No.187, 197

²³ Gender neutrality mystifies the crime of rape, gender neutral reforms, however, are not uniform in nature.

²⁴ Jurisdictions have adopted laws that are fully gender- neutral; these laws recognize male victims of rape and acknowledge that women can physically commit the act of rape. In order to achieve gender neutrality, jurisdictions have adopted an expensive definition of sexual intercourse includes penetration of the vagina, anus, or mouth with a penis, hand, tongue, or inanimate object.

women's victimhood.²⁵

The Investigation report of the Navanethem Pillai

Biography

A South African jurist of Indian Tamil origin born on 23 September 1941 in Durban, Union of South Africa served as the United Nations High Commissioner for Human rights. A distinguished expert on International Criminal Law and Human rights was the first non-white woman judge of the High Court of South Africa and first South African to obtain a doctorate in law from Harvard Law School. In South Africa, as a member of the Women's National Coalition, she contributed to the inclusion of the equality clause in the country's Constitution that prohibits discrimination on grounds of race, gender, religion and sexual orientation. Also worked as a lecturer at the University of KwaZulu-Natal and appointed Vice-President of the Council of the University of Durban Westville.

Prominently, she has also served as a judge of the International Criminal Court and President of the International Criminal Tribunal for Rwanda. And well-remembered for her role in the landmark trial of Jean-Paul Akayesu which established that rape and sexual assault could constitute acts of genocide. In 2015, Pillay became the 16th Commissioner of the International Commission against the Death Penalty. She Co-founded an international Women's Rights Organization – Equality Now and involved with other organizations working on issues relating to children, detainees, victims of torture and of domestic violence and a range of economic, social and cultural rights. Presently, Pillay has been elected as the new president of the Advisory Council of the International Nuremberg Principles Academy. Still she is working as a member of International Association against the Death Penalty, International services for Human rights, UN Interim Independent Assessment Panel and as the Co-sponsor for Donor Direct USA. Additionally, manages to enlighten students, professionals, layman and politicians on current Human Rights, Justice and Accountability issues at lectures and functions held worldwide at educational institutions and various venues.

The investigation report of the Navanethem Pillay

Madam Navanethem Pillay appointed as high commissioner in the office of high commission

²⁵ It was considered a victory for the women's right is with reference to the future prospects for equal recognition for men and women, or even for the women's rights as human rights in their endeavor to promote the humanity of women and to acquire acknowledgement of women's right as set of universal and inalienable human rights.

of human rights (OHCHR). She investigates seriously in the Sri Lankan human rights conflict. The report was submitted wherein it contains human rights investigation not the criminal investigations. The report contains the principal findings found by the OHCHR as a result of the investigation and on the basis of the information they possess. The sheer number of allegations, their gravity, recurrence and the similarities in their modus operandi, as well as the consistent pattern of conduct they indicate, all point to system crimes. While it has not always been possible to establish the identity of those responsible for serious alleged violations of international human rights law, serious violations of international humanitarian law and international crimes were committed by all parties during the period under review. Indeed, if established before a court of law, many of the allegations may, depending on the circumstances; amount to war crimes if a nexus is established with the armed conflict and crimes against humanity if committed as part of a widespread or systematic attack against a civilian population. In some of the cases, the alleged acts were apparently committed on discriminatory grounds.

The principal findings are;

- a) Unlawful killings;
- b) Violation relating to deprivation of liberty;
- c) Enforced disappearances;
- d) Torture and other forms of cruel, inhuman and degrading treatment;
- e) Sexual and gender based violence;
- f) Abductions and forced recruitment;
- g) Recruitment of children and their use in hostilities;
- h) Impact of hostilities on civilian and civilian objects;
- i) Control of movement;
- j) Denial of humanitarian assistance;
- k) Screening and deprivation of liberty of internally displaced persons.

A. Unlawful Killings

The Sri Lankan Security forces and other paramilitary groups were undoubtedly implicated in unlawful killings on the civilians and other protected groups were confirmed by the findings of the report. Also, LTTE committed crimes like suicide bombings.²⁶

²⁶ Both the groups that is government and LTTE are committed serious crimes. Later it was also confirmed by the court. The crimes also named as war crimes and crimes against humanity.

B. Violation relating to deprivation of liberty

The Paramilitary groups and government security forces make arbitrary arrest, detention and extra-judicial killings.²⁷

C. Enforced Disappearances

Sri Lankan authorities have, in a widespread and systematic manner, deprived a considerable number of victims of their liberty, and then refused to acknowledge the deprivation of liberty or concealed the fate and whereabouts of the disappeared person. This, in effect, removed these persons from the protection of the law and placed them at serious risk. Family members of the disappeared persons were also subjected to reprisals and denied the right to an effective remedy, including the right to the truth.²⁸

D. Torture and other forms of cruel, inhuman and degrading treatment

In the rehabilitation camps, police stations or any other camps, civilians are continuously beaten and tortured by the security forces. There is reason to believe such an allegation on the government forces.

