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FOREWORD FROM THE ACADEMIC SPONSOR:

As one of three academic sponsors of *Contemporary Challenges*, I am happy to welcome the third volume into the world and to congratulate the third Board of Editors under the leadership of Adwitia Maity. In a sense every year represents a rebirth for the journal, as one Board of Editors steps down and a new group take their place. There is a steep learning curve here, and it is one the board undertake alongside their studies. The rebirth means each volume is shaped by the particular vision of a new Editor in Chief and her team, but consistency is provided by the journal scope which took root in the MSc in Global Crime, Justice and Security at the University of Edinburgh Schools of Law and of Social and Political Science. This encompasses 'contemporary challenges' in the areas of security and conflict, justice, discrimination and human rights, and policing and prisons. Adwitia and her colleagues have curated an admirable selection of papers falling under this extensive umbrella. One of the joys in teaching on courses associated with the MSc programme, and linked directly to the journal, is the diversity of interests represented by the students, so it is especially heartening to see some of that spirit reflected in the volume here. I thank the authors for putting their trust in *Contemporary Challenges* and in Adwitia and her team, and I thank Adwitia and her team in turn for being worthy of that trust. As this goes to press, the cycle is beginning anew with the selection of a new Board of Editors. Having enjoyed the papers here, I already look forward to a new team's take on the stuff of Contemporary Challenges.

All best!

Andy

Dr Andy Aydin-Aitchison
(Senior Lecturer in Criminology,
Edinburgh Law School
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ACKNOWLDGEMENT AND FOREWORD FROM THE EDITOR-IN-CHIEF:

The third volume of the "*Contemporary Challenges: The Global Crime, Justice and Security Journal*" marks our growth, slow but steady. We had set out three years back with an aim of consolidating a rich collection of literature on the theme of global crime, justice and security, and in keeping with the scope of the journal, the second volume went on to accept and feature submissions from authors outside of the University of Edinburgh as well. This edition's essays and commentary link a number of academic fields, such as law, criminology, political science, and international relations. They also span a number of geographical areas and discuss transnational and global topics.

In this edition, while Nishat and Hossain in their submission discussed genocide of Bengali intellectuals in Bangladesh in the light of 1948 Genocide Convention, with a specific focus on how such killings would aptly fit the definition of genocide set out in the convention, Yu-Hsuan delved into a theoretical analysis of the discipline of Critical Criminology as a whole and explored the directions it could resort to in future.

Denndorfer, Strauer and Thebes in their article analyses the case of political assassinations in Pakistan by mapping the structure and gravity of incidents of political murders and then explore the factors of socioeconomic realities, political and fundamentalist patterns to finally arrive at a discussion of both long-term and short-term measures to address the issue. Athina Bisback writes about restorative justice and how it might play a key role in addressing the concerns of both victims as well as offenders involved in a crime.

The legal distinction between combatants and non-combatant civilians, and subsequent considerations about targeting and proportionality, constitute the fundamental problem with sieges. The article by Hale demonstrated how differentiation is a relatively new development in International Humanitarian Law and how it is ambiguously reflected in military policy. The first section examines changing IHL standards relevant to contemporary sieges, following which the International Criminal Tribunal for the Former Yugoslavia (ICTY) trial of Major Generals Stanislav Gali and Dragomir Milosevi is used to evaluate contemporary legal doctrines governing the conduct of siege warfare.

The article by Chakraborty and Chakraborty explores the question of abortion laws in India, where they discuss the growth of India's abortion laws gradually, while creating a connection with current relevant legislative changes and the sociopolitical significance of the pro-choice vs. pro-life argument in judicial decision-making. The final article by Brenner addresses the issue of rising incidence of knife crime involving youths in London and Croydon. After discussing how such increase in youth knife crime has been attributed in large part to the effects of austerity policies and budget cuts to community and social services, this article highlights how an effective public health approach could help the situation.

Without the extraordinary assistance our team gets from many different sources, Contemporary Challenges would not be conceivable. We appreciate Dr. Andy Aydn-Aitchison, who serves as our academic patron, for his words of wisdom and support. We are grateful to Dr Milena Tripkovic and Dr Andrea Birdsall for agreeing to be the Faculty Advisors for the Journal. We also appreciate Rebecca Wojturska for her tireless efforts to expand the journal's audience and her background work. We would additionally love to extend my gratitude to the former editorial boards and all their members; especially the founding Editor-in-Chief Frederick Florenz and Deputy Editor-in-Chief June Shuler, and the Editor-in-Chief for the second edition Alicja Polakiewicz and Deputy Editor-in-Chief Kağan Sürücü for their extraordinary support. Lastly, as the Editor-in-Chief, I would love to express my deepest appreciation and gratitude to the Editorial Board of the third edition, without whom this publication would have remained a figment of imagination.

Adwitia Maity

Editor-in-Chief

1971 Killing of the 'Bengali' Intellectuals: An Analysis from the Perspective of the 1948 Genocide Convention

Nusrat Jahan Nishat* and Mohammad Pizuar Hossain**

Abstract

The lessons of the history of past genocidal incidents expose that the educated and the leaders, collectively called 'intellectuals', have often been a distinct target by the perpetrators. The Pakistani military and its local collaborators targeted and killed Bengali intellectuals during the 1971 Bangladesh Liberation War. As the Bangladesh genocide is still internationally overlooked, the issue of killing the Bengali intellectuals during such genocide has not obtained much attention. This article thus examines the massacre of the Bengali intellectuals in the war from the perspective of the 1948 Genocide Convention. More specifically, the authors critically analyse the killing of the Bengali intellectuals in light of the definition of 'genocide' and the travaux preparatoires of the Convention. This article reveals that the killing of Bengali intellectuals by the Pakistani military and its local collaborators during the 1971 Bangladesh Liberation War should be considered crime of genocide.

INTRODUCTION

The history of the Holocaust (1941-1945) and the subsequent genocides in some countries, for example, Bangladesh (1971) and Cambodia (1975-1979), manifest that the 'intellectuals' have been targeted as a group and victimised by the perpetrators.[1] Adolf Hitler targeted the Polish intellectuals during World War II (WWII) and executed the '*Intelligenzaktion Pommern*', a Nazi German operation that eliminated the intellectuals.[2] The objective of this operation pictures the 'Operation Liquidation', implemented by the Pakistani military and its local collaborators[3] (hereinafter 'perpetrators') during the Bangladesh Liberation War. A similar operation against the intellectuals was traced during the Cambodian genocide.[4] Therefore, this

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[1] Peter Longerich, *Holocaust: The Nazi Persecution and Murder of the Jews* (New York: Oxford University Press, 2010) 10; Wardatul Akmam, "Atrocities against Humanity During the Liberation War in Bangladesh: A Case of Genocide," *Journal of Genocide Research* 4, no.4 (Augusr 2002): 543, 559, https://doi.org/10.1080/146235022000000463; Howard J. De Nike, John Quigley, and Kenneth J. Robinson, *Genocide in Cambodia: Documents from the Trial - Pol Pot and Ieng Sary* (Philadelphia: University of Pennsylvania Press, 2000) 1-3.

[2] Matt Killingsworth, Matthew Sussex and Jan Pakulsi, *Violence and the State* (Manchester: Manchester University Press, 2016) 42-44.

[3] The term "local collaborators" include three auxiliary forces created by the leaders of *Jamaat-e-Islami* Pakistan, namely, the *Al-Shams* (the sun), the *Al-Badr* (the moon), and the *Razakars*. Hussain Haqqani, *Pakistan between Mosque and Military* (Washington, D.C.: Carnegie Endowment for International Peace, 2005) 79.

[4] Nike, Quigley and Robinson, "Genocide in Cambodia".

study poses a question as to whether an operation particularly targeting the intellectuals of a nation can be considered a genocidal policy within the definition of genocide provided in the 1948 *Prevention and Punishment of the Crime of Genocide*[5] (hereinafter '*Genocide Convention'*). The definition of genocide specifies four protected groups such as national, ethnical, racial, and religious groups.[6] Many scholars, delegates, and legislators have questioned the exhaustiveness of the groups listed in the definition from the time of its adoption.[7]

The Indian subcontinent was divided into India and Pakistan based on the 'two-nation theory'[8] in 1947.[9] Pakistan was comprised of two parts, east and west, and a majority of its population was Muslim. East Pakistan (now Bangladesh) was populated by nearly 85 percent Muslims, and its people were liberal in their religious practices.[10] In contrast, the population of West Pakistan (now Pakistan) was about 97 percent Muslim, and they had different religious practices and rituals.[11] The people of the then East Pakistan were identified as 'Bengalis'.[12] In 1971, Pakistani military launched an attack called the 'Operation Searchlight' on the night of 25 March, intending to destroy Bengali nationalism in one blow.[13] Subsequently, Bangabandhu Sheikh Mujibur Rahman, the founding father of Bangladesh, declared the independence of Bangladesh on 26 March 1971.[14] From then on, the Liberation War of Bangladesh took place for nine months until this country achieved its victory on 16 December 1971.

During the war, the perpetrators indiscriminately killed the Bengali people, raped the Bengali women, and destroyed cultural property to wipe out the memory and heritage culture of the Bengalis. One of the unique operations that they implemented

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[5] Convention on the Prevention and Punishment of the Crime of Genocide, signed 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951) ('Genocide Convention').
[6] ibid, art 2.
[7] David Shea Bettwy, "The Genocide Convention and Unprotected Groups: Is the Scope of Protection Expanding under Customary International Law?," *Notre Dame Journal of International & Comparative Law* 2, no. 1 (2011): 171, 176, https://scholarship.law.nd.edu/ndjicl/vol2/iss1/4.
[8] 'Two-Nation Theory' denotes 'the thesis that Hindus and Muslims in India were two distinct communities that could not coexist within a single state without dominating and discriminating against the other or without constant conflict'. See Clinton Bennett, "Two-Nation Theory," in *Islam, Judaism, and Zoroastrianism,* ed. Zayn R. Kassam, Yudit Kornberg Greenberg and Jehan Bagli (Dordrecht: Springer, 2018) 695.
[9] Paul R. Brass, "The partition of India and Retributive Genocide in the Punjab, 1946–47: Means, Methods, and Purposes" *Journal of Genocide Research* 5, no. 1 (2003): 71, 76, https://doi.org/10.1080/14623520305657.
[10] Tanweer Akram, "A Critical Evaluation of the ICJ Report on the Bangladesh Genocide," *SSR*, (April 16, 2007) 1, 3, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=981254 (accessed February 23, 2021).
[11] ibid.
[12] *'Bengalis'* are the members of an Indo-Aryan ethnic group who are native to the Bengal region that includes Bangladesh, and a few Indian States such as West Bengal, Tripura, and Assam's Barak Valley. Donald N. Wilbur, *Pakistan: Its People, Its Society, Its Culture* (New Haven: HRAF Press, 1964) 219.
[13] Rudolph J. Rummel, *Statistics of Democide: Genocide and Mass Murder Since 1900* (Munster: LIT, 1998) 153.
[14] ibid; See also Constitution of the People's Republic of Bangladesh, schedules 6 and 7.

is the 'Operation Liquidation' to kill the intellectuals, including professors and teachers, journalists, activists, doctors, artists, writers, engineers, civil servants, lawyers, *etc.*[15] The Ministry of Liberation War of Bangladesh recently defined the 'intellectuals' who were killed during the 1971 war.[16] The definition specifies that:

> "Litterateurs, philosophers, scientists, artists, teachers, researchers, journalists, lawyers, physicians, engineers, architects, sculptors, government and non-government employees, politicians, social workers, cultural activists, musicians, and people involved in filmmaking, theatre and arts, who were killed by the Pakistani forces or went missing between March 25, 1971, and January 31, 1972, would be defined as martyred intellectuals."[17]

This paper analyses the killing of Bengali intellectuals during the 1971 Liberation War of Bangladesh from the perspective of the definition of genocide provided in the *Genocide Convention*. The objective is to determine whether the Pakistani military strategy of killing the Bengali intellectuals constitutes a genocidal policy under the auspices of the *Genocide Convention*.

This research has been conducted based on international legal instruments and documents, cases, international principles, scholarly articles and books, as well as various organisational reports. Following this introduction, this article briefly describes the historical background to the 1971 Bangladesh Liberation War. The next part explains and critically appraises the concept of genocide in international criminal law. Subsequently, the central part of the article analyses the killing of the Bengali intellectuals in light of the *Genocide Convention*. In the final part, the overall findings of this study are summed up.

BACKGROUND TO 1971 KILLING OF THE 'BENGALI' INTELLECTUALS

After the partition of British India in 1947, the Pakistan government began executing several discriminatory policies to control the economy, and ruling powers of East Pakistan.[18] In the 1952 language movement, the Bengali politicians, intellectuals, nationalists, and university students expressed their disapproval against West Pakistan's 'one state language' policy to make 'Urdu' the only state language of

[15] Anthony Mascarenhas, *The Rape of Bangla-Desh* (Delhi: Vikas Publications, 1972) 116-117; Mofidul Hoque, "Bangladesh 1971: A Forgotten Genocide," *The Daily Star,* March 4, 2013, http://www.thedailystar.net/bangladesh-1971-a-forgotten-genocide-50941 (accessed February 23, 2021).
[16] Mohiuddin Alamgir, "Martyred Intellectuals: Govt finalises definition," *The Daily Star*, February 11, 2021, https://www.thedailystar.net/backpage/news/martyred-intellectuals-govt-finalises-definition-2042665 (accessed February 23, 2021).
[17] ibid.
[18] Akmam, "Atrocities against Humanity During the Liberation War in Bangladesh".

Pakistan.[19] The Bengali people demanded to grant official status to 'Bangla' because most of the people of East Pakistan used to speak in this language.[20] This movement was the first stepping stone towards the independence of Bangladesh.

Before the 1971 Bangladesh Liberation War, the *Awami* League, a dominant political party of East Pakistan, won 167 seats out of 313 seats in the 1970 election of Pakistan and became the National Assembly's single majority party.[21] However, West Pakistan refused to transfer power to the newly elected *Awami* League party.[22] Also, the Pakistani military launched the 'Operation Searchlight' to kill primarily Bengali policemen, soldiers and military officers, intellectuals and East Pakistani students.[23] Following this attack, Bangabandhu Sheikh Mujibur Rahman declared the independence of Bangladesh on 26 March 1971 that spiked a full-scale war between East and West Pakistan.[24] After the nine-month war, Bangladesh obtained victory on 16 December 1971. However, the perpetrators killed an estimated 3 million Bengali people,[25] raped 0.2 – 0.4 million Bengali women, deported approximately 10 million people to the neighbouring country – India - and destroyed thousands of houses and properties.[26]

During the war, the perpetrators implemented another operation called 'Operation Liquidation' to kill the Bengali intellectuals throughout the entire period of war.[27] In particular, the first attack on the intellectuals was conducted on the very night of 25 March 1971 when professors of universities, doctors, and political party activists were killed.[28] Again, on 14 December 1971, many Bengali teachers, doctors, engineers, physicians, lawyers, journalists, literature and artists were killed.[29] Rummel stipulates that:

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[19] Monsur Musa, "Politics of Language Planning in Pakistan and the Birth of a New State," *International Journal of the Sociology of Language,* no. 118 (1996): 63, 80, https://doi.org/10.1515/ijsl.1996.118.63.
[20] ibid.
[21] Drong Andrio, "India's Role in the Emergence of Bangladesh as an Independent State,"*Vestnik RUDN: International Relations* 16, no. 4 (December 2016): 736, 737, https://doi.org/10.22363/2313-0660-2016-16-4-736-744.
[22] ibid.
[23] ibid, 43.
[24] ibid.
[25] Anwar Ouassini, "Kill 3 Million and the Rest Will Eat of Our Hands: Genocide, Rape and the Bangladeshi War of Liberation," in *Genocide and Mass Violence in Asia,* ed. Frank Jacob (ed), (Berlin/Boston: De Gruyter Oldenbourg, 2019) 42.
[26] Archer K. Blood, *The Cruel Birth of Bangladesh: Memoirs of an American Diplomat* (Dhaka: University Press Limited, 2002) 62-63; Susan Brownmiller, *Against Our Will: Men, Women and Rape* (New York: Simon & Schuster, 1975) 81.
[27] Md. Pizuar Hossain, "Another Chapter in World History When Intellectuals were Targeted," *The Daily Star*, December 14, 2018, http://www.the dailystar.net/supplements/martyred-intellectuals-day-2017-another-chapter-world-history-when-intellectuals-were-targetted-1672981 (accessed February 24, 2021).
[28] Suzannah Linton, "Completing the Circle: Accountability for the Crimes of the 1971 Bangladesh War of Liberation" *Criminal Law Forum* 21, no. 2 (June 2010): 3, 6, https://doi.org/10.1007/S10609-010-9119-8.
[29] Akmam, "Atrocities against Humanity During the Liberation War in Bangladesh," 550.

> In 1971 the self-appointed President of Pakistan and Commander-in-Chief of the Army, General Agha Mohammed Yahya Khan and his top generals prepared a careful and systematic military, economic, and political operation in East Pakistan (now Bangladesh). They also planned to murder its Bengali intellectual, cultural, and political elite. They also planned to indiscriminately murder hundreds of thousands of its Hindus and drive the rest into India.[30]

As a result of the plan of killing Bengali intellectuals as indicated in Rummel's statement, numerous intellectuals were kidnapped, blindfolded in their homes, and transported to *Mohammadpur* Physical Training College, known as *Al-Badar* [paramilitary force of Pakistani military] torture camp, where they were first physically tortured.[31] Later on, they were transported to *Rayer* Bazar slaughterhouse and *Mirpur* graveyard where they all were brutally killed.[32]

> On 21 December 1971, the *Hindustan Times* reported that:
>
> Ten senior Pakistani army officers were responsible for organising the recent murders of a large number of people, especially intellectuals, in Dacca, Mr. John Stonehouse, British Labour M.P, told PTI [Press Trust of India] in an interview here this morning (New Delhi, December 20). Mr. Stonehouse declined to name the officers but said they were of the ranks of Major- General, Brigadier, Colonel and Captain. He said during his visit to Dacca yesterday (December 19), he got the names of these Pakistani army officers who organised the murders, and members of 'Al-Badar', an extremist Muslim group who carried out this heinous crime just before the surrender of Pakistani forces in Dacca.[33]

Another report of the *Hindustan Times*, published on 24 December 1971, states that 'The Bangladesh authorities have recovered a list of nearly 5,000 people in Dacca [Dhaka] City alone from the occupation forces. These persons were to be annihilated. The list included practically every single intellectual in the city.'[34]

In December 1972, the Bangladesh government published an incomplete list of a total of 1,111 Bengali intellectuals that included 991 academics, 13 journalists, 49 physicians, 42 lawyers, and 16 writers who were killed across 19 districts of Bangladesh during the war.[35] Recently, on 13 December 2020, the Bangladesh

[30] Rummel, "*Statistics of Democide,"* 151.
[31] ibid.
[32] ibid.
[33] Ministry of External Affairs, New Delhi, *Bangladesh: Bangladesh Documents* (1971) 572.
[34] ibid, 573.
[35] Ershad Kamol, "Bangladesh to Define Martyred Intellectual, No Full List Yet," *The New Age*, December 13, 2020, https://www.newagebd.net/article/124271/bangladesh-to-define-martyred-intellectual-no-full-list-yet (accessed February 25, 2021).

government approved a list of 1,222 martyred intellectuals.[36] Various estimates suggest that about 80% of the Bengali intellectuals based in Dhaka city were exterminated.[37] Trivedi stated that the dead bodies of many intellectuals could not even be traced and the acts of killing them make it evident that the perpetrators intended to cripple the Bengali nation.[38]

ANALYSING THE CONCEPT OF GENOCIDE

Lemkin's Definition of Genocide

The term 'genocide' was first formulated by Lemkin, a Polish Lawyer, in 1944 in his book entitled 'Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress.'[39] During WWII, Lemkin heard the 1941 speech of Winston Churchill where he indicated the prevailing situation of Europe as 'a crime without a name.'[40] He decided to find a proper term for this crime and he coined the term 'genocide' for the first time in his work in 1944.[41] This term is derived from the Greek term '*genos*' - meaning race or tribe - and the Latin term '*cide'* - meaning killing.[42] His idea behind the terminology was annihilating and destructing a nation by killing all of its members.[43] This destruction consists of extensive plans to dissolve the base and roots of a group by attacking individuals.[44]

Lemkin's definition of genocide was based on the incidents of the Jewish Holocaust in WWII.[45] His first definition of genocide was as follows:

> It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. Genocide is directed against the national group as an entity, and the actions

[36] Syed Samiul Basher Anik, "Govt Approves 1,222 Names of Martyred Intellectuals," *The Dhaka Tribune,* December 13, 2020, https://www.dhakatribune.com/bangladesh/2020/12/13/govt-finalizes-list-of-1222-martyred-intellectuals-for-announcement (accessed February 25, 2021).
[37] Akmam, ""Atrocities against Humanity During the Liberation War in Bangladesh," 550.
[38] Rabindra Nath Trivedi, *Ten Months in 1971* (1997) 620.
[39] Raphael Lemkin, *Axis Rule in Occupied Europe: Laws of Occupation, Analysis of Government, Proposals for Redress* [Carnegie Endowment for International Peace, Division of International Law] (New York: Columbia University Press, 1944) 79.
[40] Katherine Goldsmith, "The Issue of Intent in the Genocide Convention and Its Effect on the Prevention and Punishment of the Crime of Genocide: Toward a Knowledge-Based Approach," *Genocide Studies and Prevention: An International Journal* 5, No. 3 (December 2010): 239, 239, https://digitalcommons.usf.edu/gsp/vol5/iss3/3.
[41] Raphael Lemkin, "Genocide as a Crime under International Law," *American Journal of International Law* 41, no. 1 (January 1947): 145, 146, https://www.jstor.org/stable/i312053.
[42] ibid.
[43] ibid.
[44] ibid.
[45] Bettwy, "The Genocide Convention and Unprotected Groups," 168.

> involved are directed against individuals, not in their individual capacity, but as a member of the national group.[46]

Lemkin's idea was to save the 'human groups' from genocide.[47] In his writings, he referred to other groups of victims, for example, Poles, Gypsies and others who were targeted during WWII.[48] His priority was to save the victim groups from the perspective of perpetrators, who attacked the individuals for belonging to any particular group.[49] In his book, he also argued that 'genuine tradition' and 'genuine culture' are destroyed through the act of genocide.[50] Lemkin's objective behind defining genocide creates a space to argue that when perpetrators target the 'intellectuals' as a human group considering them an essential foundation and part of the life of other national groups, the military strategy of destroying this group can also constitute genocide.

Genocide Convention's Definition of Genocide

Lemkin's notion of genocide was the main root to articulate the 1948 *Genocide Convention*.[51] The *travaux preparatories* for drafting the Convention reflects what happened during the Jewish Holocaust.[52] However, when UN General Assembly (GA) resolution 96 (I) codified the definition of genocide on 11 December 1946, it made a non-exhaustive list of protected groups so that all human groups can be protected from the perpetrators of genocide.[53] The resolution is widely accepted and is a source of customary law.[54] The *Ad Hoc* Committee defined the 'intent' in the definition as 'notion of premeditation.'[55] The drafters also declared that the primary purpose of this crime should be the destruction of 'human groups' valuable to the human race.[56]

The Economic and Social Council (ECOSOC) of the UN prepared the draft of the *Genocide Convention*.[57] On 9 December 1948, the Convention was adopted by the GA Resolution 260 (III) A.[58] Article II of this Convention defines that:

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[46] Lemkin, "Genocide as a Crime under International Law."
[47] Filip Strandberg Hassellind, "Groups Defined by Gender and the Genocide Convention" *Genocide Studies and Prevention: An International Journal* 14, no. 1 (2020): 61, 62, https://doi.org/10.5038/1911-9933.14.1.1679.
[48] Lemkin, ""Genocide as a Crime under International Law," 147.
[49] ibid.
[50] Lemkin, "*Axis Rule in Occupied Europe,"* 91.
[51] UN ECOSOC, *Report of the Ad Hoc Committees on Genocide* (Report 5 April 1948) 10-11.
[52] ibid.
[53] General Assembly Resolution 96(I), *The Crime of Genocide*, 55th session, UN Doc A/RES/96(I) (11 December 1946) 4-5.
[54] ibid; William A Schabas, *Genocide in International Law: The Crimes of Crimes* (New York: Cambridge University Press, 2009) 56.
[55] ibid, 5.
[56] ibid.
[57] Goldsmith, "The Issue of Intent in the Genocide Convention."
[58] ibid; See also General Assembly Resolution 96(I) (n 53).

> Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
> (a) Killing members of the group;
> (b) Causing serious bodily or mental harm to members of the group;
> (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
> (d) Imposing measures intended to prevent births within the group;
> (e) Forcibly transferring children of the group to another group.

This definition is not free from criticism. It does not clearly state what sort of intent is required to constitute genocide.[59] From judicial precedents and views of various scholars, two approaches are seen to determine the 'intent', namely, *dolus specialis* and knowledge-based approach.[60]

Dolus specialis refers to 'special intent' for committing genocide which means the perpetrator commits the apparent act to destroy a particular targeted group, either in whole or in part.[61] In the *Draft Code of Crimes against the Peace and Security of Mankind* ('*Draft Code*'), the UN International Law Commission (ILC) provided that genocide needs a specific intent as regards the committed act.[62] Jean-Paul Sartre stated that no perpetrators of genocidal actions need to have a thorough understanding of their actions.[63] In the *Darfur* case, the Commission stated that the *dolus specialis* could not be proved and hence no judgment in favour of genocide was decided.[64] In the *Kristic* case, the International Criminal Tribunal for the former Yugoslavia (ICTY) summarised that the military activities which led establishing that they intended to permanently eradicate the Bosnian Muslim population constituted genocide.[65]

According to Article 17(5) of the *Draft Code*, an individual is said to commit genocide only if the activity is conducted to destroy a targeted group in whole or in part, as such.[66] This 'as such' in the definition refers to the intent to destroy a group as a distinct entity.[67] Referring to 'knowledge-based approach', this intent can be realised

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[59] Goldsmith, "The Issue of Intent in the Genocide Convention."
[60] ibid, 240-241.
[61] *Prosecutor v Jean-Paul Akayesu*, Case No. ICTR-96-4-T, Judgment (2 September 1998), [498].
[62] *Draft Code of Crimes against the Peace and Security of Mankind* 1996, adopted by the International Law Commission, 48th session, UN Doc . A/CN.4/L532 (1996), 10 ('Draft Code').
[63] Lawrence J LeBlanc, *The United States and the Genocide Convention* (Durham and London: Duke University Press, 1991) 51.
[64] *UN Report on Secretary General on the International Commission of Inquiry on Darfur*, Pursuant to Security Council Resolution 1564, 18 September 2004 (2005) 4, 161 ('UN Report on Secretary General').
[65] *Prosecutor v Radislav Krstić*, Case No. ICTY-95-10-619, Judgment (19 April 2004), [619].
[66] Draft Code (n 62) art 17(5).
[67] Jason Abrams, "Universal Jurisdiction: Myths, Realities and Prospects: The Atrocities in Cambodia and Kosovo: Observation on Codification of Genocide" *New Eng L Rev* 35, (2001): 303, 304-306.

from the knowledge of the perpetrator's action for destructing the targeted group.[68] In the case of *Kayishema*, the International Criminal Tribunal for Rwanda (ICTR) observed that if the perpetrators have the knowledge of destruction of the group, by others or by themselves, such actors are guilty of genocide.[69]

Nexus between 'intent' and 'group'

The dispute remains unresolved as to what the drafters intended by 'intent to destroy' in the definition, but it is observed that the ICTY accepted the restrictive approach, *i.e., dolus specialis*, whereas the ICTR focused more on the knowledge-based approach.[70] As per Article 30(1) of the *Rome Statute*,[71] if a perpetrator has the knowledge of his activity and intends the consequence, he/she is criminally held liable. During the discussion regarding the *Draft Code*, the Greek delegates proposed that the judges should have the free space to decide case-by-case to find out if the intention for committing genocide is present or not.[72] The France delegates proposed that the Convention should not limit the power of judges to figure out the intention of the perpetrator to destroy a 'group'.[73]

Approaches to define the protected groups of genocide

The genocide definition articulates that only four groups are protected under the *Genocide Convention*.[74] To understand the reason behind protecting these groups only, exclusion of other groups, and plausibility for incorporating any other group, it is necessary to understand the *travaux preparatories* behind the definition. Lemkin first proposed the crime of barbarity according to which perpetrators undergo the actions of extermination out of their hatreds toward a collective group for their race, religion, or social status.[75] From this point of view, it can be inferred that Lemkin did not aim at limiting the scope and concept of genocide to a selected number of groups only, but to construct this heinous crime as a criminal intent to permanently destroy a human group, which still gives the space for the inclusion of other groups.[76]

The UNGA resolution 96(1) signifies that genocide means denial of the right to exist of entire human groups while under international law this crime is committed against

[68] Draft Code (n 62) art 17(10).
[69] *Clément Kayishema and Obed Ruzindana,* Case No ICTR-95-1-T, Judgment (21 May 1999), [91].
[70] Caroline Fournet, *The Crime of Destruction and the Law of Genocide: Their Impact on Collective Memory* (London and New York: Routledge, 2017) 83.
[71] Rome Statute of the International Criminal Court, opened for signature 17 July 1998, 2187 UNTS 3 (entered into force 1 July 2002), art 30(1).
[72] *Discussion on the Draft of the Genocide Convention*, 92nd session, UN Doc. A/C. 6/SR 92 (1948).
[73] UN ECOSOC, *Summary Record of Thirteenth Meeting - Ad Hoc Committee on Genocide*, UN Doc. E/AC. 25SR. 13 (1948).
[74] Genocide Convention (n 5); Scott Straus, "Contested meanings and Conflicting Imperatives: A Conceptual Analysis of Genocide," *Journal of Genocide Research* 3, no. 3 (November 2001): 349, 365, https://doi.org/10.1080/14623520120097189.
[75] Lemkin, ""Genocide as a Crime under International Law."
[76] Hassellind, "Groups Defined by Gender and the Genocide Convention."

racial, religious, political or any other group.[77] There is an argument that interpretation of this resolution shows 'other groups' can also be protected as *jus cogens* norm that forbids genocide.[78] The resolution requested the ECOSOC of the UN to draft the Convention, but later on, the ECOSOC requested the Secretariat's Human Rights Division to complete the drafting.[79] In the draft Convention, the Secretary-General excluded not only the 'political' and 'any other groups'[80] but also pointed out that the list of the protected groups was not to be counted as 'exhaustive.'[81] The UNGA incorporated only four groups as protected groups in the definition since historically these four groups were targeted the most in genocides.[82] As per Nersessian, the four protected groups may have been benefitted from the historical view of the Jewish Holocaust.[83] Chalk and Jonassohn expressed that the articles of the Convention are so restrictive that not even a single genocidal incident that happened from its adoption has been covered by it.[84]

In the *Akayesu* case, the Hutu group was alleged to have committed genocidal acts against the Tutsi group in Rwanda.[85] The Tribunal used an objective view as the Belgian colonisers used identity cards to determine ethnics and the Tutsi group was issued ethnic cards in 1994.[86] The Tribunal considered them as a separate 'ethnic group' even though they had many similarities with the Hutu population, a determined ethnic group.[87] It was established in the judgment that from the *travaux preparatories* of the *Genocide Convention,* a targeted group means targeting 'stable and permanent groups' that can be determined by birth.[88] This approach of the Trial Chamber means having common characteristics among the four protected groups does not provide any challenge in the case of members, who belong to that group by birth, *i.e*., automatic membership.[89]

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[77] General Assembly Resolution 96(I), "The Crime of Genocide."
[78] Hassellind, "Groups Defined by Gender and the Genocide Convention," 61.
[79] UN ECOSOC Resolution 47 (IV), *Crime of Genocide*, UN Doc E/325 (28 March 1947) 5-6.
[80] UN ECOSOC Resolution 77(V), *Crime of Genocide*, UN Doc A/362 (6 August 1947) 9.
[81] UN Secretariat Draft, *First Draft of the Genocide Convention*, UN Doc. E/447 (17 June 1947) 11.
[82] Matthew Lippman, "Genocide: The Crime of the Century. The Jurisprudence of Death at the Dawn of the New Millennium," *Houston Journal of International Law* 23, no. 3 (2001): 475, 476, http://www.hjil.org/articles/hjil-23-3-lippman.
[83] David L Nersessian, *Genocide and Political Groups* (Oxford: Oxford University Press, 2010) 62.
[84] Frank Chalk and Kurt Jonassohn, *The History and Sociology of Genocide* (New Haven and London: Yale University Press, 1990) 11.
[85] *Akayesu*, 6.
[86] ibid, 702.
[87] William A. Schabas, "Groups Protected by The Genocide Convention: Conflicting Interpretations from The International Criminal Tribunal for Rwanda," *ILSA Journal of International & Comparative Law* 6, no. 2(2000): 375, 378, https://nsuworks.nova.edu/ilsajournal/vol6/iss2/10; G. Prunier, *The Rwanda Crisis, 1959-1994: History of A Genocide* (London: Hurst Publishers, 1995) - Rwandan Tutsi were descendants of Nilotic herders on the other hand Rwandan Hutus came from the Bantu origin of South and Central Africa.
[88] UN General Assembly, *Summary Records of the Meetings of the Sixth Committee*, (21 September - 10 December 1948) 19-21.
[89] Lemkin, ""Genocide as a Crime under International Law."

For the first time, the Trial Chamber raised the question of whether Article 2 of the *Genocide Convention* exclusively limits the protected groups.[90] As a result, it would be impossible to punish the perpetrators for the physical destruction of any other groups where genocidal actions are clear.[91] According to the Trial Chamber, the drafter's objective to protect and secure a 'stable and permanent group' should be respected.[92] By applying the concept of the stable and permanent group, the Tribunal included the victim Tutsi group as a separate ethnic group even though they had similarities with the Hutu group – perpetrator group.[93] However, it was criticised on the point that if drafters wanted to include 'stable and protected groups', they could have incorporated it in the definition.[94]

The jurisprudence behind such an approach was to expand the section of protected groups in the Convention with 'everyday changing reality.'[95] Later, in the case of *Augusto Pinochet*, the Spanish Appeal Court stated that genocide should also be seen in social terms and does not necessarily need any criminal law definition.[96] Many scholars have also suggested introducing a list of new victim categories depending on 'everyday changing reality' under the international customary law.[97]

In the *Kayishema* case, the ICTR showed a different approach to point out the special intent of committing genocide.[98] The Tribunal supported the subjective approach and expressed that if the members of a group do not share a common language or culture, they can still belong to a particular group if either the victim or perpetrator considers the group 'as such.'[99] Schabas opined that the definition of genocide needs more specified *actus rea* and an 'objective approach' to identify the members under the protected groups.[100]

In the *Jelisić* case, the ICTY accepted the 'subjective approach' to identify if the Bosnian Muslims fall under the four protected groups of genocide definition since the Prosecution specified them as 'Bosnian Muslim People.'[101] The Trial Chamber declared that drafters intended to limit the areas of the Convention and protect stable

[90] ibid.
[91] ibid.
[92] ibid.
[93] Nersessian, "*Genocide and Political Groups*."
[94] Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, 1155 UNTS 331 (entered into force 27 January 1980), art 32.
[95] Hassellind, ""Groups Defined by Gender and the Genocide Convention," 75.
[96] Reed Brody and Michael Ratner, *The Pinochet Papers: The Case of Augusto Pinochet in Spain and Britain* (Boston, Mass: Kluwer Law International, 2000) 100.
[97] Beth Van Schaack, "The Crime of Political Genocide: Repairing the Genocide Convention's Blind Spot," *Yale Law Journal* 106, no. 7 (May 1997): 2259, 2277, http://dx.doi.org/10.4324/9781351157568-5.
[98] *Kayishema*.
[99] ibid, 98.
[100] Schabas, "Groups Protected by The Genocide Convention," 384.
[101] *Prosecutor v Goran Jelisić*, Case No ICTY-95-10-A, Judgment (14 December 1999), [70].

groups from an objective view.[102] The Trial Chamber also talked about the positive and negative approaches,[103] which were, however, denied by another ICTY Trial Chamber.[104] The most crucial fact is that the Trial Chamber stated that it is not inconsistent with the intention of the Convention to consider that the excluded groups are tarnished by perpetrators.[105]

Defining the protected groups of genocide

Even after more than a half-century since the 1948 *Genocide Convention*, no exact definitions of the protected groups have been provided by the legislators,[106] nor any certain characteristics were ever discussed for selecting these four groups only.[107] The *Genocide Convention* was first applied in the *Akayesu* case in 1998, after fifty years of its codification and until this time, it was thought to be a dead instrument.[108] Concerning the protected groups, it is now evident that their characteristics change with sociological, technological and scientific developments.[109] It seems that the drafters purposely wanted the State Parties to the Convention to interpret the definition of protected groups.[110]

In the *Akayesu* case, for the first time, the ICTR tried to define these four protected groups from an objective point of view.[111] The ICTR defined 'national group' as a group of people sharing common citizenship.[112] It mainly focused on the definition given in the *Nottebohm* case,[113] which defined nationality based on the person and state relationship. Nevertheless, Lemkin's referred to the members of the national group as contributors, based upon well-developed national psychology.[114]

'Ethnical group' was defined as a group of people who share similar language and same physical traits and culture.[115] However, Lemkin related nationality with culture and tradition to define ethnicity.[116] This inclusion was granted with eleven abstentions and only eighteen to seventeen votes because this idea of ethnicity is believed to be developed with time.[117]

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[102] ibid.
[103] ibid.
[104] *Prosecutor v Milonir Stakić,* Case No. ICTY-97-24-T, Judgment (31 July 2003), [512].
[105] *Jelisic*.
[106] Carola Lingaas, "Defining the Protected Groups of Genocide through the Case Law of International Courts," International Crime Database (December 2015): 1, 4.
[107] ibid.
[108] ibid; *Akayesu*.
[109] ibid.
[110] ibid.
[111] ibid, 5.
[112] *Akayesu*, 512.
[113] *Nottebohm case (Liechtenstein v Guatemala)*, ICJ Report, Judgment (6 April 1955), [22].
[114] Lemkin, '*Axis Rule in Occupied Europe,"* 79-80.
[115] *Akayesu*, 513.
[116] Lingaas, ""Defining the Protected Groups of Genocide," 6.
[117] Eric D Weitz, *A Century of Genocide: Utopias of Race and Nation* (Princeton: Princeton University Press, 2003) 17.

The ICTR defined a 'religious group' as a group of people sharing the same religion and method of worship.[118] This group was incorporated for the reason that it is more likely to be a permanent and stable group than a political group.[119] Therefore, from this point, it can be noted that a religious group does not have to be a national group, rather it must be of a long and stable manner.[120] It is immaterial whether this belief evolves from a particular tradition or based on a 'single world religion.'[121]

The 'racial group' was defined by the ICTR as a group of members having similar physical traits mostly hereditary and is commonly recognised through the geographical region, despite differences of their language, culture, nation, or religious identity.[122] Though understanding the term 'racial' was parallel to the other three groups, it was not a challenge in 1948 whereas now it has become a challenge with time.[123] At present, with the technological development throughout years, the DNA coding confirms that all human races are biologically the same.[124]

Stable and permanent nature of groups

In the *Akayesu* case[125] the tribunal meant, by referring to a 'stable and permanent group', that individuals by birth automatically belong to these groups and are not debatable, which could only define Tutsi as ethnics.[126] As per the ICTR, this was the reason why political and other economic groups were excluded from the definition.[127] However, this concept creates more confusion as the status of these four protected groups change, *i.e.*, they are neither stable nor permanent.[128]

In the case of a 'national group', nationality can be changed by crossing borders, cessations, or succession of states.[129] Race has the most progressive development depending on the changes in society.[130] Religion is a personal conception, which an individual has the liberty to change.[131] On the other hand, the political group is

[118] *Akayesu*, 515.
[119] Claus Kreb, "The Crime of genocide under International Law" *INT'L CRIM. L. REV* 6, no. 4 (2006): 461, 479.
[120] ibid.
[121] ibid, 469.
[122] *Akayesu*, 516.
[123] Schabas, 381.
[124] Michelle Brattain, "Race, Racism, and Antiracism: UNESCO and the Politics of Presenting Science to the Postwar Public," *The American Historical Review* 112, no. 5 (December 2007): 1386, 1393, https://doi.org/10.1086/ahr.112.5.1386.
[125] *Akayesu*.
[126] ibid.
[127] ibid.
[128] Schabas, "Groups Protected by The Genocide Convention," 382.
[129] ibid.
[130] ibid.
[131] Agnieszka Szpak, "National, Ethnic, Racial and Religious Groups Protected against Genocide in the Jurisprudence of the Ad Hoc International Criminal Tribunals," *European Journal of International Law* 23, no. 1 (2012): 155, 160, https://doi.org/10.1093/ejil/chs002.

argued to be excluded due to its overlapping concept with nationality.[132] Moreover, after this *Akayesu* case, no state so far has ever taken the approach of a 'stable and permanent group' to determine members of any group.[133]

Acts of Genocide

According to Article 2 of the *Genocide Convention*, five different acts form the crime of genocide. Firstly, as regards 'killing members of the group', the ICTY determined in the *Brdjanin* case that killing has to be directed towards the four protected groups.[134] In the *Gacumbitsi* case, the ICTR held that it has to be established that the perpetrator participated, ordered or abetted the killing to destroy the group as such, in whole or in part, and even killing of one member suffices the act to be genocide.[135] Secondly, in terms of 'causing serious bodily or mental harm to members of group', the ICTR held in the *Seromba* case that to constitute genocide, the inflicted harm, bodily or mental, should threaten the destruction of a group.[136] Moreover, mental harm means inflicting threat, terror or intimidation.[137] In the *Blagojevic* case, the ICTY determined that for Article 4 of the ICTY Statute, serious bodily or mental harm should be evaluated based on each case with the context of circumstances of the case.[138]

Thirdly, about 'deliberately inflicting (on the group) conditions of life calculated to bring about its physical destruction in whole or in part', in the *Stakic* case, the ICTY held that act of genocide means the group members are not killed instantly by the perpetrators.[139] In the *Kayishema and Ruzindana* case, the ICTR held that expulsion from home, excessive work; unhygienic conditions and lack of medical facilities are also acts of genocide.[140] Additionally, in respect of 'imposing measures intended to prevent births within the group', the ICTR held in both the *Akayesu* case[141] and the *Kayishema* case that this genocidal act includes sexual mutation, sterilisation, forcefully controlling birth, separating sexes and prohibiting marriages.[142] The Chamber also pointed that rape or the threat to not procreate also falls under this act.[143] Lastly, in the case of 'forcibly transferring children of the group to another group', in both the *Akayesu* case and the *Kayishema* case, the ICTR held that the purpose of this act is not forcible transfer alone, but also to traumatise them which

[132] ibid.
[133] ibid, 179.
[134] *Prosecutor v Radoslav Brdjanin*, Case No. IT-99-36, Judgment (1 September 2004), [689].
[135] *Prosecutor v* Sylvestre Gacumbitsi, Case No. ICTR-2001-64-T, Judgment (17 June 2004), [632].
[136] *Prosecutor v Athanase Seromba*, Case No. ICTR-2001-66, Appeal Chamber (12 March 2008), [46].
[137] ibid.
[138] *Prosecutor v Vidoje Blagojevic and Dragon Jokic*, Case No. IT-02-60, Judgment (17 January 2005), [646].
[139] *Stakic*, 518.
[140] *Kayishema*, 115-116.
[141] *Akayesu*, 507-508.
[142] ibid; *Kayishema,* 117.
[143] ibid, 86.

would ultimately cause the transfer of one group's children forcibly to another group.[144]

DISCUSSION

The killing of intellectuals is often addressed as a crime against humanity since they do not generally fall into the protected groups under the definition of genocide. Thereby, Michael Nicholson, a British Journalist, first coined the term 'eliticide' or 'elitocide', which means 'the killing of the educated or leadership of an ethnic group.'[145] He argues that the elites are targeted for their identity.[146] The essential characteristics for eliticide are such as the ethno-hierarchical identification of victims, the intention of the perpetrators behind targeting them, and the socio-political result.[147] Eliticide is a growing concept and has not been internationally accepted. Moreover, this term also features characteristics similar to genocide.[148]

By 'elitocide', intelligentsias of ethnics are only meant where it is evident that intelligentsias from different professions irrespective of nationality, ethnicity, race or religion are targeted in genocide. Therefore, it is more suitable to consider the intellectuals of a country within the protected group. Regarding this, Fournet opined that genocide and crimes against humanity are 'two distinct legal qualifications' and calling genocide as the crime against humanity is simply an 'aberration and absurdity.'[149] Genocide is a greater offence whose shock and stigma has a long-lasting impact.[150] Hence, genocide should not be covered under the veil of crimes against humanity or any other crime.

This argument attracts the approaches of the International Crimes Tribunal of Bangladesh (ICT-BD) regarding killing of the Bengali intellectuals during the 1971 Bangladesh Liberation War. The ICT-BD was established under the *International Crimes (Tribunals) Act* 1973 (*ICT Act*) that defines genocide as follows:

> Genocide: meaning and including any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial, religious or political group, such as:
> (i) killing members of the group;
> (ii) causing serious bodily or mental harm to members of the group;

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[144] *Akayesu*, 509; *Kayishema,* 118.
[145] Leona Toker, "Literary Reflections of Elitocide: Georgy Demidov and Precursors," *Verbeia* 3, (2019): 1, 84.
[146] ibid; Pakulsi, "*Violence and the State,*" 43.
[147] *ibid.*
[148] Adam Jones, "Why Gendercide? Why Root-and-Branch? A Comparison of the Vendee Uprising of 1793-94 and the Bosnian War of the 1990s," *Journal of Genocide Research* 8, no. 1 (August 2006): 9, 23, https://doi.org/10.1080/14623520600552835.
[149] Fournet, "*The Crime of Destruction and the Law of Genocide,"* 50.
[150] *UN Report on Secretary General*.

(iii) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(iv) imposing measures intended to prevent births within the group;
(v) forcibly transferring children of the group to another group.[151]

An analogy can be drawn between the definitions of genocide provided in the 1948 *Genocide Convention* and the 1973 *ICT Act* because both the definitions are quite identical. The only difference lies in the inclusion of the 'political group' in addition to the national, religious, ethnical and racial groups in the *ICT Act's* definition.

The issue of killing the Bengali intellectuals was distinctively raised before the ICT-BD in the trial of the local collaborators who, among other things, assisted, or abetted, or facilitated the Pakistani military to commit crimes against the Bengali intellectuals during the 1971 war. In the case concerning *Ali Ahsan Muhammad Mujahid*, the Prosecutors tried to prove, beyond a reasonable doubt, that a particular group of intelligentsias were kidnapped by the perpetrators with full intent to kill them.[152] In the case concerning *Ashrafuzzaman Khan*, it was stipulated that the incident of intellectual killing should be recognized as 'crimes of serious gravity', which was highly harmful for human civilisation.[153] Besides, in the case concerning *Motiur Rahman Nizami,*[154] the Prosecutors presented that the operations launched against the intellectuals on 25 March 1971 and afterwards can be considered attacks against the pro-independence group of Bengali people.[155] However, the killing of the intellectuals was declared a 'crime against humanity' in all the verdicts of the ICT-BD.

During the 1971 Liberation War of Bangladesh, the killing of the intellectuals involved a separate and maybe the most horrific planning at the time while the perpetrators already knew that they would lose the battle.[156] The perpetrators executed their plan to destroy the intellectuals so that the country cannot be rebuilt again. All the individuals listed as 'martyred intellectuals' in Bangladesh were not necessarily front-line soldiers, but they were separately targeted from other members of their professions. It is seen from the incidents of killing the Bengali intellectuals that the people who were targeted under a common campaign were mostly the educated people.

From the aforementioned discussion, three arguments can be made from the perspective of the incidents of killing the Bengali intellectuals and the definition of

[151] International Crimes (Tribunals) Act 1973, s 3(2)(b).
[152] *Chief Prosecutor v Ali Ahsan Muhammad Mujahid*, ICT-BD (IV) of 2012, [242, 459-460 and 487].
[153] *Chief Prosecutor v Ashrafuzzaman Khan and Chowdhury Mueen Uddin*, ICT-BD (I) of 2013, [449].
[154] *Chief Prosecutor v Motiur Rahman Nizami,* ICT-BD (III) of 2011, [77].
[155] ibid, 285.
[156] Professor Rafiqul Islam, "Massacre of the Bengali Intellectuals in 1971," *The Dhaka Tribune*, December 14, 2019, https://www.dhakatribune.com/magazine/arts-letters/2019/12/14/massacre-of-the-bengali-intellectuals-in-1971 (accessed March 2, 2021).

genocide provided in the *Genocide Convention*. The Bengali intellectuals can be defined as a group of people who had the potential to offer leadership in Bangladesh and were educated and above-average people with regard to their knowledge and wisdom. Some of them used to promote human rights and human dignity and contribute to speak against all kinds of exploitation, injustice, and atrocities committed by the Pakistani authorities. They aimed to ensure a fair and better society for the present and future generations. Again, their intellectual capacity was the main weapon to obstruct and fight against the perpetrators, exploiters and corrupts in the society. In addition, the Bengali intellectuals were targeted as a distinct group, as they were ultimately working and trying to secure the national life of the state. In other words, the perpetrators carried out the operation of killing the Bengali intellectuals particularly distinguishing them from other groups. Therefore, whether one adopts the *dolus specials* approach or knowledge-based approach, or subjective or objective view, the intent to attack this group for its permanent destruction is clear.

Although the definition of genocide given in the *Genocide Convention* was a result of WWII, the principal argument of this study for recognising intellectuals within the protected group is that the perpetrators attack them separately from other groups. Furthermore, this research shows that even special campaigns and operations are executed to kill the intellectuals only. Thus, the following arguments attempt to make it clear why the intellectuals should fall within the ambit of any protected group based on the existing criticisms and developments of the definition of genocide.

To begin with, the four protected groups have no internationally accepted definition. The members of national, religious, ethnical, and racial groups have a historical record of being targets of genocide, as well as the intellectuals. Moreover, they also have overlapping situations where they cannot be distinguished. On the other hand, the history of the Bangladesh Liberation War exposes that it is easy to distinguish the intellectuals of a country, and they do not arguably have any overlapping or growing concept.

Second, one common feature found in all the four protected groups is either they share common citizenship, religious belief, similar hereditary physical traits, or they have common language and culture. In the case of Bangladesh, the targeted intellectuals were abducted, deported, tortured, bodily and mental harmed, and finally killed. These acts are explicit genocidal acts under Article 2 of the 1948 *Genocide Convention*. Moreover, such actions were separately imposed on this group for their permanent annihilation.

Last, intellectuals cannot be referred to be a ‘stable and permanent group’, or more specifically, a permanent group. Nevertheless, this concept is still debatable, as discussed in the *Akayesu case* of the ICTR. This article argues that as the perpetrators target the individuals because they consider them to belong to the

intellectual group, the intellectuals ought to be protected under the Convention. The ICTY in the *Jelisić* case held that defining the protected groups from the objective and the scientific view is nothing but a 'perilous exercise', rather targeted groups shall be classified depending upon the particular context of each case.[157] One might argue that the intellectuals can be included in the political group which was wilfully excluded by the drafters of the *Genocide Convention*. However, a politician can be an intellectual, but all intellectuals need not be politicians. Moreover, the political or economic group has no exact definition, but intellectuals can be defined from the historical background within the national, political, or economic groups. The restrictive approach towards this definition has overlooked intellectuals who have often been vulnerable to genocide from the beginning as much as the other protected groups were.

The arguments above should be applicable in the case of the killing of the Bengali intellectuals as the execution of the 'Operation Liquidation' by the perpetrators of the Bangladesh Liberation War resulted in their partial destruction. Remarkably, the perpetrators targeted them as a separate group to kill them and make Bangladesh talentless. However, due to the restrictive approach of the definition of genocide provided in the *Genocide Convention*, which is also adopted in the 1973 ICT Act, except for including the 'political group' in the later definition, the ICT-BD's verdicts do not offer that the concerned operation constitutes genocide.

CONCLUSION

This article finds that the *travaux preparatories* of the 1948 *Genocide Convention* broadened the scope to interpret the definition of genocide.[158] As there is no specific definition of the four protected groups of genocide such as national, religious, ethnical, and racial groups, various definitions have been developed by the judicial interpretations. The definitions of these groups given by the ICTR in the *Akayesu* case have received the most attention. The ICTR defined 'national group' as a group of people sharing common citizenship and 'ethnical group' as a group of people who share similar language and same physical traits and culture. In addition, a 'religious group' includes a group of people sharing same religion and method of worship, and 'racial group' means a group of members having similar physical traits mostly hereditary. Accordingly, this paper suggests that the evolving interpretations of the protected groups of crime of genocide can consider the issue of killing intellectuals, who are targeted as a distinct group by the perpetrators.

From the historical analysis of the killing of Bengali intellectuals through implementing the 'Operation Liquidation' during the 1971 Bangladesh Liberation War, it appears that the intellectuals are targeted and killed because they are the potential leaders and/or contributors to reshaping a nation. This distinct identity

[157] *Jelisic*.
[158] Bettwy, "The Genocide Convention and Unprotected Groups," 171.

made them the victims of genocide in 1971 because the perpetrators believed that their destruction would weaken the infrastructure of the emerging country. Therefore, the strategy of killing the intellectuals as a weapon of destroying the brains of a country can be regarded as genocide under Article 2 of the *Genocide Convention*.

It should be mentioned that the prohibition of genocide is now a *jus cogens* norm.[159] Hence, in the case of killing intellectuals, although it does not necessarily go unpunished and may constitute crimes against humanity under international criminal law, the development of the elements of the four protected groups integrated into the definition of genocide creates a scope to establish it as the crime of genocide. In 2014, Ambassador Dr. William Soto, Global Embassy of Activists for Peace, proposed in Justice for Peace campaign in the Paraguay Supreme Court for some amendments in the *Genocide Convention*.[160] He suggested that with the dynamic transformation of time, changes should be brought in the *Genocide Convention* from the perspective of different groups that have been overlooked over time.[161]

Nevertheless, this article suggests that it is essential to determine how the perpetrators in each case have made the intellectuals their target and what result is generated based on their acts. If their actions demonstrate their intention to destroy the intellectual group, in whole or in part, such actions can be considered genocide under the *Genocide Convention*. Accordingly, this article concludes that execution of the 'Operation Liquidation' by the perpetrators during the 1971 Liberation War of Bangladesh amounts to genocide against the Bengali intellectuals.