E. Sexual and gender based violence

The Rape and other forms of sexual violence by security forces personnel were widespread against both male and female detainees, particularly in the aftermath of the armed conflict. The patterns of sexual violence appear to have been a deliberate means of torture to extract information and to humiliate and punish persons who were presumed to have links with LTTE forces.

F. Abductions and Forced Recruitment

There are pattern of abductions which lead to the forced recruitment. They are supposed to perform military function and denied to access to their family members.

G. Recruitment of Children and their use in hostilities

Children were used to perform in the armed conflict. This indicates that the government may also have violated the Convention on the Rights of the Child and the Optional Protocol thereto on the involvement of children in armed conflict to which it is a party, in particular to ensure the protection and care of children affected by armed conflict. The high commissioner also notes the State's failure to date to prosecute those responsible, including individuals widely suspected of child recruitment.

²⁷ These arbitrary arrest and detention is provided under prevention of terrorism act, which is still in force and also violation of State's Obligation under international human rights law.

²⁸ They are seriously targeted by the government forces due to their affiliation with LTTE forces which were the original findings of the investigation.

H. Impact of hostilities on civilian and civilian objects

The security forces utilised the facility for military purpose and should not directly targeted the civilian objects. Directing attacks against civilian objects and or against civilians not taking direct part in hostilities is a serious violation of international humanitarian law and depending on the circumstances, it may also amount to war crime.

I. Control of movement

They have the policy of preventing civilians from movement, indeed it was a restriction to their freedom of movement. There are number of individuals, including several children were shot dead, injured or beaten by LTTE cadres as they tried to leave, in contravention of their right to life and physical integrity. These acts may amount to direct attacks on civilians not taking direct part in hostilities, in violation of international humanitarian law.

J. Denial of humanitarian assistance

Sri Lankan forces were restricted the movement of humanitarian personnel and humanitarian activities. This in turn creates an impact on the ability of humanitarian organisations and personnel to exercise their functions effectively and to ensure access to relief of civilians in need.²⁹

K. Screening and deprivation of liberty to internally displaced persons

The material conditions in these closed camps amounted to violations of these closed camps amounted to violations of the rights to health and to an adequate standard of living, including food, water, housing and sanitation. It may amount to inhumane and degrading treatment as defined in international human rights law.

Further recommendations of the investigation list out by the high commissioner of human rights are;³⁰

Firstly, to the Government of Sri-Lanka, to set up a high-level executive group to develop a coordinated, time-bound plan and oversee progress in implementing the recommendations contained in the present and previous reports to the human rights council and also the recommendations of the Lessons Learnt and Reconciliation Commission.

Secondly, to invite the OHCHR to establish a full-fledged country presence to monitor the

²⁹ According to Article 56 of the customary international humanitarian law, the above said restriction can only be permitted under military necessity. As per rule 56, the use of starvation of the civilian population as a method of warfare may amount to violation of international humanitarian law.

³⁰ Refer the Report on 'Comprehensive Report of the Office of the United Nations High Commissioner for Human on Sri Lanka, Human Rights Council.

situation of human rights and make the active implementation of the recommendations of the High Commissioner of the human rights.

Thirdly, initiate genuine consultations on transitional justice, for truth-seeking and accountability mechanisms and to make reparations. Fourthly, invite the special rapporteur to make advice on the tensions of the country.

Thus the scholar makes a profound contribution to the Sri Lankan atrocities and made a fine recommendations, solutions. The unique part was that the report found evidence both on the government of Sri Lankan forces and LTTE forces. The root cause of the problems and inequalities, discrimination between both the groups are yet to be addressed in the further reports.

Conclusion

Historically there was a trend that societies are patriarchic in nature, so the feminist movement was raised to acquire the equal status of men and women before the law, its rules was dedicated to the changing women's status through reworking of law and approach to the gender. The trend of women scholars and their role proficiently enhance the values in the society. The equal status of men and women was reinstated.

Women were significant role players in family and society based on the context of the world. Society consists of men and women,³¹ that is, individuals of both the sex.³² Women are generally a distinctively feminine nature generates an image of pacifist, compassionate, generally benign and it confirms that a victim hood has become both a significant aspect of their identity and accepted facet of Feminity³³ in general. A great deal of international effort