[159] *Advisory Opinion on Reservations to Convention on Prevention and Punishment of Crime of Genocide*, ICJ Report (28 May 1951) 15-23.
[160] "Amendment to the Convention on the Prevention and Punishment of the Crime of Genocide and the Rome Statute," a proposal of the Global Embassy of Activists for Peace at Justice for Peace campaign in the Supreme Court of Justice, Paraguay, March 18, 2014, http://embajadamundialdeactivistasporlapaz.com/en/press/news/amendment-convention-prevention-and-punishment-crime-genocide-and-rome-statute (accessed March 4, 2021).
[161] ibid.

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Critical Criminology: Past, Present, and Future

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Abstract

Through the years, criminologists have studied crime and devised approaches to dealing with issues associated in an effort to further justice and equality. The desire for crime control is growing along with the fear of crime in the contemporary neoliberal and conservative environment. Some academics contend that critical criminology, which has a non-state-centric approach, is essential to truly achieving justice and equality, whereas administrative criminologists develop policies within the legal framework.

The purpose of this essay is to assess critical criminology's past, present, and future. The history of critical criminology is discussed in the first part, along with its goals and objectives. In order to clearly demonstrate the risk of injustice when mainstream criminology restricts itself to the legal framework of crime and loses its independence when working with government agencies, the second and third sections explore two cases, the war on terror and COVID-19. Critical criminology, in contrast to conventional criminology, focuses on social damage, highlighting a wider variety of issues and victimisation. Critical criminology also provides a counter-voice to those in authority. Finally, this study explores the difficulties facing critical criminology and considers how it could advance going forward to pursue its aims of genuine equality and justice.

Introduction

Criminologists through ages have conducted their research in the area of crime and developed strategies to address crime-related problems in order to pursue justice and equality. In the current neoliberal and conservative climate, the fear of crime and the demand for crime control are rising. While administrative criminologists formulate policies within the legal framework, some scholars suggest that critical criminology, which adopts a non-state-centric perspective, is crucial to fundamentally achieve justice and equality. It is more important in modern society where the state power concerning crime control is rising (Young 2013, 271).

This article aims to evaluate the past, present, and future of critical criminology. The first section introduces the development of critical criminology, and explores its role and values. The second and third section examine two examples - the war on terror and COVID-19 - to clearly illustrate the risk of injustice when mainstream criminology confines itself to the legal framework of crime, and loses its independence while collaborating with government agencies. In contrast to mainstream criminology,

critical criminology deals with social harm, identifying a broader range of problems and victimisation. Moreover, critical criminology offers a counter-voice towards those in power (authorities). Society requires someone to stand by the underprivileged side, especially when the state's power is rising. Lastly, this article delves into the challenges of critical criminology and discusses how it could develop in the future to strive for its goal - real equality and justice.

Critical Criminology

The Development of Critical Criminology

In the nineteenth century, positivist criminologists started to introduce scientific methods in the research of criminal behaviour, with an effort to figure out the causes of crime and how to deal with them (Beirne and Messerschmidt 2014). In the decades following the Second World War, penal-welfare policies were the mainstream approach towards crime in Western countries. However, since the 1960s, the collective experience of fear and anger of crime has impacted the general public and created a 'crime complex' (Garland 2000). The shift of people's attitude toward crime derived from complicated mechanisms, including the prevalence of populism, the increase of victimisation, the influence of media, and the transformation of the middle-class lifestyle. From then on, penal policies have become more punitive, with lesser concerns on the rehabilitation of offenders and more on punishment with the aid of prisons.

While punitive strategies seemed to work and successfully increased the incarceration rate, some scholars began to question the relation between crime and race, with official statistics indicating that the state disproportionately targeted minorities (Muhammad 2019). Inspired by Marxism, these scholars emphasised class-based disparities and were devoted to revealing and correcting inequalities caused by problematic crime policies (Sokoloff and Burgess-Proctor 2011). Rejecting the official definition of crime, Taylor, Walton and Young (1973) published 'The New Criminology' to explore a social theory of deviance. Then, this new field was termed 'critical criminology' two years later (Taylor, Walton, and Young 1975).

In the next few decades, critical criminology has since seen significant growth (Walton and Young 1998, vii). In this field, denying the ontological reality of crime became an influential perspective. Critical criminologists believe that thestate and the privileged construct criminal offences to maintain the unfair social structure. The criminal justice system marginalises the underprivileged and 'produces criminals' to achieve social control (Jock Young 2013, 254-255). Studies in the field highly concern social and political inequalities among races, genders, and classes. In addition, 'states violence and crime committed by the powerful elites' are important research areas (McLaughlin 2011, 53). For critical criminologists, the key to crime problems is promoting social justice and solving the problematic social structure.

Thus, they reject mainstream crime measures, such as 'zero-tolerance policing', 'three-strikes sentencing', and 'private prisons' (Walter S DeKeseredy 2011, 7), which accelerates inequality. However, this position has drawn some criticisms, that will be analysed further down below.

Critical criminology aims to address crime problems radically and comprehensively. Instead of adopting the legal definition of crime, some critical criminologists adopt a broader concept - a 'social harm' or 'zemiological' perspective (Hillyard and Tombs 2007). This perspective suggests that the definition of crime includes social harms, injuries, public wrongs, and the violation of human rights (Schwendinger and Schwendinger 1970). Although 'harm' may also lack ontological reality (Hillyard et al. 2004, 20), the perspective has successfully broadened the field of criminology. Nowadays, topics about state crimes, environment, animals, and soon have attracted more and more attention. For example, in critical green criminology, some scholars may dig into the harm to the ecosystem and research environmental crime to advocate to governments to take action to reduce the pollution to the earth.

Defining Critical Criminology

There is no single definition of critical criminology, it varies between sub-fields (Walter S DeKeseredy and Dragiewicz 2018). This article does not advocate any specific scholar's definition. Instead, it tries to adopt a wider perspective that highlights critical criminology's values. As Currie illustrated, 'what links [critical criminologists'] diverse perspectives is a willingness to apply a critical lens not only to the work of their more conventional counterparts in the discipline but their own as well' (Carrington and Hogg 2002, vii). In other words, the definition of critical criminology in this article refers to a broader group of critical and constructionist approaches. It is a perspective that stands against administrative criminology, positivism, correctionalism, and against the official definition and statistics of crime (Jock Young 2013, 253).

The Value of Critical Criminology

The unique value of critical criminology is the reason it is a significant addition to the field of criminology. This section emphasises three qualities of critical criminology which the mainstream (or orthodox) criminology lacks: comprehensiveness, independence, and the position for the underprivileged.

Comprehensiveness

Firstly, the denial of the ontology of crime enables critical criminology to deal with crime comprehensively. In contrast, accepting the state-centric definition of crime, orthodox criminology almost exclusively focuses on working-class crime (Chambliss,

Michalowski, and Kramer 2013, 5). This position may derive from natural science. As Chambliss et al. indicated:

> One important prescription resulting from the application of the epistemology of natural science to social inquiry is that to be "scientific", social inquiry must be devoid of moral judgments. This became a potent barrier to criminological inquiry into state crime. The laws made by government are not the consequence of natural forces. They are, at their historical root, statements of the moral preferences of some versus those of others (Chambliss, Michalowski, and Kramer 2013, 4).

Influenced by the epistemological tools of natural science, administrative criminologists admit a neutral fact as crime enacted by the state. Nevertheless, 'an epistemology of social science that requires moral detachment from the subject matter being studied is an illusion' (Chambliss, Michalowski, and Kramer 2013, 4). Even a state has its own moral standpoints and serves its interests. As a result, administrative criminology may disproportionately focus on offenders of specific classes, and particularly on conventional crimes. On the other hand, it is often excessively lenient with offendersof other classes (Reiman and Leighton 2020). Intentionally or by default, it recognises and even supports the inequality, oppression and domination in an existing social structure (Weis 2017). In addition, mainstream criminology may fail to deal with multifaceted social problems if it confines itself to 'narrowly framed dimensions of crime and criminal justice' (Friedrichs and Vegh Weis 2021).

As for critical criminologists, they '[challenge] the apparent ontology of crime, revealing crime as a social product of political choice and human interaction, not an immutable fact' (Chambliss, Michalowski, and Kramer 2013, 5). Thus, their position allows them to scrutinise the inequality from a 'big picture' perspective. This perspective helps them identity biased legislations which are seemingly phrased in a language of formal equality. Their work focuses on indicating oppressive policies implemented in the name of the rule of order and the state. Moreover, they delve into issues of social harm, which can sometimes be more serious than legal crimes.

Independence

Independence is an essential quality for any academic field. In recent years, criminology has gained more and more resources from governments due to the need to address the increasing crime issues. It is beneficial not only because researchers gain funding and access to shaping policy, but also because it helps the development of the discipline (Ericson 2003). However, as the most influential sponsor, the state is able to dictate the direction of research. Criminology, therefore, runs the risk of turning into a 'wholly-owned subsidiary' of the government (Garland 2011, 308), which ultimately leads to the loss of academic independence.

On the other hand, critical criminology denies crimes' ontology and their legal definitions. This view point often keeps the field away from the interests of the authority and thus helps avoid the danger of academic freedom. The research area of critical criminologists is often far beyond what criminal justice systems see as crimes. On the contrary, administrative criminologists often gain support from the state and dedicate themselves to improving the efficiency of penal policies (Walter S. DeKeseredy and Schwartz 1996). To some extent, they are risking their research as power-knowledge serving a Foucauldian disciplinary state (Foucault 2020).

The Position for the Underprivileged

Finally, the value of critical criminology lies in how it provides a voice for those that are not often able to speak out. In the trend of neoliberalism and conservatism, the gap between the rich and poor becomes wider in this capitalist society. In recent years, the implication of major global events, such as terrorism and COVID-19, has led to the empowerment of governments. This may be necessary for the state to respond to urgent and tremendous challenges. However, as Lord Acton warned: “power tends to corrupt, and absolute power corrupts absolutely.” While administrative criminologists work under the framework of the current legal system, the world needs someone to defend the rights and entitlements of the underprivileged and resist corruption. Thus, critical criminology is exceptionally valuable because 'it is the counter-voice to neoliberalism and conservatism' - the voice for the silent (Jock Young 2013, 259). In summary, these three qualities indicate the importance of critical criminology. In the following sections, this article introduces two topics of contemporary relevance to support this viewpoint.

War on Terror and Critical Criminology

Terrorism and Counter-terrorism

Since the September 11 attacks in 2001 in the US, terrorism has become a hot topic in Western countries. From then on, terrorist groups, such as Al-Qaeda and the Islamic State in Iraq and Syria (ISIS), have dominated the news. The precise definition of terrorism remains contested, with more than two hundred versions (Jackson 2008). Overall, the different versions agree on three elements: political violence, communicative violence, and asymmetry of power (Innes and Levi 2017, 5). Namely, terrorist incidents are often launched by a relatively powerless group with a political intent to convey an intimidating message.

In response to the dire threat, strong counter-terrorism measures have been adopted worldwide. In the UK, legislation allowing indefinite detention called the Anti-Terrorism, Crime and Security Act 2001 (ATCSA) was introduced weeks after the September 11 attacks (though overturned by courts later) (Ahmed 2020, 71). Another example is section 58 of the Terrorism Act 2000, which is 'absurdly broad'

(Cornford 2017) by criminalising a person who 'collects or makes a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism.' In this offence, the possession of an article 'likely' to be used for terrorist activities is forbidden. The defendant has to provide reasonable excuses to the court to avoid criminal sanction.[162] In the US, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 empowered the government to conduct electronic surveillance Online to combat terrorism (Kerr 2002). More and more measures were taken to prevent terrorist attacks in the following years (Innes and Levi 2017, 11), with considerable resources allocated in the field.

War on Terror from the perspective of Critical Criminology

The strategies adopted for counter-terrorism purposes can offer a unique insight into the differences between administrative and critical criminology. To address the problem, administrative criminologists may work as policy advisors to improve the counter-terrorism measures in government agencies. However, '"administrative criminology" accounts have tended towards "abstracted empiricism", and have not highlighted enough the ways that state institutions have dictated the boundaries between categorisations' (Innes and Levi 2017, 3). On the other hand, critical criminologists explore the nature of terrorism and counter-terrorism under the legal definitions and examine whether the application of these counter-terrorism measures disproportionately targets the minorities. In the following paragraphs, the article adopts an analytical framework from a sub-field of critical criminology - constitutive criminology[163] - because the framework is clear enough to help understand the deconstruction of the war on terror (Ahmed 2020; Henry and Milovanovic 1991).

The framework explores events in relation to: 'discourse—legislation—policing—society—individual' (Ahmed 2014, 359). Thus, the starting point is the discourse used in the war on terror. '[O]nly when the word "war" fell from the lips of the president—"a war has been declared on America"—did the terrorist attack become political terrorism and then global terrorism' (Beck 2006, 139). As counter-terrorism is termed as a war, terrorists are viewed as enemies rather than criminals, military actions, namely killing, are justified, and the state naturally requires more power. Through the use of language, a dichotomy of the world between justice and evil is constructed, with Islam seen as a global threat and a mutual enemy (Ahmed 2014, 360). The process is precisely how Cohen (1972, 9) described the occurrence of

[162]Theoretically, the burden of prove is on the prosecutor. However, this offence criminalises a person who is suspicious and requires zir to provide reasons to excuse zirself, which violates the general principles of criminal law.

[163] Constitutive criminology provides anon-state centric approach to critical perspectives. At the same time, it combines concepts from social construction, left realism, socialist feminism, post-structuralism, and social and critical legal theory (Henry and Milovanovic, 1991:294).

moral panic.[164] The targeted people, mostly innocent, are labelled with serious stigma.

Moral panic and pseudo-disasters bring new legislations and policing, targeting the threat, which often restricts the freedoms and violates the right of due process (Stanley Cohen 1972). The state, the criminal justice system, the mass media, and the panicked citizens together create a vicious circle, with policies becoming harsher towards their enemy. Then, the boundary between police and military is eroded. The welfare state develops into the crimefare state, with the shift of focus from law and order to security politics (McCulloch 2004). All these changes affect the daily life of Muslim immigrants. They may face disproportionate investigations based on ethnic profiling and suffer from misuse of detention when deprived of the right to government-appointed counsel (Welch 2004, 5-9).

Terrorist attacks are indeed a severe problem that governments have to overcome. However, the critical perspective illustrates the dark side of counter-terrorism. In the name of national security, counter-terrorism measures may come with political and diplomatic or other purposes. The discourse of the war on terror may construct Islamophobia in society and deny the intrinsic diversity in Islamic culture. The construction of Islam's single identity as a threat is terribly unfair to the majority of the law-abiding group (Ahmed 2014, 366). In addition, the measures often require substantial expenditure but lack effectiveness (Welch 2004, 5-11). Lastly, what it leads to may not be the prevention of terrorist attacks but the suffering of innocent people, the waste of state resources, and the emotional rift between ethnic groups.

Above all, critical criminology offers a more comprehensive perspective to observe, analyse, and examine matters. In terms of the war on terror, critical research on counter-terrorism is of small quantity compared to studies delving into the explanation of terrorism itself (Innes and Levi 2017, 19). Nevertheless, as Gunning (2007, 392) indicated, 'terrorism and counter-terrorism measures kill and harm real people in real places'. Therefore, the critical perspective is crucial because it valuably reminds the authority and the general public that there are victims suffered from counter-terrorism measures.

COVID-19 and Critical Criminology

COVID-19 and Administrative Criminology

The world has changed drastically since the outbreak of the Corona Virus Disease 2019 (COVID-19). Scholars in various disciplines have conducted extensive research in response to the pandemic. In criminology and criminal justice, plenty of

[164]Cohen (1972, 9) describes moral panic as 'a condition, episode, person or group of persons emerges to become defined as a threat to societal values and interest; its nature is presented in a stylized and stereotypical fashion by the mass media and politicians.'

studies aim to guide the judicial and police systems to react quickly to the transformation (Piquero 2021; Rossner, Tait, and McCurdy 2021; Handika, Rahim, and Sudirdja 2020). For example, the implication of social distancing restrictions to different types of crimes, such as cybercrime (Horgan et al. 2021), domestic violence (Richards et al. 2021), gang-related crime (Jeffrey Brantingham, Tita, and Mohler 2021), firearm-related crime (Kim and Phillips 2021), etc., has caught the attention of researchers.

Indeed, these research topics are of great importance because it improves the efficiency of the criminal justice system and the maintenance of social stability. However, mainstream criminology often focuses on issues within the existing legal framework and fails to draw attention to the 'invisible crime' (Davies, Francis, and Wyatt 2014). Historically, it has unfairly emphasised crimes committed by the powerless (Reiman and Leighton 2020). Justice is incomplete (and sometimes even non-existent) without the voice of critical criminology.

COVID-19 from the Perspective of Critical Criminology

Critical criminology recognises that crime occurs within the context of 'the larger political economy.' In modern capitalist society, this context includes the inequality between classes in the social, economic, and political aspects (Friedrichs and Vegh Weis 2021, 131-132). Therefore, critical criminology does not confine itself in the framework of crimes existing in the current legal system. In terms of COVID-19, it goes further to the social harm the pandemic caused. The disease is dangerous, and so are the repercussions it has on a social scale. For example, studies have shown that discrimination and racism targeting Asians have dramatically increased during the outbreak (He et al. 2020; Devakumar et al. 2020). 'The media-orchestrated panic' and ethnic hatred becomes a vehicle to shift the focus of the government's failure to prevent infection (Muzzatti 2005, 125).

From the perspective of critical criminology, broadening the scope of crime is an effective method to identify and deal with those problems (Friedrichs and Vegh Weis 2021, 131-133). Critical criminologists observe and indicate social harm caused no matter whether it is legally criminalised or not. For instance, banks that find a loophole in the government financial relief programs and gain undue profits may commit a 'corporate crime' or a 'state-corporate crime' (Michalowski and Kramer 2006; Kramer, Michalowski, and Kauzlarich 2002). Governments that fail to protect citizens' lives and health from the virus may carry out a 'state crime' (Rothe and Kauzlarich 2016).Besides, suppose the International Monetary Fund deliberately ignores the challenge of the pandemic and forces developing countries to pay their debt. In that case, it may be a form of global criminality as well (Rothe and Friedrichs 2014).

A case study of state-corporate crimes is provided by Friedrichs and Weis (2021).The healthcare industry in the United States and its potential to exploit the COVID-19 crisis had been discussed here. In the US, a country with predatory capitalism, the primary purpose of the pharmaceutical industry is to profit rather than to save lives (Case and Deaton 2020). When the pandemic started, Gilead Sciences, a pharmaceutical company with ties to the administration, found its drug Remdesivir could be used to treat COVID-19. It claimed 'orphan drug status' for Remdesivir to gain tax benefits and a more extended market exclusivity period. However, the status is designed to help sponsors recuperate the cost of drug development for rare diseases, which is not the case of COVID-19. The company finally withdrew its request under public pressure. If it had succeeded, the poor may have had no access to unaffordable medicine. In a case where the company colluded with the government and successfully made undeserved profits, they may have committed a state-corporate crime.

The implication of COVID-19 for critical criminologists is more than that. For instance, scholars of green criminology and critical animal studies may focus on zoonoses and advocate a detailed investigation of the disease's origin. They defend animal rights and call for abolishing wildlife trades and reclaiming wildlife habitats (Beirne 2021), which protects animals and prevents zoonoses. Issues they explore are often not yet regulated by the government. In summary, not only does critical criminology defend the rights of the marginalised groups, but it also helps think beyond the existing legal framework. It offers a broader perspective to counter major events and pursue genuine equality.

The Challenges and Future of Critical Criminology

Challenges

So far, the article has introduced critical criminology and illustrated its values through two examples. Nonetheless, the discipline does not develop without difficulties. This section points out two main challenges it confronts: criticism and lacking research resources.

Criticism

Traditionally, orthodox critical criminology (or radical criminology) tends to insist that crime is a tool of ruling classes, especially under capitalism. Thus, it pays little attention to the phenomenon of crime. Instead, it cares more about fundamentally solving what they perceive to be the problem (the oppression of the state and capitalists)to achieve equality. Radical criminologists believe that addressing problems within the existing system is almost infeasible. An example was provided by Cohen (1985) in "Visions of Social Control". He criticises that community supervision, a policy formulated to reduce the incarcerated population, consequently increases people controlled by the criminal justice system.

However, this position comes in for criticism that radical criminology ignores real harm and victimisation caused by crimes. It 'romanticise[s] the delinquent as a working-class resister' and '[forgets] about the victim, who in many instances was a vulnerable and female member of the working classes or oppressed racial minorities' (Carrington and Hogg 2002, 7). Despite a lofty ideal, radical criminologists may fail to help real persons in practice.

In response to that criticism, some scholars chose a new route: Left Realism. Instead of ignoring crimes and victimisation, crimes were taken up in proportional seriousness and efforts were dedicated to improving victims' conditions. For Left Realism criminologists, 'the definition of crime is consensual' (Lea 2016, 63). As Young(1987) explained, deviance is a product of 'action and reaction.' If there is no regulation, there is no criminal. While Left Realism remains critical to legal definitions of crimes, to recognise victimisation, they must (at least partly) admit the existence and even justification of rules. From this perspective, both legal offences and rule-breaking deviance are real (Young 1987, 339).

In Left Realism criminology, crime is constructed not only by the state but also by the community (Lea 2016, 63). The effectiveness of police action depends on public support to a great extent (Jock Young 1987, 339), and public support is largely dependent on the real experience of victimisation. In other words, the social control mechanisms rely on the general public. From this viewpoint, Left Realist criminologists are faithful to the phenomenon which they study - the nature of crime (Jock Young 2002, 26; 1987, 337). They consider social survey as a 'democratic instrument' (Jock Young 1991, 174) and may work with the government to support victims.

Thus, Left Realism criminologists refute the criticism by saying that '[t]hose who would seek to marginalise critical criminology fail to comprehend its purchase on the grain of social reality' (Jock Young 2013, 271). They develop working-class victimology and believe in the possibility for social democratic welfare states to '[regulate] capitalism and [protect] the vulnerable from the predatory criminality associated with competitive individualism' (McLaughlin 2011, 50). In contrast, radical criminologists insist that the transformation from social democratic states to authoritarian anti-welfare ones is inevitable under capitalism.

This standpoint makes Left Realism counter not just administrative criminology but also orthodox critical criminology (Lea 2015, 166). Orthodox critical criminologists are pejoratively called 'left idealists' (Jock Young 1979). On the other hand, they suggest that the new route may associate with the privileged classes and lose its critical essence. Ultimately, the fundamentally critical voice may gradually step out of

the spotlight with more and more critical criminologists working within the system (Cohen 1998, 109).

Above all, critical criminology has developed various viewpoints and theories. Some even criticise each other, such as radical criminology and Left Realism criminology. However, instead of emphasising any subfield, thisarticle suggests that diversity is a vital quality of a discipline. Thus, both radical and Left Realism criminology as well as other perspectives are of great importance to our society because they can provide valuable viewpoints for policy-makers.

Lacking Research Resources

The lack of resources is another challenge for the development of critical criminology. Crime is too practical of a problem that many institutions prioritise skill-training rather than theoretical research (Donnermeyer and DeKeseredy 2018). Despite the substantial expansion of the criminal justice system in recent years, most investments are for administrative criminological research to improve policies in the existing framework (W. DeKeseredy 1996). Universities may press faculty to seek grants from the government departments, which often resist reform and pursue rapid produced knowledge (W. DeKeseredy 2021, 7). Under this circumstance, the development of criminology will be imbalanced, for most of the resources are put in administrative criminology and the teaching of practical skills.

The contribution of administrative criminology is undeniable (Mayhew 2016). However, what it involves is more 'a reflexive journey into an official past' (Carlen 2016, 19). Its problem-oriented dimension may make the discipline vulnerable. Moreover, if the authority could dictate its research topics, it may risk becoming 'a wholly-owned subsidiary of the criminal justice state' (Garland 2011, 308). Thus, critical criminology deserves more resources to ensure wider topic choices and theory development, which helps maintain the momentum and independence of this academic field (Young 2013, 260).

Future

The article has introduced the weight of critical criminology and the difficulties it faces. It must strive to extend its influence to create a better future for the world. Therefore, this section will discuss its place in the academic field and the responsibility it takes.

Critical criminology has mainly focused on traditional crimes such as street violence (Chambliss, Michalowski, and Kramer 2013, 6). Nevertheless, it should increase its scope and insight to become more dynamic, independent and influential. The topics in the field could extend across the borderline of criminology into other disciplines(Young2013, xlvii-xlviii), and include significant international events(Hudson and Walters2009).In recent years, scholars have been concerned

about issues wider than the legal framework. This is more relevant when the mainstream (administrative criminology) fails to refuse the authority's control.

The role that critical criminology plays here is to provide a counter-voice to the power. The term 'critical' is not just used to show disapproval. As Young(2013, 271) stated: 'those in our own camp who would narrow their definition of the "critical" to the sectarian or the esoteric, fail to understand the central position of critique as a counterbalance to neoliberalism and its administrative discourses.' Thus, instead of confining their field as a separate subject, critical criminologists should draw upon a range of academic disciplines to overcome problems it encounters (Jock Young 2013, 253-254; Garland 2011, 300).

Lastly, 'the future of critical criminology…depends on being able to meaningfully transform the lives of marginalised individuals. (Arrigo 2001, 83)' To do so, criminologists may need to become what Loader and Sparks (2011) call 'democratic under-labourers' (Locke 1847). These labourers shoulder the responsibilities of problem identification, debate provocation, and challenging the public and the authority's opinions (Loader and Sparks 2011, 23). In contemporary neoliberal and conservative society, the critical perspective is massively needed (Young 2013, 259). Critical criminologists should play this role well and make the counter-voice loud enough to protect the underprivileged.

Conclusion

Critical criminology derives from the inequality of society. Influenced by Marxism, it adopted a strictly radical perspective in the beginning. Since then, it has become diverse, with more and more scholars dedicated to the field. The research area has expanded from legal crime to social harm and human rights. The perspective has developed from radical tradition to left-realism. However, what remains unchanged is the insistence to fight for the powerless. Despite lacking resources and receiving criticism, its values have supported critical criminology to develop independently.

Under current trends of neoliberalism and conservatism, the state is holding greater power and getting tougher towards the underprivileged. Thus, the world needs a counter-voice strong enough to strive for equality. Critical criminology is that kind of voice, as shown in the examples of the war on terror and COVID-19. At this moment, perhaps all criminologists should ask themselves the classical question: Whose side are we on? (Becker 1966) If the answer is (and indeed it ought to be) the side of the socially and economically excluded (Walter S DeKeseredy 2011, 9), then the value of critical criminology should never be ignored (Young 1998).

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"DOES THE BULLET DELIVER WHERE THE BALLOT HAS FAILED?" –ATTEMPTING TO EXPLAIN POLITICAL ASSASSINATIONS IN PAKISTAN

Lisa Denndörfer, Viktoria Strauer, Sonja Thebes

Abstract

Political assassinations in Pakistan have been a systematic challenge ever since the country's independence from Great Britain in 1947. On one hand, state actors formed unlikely alliances with Western Powers in the aftermath of the Afghan War and during the War on Terror. On the other, non-state actors, like Islamist jihadi groups, used the country for domestic and foreign terrorist attacks and to spread violence. Thus, this demonstrates the conflict between the different players in Pakistan. When the country was transformed into a democracy in 2007/2008, the number of assassinations did not decrease, but rather increased by ninefold.

This article analyses the case of political assassinations in Pakistan and attempts to explain their prevalence in the country. First, the overall pattern and seriousness of political murders is identified with help from a self-created dataset. Then, it will be argued that the main explanatory factors at play in Pakistan are socioeconomic conditions, social conflict, elections, military and religion, sectarianism and blasphemy laws. Lastly, a brief discussion of long- and short-term measures is done.

Introduction

Political assassinations are a worldwide phenomenon[165] which can have severe impacts on a country's regime type, status and stability,[166] as well as its economy.[167]For the perpetrators of political assassinations, the appeal lies in committing "the ultimate kind of electoral fraud".[168]Regardless of how these assassinations are judged, they can change the fate of a country, be it through a

[165] Marissa Mandala, "Political Assassinations. A Global Perspective", in *International and Transnational Crime and Justice*, ed. Mangai Natarajan (Cambridge: Cambridge University Press, 2019), 154–160.

[166] Benjamin F. Jones and Benjamin A. Olken, "Hit or miss? The effect of assassinations on institutions and war", *American Economic Journal: Macroeconomics* 1, no. 2 (2009); Zaryab Iqbal and Christopher Zorn, "Sic semper tyrannis? Power, repression, and assassination since the second world war", *Journal of Politics* 68, no. 3 (2006).

[167] Muhammad Nadeem Qureshi, Karamat Ali and Imran RafiKhan, "Political Instability and Economic Development: Pakistan Time-Series Analysis", *International Research Journal of Finance and Economics no.* 56 (2010).

[168] Kristine Höglund, "Electoral violence in conflict-ridden societies: Concepts, causes, and consequences", *Terrorism and Political Violence* 21, no. 3 (2009): 415.

regime change or an "increase [in] the intensity of existing moderate-level conflicts".[169]

Pakistan has only become a topic of interest in relation to political crimes over the last decades, even though the nation is torn by a pattern of repeated assassinations of political leaders, which destabilised the governments, their oppositions and fragmented the society along the way.[170]

Since its independence in 1947, Pakistan experienced "almost all types of political control, from democracy – presidential and parliamentary – to repeated military coups" leading to a total of 33 years of dictatorship.[171] Summarizing the country's turbulent past, Bruneau et al. state that "until May 2013, no civilian government had ever finished its five-year term, successfully held elections, and transitioned to another civilian led government".[172] Although there are studies about the violence and crime phenomenon in Pakistan, there are only limited analyses on political assassinations in Pakistan. This article aims at analysing the occurrence of political assassinations in Pakistani society and finding explanatory factors for the nation's political murders.

Methodology and Conceptual Framework

Political crimes and more specifically, political assassinations have been widely discussed by scholars in general.[173]Some have focused their attention more specifically on political crimes in Pakistan, their causes and their implications.[174] Arguing against exceptionalism of political violence in non-democratic systems,

[169] Jones and Olken, *"Hit or miss?",* 72.

[170] Navnita Chadha Behera, "The Kashmir Conflict: Multiple Fault Lines", *Journal of Asian Security and International Affairs* 3, no. 1 (2016): 55.

[171]Qureshi, Ali and Khan, "Political Instability and Economic Development", 180.

[172] Thomas C. Bruneau, et al., "Civil-Military Relations in Muslim Countries. The Cases of Egypt, Pakistan, and Turkey", *Journal of Defense Resources Management* 4, no. 2 (2014): 23.

[173] Jeffrey Ian Ross, "The Dynamics of Political Crime". (New York: Sage, 2003); Stephan Parmentier and Elmar G. Weitekamp, "Political Crimes and Serious Violations of Human Rights", in *Crime and Human Rights (Sociology of Crime, Law and Deviance*) 9, ed. Stephan Parmentier, Elmar G. Weitekamp (Bingley: Emerald Group Publishing Limited, 2007), 109-144. (2007); Roelof Haveman and Alette Smeulers, "Criminology in a State of Denial – Towards a Criminology of International Crimes: Supranational Criminology", in *Supranational Criminology: Towards a Criminology of International Crimes*, ed. Alette Smeulers and Roelof Haveman (Antwerp: Intersentia Publishers, 2008), 3-26; Mandala, "Political Assassinations"; Michael Mumford et al., "The sources of leader violence: A comparison of ideological and non-ideological leaders", *Leadership Quarterly* 18, no. 3 (2007), 217–235; Arie Perliger, "The Rationale of Political Assassinations", *Combatting Terrorism Center at West Point (2015)*, accessed May 30, 2021; Arie Perliger, "The Role of Civil Wars and Elections in Inducing Political Assassinations", *Studies in Conflict & Terrorism* 40, no. 8 (2017), 684-700; Andra Serban et al., "Assassination of political leaders: The role of social conflict", *Leadership Quarterly* 29, no. 4 (2018), 457–475.

[174] Zahid S. Ahmed and Maria J. Stephan, "Fighting for the rule of law: civil resistance and the lawyers' movement in Pakistan", *Democratization* 17, no. 3 (2010), 492-513; Zulfiqar Ali, "Conflict between social structure and legal framework: political corruption in Pakistan", *Commonwealth & Comparative Politics* 54, no. 1 (2016), 115-127; Ethan Bueno de Mesquita et al.; "Measuring political violence in Pakistan: Insights from the BFRS Dataset", *Conflict Management and Peace Science* 32, no. 5 (2015), 536–558; Qureshi, Ali and Khan, "Political Instability and Economic Development"; Ulfat Zahra, "Political Assassinations in Pakistan with Special Reference to the Mystery of the Murder of Hayat Muhammad Khan Sherpao, 1975", *Pakistan Perspectives* 25, no. 2 (2020), 105–122.

researchers have also pointed out the important effects of assassinations on the level of democracy and how it can transform power structure.[175]

The Islamic Republic of Pakistan is rather young, and its democratisation process has been ongoing since 2008. Quantitative statistical models such as the works of Bueno de Mesquita et al.[176], Jones & Olken[177] and Serban et al.[178] have tried to analyse the political incidents and their effects on Pakistan. However, no longitudinal study on election results and an assessment of key democratic factors has been done to discuss the political implications of assassinations. Furthermore, although general literature on political crimes exists, a case study of Pakistan has not been conducted.

To fill this gap in the research, we have decided to try to shed light on the phenomenon of political assassinations in Pakistan. Thus, our research questions were, firstly, how grave the situation of political murder is and, secondly, which factors can be used to explain the occurrence of individuated political violence. To answer the first research question, a quantitative dataset was compiled to give an overview of the problem. After that, explanatory factors from the criminological literature were selected and applied to the case of Pakistan to cover our second research question.

Data collection

When it comes to political assassinations in Pakistan, reliable data is rare. The Pakistani government does not collect statistics, and domestic English-speaking newspapers only occasionally report the murder of politicians. International databases, such as the Global Terrorism Index (GTD), do not provide a full picture either, since the GTD has only started collecting data on Pakistan since 1981 or often underreport cases of political violence in Pakistan.[179] Because of this, it was not possible to develop a broad quantitative model, which is why this article uses its own dataset built from journals and newspaper articles, biographies of politicians, the BFRS[180] and the GTD. Criterion for the inclusion of incidents was that an attempted or successful assassination had to be aimed at a politician who must have at least held a regional political function.

The downside with this approach is that usually only high-profile political assassinations make it in the national newspapers; many local attacks are not reported or are limited to regional publications rarely accessible online and even less in English. The actual numbers of political assassinations in Pakistan may therefore be higher than presented here. Nonetheless, our dataset serves for the illustrative purpose of this work and was vital for identifying the explanatory factors.

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[175] Jones and Olken, “Hit or miss?”; Serban et al., “Assassination of political leaders: The role of social cofflict”.

[176] Bueno de Mesquita et al., “Measuring political violence in Pakistan”.

[177] Jones and Olken, “Hit or miss?”.

[178] Serban et al., “Assassination of political leaders: The role of social conflict”.

[179] START, “GTD Assassinations in Pakistan”, *Global Terrorism Index*, May 25, 2021. Accessed May 25, 2021. https://www.start.umd.edu/gtd/search/Results.aspx?page=1&casualties_type=b&casualties_max=&dtp2=all&success=no&country=153&target=2&charttype=line&chart=overtime&ob=GTDID&od=desc&expanded=yes#results-table; Bueno de Mesquita et al., “Measuring political violence in Pakistan”.

[180] Bueno de Mesquita et al., “Measuring political violence in Pakistan”.

Limitations

Many small incidents and crackdowns in the system are noted in the literature since 2007/08, yet it is impossible to describe and "measure" each of these or to outlay causes or connect these to the wider spectrum of instability. This permanent process of reactions and counter-reactions makes it difficult to first identify all incidents and then to understand or link all the consequences of incidents.

Due to the lack of reliable data, our dataset does not claim full accuracy and serves more of an illustrative purpose than a serious quantitative analysis. More importantly, the dataset helped identify the explanatory factors. While not exhaustive, these factors try to highlight some of the issues Pakistan faces. Due to the diverging characteristics in regions and provinces, a geographical analysis of the locations of assassinations in a larger scope could offer even more insight but goes beyond this article.

Additionally, the paper cannot go into detail about the many legacies of British colonial rule, like the judiciary, politics, culture, and tradition of the country. As a result, this paper will discuss only the time frame from 2007/2008 onwards. Furthermore, due to the complex relations with external actors (USA, China, India, Afghanistan) and militant groups (ISIS, Al-Qaeda, Taliban and other), this dimension was likewise excluded in the analysis.

Conceptual Framework on Political Crimes and Political Assassinations

If one considers political assassinations as a political crime, it is important to find a working definition of the term. Yet again, the phenomenon of political assassinations *per se,* but also its causes, implications, and consequences, have received little attention in research.[181] Although assassinations might not be rare and sometimes even systematic, the occurrence of this phenomenon depends on a variety of social, political, and economic conditions.[182]

Generally, political crimes have been called a "contradictio in terminis"[183] because of the idea that there are different apprehensions on the notion of "crime" and "political".[184] Historically, political assassinations are inherent to social reality and communities,[185] but it is the context and the motives behind the attacks which make the assassinations political.[186] Schafer declares that a political crime can be distinguished "based on the conviction or the motivation of the offender about the

[181] Serban et al., "Assassination of political leaders: The role of social conflict"; Zaryab Iqbal and Christopher Zorn, "The political consequences of assassination", *Journal of Conflict Resolution* 52, no. 3 (2008), 386.

[182] Francis J. Yammarino, Michael D. Mumford, Andra Serban and Kristie Shirrefs, "Assassination and leadership: Traditional approaches and historiometric methods", *The Leadership Quarterly* 24, no. 6 (2013), 823.

[183] Parmentier and Weitekamp, "Political Crimes and Serious Violations of Human Rights", 3.

[184] Parmentier and Weitekamp, "Political Crimes and Serious Violations of Human Rights", 3; Stephen Schafer, "The Political Criminal", in *Crime and Justic* 2, ed. L. Radzinowicz and M. Wolfgang (Eds.), (New York: Basic Books, 1977), 368-380; Eugene F. Miller, "What Does "Political" mean?", *The Review of Politics* 42, no.1 (1980), 56 -72.

[185] Perliger, "*The Rationale of Political Assassinations"*, 18.

[186] Parmentier, S. & Weitekamp, E.G.M, "Political Crimes and Serious Violations of Human Rights", 3.

truth and the justification of his own altruistic beliefs".[187] The crime as a committed act becomes part of a toolbox, an instrument "for ideological purposes, which sets him apart from ordinary criminals and also from pseudo-convictional criminal".[188] Haveman and Smeulers agree that the nature and context of political crimes "are completely different from the nature and context of ordinary crimes".[189] Therefore, the crime becomes a means to reach their objective which is a) political and b) distinctive from acts of ordinary crimes.

To be defined as a political assassination, Perliger argues that three elements must be present to constitute the target as a political one:

1) The targeted individual must be part of a leadership of a group that operates within a framework of ideology or policies,
2) the motive of the perpetrator remains political with a societal or political change in mind, blocking or encouraging certain directions (values, policies or norms),
3) the final act leads to the murder of the targeted individual.[190]

Based on this, Perliger defines political assassinations as "an action that directly or indirectly leads to the death of an intentionally targeted individual who is active in the political sphere, in order to promote or prevent specific policies, values, practices or norms pertaining to the collective".[191] Iqbal and Zorn call it a "killing of a public figure for political reasons" and attribute an enormous importance to assassinations as one of the "highest profile acts of political violence".[192] Kasher and Yadlin specify it as "an act of killing a prominent person selectively, intentionally, and for political (including religious) purposes".[193] Interestingly, they reflect on the notion that political assassinations of leaders can be legally or morally justified when it comes to preventive acts and do not always have to be sanctioned *per se.*[194]

According to Perliger, the strategic choice of actors for political assassinations is often done "because they believe that it is the fastest and/or most effective way to promote desired political goals, since other alternatives are not viable, or because the targeted individual possesses political capital and powers that are related to the political objectives of the perpetrator".[195]Overall, many scholars agree that political assassinations come with the objective of a regime change or shall lead to political unrest and instability, but also continue in large-scale political, economic, and social upheaval.[196] Whilst Nielson asserts that assassination have been condoned as acts of political violence when political reform was impossible to achieve,[197] scholars like Iqbal and Zorn disagree with the notion of a legitimate mechanism to cause political

[187] Schafer, "The Political Criminal", 374.
[188] Ibid., 376.
[189] Haveman and Smeulers, "Criminology in a State of Denial", 8.
[190]Perliger, "*The Rationale of Political Assassinations"*, 21.
[191] Ibid.
[192]Iqbal and Zorn, "The political consequences of assassination", 385–386.
[193]Asa Kasher and Amos Yadlin, "Assassination and Preventive Killing", *SAIS Review of International Affairs* 25, no. 1 (2005), 44.
[194] Ibid.
[195]Perliger, "The Role of Civil Wars and Elections", 685.
[196]Perliger, A. (2015). "The Rationale of Political Assassinations*"*, 15; Yammarino et al.,"Assassination and leadership"; Iqbal and Zorn,"The political consequences of assassination", 387.
[197]Kai Nielson, "On terrorism and political assassination", in *Assassination,* ed. Harold Zellner (Cambridge: Schenkman, 1974), 97-110.

change.[198]. For them, assassinations are simply "a phenomenon of political violence and therefore a negative influence on that state's political system".[199]

In conclusion, assassinations are used as one out of many instruments in a toolbox of political crimes. Depending on the definition, they can also be associated with the broader category of political crime or constitute terrorism.[200] In the case of Pakistan, "political violence is a central policy concern [...] and takes many forms".[201] Therefore it is important to note that political assassinations are only one manifestation of political violence which the country faces.

Analysis of Political Assassinations in Pakistan

Targeted murders of Pakistani politicians have continuously followed Pakistan after gaining independence from Great Britain in 1947. The first well-documented and high-profile political assassination was the country's first Prime Minister, Liaquat Ali Khan in 1951.[202]

Figure 1, developed from our dataset, illustrates that there have been repeatedly successful attacks on politicians. Yet again, it must be noted that due to our methodological approach the actual figure of political assassinations in Pakistan is likely to be higher than in our dataset.

Between 1951 and 2020, a total of 73 representatives of political, economic, or social institutions in Pakistan were killed. Our dataset also shows a worrying trend: before 2006, the pattern of political assassinations was rather steady with an average of 0.36 politicians assassinated per annum, despite experiencing regime changes, military coups, and democracies.[203] This average increased to 3.5 politicians murdered per year in the years 2006 to 2020. A climax of assassinations can be seen in 2007, which can be attributed to the end of the military reign and the building of the present Islamic Republic of Pakistan in that year. Other spikes can be found in the election years of 2013 and 2018. This increase in violence and assassinations during times of campaigning and elections in Pakistan attests to global patterns of political assassinations.[204]

[198] Iqbal and Zorn, "The political consequences of assassination", 365.
[199] Ibid.
[200] Jeffrey Ian Ross, *The Dynamics of Political Crime*, (Thousand Oaks: Sage, 2003), 64.
[201] Bueno de Mesquita et al., "Measuring political violence in Pakistan", 537.
[202] "Pakistani political leaders who were assassinated". *International News*. November 3, 2018.

[203] Ayesha Shoukat and Edmund T. Gomez, "Transformation of political elite as regime changes in Pakistan", *Asian Journal of Political Science* 26, no. 1 (2018): 35-52.; Qureshi et al., "Political Instability and Economic Development".
[204] Marissa Mandala, "Political Assassinations".

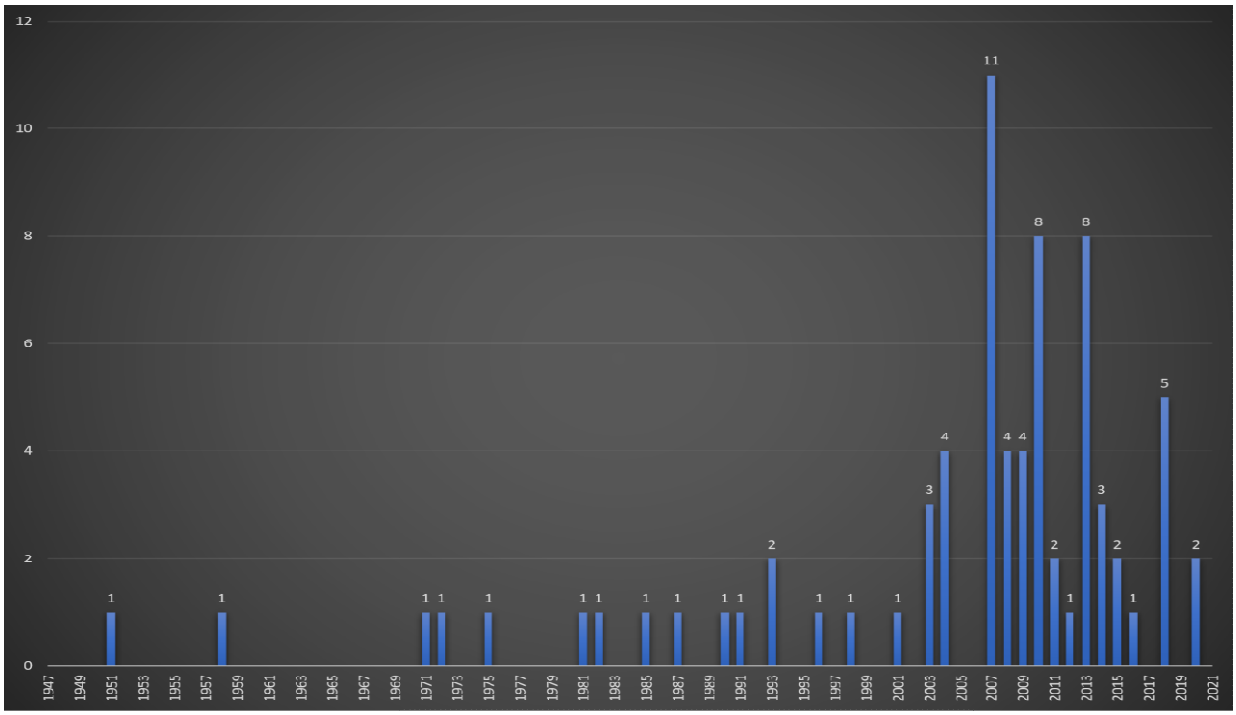

Figure 1: Political Assassinations and Attempts in Pakistan (1947-2020)

Note 1: Data aggregated by the authors.

Perpetrators

Parmentier and Weitekamp state that political crimes "go beyond the micro level of individuals and individual motivations, and that they are situated at the meso level and the macro level of societies with many – if not all – cases involving ideological motivations."[205]However, the perpetrators and reasonings diverge.[206] In Pakistan, the motivation of the assassins differs vastly between the geographic areas and years.[207]In the region of Balochistan, the ethnic independence movement is one of the main regional drivers of assassinations, whereas in Punjab and Sindh sectarian cleavages cause violence.[208]

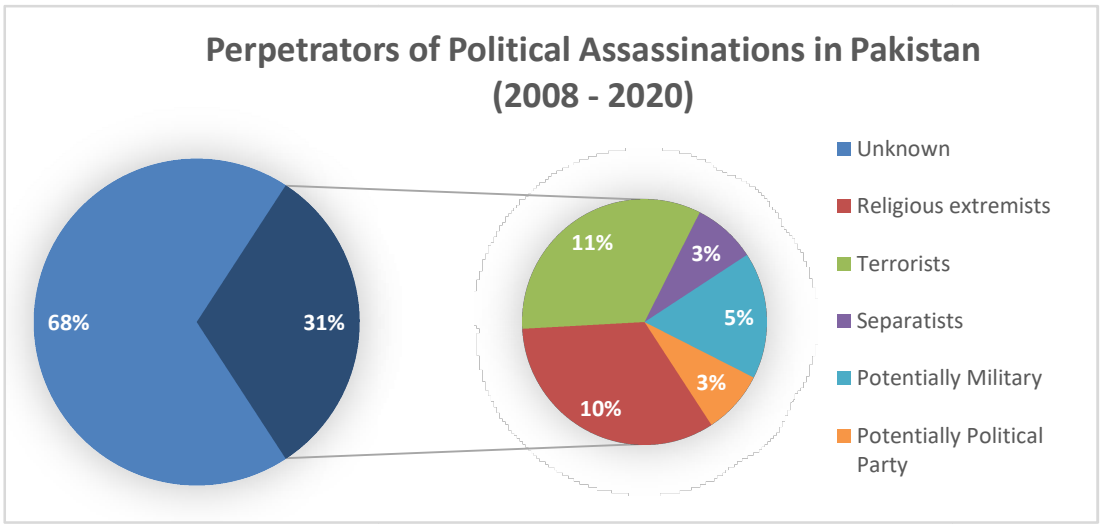

Figure 2: Perpetrators for Political Assassinations in Pakistan (2008-2020)

[205] Parmentier and Weitekamp, "Political Crimes and Serious Violations of Human Rights", 2.
[206]Iqbal and Zorn, "Sic semper tyrannis?".
[207] Bueno de Mesquita et al., "Measuring political violence in Pakistan", 540.
[208] Ibid., 551.

Note 2: Data aggregated by the authors.

Figure 2 shows our compilation of attributed motives for the political assassinations from 2008 until 2020. Over this time frame, 38 political assassinations were carried out. Unfortunately, for the majority of political assassinations in Pakistan the motivation or perpetrators are unknown (68%). The perpetrators could be identified in only 12 instances, demonstrating a low clearing rate for political murder. In 11% of the cases where the perpetrators were known, terrorists, both domestic and foreign, claimed responsibility for the attack. In 10% of the cases, the attacks were carried out by religious extremists. 5% of the attacks were potentially carried out by the military. Separatist struggles were responsible for 3% of all cases since 2008– although the regional rate of murdered politicians might be higher in certain areas and not be reported in national mass media.[209] Furthermore, in 3%, there was rumour that a political party was involved, aimed at eliminating an opponent before the ballots. Studies on electoral violence in Pakistan show that those parties perpetrating or involved in the assassinations are also more likely to receive additional seats in the National Assembly of the province in which the violence is committed.[210]

Most commonly, firearms and/or explosives are used to carry out the attack. This is congruent with worldwide method assessments of assassinations.[211]However, an important characteristic of political assassinations in Pakistan is that they strategically happen in the public sphere, where civilians are killed together with the target.[212] These casualties are often families of the primary targets but also politicians or people who were attending political rallies.[213]The high death toll of some of these attacks makes it even more difficult to distinguish between targeted political assassinations and terrorist attacks. This factor cannot be underestimated because it skews the data.

Explanatory Factors

By analysing the case of Pakistan, we have identified the following five explanatory factors for political assassinations in the literature: socioeconomic conditions, social conflict, elections, military, traditional culture and the role of religion, sectarianism and blasphemy laws. The following explains the factors in detail.

Socioeconomic Conditions

Socioeconomic conditions, such as a lack of economic development and poverty, have been frequently linked as a driver for political violence, such as terrorism and political assassinations.[214] Furthermore, Serban et al. show that if the socio-

[209]Bueno de Mesquita et al., "Measuring political violence in Pakistan".

[210]Free and Fair Election Network, "Campaigns of Violence. Electoral Violence During the 2013 General Assembly Election in Pakistan", (FAFEN, Islamabad, 2013), 3.

[211] Jones and Olken, "Hit or miss?".

[212]"Timeline: Political assassinations in Pakistan", *Express Tribune*, June 14, 2014; "Pakistani political leaders who were assassinated", *International News*, November 3, 2018; Free and Fair Election Network, "Campaigns of Violence", 3.

[213] Ibid.

[214]Tore Bjørgo and Andrew Silke, "Root causes of terrorism", in *Routledge Handbook of Terrorism and Counterterrorism*, ed. Andrew Silke (Routledge, 2018);Institute of Economic and Peace, "Global Terrorism Index 2020: Measuring the Impact of Terrorism", (Sydney: Institute for Economics & Peace, 2020); Gary LaFree and Anina Schwarzenbach, "Micro and macro-level risk factors for extremism and terrorism: Toward a criminology of extremist violence", *Monatsschrift für*

economic development of a society increases, the probability of assassinations will decrease.[215] Other studies have also found that political instability has a significant impact on economic development,[216] thus leading to a reinforcement of both factors.

Lacking diversification, the Pakistani economy is dependent on exports and relies heavily on the primary and secondary sectors.[217]Such dependence results in vulnerable employment for 55% of the population over the age of 15, which can lead to spiking rates of unemployment if the GDP or certain industries experience economic downturns.[218] Moreover, Pakistan has a negative trade balance and accumulates high foreign debts.[219] Lasting high inflation rates likewise impact the population and have led to further resentments.[220] Besides these problems reducing governance and support within the general public, Pakistan is repeatedly hit by natural catastrophes like earthquakes and floods, which are claimed to have set back the country and its economic development for decades.[221]
Due to this, the Pakistani economy is not equipped to provide basic facilities such as employment, health, education, electricity, sanitation and housing for its people and offers only limited opportunities to its relatively young population.[222] This has tremendous effects on poverty levels and household incomes: In 2015, more than 75% of the people lived on less than $5.50 per day, almost a quarter of the population lived below the national poverty line and 20% of the Pakistani people suffered from hunger.[223] However, even "individuals living above the income poverty line can still suffer deprivations in health, education and/or standard of living".[224]

Efforts by international aid organizations and by the Pakistani government have not been fruitful due to the "widespread, systematic and deeply entrenched" levels of corruption in the society and the government.[225] The corruption is perceived as prevalent "within federal, provincial and local governments" and also extends to the

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Kriminologie und Strafrechtsreform 104, no. 3 (2021); Muhammed S. A. Malik et al., "Identification of risk factors generating terrorism in Pakistan", *Terrorism and Political Violence* 27, no. 3 (2015), 537-556.

[215] Serban et al., "Assassination of political leaders: The role of social conflict", 461f.

[216] Qureshi et al., "Political Instability and Economic Development".

[217] CIA.org, "Pakistan", *The World Factbook*. March 30, 2022. Accessed March 15, 2022. https://www.cia.gov/the-world-factbook/countries/pakistan/; Qureshi et al., "Political Instability and Economic Development".

[218]United Nations Development Programme, "Pakistan", *Human Development Indicators*, 2020. Accessed *March 21, 2022. https://hdr.undp.org/en/countries/profiles/PAK*

[219] CIA.org, "Pakistan".