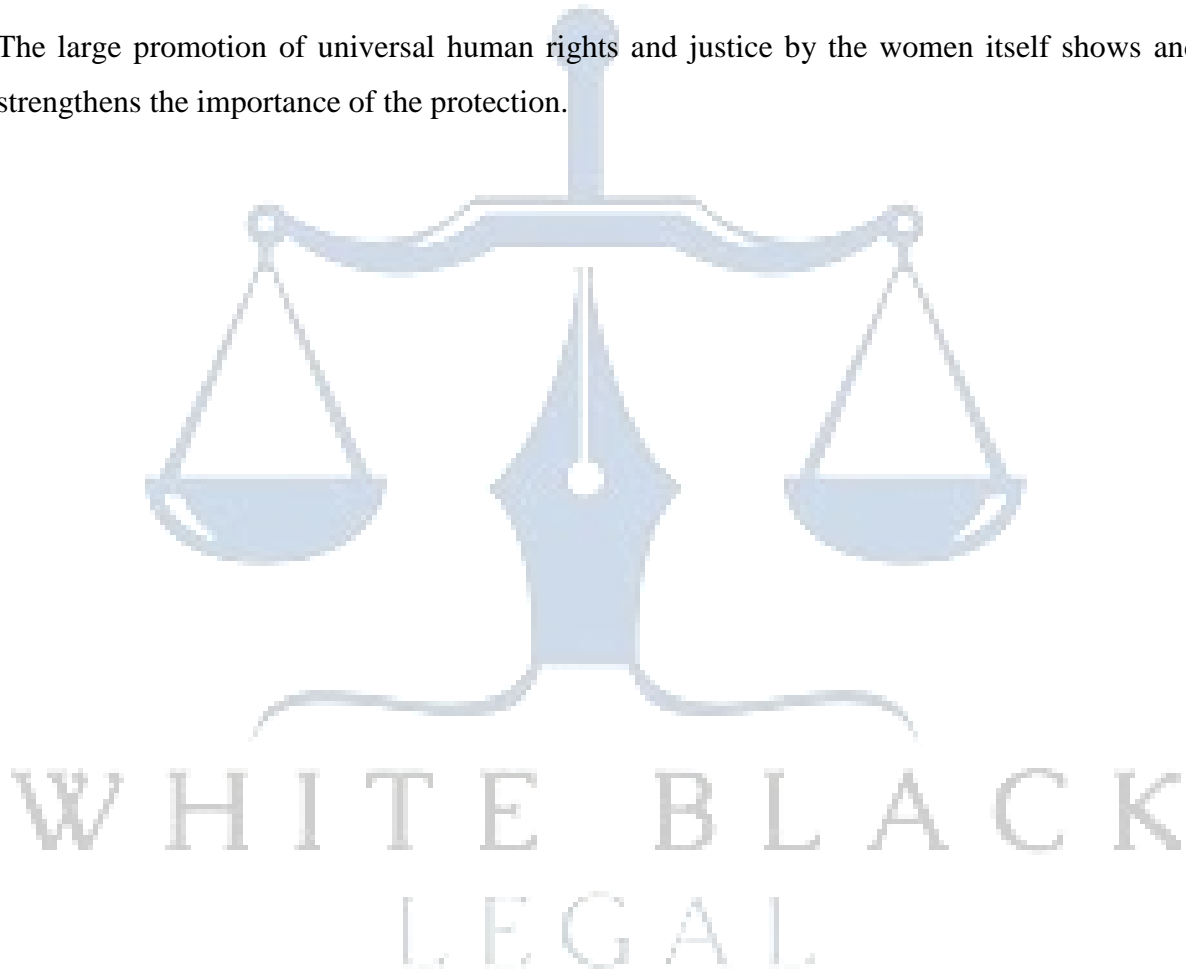
³¹ The word Woman means a female human being of any age, taken from The Law Lexicon- The encyclopedic Law Dictionary with Legal Maxims, Latin terms, words & phrases, P Ramanatha Aiyar (2012) third Edition, Lexis Nexis, Butterworth's wadhwa: Haryana, Page. No. 1915.

³² Every society differentiates its members on the basis of sex, treating men and women in different ways and expecting different patterns of behaviour from them. This differentiation does not necessarily imply the one sex should have status superior to the other, but in practice, sexual differentiation was always translating into sexual inequality. Refer Sociology- Principles of Sociology with an introduction to social thought, C. N. Shankar Rao (2014), Second Edition, published by S. Chand & Company Pvt. Ltd; New Delhi in Page. No.814.

³³ Feminity is a gender identity refers to the degree to which persons see themselves as feminine given it means to women in society. Gender attitudes that is associated with women, thinking in terms of care. Feminites ideas about what is to be female, a part of females identity and are shared and actualized through human interactions accomplishing gender, that is acting feminine involves behaving in a way that is consistent with ones gender identity. Referred in Understanding Gender, Crime, and Justice, Morach Merry (2006), published by Sage Publications India Pvt. Ltd; New Delhi in Page No. 89.

has been devoted to the issue of women's rights. This has culminated in a growing number of International legal declarations and conventions³⁴ in which states have pledged their security to addressing and opposing incidence violence against women; it has also resulted in significant developments among National laws, focused on alleviating the plight of women internationally, and ensuring the production of women's human rights.

The large promotion of universal human rights and justice by the women itself shows and strengthens the importance of the protection.



³⁴ The declarations and international conventions protecting women's rights are Article 2 of The Universal Declaration of Human Rights (1948), Inter-American Convention on the Granting of Civil Rights to women (1948), The Millennium Declaration adopted by general assembly in (2000), The two covenants on Economic, Social, and Cultural rights and Civil and Political rights (1966), Article 1 of Charter of The United Nations (1945), The Convention on Elimination of all forms of Discrimination against Women (1979), Declaration on the Elimination of Violence against Women (1993), The United Nations General Assembly unanimously created a single specialized agency "UN Women" tasked with accelerating progress in achieving gender equality and women's empowerment.