[220]The World Bank, "Inflation, consumer prices (annual %) - Pakistan", *The World Bank Data*, 2022. Accessed in May 8, 2021. https://data.worldbank.org/indicator/FP.CPI.TOTL.ZG?locations=PK ; Emily Schmall and Salman Masood, "As Inflation Surges, Pakistan Seeks a $6 Billion I.M.F. Lifeline", *New York Times*, November 23, 2021; Salman Masood, "Pakistan's Cricket-Star-Turned-Prime Minister Fights for Survival", *New York Times*, March 22, 2022.

[221]Carlotta Gall, "Pakistan Flood Sets Back Infrastructure by Years", *New York Times*, August 26, 2010; Somini Sengupta, "Pakistan Quake Rocks South Asia; Over 18,000 Killed", *New York Times*, October 9, 2005.

[222] United Nations Development Programme, "Pakistan"; Malik et al., "Identification of risk factors generating terrorism in Pakistan", 553.

[223]Asian Development Bank, "Poverty Data: Pakistan", *Asian Development Bank*. 2021. Accessed May 8, 2021. https://www.adb.org/countries/pakistan/poverty

[224]United Nations Development Programme, "The Next Frontier: Human Development and the Anthropocene Briefing note for countries on the 2020 Human Development Report Pakistan", Human Development Report 2020, 2020, 6.

[225]Marie Chêne, "Overview of corruption in Pakistan", *Transparency International*, (2008): 3.

military and police branches.[226] According to public surveys, the most corrupt government agencies are the police, the power sector and the judiciary.[227] The effect is further exacerbated by the lack of a fair accountability system, which leads to an undermining of the trust put into these institutions or allows other, non-state actors carry out quasi-governmental services.[228]

As a result, the dire poverty, ongoing conflicts and lack of economic development can drive Pakistani youth into more radical and militant ideologies, for instance religious extremism or separatism.[229] Furthermore, due to corruption and lack of accountability regimes, Pakistani state institutions are effectively hindered from serving its people, in turn fuelling political resentment and potentially escalating into the employment of violent means, such as political assassinations.[230]

Social Conflict

Another general cause of terrorism and political violence is the presence of collective grievances or social conflict in a society.[231] Empirical analyses have indicated a correlation between the an increased likelihood of assassinations is political unrest or social conflict, which includes strikes, riots, anti-government demonstrations, guerrilla warfare and other tactics.[232] On a micro level, radicalization theories have emphasized personal and group grievances as motivators for fighting personal injustices or harms or for countering a "harm to a group or cause".[233] The cause of social conflict can be "unequal division or distribution of scarce resources between social groups", such as political, economic and social resources.[234] Despite socioeconomic conditions, which have been discussed above, social unrest in Pakistan is created through inequality within the society, a political system that bypasses the interests and needs of its voters and territorial fragmentation – and with that, geographical exclusion.

For one, Perliger observes that "states that lack consensual political ethos and homogeneous populations (in terms of the national and ethnic landscape)" have an

[226] Ibid.
[227] Ibid., 4.
[228] Feisal Khan, "Combatting corruption in Pakistan", Asian Education and Development Studies 5, no. 2 (2016), 195-210;Benham T. Said, "Geschichte al-Qaidas. Bin Laden, der 11. September und die tausend Fronten des Terrors heute" (München: C.H.Beck, 2018); Malik et al., "Identification of risk factors generating terrorism in Pakistan", 551.
[229] Ayesha Siddiqa, "Pakistan's Counterterrorism Strategy: Separating Friends from Enemies", *The Washington Quarterly 34*, no. 1 (2011), 158.
[230] Feisal Khan, "Corruption and the Decline of the State in Pakistan", *Asian Journal of Political Science* 15, no. 2 (2007), 219-247; Malik et al., "Identification of risk factors generating terrorism in Pakistan", 551; Alex Schmid, "Frameworks for Conceptualising Terrorism", *Terrorism and Political Violence* 16, no. 2 (2004): 197-221.
[231] Jeffrey Ian Ross, "Structural Causes of Oppositional Political Terrorism: Towards a Causal Model", *Journal of Peace Research* 30, no. 3 (1993): 317-329; Andra Serban et al., "Assassination of political leaders: The role of social conflict", 467.
[232] Zaryab Iqbal and Christopher Zorn, "Sic semper tyrannis?", 499; Andra Serban et al., "Assassination of political leaders: The role of social conflict", 467.
[233] John Monahan, "The Individual Risk Assessment of Terrorism: Recent Developments", in *Public Law and Legal Theory Research Paper Series* 57; Clark McCauley and Sophia Moskalenko, *Friction: How radicalization happens to them and us*, (New York: Oxford University Press, 2011), 214-215.
[234] Andra Serban et al., "Assassination of political leaders: The role of social conflict", 458ff.

increased risk for attacks against leaders.[235]Pakistan is a heterogenous country with a variety of religions, ethnic and linguistic groups and identities.[236] Unfortunately, social, ethnic, religious and gender-based inequality prevails.[237]Smaller ethnic groups or minority faiths suffer from cultural and religious subordination, such as Christians, Hindus and others.[238] These minorities are subjected to overall discrimination, hold a lower socioeconomic status and are disproportionately targeted by the country's blasphemy laws.[239] Such injustices on a subgroup of the population can lead to intense social mobilization, fuels extreme positions to be elected, sectarianism and separatism and run the risk of becoming violent.[240]

Second, the political process in Pakistan is marked by institutional and practical exclusion of voters' interests for the personal benefit of politicians. Many Pakistani people lack the opportunity to actively participate in the political process due to the marginalization of minorities' electoral voices. Furthermore, the political elite is mainly made up of one of six broader ethnic groups, which only account for 7.6% of the Pakistani population.[241]The institutional system of accountability for government servants is perceived as absent of efficient oversight mechanism, which is critical considering the widespread levels of corruption.[242] Because of these institutional deficiencies, politicians are often accused of ignoring the political wishes of the public in the policy making or perceived as dishonest and disloyal to country and nation.[243]

Thirdly, our dataset has shown that separatists are responsible for 8% of the known cases of political assassinations. Such violent separatist movements are the result of territorial fragmentation and "gathered", or locally densely populated, areas while national government influences are low.[244]Research has shown that there are significant links between territorial fragmentation and the number of assassinations and, since 2007, ethnic and separatist movements have only gained traction.[245]The discovery of oil and gas in the province of Balochistan has reheated previous local ethnic independence movements, while the tribal areas of the province Khyber Pakhtunkhwa (KPK) have been in constant conflict since 2004.[246] For this time frame, our dataset shows a spike in total assassinations in the years 2008 to 2011,

[235] Perliger, "The Rationale of Political Assassinations ", 5.

[236]CIA.org, "Pakistan"; Maria M. Fuchs and Simon W. Fuchs, "Religious Minorities in Pakistan: Identities, Citizenship and Social Belonging", *South Asia: Journal of South Asia Studies* 43, no. 1 (2020), 52.

[237] Malik et al., "Identification of risk factors generating terrorism in Pakistan", 551.

[238]United States Commission on International Religious Freedom (USCRIF), "Pakistan. USCRIF-Recommended for Countries of Particular Concern (CPC)", *USCRIF Annual Report 2020*, (2020): 32.

[239] Christophe Jaffrelot, "Minorities Under Attack in Pakistan", in*Minorities and Populism - Critical Perspectives from South Asia and Europe*, ed. Volker Kaul and Ananya Vaijpeyi (Cham: Springer, 2020);Nilay Saiya, "Blasphemy and terrorism in the Muslim world", *Terrorism and Political Violence* 29, no. 6 (2017), 1096f.

[240]Malik et al., "Identification of risk factors generating terrorism in Pakistan", 551.

[241] CIA.org, "Pakistan".

[242]Malik et al., "Identification of risk factors generating terrorism in Pakistan", 551; Chêne, "Overview of corruption in Pakistan", 3; Ali, "Conflict between social structure and legal framework".

[243] Behera, "The Kashmir Conflict: Multiple Fault Lines"; Malik et al., "Identification of risk factors generating terrorism in Pakistan", 550-551, 554.

[244] Bueno de Mesquita et al., "Measuring political violence in Pakistan", 555; Malik et al., "Identification of risk factors generating terrorism in Pakistan", 554; Said, "Geschichte al-Qaidas", 170.

[245] Serban et al., "Assassination of political leaders: The role of social conflict", 459.

[246] Bueno de Mesquita et al., "Measuring political violence in Pakistan", 555.

whereas other works illustrate the increase in political assassination on provincial levels and highlight the regions of Balochistan, KPK and Sindh.[247] In these areas, the intensified local conflicts are the main drivers of political violence.[248] Such local interests have fostered connections and strategic alliances between communities and extremist militia, and it is said that by this, local governments and the military have provided a “friendly environment” for terror groups like Al-Qaida.[249]

In summary, Pakistan offers a multitude of collective grievances and social conflicts with a variety of actors, issues and regions involved. These conflicts and conflict zones are likely to serve as accelerants of political assassinations in the country, disrupting chances of peaceful modernization, development and unity.

Elections

Elections in themselves are not the cause of political assassinations, since the abolition of free democratic elections fuels terrorism.[250] Nonetheless, elections exacerbate three factors: Electoral violence, preexisting social conflicts, and in the case of Pakistan, incentives to eliminate opponents before the ballot. As a result, elections are considered facilitators for assassinations, particularly of legislators,[251] as well as for electoral violence.[252]

First, activities that are regarded as electoral violence include the harassing, assault, and intimidation of candidates, election workers, and voters; rioting, destruction of property, and political assassination.[253] Such attacks are launched against four different types of targets: a) electoral stakeholders (voters, candidates, election workers, media, and monitors), b) electoral information (registration data, vote results, ballots, and campaign material), c) electoral facilities (polling and counting stations), and d) electoral events (campaign rallies, traveling to polling stations).[254] Reports on the General election of 2013 in Pakistan show that high explosives were mostly used and that the main targets were candidates and workers of all major political parties.[255] Additionally, those areas experiencing territorial conflicts were also those most affected by high-explosive electoral violence.[256]

During election-times, politicians will use their rhetoric abilities to emphasize differences between voters instead of bringing people together,[257] thereby emphasizing existing tensions, especially in a society as fragmented as Pakistan’s. While an election naturally is a phase of "revolution,” and therefore of uncertainty, this sensation can be exacerbated by the nature of politics, the design of an electoral system and its administration.[258] Generally, “new democracies, or regimes in

[247] Ibid.
[248] Bueno de Mesquita et al., “Measuring political violence in Pakistan”, 555; Malik et al., “Identification of risk factors generating terrorism in Pakistan”, 554; Said, “Geschichte al-Qaidas”, 171.
[249] Said, “Geschichte al-Qaidas”, 170.
[250] Tore Bjørgo and Andrew Silke, “Root causes of terrorism”.
[251] Perliger, “The Role of Civil Wars and Elections”, 693.
[252] Höglund, Electoral violence in conflict-ridden societies”, 415.
[253] Ibid.
[254] Ibid., 417.
[255] Free and Fair Election Network, “Campaigns of Violence”, 3.
[256] Ibid., 11.
[257] Behera, ”The Kashmir Conflict: Multiple Fault Lines”.
[258] Höglund,” Electoral violence in conflict-ridden societies”, 420.

transition, which are still struggling to develop strong democratic practices," are more vulnerable to political assassinations.[259] The Pakistani democracy can be categorized as a "non-liberal or procedural democracy" due to "the limited commitment of the political elites [...] to democratic-liberal values, and the existence of procedural mechanisms that prevent opposition forces from gaining significant political influence".[260] The state's institutions are penetrated by a system of patronage[261]which is known to have an impairing effect on democracy.[262]Pakistani elections also lack fairness in terms of political elitism and active political involvement.[263]

The criteria that distinguish electoral violence from other types of violence are "the timing and motive" behind it.[264]The closer elections get, the higher the tendency to assassinate legislators or intimidate voters is.[265] In 2013, 24 incidents of Election Day violence were counted, which left 39 people killed and 141 injured.[266]The public appearances of party candidates during campaigning increased their exposure to attacks, especially of oppositional politicians who are "the least protected and isolated political figures".[267] Uninfluenced by elections is the tendency to target heads of state.[268]

The actors who commit electoral violence are (1) state actors (i.e., military and police), (2) political parties, (3) guerilla/rebel groups, and (4) militia and paramilitary groups.[269] While some perpetrators of electoral violence/assassinations try to influence the outcome of the elections, others do not believe in elections per se as a legitimate method for transferring political power, and others again are opponents of the ruling system under which the elections are held.[270]The more there is at stake, the bigger is the incentive for political actors to influence the electoral process through means of intimidation and violence.[271] A tactic of threat and fear can not only provoke a low voter turnout, but it can also determine whom people vote for and whether candidates resign their candidature.[272]When elections offer a genuine possibility to change existing power relations ("close races"), electoral violence erupts.[273]

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[259]Perliger, "The Role of Civil Wars and Elections", 696.

[260] Perliger, "The Rationale of Political Assassinations", 41.

[261] Patronage is defined as "'patron-client relationships,'" in which "the 'patron' provides protection, services or rewards to the 'clients' (usually individuals of lower status) who become the patron's political followers," Rod Hague, Martin Harrop, and Shaun Breslin, *Comparative Government and Politics: An Introduction*, 3rd edition (Basingstoke: Macmillan, 1992), 467. "In essence [patronage] is based on an interpersonal exchange but between people in an asymmetrical relationship," Höglund, "Electoral violence in conflict-ridden societies", 420.

[262] Höglund, Electoral violence in conflict-ridden societies", 420.

[263]Shoukat and Gomez, "Transformation of political elite as regime changes in Pakistan".

[264] Höglund, Electoral violence in conflict-ridden societies", 415.

[265]Perliger, "The Role of Civil Wars and Elections", 694.

[266]Free and Fair Election Network, "Campaigns of Violence", 14.

[267] Höglund, "Electoral violence in conflict-ridden societies", 421.; Perliger, "The Role of Civil Wars and Elections", 693.

[268] Ibid., 697f.

[269] Höglund, Electoral violence in conflict-ridden societies", 416.

[270] Ibid, 415f.

[271]Ibid.

[272]Ibid, 417.

[273]Ibid, 421.

To conclude, electoral violence reflects the larger political conflict within a country whose society is divided. In Pakistan, political violence clusters around election times and can escalate into political assassinations. Elections serve as a "breeding ground" for the de-legitimization of political rivals; electoral violence is a way of channeling political dissent and influencing political processes.[274] To prevent the intensification of violent political disputes, the electoral process must be managed extremely carefully.

Military

Despite efforts of civilian leaders to reduce the direct influence of the military in the day-to-day business of the government, the power of the military is great in Pakistan.[275] Even though Pakistan's constitution was amended in 2010, transforming it into a parliamentary democracy "with defense committees in the Senate and the National Assembly to conduct oversight over the military", foreign and defense policy remain "off limits".[276] The legislature can neither influence defense-related decisions nor oversee the military or its budget.[277] Furthermore, the Pakistani military directly coordinates defense acquisitions with foreign governments and prevails as "the go-to power broker for the state of Pakistan".[278]

The military has also "fully penetrated" the intelligence agencies and even plays an important role for internal security as the national police force is "largely seen as corrupt, incompetent and excessively brutal".[279] Besides its predominant role in foreign and domestic policy, the military is heavily involved in the economy, controlling over 33% of all heavy industry and 10% of all assets in the private sector.[280] It is also involved in illicit market activities, like smuggling oil and narcotics across borders and demanding money at army-checkpoints in the provinces.[281] Above all, the military has established a broad patronage network which protects their ranks, undermines the law and is a key enabler for the unrestrained corruption within the military.

To conclude, "Pakistan's army is the keystone to its problematic national identity".[282] While it may be necessary to confer more power to the military during elections and in times of violent conflicts to protect civilians, it is important to remember that the military does not provide effective tools to solve the underlying conflicts.[283] Furthermore, an oversized military bears the constant risk of "military interventionism" for the state's institutions – especially in Pakistan, where multiple military coups have been performed in the past.[284]

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[274]Perliger, "The Role of Civil Wars and Elections", 697; Free and Fair Election Network, "Campaigns of Violence", 3.
[275] Bruneau et al, "Civil-Military Relations in Muslim Countries".
[276] Ibid., 13.
[277]Bruneau et al, "Civil-Military Relations in Muslim Countries", 14-15.
[278] Ibid 13; 24.
[279]Ibid., 17.
[280]Ibid.
[281]Khan, "Combating corruption in Pakistan".

[282]Bruneau et al., "Civil-Military Relations in Muslim Countries", 11.
[283]Höglund, Electoral violence in conflict-ridden societies", 421.
[284]Bruneau et al., "Civil-Military Relations in Muslim Countries", 11.

Religion, Sectarianism and Blasphemy Laws

Our dataset shows that 10% of political assassination was carried out by religious extremists. Religion is deeply enmeshed with the Pakistani society, and Islam is one of the "defining influence[s] in Pakistani society" and social institutions.[285]

Pakistan is home to the second largest Muslim population in the world, and the community of faith consists of the two main divergent doctrines of Sunni (85-90%) and Shia (10-15%).[286] Since Pakistan is not a secular state, but a declared Islamic republic, the fight for empowerment, public identity and superiority is not only a fight over fundamental differences in religious practices, but also about real political power and its translation within the nation's legislative order.[287]

The intense emphasis on religious doctrines has paved way for sectarianism. Pakistani sectarianism is defined as the "organized and militant regiopolitical activism" of Shiites or Sunnis, whose aims include "safeguard[ing] and promot[ing] the sociopolitical interests of the particular Muslim sectarian communitiy" and a "marginalization of the rival sectarian community".[288] These sectarian divisions attempt in agenda-setting efforts and interfere in elections through endorsement of rivalling schools of thought, which further increases religious tensions in the society and on political decisions.[289]This activism has frequently turned violent in the past and includes terrorist tactics like targeted killings and bombings,[290]of which especially progressive politicians are repeatedly the intended targets of sectarianistic violence.[291]

Nonetheless, the relationship between politics and sectarianism is not one-dimensional: The Pakistani state government has repeatedly supported specific Islamic groups in order to support the state's own political agendas.[292] Unfortunately, this has "inadvertently encouraged the growth of new religious and political dynamics", as well as intensified sectarianist conflicts.[293] These relationships are often short-lived and volatile, especially if politicians do not adhere to pressure by religious leaders.[294] As a result, the state "struggles to find a new basis for a national politics beyond Islamic ideology".[295]

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[285]Mohammed A. Qadeer, *Pakistan: Social and cultural transformations in a Muslim nation* (New York City: Routledge, 2006), 154.

[286] CIA.org, "Pakistan"; Vali Nasr, "International Politics, Domestic Imperatives, and Identity Mobilization: Sectarianism in Pakistan, 1979-1998", *Comparative Politics* 32, no. 2 (2000); Pew Research Center, "Rising Restrictions on Religion. One-third of the world's population experiences an increase", *Pew Forum on Religion & Public Life*.

[287]Nasr, "International Politics, Domestic Imperatives, and Identity Mobilization".

[288]Nasr, "International Politics, Domestic Imperatives, and Identity Mobilization", 171.

[289]Muhammed Ismail Khan, "The Assertion of Barelvi Extremism", *Current Trends in Islamist Ideology* 12, (2011), 64.

[290]Nasr, "International Politics, Domestic Imperatives, and Identity Mobilization", 171.

[291]Khan, "The Assertion of Barelvi Extremism"; Vali Nasr, "The rise of Sunni militancy in Pakistan: The changing role of Islamism and the Ulama in society and politics", *Modern Asian Studies* 34, no. 1 (2011).

[292] Khan, "The Assertion of Barelvi Extremism"; 66.

[293]Ibid., 67.

[294] Ibid., 56.

[295]Ibid.

The blasphemy laws are a unique explanatory factor for political assassinations in Pakistan. Numerous politicians have been assassinated for demanding amnesties for accused individuals and for amendments to existing Pakistani blasphemy laws.[296] However, Pakistan is not the only country that punishes blasphemy: In general, "44% of [all the] countries worldwide have laws against defamation of religions, including hate speech against religious communities".[297] Due to the fusion of politics and religion, the blasphemy laws are deeply embedded in Pakistan's society and politics.[298]

The purposes of the blasphemy laws in Pakistan are to "[s]afeguard the integrity of religious communities and traditions, fighting incitement and discrimination, preserving social harmony and morality".[299] Covering all faiths during the reign of Great Britain, the laws were later rewritten to only cover blasphemy of Islam.[300] During the 1980s military regime, the laws were tightened and politically instrumentalized to "fuse religion and nationalism, gain support of conservative Islamist forces, silence moderates and liberals, and weaken opponents".[301]

Nowadays, the laws cover a broad spectrum of offences and "allow[…] for a case to be filed against someone on the basis of them allegedly using 'innuendos' and '"insinuations' to desecrate religion".[302]Such vague laws can be misappropriated to remove unwanted individuals and to "settle personal scores" within neighbourhoods or villages.[303] Critics have pointed out the "selective application" of the laws and overrepresentation of religious minorities under the accused. Members of religious minorities like Christians, Ahmadi Muslims and Hindus who make up only 3% of the population are almost half of all cases tried in the courts.[304] In addition, the risk of being convicted is also increased by a low burden of proof, corruption and improper judicial system.[305]

Due to the misapplication of the laws, Pakistan has the highest rate of prosecutions for blasphemy worldwide.[306]Since 2013, the sole punishment for blasphemy is the

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[296]Knox Thames, "Killing Moderate Pakistan, One Advocate for Tolerance at a Time", Foreign Policy, March 14, 2021.

[297] Pew Research Center, "Rising Restrictions on Religion"; Saiya, "Blasphemy and terrorism", 1101.

[298] Saeed Ahmed Rid, "How Democracy Affects Religious Freedom in Muslim Majority Countries", *Asia-Pacific - Annual Research Journal of Far East & South East Asia* 38, February (2020), 126-148.

[299] Saiya, "Blasphemy and terrorism", 1089.

[300]Peter Blood, *Pakistan: A Country Study* (Washington D.C.: Federal Research Division, 1995); Saiya, "Blasphemy and terrorism".

[301] Saiya, "Blasphemy and terrorism", 1089.

[302] Khan, "The Assertion of Barelvi Extremism", 67.

[303] Ibid.

[304] Saiya, "Blasphemy and terrorism", 1097.

[305]United States Commission on International Religious Freedom (USCRIF), "USCIRF Marks 10th Anniversary of Shahbaz Bhatti Assassination", *USCRIF Statements*, March 2, 2021. Accessed April 20, 2021. https://www.uscirf.gov/news-room/releases-statements/uscirf-marks-10th-anniversary-shahbaz-bhatti-assassination ; Malik et al., "Identification of risk factors generating terrorism in Pakistan", 552.

[306] Saiya, "Blasphemy and terrorism", 1096; "USCIRF Marks 10th Anniversary of Shahbaz Bhatti Assassination".

death penalty.[307] Although no one had been executed by the state for blasphemy since 2011, between 30 and 60 people have been lynched by mobs since the 1990s, even those acquitted from the charges.[308]

Efforts by politicians to revise the laws have repeatedly occurred since their instalment, but these efforts were never fulfilled due to pressure from the population and religious leaders.[309] Although blasphemy laws are not always indicative of a punitive or extremist society per se, research states that an application of blasphemy laws such as that of Pakistan "weaken[s] reform-minded moderates, silence[s] minorities and promote[s] violence".[310] The repeated assassinations of lawyers and politicians involved in blasphemy cases, including Salman Taseer and Shahbaz Bhatti, intimidate and permanently silence the reform and revision of these laws.[311]

As a result, the religious extremist violence in Pakistan stems from the fusion of religion and politics, sectarianism, and the misuse of blasphemy laws, which altogether create an immensely heated environment. Progressive policies, or even the perception of a person acting against religious doctrines, can have fatal effects for individual politicians and society as a whole.[312]

Conclusion

Assassinations are difficult to differentiate from the broader level of political violence within a country that experiences terrorism and drone strikes. As this article shows, the causes of assassinations and other types of violence are woven into the institutional, structural, regional, and political life of Pakistan. As a result of clashing ideologies and a readiness to resolve conflicts through violence, Pakistan is trapped in a vicious cycle marked by political assassinations and other forms of political violence.

As this case study shows, political violence and instability are not just caused by one single factor, but rather by a complex interplay of domestic and foreign influences, factors, and characteristics. The more the phenomenon of political violence is analysed in Pakistan, the more obscure and less selective each factor becomes. Due to this, the limitations of our research approach must be emphasized. The

[307] Saiya, "Blasphemy and terrorism", 1099.

[308] "Bad-mouthing. Pakistan's blasphemy laws legitimise intolerance", *Economist*, November 29, 2014; Khan, "The Assertion of Barelvi Extremism", 67; Saiya, "Blasphemy and terrorism"; Thames, "Killing Moderate Pakistan"; USCRIF, "Pakistan. USCRIF-Recommended for Countries of Particular Concern (CPC)".

[309] Khan, "The Assertion of Barelvi Extremism"; Saeed Ahmed Rid, "How Democracy Affects Religious Freedom in Muslim Majority Countries", *Asia-Pacific - Annual Research Journal of Far East & South East Asia* 38, February (2020), 126-148.

[310] Amnesty International, "Use and Abuse of the Blasphemy Laws", July 1, 1994. Accessed April 9, 2022. https://redirect.is/5cnqpd4 ; Joseph Liu, "Laws Penalizing Blasphemy, Apostasy and Defamation of Religion are Widespread",Pew Research Center, November 21, 2012. Accessed April 20, 2021. https://www.pewresearch.org/religion/2012/11/21/laws-penalizing-blasphemy-apostasy-and-defamation-of-religion-are-widespread/; Saiya, "Blasphemy and terrorism", 1088.

[311] "Bad-mouthing. Pakistan's blasphemy laws legitimise intolerance"; Thames, "Killing Moderate Pakistan"; United States Commission on International Religious Freedom (USCRIF), "Pakistan. USCRIF-Recommended for Countries of Particular Concern (CPC)".

[312] Amnesty International, "Use and Abuse of the Blasphemy Laws; Liu, "Laws Penalizing Blasphemy, Apostasy and Defamation of Religion are Widespread"; Saiya, "Blasphemy and terrorism", 1088.

current situation of Pakistan is multi-layered, which is why recommendations must be over two different time frames.

Short-term measures, which can be implemented almost immediately, are the increase of armed security personnel and the establishment of security checkpoints when politicians are campaigning for elections.[313]Importantly, many political assassinations in Pakistan occur during campaigning and public events, where safety could be enhanced through entry and exit controls.[314] Nonetheless, the increase of security measures has no protective effect if those who are supposed to protect the politicians successfully pursue their own interests. Furthermore, a significant increase of the clearing rate of political murders could decrease the number of willing offenders and completed attacks.
However, all these measures require financial means as well as a well-functioning and independent intelligence agency, neither of which currently exist.[315]As our dataset implies, not all acts of political assassination come from outside the executive or legislative realm, implying that strategic interests may prevail before democratic transitions of power.

To mediate the explanatory factors found in this case study, long-term measures must be implemented. Regarding socio-economic grievances, Ross suggests reducing underemployment and poverty.[316] The main hurdle for this measure is the high level of corruption throughout the country, which has rendered domestic and foreign financial aid ineffective.[317] Unless the enormous corruption across all sectors of executive, judicative and legislative actors is confronted, the socio-economic situation and, therefore grievances, in society will not improve significantly.

Because violence clusters around election times, politicians need to pay attention to their rhetoric and take the existent social tensions within Pakistani society into consideration. Therefore, politicians should be careful not to intensify existing social conflicts and cleavages, both during election times and after them.[318] Furthermore, they should also foster a sense of unity instead of dividing the people with numerous separatist and fundamentalist movements.[319] With regards to the political elite in Islamabad, a fundamental change regarding the politics of patronage needs to happen, which implies opening politics for a broader spectrum of the society and ending ethnical favouritism. Moreover, the concerns of ordinary people – particularly of those in rural areas – need to be taken into consideration in the capital to eliminate leeway for radicalism and militancy.
The government also needs to regain authority in the provinces, where it is undermined by a parallel system that has been built by the military, schools and

[313] Mandala, “Political Assassinations”, 158.
[314]Ibid., 159.
[315] Bruneau et al, “Civil-Military Relations in Muslim Countries”.
[316]Ross, “Structural Causes of Oppositional Political Terrorism”.
[317] Chêne, “Overview of corruption in Pakistan.”; Khan, “Corruption and the Decline of the State in Pakistan”.

[318]Höglund, “Electoral violence in conflict-ridden societies”, 421; Siddiqa, “Pakistan's Counterterrorism Strategy: Separating Friends from Enemies”, 158.
[319] Höglund, “Electoral violence in conflict-ridden societies”, 421; Fuchs and Fuchs, “Religious Minorities in Pakistan: Identities, Citizenship and Social Belonging”.

mosques and has evolved over decades.[320]Ultimately, the power of the military is but one symptom of the dysfunctional state apparatus; the threat of a military coup is constantly present.[321] Moreover, in the fight against corruption, it is not sufficient to create anti-corruption laws and a Federal Investigation Agency (FIA) as long as repercussions for corruption of high-level public officials remain low.[322]

When it comes to religion, sectarianism and blasphemy laws, it is important to note that the Islamic religion is an element of the Pakistani constitution. Nonetheless, Saddiqa states that "Pakistan also needs to create a new religious narrative. No amount of counterterrorism operations will work unless the government has a plan to generate a new discourse that can counter […]ideology and the orthodox interpretation of Sharia law".[323]It seems to us that it is nearly impossible to change the composition of current religious conflicts unless the majority of the population is willing to reconcile and aim towards unity and transitional justice.

As for the blasphemy laws, a compromise could stipulate the introduction of safeguards to the law, like increasing the burden of proof to prevent the misapplication of the penal code.[324] In the name of the rule of law, it would also help to punish those who commit violence as a form of "vigilante justice" outside the courtroom and consequently prosecute false accusations.[325]

In the end, all implemented measures should aim at developing "[t]he institutions necessary for ensuring free and fair elections — police, judiciary, and the media".[326]In addition to establishing free press and media, access to the internet needs to be increased nationwide while simultaneously raising the levels of literacy and education in general. Finally, the political parties need time (uninterrupted by military dictatorships) to establish themselves and develop moderate agendas. Consequently, only time will tell if efforts to curb the assassinations in Pakistan can be fruitful.

[320]Ibid.
[321]Ibid.
[322]Ali, "Conflict between social structure and legal framework", 116.

[323] Siddiqa, "Pakistan's Counterterrorism Strategy: Separating Friends from Enemies", 159.
[324]USCRIF, "Pakistan. USCRIF-Recommended for Countries of Particular Concern (CPC)".

[325]Saiya, "Blasphemy and terrorism in the Muslim world".

[326]Höglund, "Electoral violence in conflict-ridden societies", 420.

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RESTORATIVE JUSTICE AND PSYCHOPATHIC TRAITS: THE PERSPECTIVE OF BELGIAN PRACTITIONERS

- **Athina Bisback**

Abstract

The literature on restorative justice practices and more specifically victim-offender mediation in psychopathic individuals is scarce. At first glance, restorative justice practices might not be possible or useful when dealing with psychopathic offenders due to the inherent characteristics they possess. The present study examined the possibility and usefulness of restorative justice practices in Flanders (i.e. victim-offender mediation) with psychopathic offenders. It focused on how practitioners think and feel about working with psychopathic offenders during victim-offender mediation. Understanding if and how this practice can be used with psychopathic individuals can contribute to the literature on restorative justice in general. Practitioners are mostly unaware of the presence of mental health problems at the start of the process. However, despite the presence of dysfunctional traits such as psychopathic traits, most facilitators argued that everyone should be able to get involved in victim-offender mediation. Victim-offender mediation is possible and may be useful for everyone involved. Despite the presence of psychopathic traits, it is the expectations of both the victim and offender about the mediation process that is of uttermost importance. Both expectations need to align with one another in order for the mediation to be successful.

Keywords: restorative justice, victim-offender mediation, psychopathy

Introduction

Inviting offenders and victims for dialogue and exploration is probably one of the core processes when thinking about restorative justice. However, restorative justice practices also aim at getting offenders to take responsibility and understand the consequences of their actions in order to meet the victims' needs (Zehr, 2002). Unfortunately, one of the main characteristics of individuals with psychopathy is to disregard the welfare of others (Hare, 1991). Thus, one might immediately but wrongly assume that restorative justice practices are not suitable when a psychopathic offender is involved. Recent research, however, suggested that psychopaths fail to automatically take the perspective of others, but they do have the ability to do so (Drayton et al., 2018). Empathy can be activated deliberately when a psychopath is asked to empathize with someone (Meffert et al., 2013). These findings cautiously indicate that restorative justice practices may also be beneficial when dealing with psychopathic offenders.

The present study examined the possibility and usefulness of restorative justice practices in Flanders (i.e. victim-offender mediation) with psychopathic offenders. It focused on practitioners' thoughts about this subject and their experiences with offenders showing these traits. The literature on restorative justice practices and more specifically victim-offender mediation in psychopathic individuals is scarce, or

in fact, even missing. Understanding if and how this practice can be used with psychopathic individuals can contribute to the literature of restorative justice in general. It may provide us with new insights into a better understanding of how restorative justice practices can be used when dealing with this difficult group of offenders.

Restorative Justice

Finding a well-agreed upon definition of restorative justice is not straightforward (Daly, 2006; Doolin, 2007). Restorative justice practices are different from traditional justice practices in that it emphasizes the value of relationships, dialogue, and process over the outcome (Bolitho, 2015). According to Daly (2006), restorative justice can be understood as a set of aspirations or core values on how to strive towards a sense of justice. Victims are lenient towards those that harmed them, offenders feel remorse about past behavior and can apologize, communities take an active role in supporting both parties and a facilitator aims at guiding the opposing parties through a rational discussion. Unfortunately, the restorative justice process may be weakened if one of the above is not present. For instance, if an offender exhibits psychopathic traits, this may hinder the ideals that restorative justice practices are striving towards, and thus, impede the restorative justice process in general.

Psychopathy

Psychopathy is a multidimensional clinical construct describing a pathological personality style that is characterized by manipulative, unemotional, reckless, and antisocial behavior (Coid& Ullrich, 2010; Hare & Neumann, 2008). Psychopathy can best be represented by the presence of three distinct facets: an arrogant and deceitful interpersonal style, deficient affective experience, and an irresponsible behavioral lifestyle (Andershed et al., 2002; Colins & Andershed, 2018; Colins et al., 2014; Cooke & Michie, 2001; Frick & Hare, 2001). The interpersonal facet is represented by grandiose-manipulative traits including glibness or superficial charm, a grandiose sense of self-worth, and a conning and manipulative style (Hare, 1991). The effective facet of psychopathy can be referred to as the presence of callous-unemotional traits featuring a lack of remorse or guilt, lack of empathy, and a shallow or deficient effect (Frick, 2013). The behavioural or lifestyle facet consists of daring-impulsive traits (Colins et al., 2014; Lynam et al., 2005) such as the need for stimulation, parasitic lifestyle, impulsivity, and irresponsibility (Hare, 1991). According to some researchers, a fourth domain should be included. In adults, an antisocial facet assesses poor behavioral control, early behavioral problems, juvenile delinquency, revocation of conditional release, and criminal versatility (Hare, 1991). In youth, it is assessed solely by the presence of conduct disorder symptoms (Salekin & Hare, 2016; Salekin, 2017).

Research on psychopathic traits has long recognized deficient emotion processing (i.e. emotion recognition, affective arousal, expression of emotions) as a key feature of psychopathy (Kimonis et al., 2006; Levenston et al., 2000; Loney et al., 2003; Patrick et al., 1994). Studies have found that individuals with psychopathic tendencies present with impaired recognition and sensitivity towards other people's expressions of fear (Blair et al., 2001; Blair et al., 2004) and sadness (Blair et al., 2001; Dadds et al., 2018). Preliminary evidence even suggested that these emotion

recognition problems are present for facial and vocal external signals across all different emotions (Dawel et al., 2012; Hastings et al., 2008). On top, individuals with psychopathic traits seem to manifest significant abnormalities in their capacity to become effectively aroused by others' emotional states. More specifically, psychopaths are less responsive to distress cues (e.g., pictures of people crying; Blair, 1999; Blair et al., 1997). Finally, defective facial reactions have been linked to experiencing limited feelings of empathy towards victims (Fanti, 2018). When showing violent movies to individuals scoring high on callous-unemotional traits reduced facial activity of sadness and disgust was noticed. This is suggestive of reduced empathy towards victims' feelings (Fanti et al., 2017).

To some people's surprise, individuals with psychopathic traits do understand social norms and expectations (Gong et al., 2019), know right from wrong (Aharoni et al., 2012; Cima et al., 2010), and have the capacity to make inferences about other people's expectations (Gong et al., 2019). Recent research even suggested that psychopaths can take the perspective of others, but fail to automatically do so (Drayton et al., 2018). Unfortunately, they do not take it into account consciously when making decisions (Gong et al., 2019). However, when a psychopath is deliberately asked to empathize with someone, he/she can mirror the feelings of the other person (Meffert et al., 2013). These findings cautiously indicate that restorative justice practices may also be beneficial when dealing with psychopathic offenders.

Restorative Justice Practices and Individuals with Psychopathic Traits

However, based on the core characteristics of psychopathy and the existing emotional deficiencies, it is not unsurprising to understand why people may believe that restorative justice practices are not the best way to go when dealing with psychopathic individuals. Why would we want to let victims 'suffer' more by installing a dialogue with an individual that is, according to some, unable to empathize, take responsibility, and feel guilty? Why would we want to install a conference in which the psychopathic offender, again, can exercise control? What about the ethical and moral obligations of restorative justice to ensure victim safety? What about the training of facilitators to identify manipulative attempts to, for example, transfer responsibility towards the victim? These are issues that may arise when initiating a dialogue with a psychopathic individual, making it a rather difficult restorative justice process for both victim and facilitator.

The Present Study

This study examined the views of restorative justice practitioners in Flanders about the extent to which psychopathic traits in offenders impact the possibility and usefulness of restorative justice practices. To the best of our knowledge, no study has looked at this matter. The present study tries to fill this gap in the literature (Doumen et al., 2012).

Methods

Participants

Participation was solicited from 33 facilitators (75.8% female), of which 27 filled in the entire questionnaire. The facilitators' ages ranged from 23 to 53 (M_{age} = 36.70, SD_{age} = 11.90). Most of the facilitators worked with juvenile offenders (75.8%) and

had more than five years of experience (N = 21; 63.6%). 10 people had between one and five years of experience, and two people indicated that they had less than one year of experience.

Procedure

The present study used data from an online Qualtrics self-report questionnaire[327] specifically designed for this study. Restorative justice institutions were approached by e-mail and were asked to distribute the link of the questionnaires to their personnel. The target population included all facilitators employed by an official victim-offender mediation institution in Flanders, the Flemish-speaking part of Belgium. The participants were asked about their point of view regarding the possibility and usefulness of restorative justice practices for offenders exhibiting psychopathic traits. More specifically, the following questions were posed:

1) Restorative justice practices (victim-offender mediation) with offenders that exhibit psychopathic traits are possible. Why so or why not?

2) Restorative justice practices (victim-offender mediation) with offenders that exhibit psychopathic traits are useful or may be useful. Why so or why not?

3) Do you have experience with victim-offender mediation when an offender exhibits psychopathic traits? How have you experienced this as a facilitator (feelings, thoughts, outcome, …)?

Data analyses

Data analyses included both quantitative and qualitative methods. First, the dichotomous questions were inspected using percentages. Next, thematic analysis was used to uncover implicit and explicit ideas that are found important by the reflective practitioners (Guest et al., 2012). The analysis consisted of three phases: (1) the discovery phase to divide the text into relevant fragments and code the different fragments; (2) the reduction phase consisting of thematizing and ordering; and (3) the reflection phase to define and structure the themes definitively (Verhoeven & Verhoeven, 2020).

Results

Apart from one individual, all facilitators agreed that victim-offender mediation is possible when dealing with psychopathic offenders. The participants indicated that they are often unaware of mental health problems such as psychopathy at the start of a mediation journey. However, despite the presence of psychopathic traits in the offender, people argued that everyone should have equal rights and should be at liberty to ask for victim-offender mediation, even people that are perhaps low on empathy. The respondents also indicated that expectations from the mediation can be very different. Expectations of the victims can go from demanding responsibility to

[327] The questions were posed in Dutch. 'Herstelbemiddeling' was used to refer to restorative justice practices used in Belgium, which is mainly victim-offender mediation.

acknowledgment from the offender to mere demands of financial compensation. When the demand of the offender and the expectations of the victim match, mediation can take place. If the offender exhibited psychopathic traits, the facilitator placed even more emphasis on the proper preparation of the victim, guarding boundaries during the meeting, and providing extra care to prevent secondary victimization. An interesting addition came from two independent participants. When mediation was not successful, it was usually the victim that decided to terminate the mediation prematurely and not continue the process. Reasons behind this were that, according to the victim, the offender did not feel sufficiently guilty or did not acknowledge them as victims, or there were safety concerns.

85.2% of participants indicated that victim-offender mediation is useful or can be useful when there is a psychopathic offender involved. Two major themes were discussed by the participants. First and foremost, everyone indicated that mediation is especially valuable for the victim. It could help victims with processing past events. Victims get the opportunity to bring their side of the story, can gain some insight into the problems of the offender and can search for some sort of closure. For example, one facilitator said: “I suspect that a victim can count on little recognition, but sometimes no recognition is better than being left with unanswered questions.” Another person indicated that “for the victim, it can lead to some sort of closure, a feeling that they have tried everything, even though they did not get the answers they expected to get”. The offender could contribute to repairing the damage done to the victim. However, one must be alert that secondary victimization does not occur. The second theme that was indicated by a minority of the respondents was that mediation could also be valuable for the offender. Entering into dialogue may be a way for the offender to be heard. More specifically, the offender is approached as a human being and is listened to. Mediation could also be a learning opportunity for psychopathic offenders. It may be useful for psychopathic offenders to be confronted with their actions: they can see that behavior has consequences, which in turn can affect thought patterns. However, according to one respondent, mediation with psychopathic offenders can also have an undesirable effect: “For the perpetrators themselves, the mediation will make little or no contribution to their sense of responsibility. Most of all, they will learn how to behave in a socially desirable manner, but that does not change guilt and insight.”

A little more than half of the facilitators (55.6%) had previous experience with victim-offender mediation with the offender exhibiting psychopathic traits. Most of the time, facilitators are not informed about the possible mental health problems of the offender. But based on personal feelings during the process, facilitators did assume the presence of specific personality traits. The following traits were noticed that reminded them of psychopathic personality: limited empathy or guilt towards the victims, the usage of manipulative, charming, and socially desirable behavior, callous and unemotional, tendency to be in control and to negotiate. Furthermore, they are

capable of picturing a beautiful story, but unfortunately, this is not converted into action. One facilitator indicated the following:

In some cases, it was striking how they manage to turn the situation around so that it was the victim's fault that this had happened to them. Or enjoying retelling the facts. These are the kind of conversations that give you the creeps and where, as a facilitator, you quickly feel that something is not right.

Feelings of suspicion, alertness, and caution are all widely present when dealing with psychopathic individuals. Sometimes victims were also not interested in the voice of the offender because they already have a fixed view about people committing these crimes. To conclude, the presence of these traits is more likely to hinder the process because the victims mainly expect understanding from the offender. However, of importance, not only offenders show these traits. Victims too can exhibit psychopathic traits. One facilitator indicated that she recently terminated a mediation process because a victim took control over the young offenders.

Discussion

This is the first study to scrutinize how facilitators think about working with psychopathic offenders during victim-offender mediation. The most important findings are that most facilitators are unaware of the presence of mental health problems such as psychopathy at the start of the mediation process. Despite the presence of these dysfunctional traits, most facilitators argued that everyone should be able to get involved in victim-offender mediation. Victim-offender mediation is possible and may be useful for everyone involved. However, both the victim and offender's expectations about the mediation need to align with one another for the mediation to be successful.

Unfortunately, the facilitators placed more emphasis on desirable outcomes for the victims, even though all parties are equally important in the process (Zehr, 2002). Only a minority of the participants argued that restorative justice practices can also have beneficial effects on the offender. One participant even indicated that mediation will not contribute to the offender's sense of responsibility and that by best; offenders will learn how to behave in an even more socially desirable manner, not changing any feelings of guilt or gaining insight into their problems. Research already indicated that restorative justice practices can have potential beneficial effects on offenders. Some of the effects that are important at the societal level, are the reduction of future delinquent behavior in both juveniles (Wilson et al., 2017; (de Beg & Rodriguez, 2007) as well as adult offenders (Bonta et al., 2006; Latimer et al., 2005). Unfortunately, we are unaware of what role the presence of psychopathic traits plays in this relationship.

The restorative justice process may be weakened if an offender exhibits psychopathic traits. Should all parties be made consciously aware of the presence of these traits? To our surprise, one participant indicated that "research has shown that treatment has no effect on psychopaths or may even have opposite effects". Research has shown that effectively treating psychopaths can be quite difficult (Klein Haneveld et al., 2020; Ogloff et al., 1990; Olver et al., 2011; Olver & Wong, 2011; Rojas & Olver, 2021), but no true evidence exist for the notion that psychopathy is an untreatable syndrome (DeSorcy et al., 2020; Larsen, 2019; Larsen et al., 2020). In

fact, there are some indications that psychopathic offenders can be successfully treated (O'Brien & Daffern, 2016; Polaschek & Daly, 2013). If reflective practitioners working with offenders may already have such distorted views about psychopathic offenders, how can they then effectively facilitate the process? It should also come no surprise that these ideas may be (unconsciously) transferred to victims. Does this then not harm the mediation and weaken the restorative justice process because prejudice is present?

Limitations and Future Directions

As always, findings must be interpreted in light of several limitations. First, a limited number of questions were asked to the facilitators. For example, facilitators were not asked whether they had any knowledge of what the concept 'psychopathy' entails. Future research should focus on interviewing facilitators more in-depth about the subject matter and use an interview format instead of an online open-ended questionnaire. Furthermore, conscious awareness needs to be created in facilitators in practice. Facilitators are reflective practitioners and should be educated (more) about what psychopathy entails and how to (effectively) interact with such individuals.

Secondly, we solely relied on data from a small number of facilitators. Replication in larger samples is needed, including listening to victims' and offenders' voices. In order to assess the impact of victim-offender mediation with psychopathic individuals on victims, it may be useful to consider detailed experiences of victims that have participated in mediation of which the offender certainly scored high on psychopathy. On the other hand, experiences of offenders with these traits might also give insight into the restorative justice process and how it affects the offender in question. Offenders could be asked to fill out a self-report measure of psychopathy in the aftermath of the mediation. This is ensure that the result does not influence the actual mediation process, as, according to one facilitator, some individuals already have fixed views about 'that type of individual'. On the other hand, can we not argue that the (voluntary) sharing of these problems might also be beneficial for the restorative justice process? The offender enters the more vulnerable position by exposing his/her flaws to the victim and facilitator. Sharing the result could also be indicative of open and honest communication, something that is highly encouraged in restorative justice practices.

In Belgium, every (adult) offender also receives an invitation to participate in victim-offender mediation (K. Buntinx, personal communication). Investigations into the reasons as to why some individuals are reluctant to accept this invitation might be useful. Are psychopathic offenders in fact less willing to participate in victim-offender mediation compared to other offenders? What are their specific reasons to participate/refuse, and can these be linked to their pathological personality style?

Finally, the author was not able to discuss differences in interpretation with other researchers and therefore the influence of personal bias might be present. In order to verify the results, discussion with experienced qualitative researchers is preferable (Klar-Chalamish& Peleg-Koriat, 2021).

Conclusion

First and foremost, in this research facilitators indicated that restorative justice practices such as victim-offender mediation is are possible and useful when dealing with psychopathic offenders. Psychopathic traits may hinder the overall restorative justice process to some extent. Therefore, it is important that facilitators are educated properly about what psychopathy means and how to deal with individuals showing these traits. Despite the presence of a somewhat dysfunctional personality style, if the expectations of both victim and offender about the mediation process are on the same page, mediation can take place and can be successful.

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"TAKE PITY OF YOUR TOWN AND OF YOUR PEOPLE"

Can International Humanitarian Law protect civilians under siege?

- **Christopher Hale**

I will not leave the half-achievéd Harfleur

Till in her ashes she lieburièd

The gates of mercy shall be all shut up.

…Therefore, you men of Harfleur,

Take pity of your town and of your people,

While yet my soldiers are in my command,

While yet the cool and temperate wind of grace

O'erblows the filthy and contagious clouds

Of heady murder, spoil and villainy.

- Shakespeare, W., *Henry V* (1600), Act 3, scene 3[328]

- '*Siege is the oldest form of total war*.'[329]
- Michael Walzer

Abstract

It has been argued that the practice of siege warfare is at the very limit of legality under the terms of International Humanitarian Law.[330] The question addressed in this essay might be rephrased: how do the laws of armed conflict permit sieges to become humanitarian disasters? More precisely, can military doctrine regarding the efficacy of siege warfare operations to induce surrender of besieged forces comply in real world terms with the laws of armed conflict? Since February, 2022 it is alleged that Russian armed forces perpetrated a number of crimes against humanity in Ukraine during sieges of cities such as Mariupol. These crimes include indiscriminate targeting of civilian habitation and

[328] The Oxford Shakespeare, *Henry V*, ed. Gary Taylor, Oxford, 1982, 2008 p. 173

[329] Walzer, M., Just and Unjust Wars, New York, Basic Books, 2006, p.160

[330] Riordan, K., 'Shelling, Sniping and Starvation: the Law of Armed Conflict and the Lessons of the Siege of Sarajevo', Victoria University of Wellington Law Review, 41 (2), p.150; Watts, S., Under Siege: International Humanitarian Law and Security Council Practice Concerning Urban Siege Operations', Research and Policy Paper, CHE Project, May 2014.

attacks on evacuation corridors.[331] *In the 1990s, siege warfare in the former Yugoslavia provoked international censure and criminal prosecution of perpetrators. Nevertheless, recent and ongoing siege operations in Syria, Kashmir and Ukraine show no sign of respecting the rights of civilian populations despite international censure. The core legal issue regarding sieges is the principle of distinction between combatants and non-combatant civilians and thus decisions regarding targeting and proportionality. The essay will show that distinction is a recent innovation in International Humanitarian Law and is uncertainly embodied in military doctrine. The first part reviews evolving IHL norms pertinent to modern sieges. In the second, the essay examines modern jurisprudence regarding the conduct of siege warfare derived from the International Criminal Tribunal for the Former Yugoslavia (ICTY) prosecution of Major General Stanislav Galić and Major General Dragomir Milosević.*[332]

Keywords: siege, attacks, citizens, civilians, civilian objects, targeting, distinction, proportionality, encirclement, bombardment.

Introduction

Warfare, whether it is national or international, can be broadly divided into mobile and static conflict. The first takes place on the land, sea and in the air; the second refers to sieges and blockades of cities, fortresses, territories and nations.[333] Sieges or 'encirclement operations' have dominated the practice and culture of war for thousands of years. The siege of Sarajevo was a pivotal and catastrophic event in the Balkan wars of the 1990s; urban sieges of cities such as Homs, Aleppo, Ghouta and Idlib characterize the ongoing non-international armed conflict in Syria. In South Asia, the disputed territory of Kashmir is regarded by some legal scholars as under siege.[334] Since the late 19th Century, siege warfare has been implicitly moderated by a succession of legal regimes that impose restrictions on targeting certain human groups. This essay will argue that these restrictions offered minimal protection to civilians for much of the 19th and 20th Centuries and suggests reasons why the contemporary practice of siege warfare has led to frequent violations of the legal principles of distinction and, concomitantly, targeting and proportionality.

To begin with, it should be noted that the treaties and customary rules that now embody the Laws of Armed Conflict (LOAC) do not define a siege. For the purposes of this essay, a working definition is therefore essential. The word siege is derived from the Latin '*sedere*', to sit. A useful synopsis is provided by Krasker: 'siege warfare is an operational strategy to facilitate the capture of a fortified place… in such a way as to isolate it from relief in the form of supplies or additional defensive

[331] https://blogs.icrc.org/law-and-policy/2022/03/17/armed-conflict-in-ukraine-a-recap-of-basic-ihl-rules/CordulaDroege, (accessed 18 August, 2022

[332] https://www.icty.org/case/galic Indictment (accessed 18 August, 2022)

[333] Sources consulted: Dowdall, A., Horne, J., eds., Civilians Under Siege from Sarajevo to Troy, London, 2018, Forrest, A., Hagemann, K., Randall, J., Civilians and War in Europe 1618-1815, 2009; Funck, M., Chickering, R., Endangered Cities: Military Power and Urban Societies in the Era of the World Wars, 2004, Grimsley, M., Rogers, C., Civilians in the Path of War, 2002

[334] Malik, A., Kashmir under Siege: an International law Perspective, RSIL, 2019, https://rsilpak.org/2019/kashmir-under-siege-an-international-law-perspective/ (accessed 18 August, 2022)

forces.'[335] A Chatham House briefing encapsulates siege warfare as a means to isolate enemy forces from reinforcements and supplies.[336] The fortified place may be a village, town, city or area of land: the intent of the besieger is to impose isolation on inhabitants to compel surrender.[337]

The key point is that cities that fall under siege throw together in a single domain civilian populations and combatants or defenders in close proximity. The significance of sieges in both law and culture derives from the way siege warfare exposes these civilians, non-combatants in legal terms, to many different kinds of catastrophic violence from the effects of bombardment, starvation, disease, assault, rape, enslavement, and pillage. Furthermore, the conduct of sieges frequently causes the destruction of homes, civic buildings and sites of cultural significance as well as fortified structures.[338] Until the advent of aerial warfare and genocide in the 20th Century, sieges exposed civilians to the most egregious harms of war in greater numbers than any other form of conflict. In short, sieges are discrete forms of military engagement that profoundly unsettle the discriminatory legal distinctions between combatant and non-combatant.

The persistence of sieges in the history of warfare and armed conflicts is a consequence of how cities and towns evolved into the loci of economic and political powers – and how urban strongholds can control extensive tracts of state territory. In an era of globalised urbanisation, sieges are thus becoming more significant in armed conflict. Capture of cities was and is frequently the strategic goal of warring states. In the past, this meant that certain cities were heavily defended as fortresses which, in turn, posed a threat to the mobile forces of an enemy state. Combatants can rarely take the risk of circumventing fortresses in embattled territories. However, as a general rule, sieges are the most expensive to conduct for the attacker. The purpose of fortification, after all, is to minimise the need to deploy manpower while the besieger has to commit considerable human and material resources to achieve his ends. The material and human costs of besieging compel besiegers to look for ways to conclude a siege rapidly.

2.1 The conduct of sieges under international humanitarian law

Some scholars acknowledge that the laws of war or armed conflict (LOAC) and, therefore, International Humanitarian Law have imperfectly legislated 'the cruelties of certain long-standing forms of hostilities, such as siege warfare.'[339] Siege warfare and the starvation of civilians are not illegal under IHL or other areas of public international law. Issues of legal contention arise from the practice of sieges as these impact civilians in the besieged town, city, or territory. Under constrictions imposed by recent additions to the LOAC in the 1977 Geneva Protocol 1, the practice of siege warfare must respect the fundamental legal obligation of discrimination. This is set out by the International Committee of the Red Cross (ICRC) in customary Rule 15,

[335] Krasker, J., *Siege* in Oxford Public International Law, Oxford University Press, Oxford, 2015

[336] Gillard, E-C., Sieges, the Law and Protecting Civilians, International Law Programme Briefing, Chatham House, 2019

[337] Mikos-Skuza, E., Siege Warfare in the 21st Century from the Perspective of International Humanitarian Law, Wroclaw Review of Law, Administration & Economics, volume 8, issue 2, 2019

[338] At the end of Homer's 'Iliad', written in the 8th Century BCE, when the Greek army finally overwhelms Troy, the long besieged city is sacked, pillaged and burned; its people are enslaved.

[339] Roberts, A., Guelff, R., Documents on the Laws of War, Clarendon Press, Oxford, 1989, Introduction, p.15. Hereafter, Roberts &Guelff.

'Principle of Precautions in Attack': 'In the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects. All feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians and damage to civilian objects.'[340]

It has been asserted that since at least the mid-19th century, protection of the civilian has been embodied in international law. As Alexander has demonstrated, this is not correct: the concept of the protected civilian is novel.[341] The argument here builds on this analysis to suggest that the gap between the International Humanitarian Law and military doctrine regarding successful outcomes of siege warfare has never been adequately bridged. It is suggested that the late development of the legal concept of the protected civilian may explain this discrepancy between International Humanitarian Law and the practice of siege warfare. Notions of distinction were developed before the end of the 19th century, for example, in medieval laws of war that protected clerics, merchants and the poor. Later, Rousseau argued that since wars were matters of state, individuals were only involved if they were soldiers. Citizens of states were by implication protected.[342] Rousseau's principle had little impact on international law and jurists continued to conceive of unarmed citizens of an enemy state as hostile or 'passive enemies'. The precept offered limited protection that every action necessary to win a war was permissible, which implied that harming such 'passive enemies' was only permitted if it contributed to ending a war. In the theatre of operations, however, it was considered unrealistic to offer civilians protection. With respect to siege warfare, private property could be destroyed, and lethal harm to civilians caused by bombardment and starvation, the definitive tactics of sieges. This fragile level of protection was compounded by the conception of the citizen of a hostile state as a 'passive enemy' who might become an active one by taking up arms or engaging in a *levée en masse*. Civilians were required to *demonstrate neutrality* rather than enjoy protection.

The Lieber Code of 1863, to take a notable example,[343] refers to the 'native of a hostile country' as 'one of the constituents of the hostile state or nation' (Article 22) and sanctioned starvation (Article 17), driving non-combatants into besieged areas to 'hasten on the surrender' (Article 18) and bombardment of cities without prior warning (Article 19). The only concession to distinction is Article 23, which asserts that 'Inoffensive citizens' 'are no longer, murdered, enslaved, or carried off to distant parts.' Above all, the Code insists that 'To save the country is paramount' (Article 5) implying broad parameters of derogation.

Like the Lieber Code, the Hague Convention IV of 1907 is regarded by historians as an epochal stage in the evolution of International Humanitarian Law. Yet the Convention offers only ambivalent protection to non-combatants and does not develop the principle of distinction between combatants and civilian non-combatants.

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[340] https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule15(accessed 18 August, 2022)

[341] See for example, Green,L., The Contemporary Law of Armed Conflict (2000),p.229; Jaworski, E., '"Military Necessity" and "Civilian Immunity": Where is the Balance?',(2003) 2 Chinese Journal of International Law, both cited in Alexander, A., The Genesis of the Civilian, Leiden Journal of International Law, 20 (2007), pp.359-376

[342] Oppenheim, L., International Law : A Treatise / Vol.2, War and Neutrality., London: Longmans, Green, 1906

[343] 'General Orders, No. 100: Instructions for the Government of Armies of the United States in the Field.' See Labuda, P., https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e2126 (accessed 18 August, 2022)

Instead, Article 27 of Hague Convention IV (1907) asserts a principle of distinction between non-human targets of 'sieges and bombardments': all 'necessary steps' must be taken to spare buildings dedicated to' religion, art, science, charitable purposes and 'places where the sick and wounded are collected'. The same Article also imposes obligations on the defending or besieged forces to identify 'by distinctive and visible signs' any buildings not used for military purposes at the time of the planned attack. As Watts notes, the language of Article 27 blends imperatives, namely 'all necessary steps' with a weaker construction: 'as far as possible'. Distinction, in short, can be superseded by *discretion* on the part of the besieging forces. The consequence is that the judgement of commanders regarding military necessity or the identification of military objectives to justify targeting restricts the legal efficacy of such limited discrimination to prevent harm to civilians. [344]

Furthermore, Article 25 *removes* rather than reinforces protection of non-combatants: 'The attack or bombardment, by whatever means, of towns, villages, dwellings or buildings *which are undefended* is prohibited.'[345]. Here a distinction made between objects of attack, namely defended and undefended, denied immunity to civilians in fortified towns, such as a fortress city like Przemyśl which would be besieged by Russian armies soon after the beginning of the First World War.[346]

The Convention offered remarkably vague protection to people under enemy control in Article 46, which asserts respect for various individual rights, and Article 50, which prohibits civilian reprisals – and was, in any event, ignored by all occupying armies in the course of the war. As it transpired, the Hague Conventions had little prohibitive or ameliorative impact on the conduct of sieges in both world wars.[347] Sieges proved to be humanitarian disasters and, for civilians in general, the two world wars were catastrophic.[348] In general, the Hague Conventions as well as customary law regarded non-combatants as *enemy citizens* of aantagonistic state who might be drawn into the conflict and thus had no need of protection since they were hostile actors.[349]

The legal concept of a civilian began to emerge somewhat tentatively during and just after the First World War. The legal birth of the protected civilian had its roots in the international disapprobation of German atrocities committed against civilians in Belgium and the development of aerial warfare.[350] The peaceful civilian replaced the potential enemy citizen. Similarly, outrage about the killing of civilians during air raids by German Zeppelins and early bombers led first to the recognition that in modern

[344] Hague Convention IV Respecting the Laws and Customs of War on Land, Section 11 Hostilities, Articles 25-28, in Roberts &Guelff, pp. 52-53
[345] Ibid., p.53
[346] Watson, A., The Fortress: The Great Siege of Przemysl', London, Penguin, 2019.
[347] Watts, op.cit., p.6
[348] See for example, Watson, A., op.cit.; Glantz, D., The Siege of Leningrad, 1941-1944: 900 Days of Terror, London, 2004.
[349] Alexander, A., op.cit. p.365
[350] The Report of the Committee on Alleged German Outrages, known as the Bryce Report, referred to '...the peaceful population of an unoffending country which was not at war with its invaders but merely defending its own neutrality, guaranteed by the invading Power...' German actions were 'unnecessary, excessive and illegal.' https://babel.hathitrust.org/cgi/pt?id=umn.31951001694236w&view=1up&seq=6 (accessed 18 August, 2022)

warfare the distinction between civilians and combatants was eroded since civilians could be targets of aerial attack and second to an effort to regulate its practice. The 1923 Hague Draft Rules of Aerial Warfare made, in theory a significant advance by prohibiting in Articles 22-27 terrorizing the civilian population and asserting rules of targeting military objectives. But the draft Rules were never incorporated into a treaty in a legally binding form.[351]

To sum up, the evolution of legal norms of protection of non-combatants that encompass siege warfare in International Humanitarian Law was a slow and fitful process. By the time the Second World War began in 1939, legal protection offered to civilians was threadbare. The consequences need not be elaborated here. The 900 day 'Siege of Leningrad' grossly violated any moral notion of distinction and protection of civilians. After the war, there were renewed efforts to codify such protection under the rubric of distinction. The Geneva Convention IV (1949) sought to address the failure to protect civilians through treaty based prohibitions. However, the Convention introduces little that is legally original and, as stated in Article 154, 'shall be regarded as supplementary' to the Hague Regulations.[352] It is noteworthy that the Convention offers confusing definitions of who and what should be protected from the 'effects of war'. Thus Article 15 refers to 'wounded and sick combatants and non-combatants' as well as 'civilians who take no part in hostilities… and perform no work of a military category' while Article 16 affirms that the wounded, sick, infirm and expectant mothers must be regarded objects of '*particular protection and respect'*. Article 17 obligates the parties to the conflict to 'endeavour' to conclude agreements for the removal i.e. evacuation of the wounded, sick, infirm and elderly, children and 'maternity cases' from besieged or encircled areas, and for the 'passage' of religious officials, medical personnel and medical equipment 'on their way to such areas'. This hierarchy of more or less entitled civilian types would confuse the fulfilment of their protection since it offers the leadership cadre of besieging forces a further level of triage or discretionary judgement.

Be that as it may, after a hiatus of nearly three decades, in 1977, the First Additional Protocol to the 1949 Geneva Conventions, hereafter AP 1 and the Second Additional Protocol (AP II) sharpened and clarified the discriminatory elements of the LOAC. Additional Protocol 1 does not explicitly refer to sieges but applies to target provisions to attacks in 'whatever territory conducted', which encompasses siege warfare. The Protocols simplify the principle of distinction in Article 48 (Basic Rule) as between 'the civilian population and combatants and between civilian objects and military objectives'; Article 50 (3) defines the civilian population as 'all persons who are civilians'. The hierarchical levels of civilian protection set out in the earlier Geneva Conventions have thus been superseded.[353] Articles 51 and 58 develop rules implicit to the *jus in bello* conduct of sieges.[354] Civilians must enjoy general protection against dangers 'arising from military operations'; they should not be objects of attacks or threats of violence designed to 'spread terror'; the enforced use of civilians as 'human shields' to render points or areas immune from attack is prohibited.

[351] Roberts &Guelff, op.cit. pp.121-135
[352] Geneva Convention IV Relative to the Protection of Civilian Persons in Time of War, 1949 in Roberts &Guelff, p.271-337: Article 154 pp.324-325
[353] Roberts &Guelff, p.414-415
[354] Ibid., pp. 414ff. https://www.icrc.org/en/doc/assets/files/other/icrc_002_0321.pdf (accessed 18 August, 2022)

The purpose of this account of the evolution of key principles in the LOAC is to show that ratified prohibitions applicable to siege operations which dispense with the notion of the hostile citizen and affirm a distinction between civilians and combatants are recent developments in International Humanitarian Law. This is significant because - to borrow Alexander's phrase - the 'slow, disjointed process of development and change'[355] has rendered the legal constraints on the practice of sieges weaker than the methodologies espoused in military doctrine. The foundational principles of doctrine in practice derive from 'On War' by Carl von Clausewitz: '...the destruction of the enemy's military force is the foundation-stone of all action in war, the great support of all combinations, which rest upon it like the arch on its abutments.'[356] According to modern doctrine of armed conflict, the successful prosecution of a siege requires *total* encirclement and isolation of the town, city or region and the 'maximum concentration of forces and fires'.[357]

Kinsella argues that 'civilians' and 'combatants' are concepts in IHL that are susceptible to adaptation by parties with vested interests, such as commanders of a besieging or besieged armed force.[358] This adaptability of a norm is especially significant when it comes to the potential redefinition in combat situations under Article 52 (3) of civilians who 'take a direct part in hostilities' (DPH) and thus forfeit the right to protection. The definition of DPH is a grey area that the ICRC has attempted to address in an Interpretive Guidance.[359] It asserts that in cases of doubt, the individual must be regarded as a civilian. Thus, the definition in the practice of a normative concept is influenced by subjective judgement. Paust further argues that the US Department of Defense 'Law of War Manual' expands the idea of who is DPH in error.[360]

Regarding the prohibition in Article 51 against inducing terror, since military doctrine insists that commanders 'maintain constant pressure' on besieged forces, it is difficult to conceive of attacks that do *not* generate robust emotional responses among civilians who must live close to besieged combatants.[361] The International Committee of the Red Cross (ICRC) acknowledges that 'even lawful attacks' can induce 'immense anxiety and even terror'. It is hair-splitting to distinguish these emotional states; immense anxiety is coterminous with terror. The critical point is that the Protocol only prohibits attacks that are conducted *primarily* to induce terror. It is lawful, in other words, to 'spread terror' if it can be shown to be an incidental

[355] Alexander, A., op.cit. p.375

[356] Clausewitz, C. v, On War, accessed here: https://www.clausewitz.com/readings/OnWar1873/BK1ch02.html#a (accessed 18 August, 2022)

[357] Field Manual No. 3-90-2: 6-18: 'Once the commander decides to destroy an encircled enemy force, that enemy force is reduced as rapidly as possible to free resources for use elsewhere. The reduction of an encircled enemy force continues without interruption, using the maximum concentration of forces and fires, until the encircled enemy force's complete destruction or surrender…' Headquarters Department of the Army Washington, DC, 22 March 2013

[358] Kinsella, H., The Image Before the Weapon: A Critical History of the Distinction Between Combatant and Civilian, Ithaca, Cornell University Press, 2011, pp.190-200

[359] International Review of the Red Cross, 26 February 2009, pp.991-1027

[360] Jordan J. Paust, Errors and Misconceptions in the 2015 Department of Defense Law of War Manual, 26 Minn. J. Int'l L. 303, 2017

[361] United States, Department of the Army, Field Manual 3-90-2, Reconnaissance, Security, and Tactical Enabling Tasks, 6-1 (2013); United Kingdom Ministry of Defence, The Manual of the Law of Armed Conflict, ¶5-34 (2004).

consequence of an attack. The legal task of proving or disproving indiscriminate or collateral terror beyond a reasonable doubt is daunting.

Another problem arises from the Protocol's refinement of targeting or discrimination in attack. The failure to discriminate is defined in Article 51 as 'attack by bombardment… which treats as a *single military objective* a number of clearly separated and distinct military objectives located in a city, town, village or other area…'[362] [italics added]. Again, the military doctrine of maximalism may likely test this prohibition. According to the previously cited manuals of war, the successful prosecution of a siege requires *total* encirclement and isolation of the town, city or region and insists that 'The reduction of an encircled enemy force continues without interruption…'[363] Maximalism facilitates the contravention in practice of the obligation not to treat a besieged territory as a 'single military entity'.

The Additional Protocols refine the principle of distinction further in other ways. Article 52 prohibits attacks on civilian objects such as houses, dwellings, churches and other places of worship unless their destruction would provide a 'definite military advantage'. During a siege, civilian objects, such as elevated vantage points, may be used as fighting positions and thus become military objectives. However, Article 51 (3) forbids targeting dual-use objects if there is any doubt concerning whether or not such things have ceased to have civilian status.[364] Note once again, that prohibition is hedged by the judgement of the attacker. We should note that these rules apply equally to the besieging and besieged parties. Both belligerent parties must protect and reduce harm to civilians in besieged areas.[365]

To sum up, the characteristic strategies of siege warfare that should comply with these legal prohibitions are principally bombardment and encirclement. Both practices make applying the LOAC rigorously problematic since sieges - and indeed urban warfare of all kinds - force together combatants and non-combatant civilians in frequently hazardous proximity. Military doctrine insists on a maximalist approach to siege warfare. There is a second problem. The LOAC implicitly pertinent to siege warfare are hedged by the application of human judgement. The legal framework assumes a deciding subject making decisions according to legal principles, not exigencies. Taking each principle in turn: first, the requirement of distinction requires accurate identification of military objectives so that the besieged area is not treated as a 'single military objective'; secondly, the rule of proportionality prohibits attacks which, in the words of the Geneva Convention Article 51 (5) (b), API '*may be expected* to cause incidental loss of civilian life…' that would be excessive in relation to the 'direct military advantage *anticipated*.' Expectation and anticipation are innately subjective. To comply with the rules of distinction and proportionality, it is necessary for the besieging and besieged commanders to make accurate and reliable assessments of whether or not a planned attack is proportional to the

[362] Roberts & Guelff, op.cit. p.416

[363] Field Manual No. 3-90-2: 6-18: 'Once the commander decides to destroy an encircled enemy force, that enemy force is reduced as rapidly as possible to free resources for use elsewhere. The reduction of an encircled enemy force continues without interruption, using the maximum concentration of forces and fires, until the encircled enemy force's complete destruction or surrender…' Headquarters Department of the Army Washington, DC, 22 March 2013.

[364] Roberts &Guelff, pp. 414-418

[365] At the time of writing, the AP1 has been ratified by 174 states, but excluding the United States, Israel, Iran, Pakistan, India, and Turkey. The United States, Iran, and Pakistan signed AP1 on 12 December 1977, which merely indicates intention to work towards ratification.

'incidental loss of civilian life.' Can we reasonably expect lawful decisions to be consistently made in the fast-changing conditions of siege warfare? For example, returning to the matter of encirclement, a situation in which the besieged territory has been compressed may severely impact the safety of civilians. Bombardment in these circumstances will make the loss of civilian life proportionally more likely and compromise access to medical facilities and food and water supplies. Subjectivity is embedded in the language of LOAC since minds are required to 'take into account' or 'anticipate military advantage'. Proportionality rests precariously on a scaffolding of individual mental actions rather than unequivocal rules.[366]

2.2 Starvation or Relief?

We can substantiate the problem of subjective discretion by turning to other dimensions of IHL pertinent to siege warfare: the starvation of civilians and the conduct of relief operations. We begin with the matter of starvation. Article 54 (1) of the API (1977) asserts that 'Starvation of civilians as a method of warfare is prohibited.' Furthermore, the prohibition extends to the destruction of 'objects indispensable to the survival of the civilian population' (Article 54 (2)) and is elaborated to preclude 'such of the objects covered by it as are used by an adverse party' (Article 54 (3)).[367] The latter emphasises that the prohibition derives from the principle of distinction: belligerents may starve, but civilians should not. The Additional Protocol represents a significant advance in IHL norms: the Lieber Code of 1863 stated that 'it is lawful to starve the hostile belligerent, armed *or unarmed*, so that it leads to the speedier subjection of the enemy.'[368] Since then, the prohibition has been codified in both international (IAC) and non-international conflicts (NIAC) and under the Rome Statute of the International Criminal Court, deliberate starvation is a war crime.[369] According to the ICRC guidelines, the prohibition is incorporated in IHL Customary law as Rule 15.[370] Article 54 reiterates distinction in a specific framework: an attacker may not induce starvation and destroy materials essential to sustain life as a means to achieve a military end.

Again, Article 54 is implicit in application to siege warfare. It is also problematic. Throughout a siege, encirclement and isolation progressively reduce food and water supplies to the occupants within a besieged city, town or region. The needs of civilians are unlikely to be prioritised by besieged commanders over combatants who control the means of access and distribution. Starvation, at some level, is a foreseeable consequence of siege warfare since the isolation of the defining strategy of siege warfare. Dinstein insists that under Article 54 'a true siege would no longer be feasible.' He argues that prohibition is 'unrealistic' since according to military doctrine siege warfare is indispensable as a tactic according to military doctrine. He argues:

> 'The Protocol completely fails to take into account the inherent nature of siege warfare in which starvation of those within the invested location is not an end

[366] This applies equally to the obligations of besieged forces.
[367] Roberts &Guelff, pp. 416-418
[368] Lieber Code, Article 17, https://avalon.law.yale.edu/19th_century/lieber.asp (accessed 18 August, 2022)
[369] ICC Statute, Art. 8(2)(b)(xxv), https://legal.un.org/icc/statute/romefra.htm (accessed 18 August, 2022)
[370] https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule15_sectionc(accessed 18 August, 2022)

but a means. It is important to bear in mind that a siege does not generate starvation for the purpose of killing civilians with hunger, but *only in order to cause the encircled town to surrender*.'[371]

This is sophistry. If starvation of civilians is a means to induce the surrender of a town then the principle of distinction is voided by linking civilian starvation with the military objective, namely surrender. This barely acknowledged difficulty animates much debate about the real world application of IHL. Watson argues that the prohibition against the deliberate starvation of civilians fundamentally limits the enactment of physical isolation through encirclement in legal terms. Hence sieges rest on the very edge of permissibility.[372] A contrary view elaborated by Rogers, for example, argues that the apparent contradiction in IHL between permitting sieges and prohibiting the arbitrary starvation of civilians can be resolved by invoking distinct purpose.[373] This is articulated in the CIHL commentary on customary law Rule 15: 'The prohibition of starvation as a method of warfare does not prohibit siege warfare *as long as the purpose is to achieve a military objective* and not to starve a civilian population.'[374] This means that to make a case about the potential criminal practice of a siege, prosecutors must provide proof of intent, namely, to starve civilians or deprive them of 'life-sustaining objects' distinct from achieving a military objective.

This brings us to the more fundamental problems of the legal regulation of armed conflict. No legal system can be productive if its prohibitions take no account of predictable real-world conditions in which law is applied. Historical precedents of siege warfare and modern jurisprudence derived from the ICTY, for example, provide concrete evidence of the likely conditions of modern siege warfare. As noted, encirclement conducted over weeks, months and years (as in the case of Sarajevo) compresses the close relationships of the combatants and non-combatants. It thus makes discrimination-targeting arduous and hard to achieve. This means that the likelihood that the besieging force treats the increasingly congested besieged city or town as a 'single military objective increases. Furthermore, the balance of obligations based on discrimination and proportionality is tilted towards the attacker or besieging forces. In real-world circumstances, the besieged combatants have direct control over the civilian population in the besieged area and thus a greater level of humanitarian accountability.

The obligations of defenders under AP I addresses some of these matters. We have already noted the prohibition in Article 51 (5) of using civilians as human shields. Under Articles 51 (5) and Article 58, defenders are obligated to deploy forces to account for the 'presence and movements of the civilian population' and to remove the latter from the vicinity of military objectives. The same problem pertains. Encirclement and the maximal use of force will progressively contract the space of the besieged area, forcing defenders and civilians, as well as military objects and civilian objects, into ever closer proximity. There is, it might be said, a mathematical relationship between the dimensions of the area under siege and the feasibility of

[371]Dinstein, Y., Siege Warfare and the Starvation of Civilians, in Delissen, A.,, Tanja, G., Humanitarian Law of Armed Conflict: Challenges Ahead, p.150, Dordrech; London: Nijhoff, 1991
[372] Watts, S., op.cit. p.10
[373] Rogers, A., Law on the Battlefield, Manchester University Press, 2012, 3rd edition: see pp.140-41
[374]https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule53 (accessed 18 August, 2022)

both attackers and defenders complying with IHL. Even the obligation placed on defenders to mark out the location of civilian objects might permit the attackers to deduce the location of *military* objectives. Respecting IHL prohibitions may, in some circumstances, confer tactical advantages to one side or the other.

Let us now turn to a case study to explore how these problems impact on applying criminal law to modern siege warfare practice. Can militarily effective sieges be waged legally?

1. Siege warfare in modern jurisprudence

Waxman succinctly argues that contemporary armed conflict can be viewed as a dynamic interaction between cities, strategies and law.[375] The first two have undergone transformative evolutions. Has IHL kept pace? The practice of siege warfare in the Balkan conflicts of the 1990s that followed the dissolution of Yugoslavia and the jurisprudence generated at the International Criminal Tribunal for the Former Yugoslavia (ICTY) provide us with crucial insights into the legal status; in short, the application of the Additional Protocols, and practice of sieges – that continue to inform the NIAC in Syria and the isolation of Kashmir by the Indian government.[376] After being initially besieged by the forces of the Yugoslav People's Army, troops of the VRS, the Army of Republika Srpska encircled the city, launching artillery fire from surrounding hills and positioning snipers in apartment blocks in districts it controlled. The siege, the longest in modern warfare, would endure for 1,425 days from 5 April 1992 to 29 February 1996.[377] Some five and a half thousand civilians were killed. During the siege, the VRS snipers targeted civilians forced out of their homes to find water and other supplies. Artillery bombardment caused significant civilian casualties, for example, in the 'breadline massacre' of May 1992. The VRS turned off supplies of electricity, water and gas at will, causing, in Catherine Baker's words, 'a sense of powerlessness'. VRS forces targeted historical and cultural institutions, such as the Vijećnica Library which was destroyed by incendiary shells in August 1992. Historians have characterised this strategy as 'urbicide' – meaning the deliberate destruction of a city as a symbol of coexistence in diversity.[378] Others have noted that the onslaught on Sarajevo and other towns were energised by hatred of cities: Bogdan Bogdanović described the Bosnia war as 'a battle between city lovers and city haters.' This is significant because it may prove to be the case that IHL prohibitions apropos siege warfare are weakly defended against highly invested concepts of the nature of military objectives and necessity. As Waxman puts it:

> '…the political objectives driving the Serb offensive produced the greatest motivation for besieging cities. In particular, the twin goals of expelling

[375] Waxman, M., Siegecraft and Surrender: The Law and Strategy of Cities as Targets, 39 Va. J. Int'l L. 353 (1999), p.387

[376] During the Bosnian war a number of cities as well as Sarajevo were put under siege, including Dubrovnik, Tuzla, Srebrenica, Bihac and Gorazde. This essay focuses on the siege of the Bosnian capital since the VRS tactics there focused the bulk of international disapprobation at the time and in the criminal proceedings that followed the end of the war.

[377] Baker, C., The Yugoslav Wars of the 1990s, 2015, pp. 66-68.

[378] For example, Sells, M., The Bridge Betrayed: Religion and Genocide in Bosnia, Berkley, 1999; Denitch, B., Ethnic Nationalism and the Tragic Death of Yugoslavia, Minneapolis, 1996.

opposing ethnic groups and shattering symbols and manifestations of multi-ethnicity made cities enticing targets.'[379]

In the aftermath of the war, the ICTY prosecuted several Serb officials for numerous counts of crimes against humanity committed during the sieges: Stanislav Galić and Dragomir Milošević, who commanded the operation of the siege and their superiors, Radovan Karadžić and Ratko Mladić.[380] All four were convicted and sentenced to long terms of imprisonment. Notwithstanding the punitive consequences of the Tribunal proceedings against the perpetrators of a modern siege, there is evidence in the court records of a deepening strain between legal norms and the imperatives of conflict strategy. It implies, contrary to GC AP 1 Article 52 (2), that the entire city can be regarded as a military objective since it embodied the identity of the enemy forces as an arena of ethnic diversity. Similarly, any distinction between civilians and combatant defenders of the city is weakened since the city's population is a collective embodiment of the diverse ethnicity that the VRS and its leaders sought to destroy as a conflict strategy.

The judgement in the case of Major-General Stanislav Galić is significant. It was the first made by an international tribunal regarding the charge of terror under IHL and the deliberations of the court examined in depth of IHL principle of proportionality.[381] It will be recalled that under AP I, Article 51 (5) (b) and Article 57 'excessive' loss of civilian lives and damage to civilian objects proportional to 'concrete and direct' military advantages are prohibited; so too are military actions undertaken with the 'primary purpose' of inducing terror in civilian populations in Article 51 (2) and Article 13 of Additional Protocol II which regulates non-international armed conflicts. The paradox of the Galić case is that the war crimes charges brought against the defendant, in short attacks on civilians and infliction of terror, are derived from the Geneva protocols but are articulated in different terms in the language of the ICTY Statute. When the ICTY judges debated the application of the Protocols concerning the Statute, they made several innovations in the jurisprudence regulating armed conflict.[382] First, they rejected the application of the *nullumcrimen sine lege* principle on the grounds that the relevant prohibitions of AP I had been brought into effect by the 'May Agreement' of 22 May 1992, signed by the parties to the conflict, which prohibited attacks on the civilian population. With respect to this matter, the chamber insisted that AP I Article 51 (2) did not permit derogation on the grounds of military necessity and insisted that 'attacking civilians or the civilian population cannot be justified by invoking military necessity.'[383] Equally significant is that the chamber of the ICTY firmly established the crime of terror as a war crime under Article 3: 'acts of violence *wilfully* directed against the civilian population… with the primary purpose of

[379] Waxman, op.cit., p. 404

[380] https://www.icty.org/case/galic; https://www.icty.org/en/case/dragomir_milosevic; https://www.icty.org/en/case/karadzic; https://www.icty.org/en/case/mladic (accessed 18 August, 2022)

[381] Galić case information sheet: http://haguejusticeportal.net/Docs/Fact%20Sheets/Galic_Case%20Info%20Sheet.pdf (accessed 18 August, 2022); Gall, E., "Introductory Note," International Legal Materials 43, no. 4 (July 2004): 789-793; Kravetz, D., The Protection of Civilians in War: The ICTY's Galic´ Case, Leiden Journal of International Law, 17 (2004), pp. 521–536

[382] Kravetz, D., op.cit. pp. 523ff.

[383] ICTY, Galić case Judgement note 2. Para 44.

spreading terror…'[384] The implication of this articulation of the crime of terror is that the prosecution is not obligated to prove that certain acts of violence actually caused states of terror in a civilian population, but that the perpetrators intended to terrorize by means of 'reckless attack'. Kravetz, writing in 2004, asserted that the recognition of terrorisation as a war crime 'will certainly transcend the sphere of competence of the ICTY and affect the work of other national and international tribunals that in the future will be charged with the task of prosecuting those responsible for acts of terror against civilians.'[385]

In the case of sieges ongoing at the time of writing, there is little evidence that IHL and the jurisprudence of the ICTY have alleviated the impact of conflict on civilians in besieged cities. In the case of the Syrian conflict(s)[386], protracted siege warfare that began in Dera'a in March 2011 was crucial to the long-term survival of the Assad regime because it offered a means to isolate and, in effect, immunise pockets of rebellion in urban areas and conduct brutal campaigns of collective punishment.[387] The siege of eastern Ghouta lasted for over five years (2013-2018) and caused a long-term humanitarian catastrophe. Throughout the Syrian conflict, the regime has impeded the provision of relief supplies to besieged cities such as Aleppo – and Gillard has argued that this exploits an ambiguity in customary law that permits denial for 'valid reasons' that are not 'arbitrary or capricious'.[388] At the same time, the besieged forces have sequestered food supplies for the exclusive use of combatants and exploited civilians as human shields.

This eschewing of a crucial obligation of IHL and the customary law of war goes hand in hand with a profound disrespect for the legal distinction between combatants and civilians and concomitantly for proportionality. As a consequence, sieges have become pivotal spaces of egregious IHL and human rights abuses.[389] The Violations Documentation Center in Syria in its Special Report on the Attacks in Idlib governate 1 September 2019 – 31 December 2019 provides evidence of alleged breaches of IHL, IHRL and customary laws of war, such as deliberate and indiscriminate attacks

[384] Ibid., paras. 133,138
[385]Kravetz, D., pp. 535-536
[386] There is an unresolved debate about what kind of conflict is taking place in Syria. Is it an international armed conflict or a non-international armed conflict? Gal argues that both type of conflict have or are taking place in Syria; Gill argues contra that since international intervention by the Russian Federation, for example, is on the side of the government, the hostilities must be defined as non-international but, regarding the application of IHL 'on balance, the law relating to targeting is quite similar under the two regimes, hence for the purpose of determining whether an attack is indiscriminate or disproportionate classification will make little difference, if any, as to whether a conflict is governed by the rules pertaining to IAC or NIAC.' Gill, T., Classifying the Conflict in Syria, 92 INT'L L. STUD. 353 (2016)
Volume 92 2016
[387]Todman, W., Capitalising on Collective Punishment: Siege Tactics in the Syrian Conflict, A thesis submitted to the Faculty of the Graduate School of Arts and Sciences of Georgetown University, April, 2016
[388] Gillard, Emanuela-Chiara, The law regulating cross-border relief operations, International Review of the Red Cross, Vol. 95 (2013),p.360.
[389] Independent International Commission of Inquiry on the Syrian Arab Republic, Sieges as a Weapon of War: Encircle, starve, surrender, evacuate, 29 May 2019.

against civilians, intentional attacks against civilian objects, targeting popular markets and educational facilities, and arbitrary and forced displacement.[390]

2. Conclusion

The momentum of global urbanisation and the globalised role of cities as foci of the wealth and identity of states is likely to make siege warfare the most significant kind of international and non-international armed conflict in the 21st Century. Traditional mobile wars waged across open landscapes will become rare. This evolutionary process in the location and conduct of war will put IHL under immense pressure to prevent and punish breaches of the implicit rules governing siege warfare. Yet the modern city may be the perfect locus to *illegally* induce terror in civilian populations and force civilians to the edge of survivable starvation. Since international law acknowledges that causing surrender is the object of siege tactics, breaching prohibitions of proportionality and distinction that embody the judgement of commanders is an inevitable consequence of the contradiction between military doctrine and law.

Real-world practice corroborates this argument. Since the 1990s, Century, the violation of IHL prohibitions intended to constrain the deprecations of siege warfare has become the norm. This is further demonstrated by the conflict in Ukraine, which began when Russian forces launched attacks in February 2022 on cities such as the capital Kiev and the port city of Mariupol. Allegations of war crimes have been made in the aftermath of the illegal attack on Ukrainian territory, which is currently under investigation.[391] The argument presented in this essay is that IHL embodies significant elements of discretion to identify military objectives and apply the principle of necessity to strategic operations that permit commanders to cause severe harm to civilian populations. The discretionary gap in IHL forms a nexus with the contradiction between maximalist strategic doctrine articulated in the manuals of national armed forces and IHL pertinent to sieges. The implications of humanitarian catastrophes in the former Yugoslavia, Syria and Ukraine provide ample evidence that the fundamental weakness of IHL to govern siege warfare in ways that guarantee the safety of non-combatant civilians will shape future armed conflict in the 21st Century and lead to as yet unimaginable harms

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[390] Report available here: https://vdc-sy.net/wp-content/plugins/pdfjs-viewer-shortcode/pdfjs/web/viewer.php?file=https://vdc-sy.net%2Fwp-content%2Fuploads%2F2020%2F03%2FIdlib-Governorate-...-The-Ongoing-Massacre.pdf&download=true&print=true&openfile=false: 'VDC confirms that the Russian and Syrian government forces violate the principles of international humanitarian law. It targets civilians directly and deliberately. These forces also intend to target aid and relief workers, infrastructure and civilian objects. Systematic attacks targeting civilian neighbourhoods were recorded clearly and unambiguously, killing hundreds of civilians and causing heavy losses to the property of the population...' p.30 See also Human Rights Data Analysis Group, https://hrdag.org/syria/, collecting data on torture in prison; Syrian Network for Human Rights, http://sn4hr.org/, reporting on deaths, detentions, and disappearances; Exposing the Invisible, 'The Syrian Archive – Hadi Al Khatib', https://exposing the invisible.org/films/group/syrian-archive/; The Syrian Archive, https://syrianarchive.org/en (curating visual documentation of international crimes in Syria)

[391] https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-i-have-decided-proceed-opening

Treaties

Charter of the United Nations, opened for signature 26 June 1945, 1 UTS XVI (entered into force 24 October 1945)

Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, opened for signature 29 July 1899, 87 CTS 227 (entered into force 4 September 1900)

Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, opened for signature 18 October 1907, International Peace Conference, The Hague, Official Record 631 (entered into force 26 January 1910)

Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, opened for signature 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950)

Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, opened for signature 12 August 1949, 75 UNTS 85 (entered into force 21 October 1950)

Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, opened for signature 8 August 1949, 75 UNTS 287 (entered into force 21 October 1950)

Project of an International Declaration concerning the Laws and Customs of War, opened for signature 27 August 1874, https://ihl-databases.icrc.org/ihl/INTRO/135 (not yet entered into force)

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), opened for signature 8 June 1977, 1125

UNTS 3 (entered into force 7 December 1978)

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), opened for signature 8 June 1977,

1125 UNTS 609 (entered into force 7 December 1978)

Rome Statute of the International Criminal Court, opened for signature 17 July 1998, 2187 UNTS 3 (entered into force 1 July 2002)

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THE REFORM OF ABORTION LAW IN INDIA: A CRITIQUE

Anogh Chakraborty and Shubhayan Chakraborty

Abstract

After six consecutive years of discourse, India has finally passed the amendment to its Medical Termination of Pregnancy (MTP) Act of 1971. This paper addresses the problems that the 2021 Amendment may prove to be inadequate to resolve, considering the existing practical lacunae between the vision of the legislation and the implementation of the law. It analyses and conducts a study on the numerous socio-economic factors that relate to the nuances of unlawful abortions, the extent to which this amendment has been able to address such problems, and how effectively has the Judiciary been able to provide appropriate remedies in accordance with the jurisprudence of the law of abortion. The paper also deliberates on the viability of the prescribed specialised Medical Board in the present infirm medical infrastructure of the country. Furthermore, several crucial elements of the concerned legislation have been left to be addressed by the MTP Rules that are yet to be enacted. This paper discusses and reflects regarding the dimensions of abortion and its potentially discriminatory use and attempts to strike a balance between the right to personal liberty and the right to life of an unborn, relying on a comparative evaluation of the laws on abortion above the gestation period in other jurisdictions. In conclusion, the paper appreciates the gradual progression of abortion law in India while establishing a nexus with the recent relevant legislative developments and the socio-political role of the debate between pro-choice and pro-life in judicial decision-making.

Keywords*: MTP, Unsafe, Abortion, Liberty, Amendment, People-with-Disabilities*

Introduction

India has had a long medical history of the treatment of abortion in ways that are specific to the country's belief in *Ayurveda*. But without delving deep into the discussion of its success rate at the very outset, what can be acknowledged undisputedly is the fact that it was hardly ever regulated by law. This has, therefore, contributed to the stigma of abortion in society not because it takes away a life, but because the mother enables it. Historically, almost every country has had an ignominious outcome when women have attempted to be empowered with a voice and a choice. The struggle to formulate reasonably efficient abortion laws that would effectuate a woman to choose for her is one such example.

India enacted the Medical Termination of Pregnancy Act[392] as early as 1971, two years before the Supreme Court of the USA's decision on *Roe v. Wade*[393], the pioneer landmark case in the jurisprudence of abortion law. However, the changing dynamics of time and society had left the 1971 Act insufficient in today's context. Newer challenges needed better solutions in the face of amendments to the existing Act, a more inclusive study of illegal channels of abortions and the resultant rate of maternal morbidity. An overall change in the socio-legal and political thought revisited the idea of the empowerment of women. This issue has been the hotspot of debates amongst not only the medical fraternity and policymakers but among activists and the general public as well. The educational institutions pan-India have witnessed numerous academic parleys nurturing research papers that too, to an extent, indirectly resulted in aiding the emboldening of women's rights in the face of abortion laws[394]. The evolving jurisprudence on the right to life and personal liberty in light of significant advancements in medical science and technology has ignited concern about the need for change in abortion laws all over the country. This has resulted in the active participation of the judiciary and legislation to such effect. After almost a decade of continuous parliamentary debate and judicial deliberations, India witnessed the introduction of its 2020 Amendment Bill[395] to its Medical Termination of Pregnancy Act 1971[396] (hereinafter referred to as 'MTP Act') which ultimately received the presidential assent on March, 2021and was enacted as the Medical Termination of Pregnancy (Amendment) Act, 2021.[397]

The 2021 Amendment is one step forward towards progressiveness as it eases the formerly more stringent outlook of requiring the advice of two doctors for an abortion that is sought within 12 to 20 weeks[398]. With its evolution, it now provides the mother with the opportunity to abort at any point of time during her pregnancy, subject to the advice of two doctors, if the foetus presents significant abnormalities. This has further widened the debate regarding the status of pregnant women falling under categories other than those carrying abnormal foetus. The opinion of one doctor came to be held as a requisite to avail abortion for an upper gestation limit extended upto 20 weeks and two doctors thereafter. Other proposals[399] include no gestation limit for cases of severe foetal abnormalities. Also, it seeks to constitute Medical Boards with a different composition consisting of the following members: (i) a gynaecologist, (ii) a paediatrician, (iii) a radiologist or sonologist, and (iv) any other

[392]Medical Termination of Pregnancy Act 1971
[393]*Roe v Wade* [1973] 410 US 113
[394]Asit K. Bose, 'Abortion in India: A Legal Study' (1974) 16 (4) JILI <https://www.jstor.org/stable/43950391> accessed 25 August2022; *see also,*Melissa Stillman and others,*Abortion in India: A Literature Review*(New York:Guttmacher Institute 2014); Ravi Duggal and Vimala Ramachandran, 'The Abortion Assessment Project—India: Key Findings and Recommendations' (2005) 12 (24) IJHRHC <https://www.tandfonline.com/doi/citedby/10.1016/S0968-8080%2804%2924009-5?scroll=top&needAccess=true>;Siddhivinayak S. Hirve, 'Abortion Law Policy and Services in India: A Critical Review' (*T&F Online*, 2004) 12 IJSRHR 114
[395]PRS, 'Medical Termination of Pregnancy Amendment Bill 2020' (*PRS Legislative Research*, 2021) <https://prsindia.org/billtrack/the-medical-termination-of-pregnancy-amendment-bill-2020> accessed 15 April 2022
[396]Medical Termination of Pregnancy Act 1971
[397]Medical Termination of Pregnancy (Amendment) Act 2021
[398] 'The Medical Termination of Pregnancy (Amendment) Bill, 2020' (PRS India 2022). <https://prsindia.org/billtrack/the-medical-termination-of-pregnancy-amendment-bill-2020> accessed 25 August2022
[399]*Ibid*.

number of members, as may be notified by the state government. Therefore, science has made it safer for women to get abortions and as a representative of women's rights in an international scenario, India has passed the amendment in its positive attempt to make the right of abortion more accessible to women. However, it has still a longer way to go to defy the social stigma attached to it.

However, the authors believe that, if the Government carries out an extensive study on the ground levels of specially rural and semi-urban regions of all its 28 States and 8 Union Territories lack of resources and scope in the service base is the main source of concern. The amendment is sufficiently large to allow for revisions as the conversation develops its parameters. Authors argue that legislative framing especially in the field of public health, is very crucial. Determining stakes, who is responsible, and where remedies might be found are all determined by how the provisions have been framed. Gender fairness, healthy reproductive sanitation, maternal health, and a woman's bodily rights are all issues that require special attention because they not only affect the well-being of women but also of the society at large.

If we take a closer look, the realities of public health in India vary greatly between different states. What is standard in Kerala (with respect to governmental reaction in Nipah and COVID) can hardly be claimed for the vast majority of Indian states, since data is sparse[400]. According to the Lancet's first major study on abortions and unplanned pregnancies, one in every three of India's 48.1 million pregnancies ends in an abortion, with 15.6 million occurring in 2015.[401]

Today anything that can be counted can, presumably, be handled. Because data collection is not brought to a definite standard, abortion laws seldom address investments and resources.[402] The majority of Indian women and men seek advice on family planning, including MTP, in state hospitals or medical centres. Since health is a state issue, the enabling features of the amendment, particularly data collection, between New Delhi and the states should not be overlooked.

Millions of women around the world are seeking abortions from a variety of sources, ranging from costly private clinics to unqualified individuals. From menstruation to pregnancy through menopause, they are subjected to unspoken, unwritten and unaccounted discrimination, often with little legal or family protection. A major set of qualms has been resolved as a result of the amendment. A reversal is not conceivable, which is a significant stride for women.

Hindrances in Implementation

[400]Amrita Nayak Dutta, 'Why Kerala is India's healthiest state' *The Print* (10 February 2018);*see also,* DGHP, 'How Kerala Avoided a Chronic Disease Crisis' (*Centre for Disease Control and Prevention*, 16 May 2019) <https://www.cdc.gov/globalhealth/healthprotection/stories/kerala-avoided-crisis.html> accessed 25 August2022; ShyamaRajagopal, 'Combating post-flood diseases a titanic feat: Minister'*The Hindu* (7 September 2019) < https://www.thehindu.com/news/national/kerala/combating-post-flood-diseases-a-titanic-feat-minister/article24895940.ece> accessed 25 August2022.

[401]Susheela Singh, ChanderShekhar, *et al.*, 'The incidence of abortion and unintended pregnancy in India, 2015' (2018) 6 Lancet Glob Health e-111

[402]ChitraSubramaniam, 'India's new abortion law is progressive and has a human face' (*Observer Research Foundation*, 07 March 2020) <India's new abortion law is progressive and has a human face | ORF (orfonline.org)> accessed 15 April 2022

For the MTP Amendment of 2021 to be claimed as a success, there have to be several realities to address. It presumes a parity in distribution of health care workers and providers throughout India. Only truth could not be any further from this presumption. 50,000-70,000 OB-GYNs work in a country of 1.36 billion people (obstetrician-gynaecologists).[403]There is serious inaccessibility of medical opinions from doctors in rural settings as the majority of doctors have their practice in and around cities. There are several other logistical changes like infrastructural problems, technological incompatibility, inadequate skills and training among the health workers in rural regions etc. that the Amendment fails to consider. The amendment does not strengthen the pregnant person's independence and responsibility or takes a step toward decriminalising abortions for all classes and categories of persons. Changing the phrasing to indicate “pregnant persons” rather than women, would hold the law as trans-inclusive. This paper studies in detail the major gaps that the Amendment may prove to be inadequate to resolve, considering the existing practical lacunae between the vision of the legislation and the implementation of the law.

Unlawful Abortion

As a result of a detailed study of a considerable number of literatures on abortion, the authors have developed an opinion, although debatable, that the root cause and the centre of focus regarding all the deliberation over the world for the past 5-6 decades on the practices, standards, policies, laws and jurisprudence of abortion are the issues of unsafe and unlawful abortions, lack of family planning, and the social and economic consequences attached to it[404]. Unsafe pregnancy terminations remain a leading cause of maternal death and morbidity. According to recent estimates based on various techniques, unsafe termination of pregnancies is responsible for at least 8%[405]of maternal mortality, and potentially as high as 15%.[406]

Worldwide there are States like the Dominican Republic, Malta, Holy Sea, El Salvador, Nicaragua etc. which may not have faced a high number of abortions but have a high number of maternal deaths which indirectly points towards a de facto well-established practice of illegal abortions[407]. According to a study conducted by Lancet Global Health, over 100 traditional methods are used for inducing abortion till date. An estimated 12.7 million (81%) abortions were medication abortions, 2.2

[403]SeeratChabba, ‘Abortion in India: Bridging the gap between progressive legislation and implementation’ (*DW*, 18 November 2021) <https://www.dw.com/en/abortion-in-india-bridging-the-gap-between-progressive-legislation-and-implementation/a-59853929> accessed 15 April 2022

[404]WHO, ‘Sexual, reproductive, maternal, newborn, child and adolescent health policy survey 2018–2019: report’ (World Health Organisation)<https://platform.who.int/docs/default-source/mca-documents/policy-documents/policy-survey-reports/srmncah-policysurvey2018-fullreport-pt-2.pdf?sfvrsn=3a202c28_4> accessed 25 August2022;*See Also,* HLI Staff, ‘Why Women Abort’ (*Human Life International*, 5 May 2021) <https://www.hli.org/resources/why-women-abort/> accessed 25 August2022.

[405]Lale Say, Doris Chou, *et al.,* ‘Global causes of maternal death: a WHO systematic analysis’ (2014) 2 Lancet Glob Health 323

[406] Nicholas J Kassebaum, Amelia Bertozzi-Villa, *et al.,* ‘Global, regional, and national levels and causes of maternal mortality during 1990–2013: a systematic analysis for the Global Burden of Disease Study 2013’ (2014) 384 Lancet Glob Health 980

[407] Vinod Mishra and Victor Gaigbe-Togbe and Julia Ferre, ‘Abortion Policies and Reproductive Health around the World’ (United Nations, Department of Economic and Social Affairs 2014) <https://www.un.org/en/development/desa/population/publications/pdf/policy/AbortionPoliciesReproductiveHealth.pdf> accessed 25 August2022.

million (14%) abortions were surgical, and 0.8 million (5%) abortions were done through other methods that were potentially unsafe.[408] Unsafe methods today can be divided into several broad classes: oral and injectable medicines, vaginal preparations, intrauterine foreign bodies, and trauma to the abdomen. In addition to detergents, solvents, and bleach, women in developing countries still rely on teas and decoctions made from local plant or animal products, including dung. Foreign bodies inserted into the uterus to disrupt the pregnancy often damage the uterus and internal organs, including bowel. Unsafe abortion procedures may involve insertion of an object or substance (root, twig or catheter or traditional concoction) into the uterus; dilation and curettage performed incorrectly by an unskilled provider; ingestion of harmful substances; and application of external force. In some settings, traditional practitioners vigorously pummelled the woman's lower abdomen to disrupt the pregnancy, which can cause the uterus to rupture, killing the woman.[409]

Unsafe abortion is defined by the World Health Organization (WHO) as a procedure for terminating an unintended pregnancy, carried out either by persons lacking the necessary skills or in an environment that does not conform to minimal medical standards, or both.[410] If the question as to what shall considered to be the principle reason for opting for unsafe and illegal methods of abortion arise, the authors find it prudent to attribute such basis to the factor of mental agony that a woman faces over her course of pregnancy. However, several factors here may be responsible for causing such agony like facing limitations while accessing safe abortion, or confronting legal discrimination due to above discussed legislative misinterpretation. Actual causes of such limitations can be further sub-categorised into problems like illiteracy, economic unsoundness, vague sense of social reputation, domestic violence and strong imposition of toxic patriarchal practices among poor dependent women, inadequacy of equal and standard medical infrastructure in all parts of the country (especially rural areas), etc. Whatever the reason, all of it results in opting for illegal methods which aid in the promotion of backdoor abortions.

India's National Population Policy of year 2000[411] recommended the official expansion of the provision of abortion up to eight weeks' gestation to all public facilities, including primary health centres. Trivial amendments to the relevant laws and regulations were made in 2002[412] and 2003[413] respectively in an effort to streamline registration of private doctors as abortion providers and thereby further expand access to safe abortion services. However, even after a couple of decades later, community health centres continue to be the main providers of abortions in early gestation, and therefore the implementation of progressive provisions at such lower level remains a challenge in absence of regular inspections. That is because a large number of primary health centres are still not regularly staffed with certified

[408]Susheela Singh, ChanderShekhar, *et al.*, 'The incidence of abortion and unintended pregnancy in India, 2015' (2018) 6 Lancet Glob Health e-111

[409]WHO, *Safe Abortion: Technical and Policy Guidance for Health Systems* (2nd ed. 2012)

[410] David A Grimes, Janie Benson, *et al.,* 'Unsafe abortion: the preventable pandemic. The Lancet Sexual and Reproductive Health Series' (2006) 368 Lancet

[411]Department of Family Welfare, Ministry of Health and Family Welfare, *National Population Policy 2000* (Reprint 2002)

[412]Medical Termination of Pregnancy (Amendment) Act 2002

[413]Medical Termination of Pregnancy Regulations 2003

abortion providers.[414]The Indian Parliament on the other hand again could not directly address the problem in its 2021 amendment to the Act of 1971 except for the case of abortion in cases of foetal abnormalities. The legislature barely addressed the problem of backdoor abortion in any of its Bills over the past 6-7 years. Even judicially, in the interpretation of the law regarding the restriction of abortion, it is meant as the restriction of 'legal' abortion and not otherwise. Therefore, the increase in the gestation limit up to 24 weeks could be identified as only partial in providing an exhaustive remedy to the problem of unlawful abortions.

Judicial remedy in abortion after 24 weeks for rape

Pregnancies that reveal a high risk of chromosomal abnormality which in turn can adversely affect the foetus in future put the woman at a high risk of an emotionally untoward situation. This can be said to be caused by their reasonably fearful apprehension of the born child appearing as an entity who would never be able to express or conduct him or herself with full potentiality. At the risk of being politically borderline, the authors do not fear to consider that the knowledge, to some mothers, of bearing a foetus to be affected by a disability, such as Down's syndrome, may also result into a state of mental agony of quite deep and despairing nature. The MTP amendment of 2021 in regard to such line of thought has introduced the provision of no upper limit for abortions of pregnancies with detected foetal abnormalities. However, this has left the option of abortion of pregnancies resulting from rape beyond 24 weeks only through writ petitions. The amendment provides for termination of pregnancy with the requirement of permission of only one doctor in any case where the health of the pregnant woman is in danger. This provision, even though applicable for abortion of rape survivors, shall factor in only to the good of those mothers who would face physical complications during pregnancy and not in any case otherwise, and therefore, fails to consider the aspect of mental agony. It still undermines the importance of the mental agony that a rape victim faces. The amendment has drawn a sharp line of difference in categorising the rape victims undergoing severe mental distress and those under physical danger of health and life by limiting the scope of abortion to writ petitions for the former and waving an upper limit of gestation for the other. This has enabled categorisation of groups in the same homogeneous class of victims and hence, also attracts the attention of Article 14 of the Constitution of India[415].

In the landmark decision of *Chandrakant v. State of Gujarat*[416] ('Chandrakant') significant judicial progress was made. It adopted the victims' "best interest" criteria, forcing the Court to take into consideration medical assessment and socio-economic

[414]Guttmacher Institute*, Abortion & Unintended Pregnancy In Six Indian States Findings And Implications For Policies And Programs* (Joint-Report, 2018) International Institute for Population Sciences, *Unintended Pregnancy and Abortion in India*.

[415] Article 14 of the Constitution of India provides for both the concepts of 'Equality before Law' and 'Equal protection of Law' by ensuring the supremacy of the law in the governance of the country (i.e. Dicey's Rule of Law) that forms one of the important basis of the fundamental right to life. Article 14 reads "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth". The authors in the present context have referred to the reasonable classification that this article allows. Article 14 forbids class legislation but allows classification of persons, objects, and transactions by the legislature for the purpose of achieving specific ends as long as such classification is not arbitrary, artificial or evasive in nature.

[416]*Chandrakant v State of Gujarat* [1992] 1 GLR 554

factors in favouring the minor and her health, based on the medical board's view that the pregnancy was a “severe threat to life” and “mentally disastrous.”

Despite the fact that subsequent judgments have advanced abortion access for victims based on the Chandrakant test, a unified norm is still a long way off. In *R v. State of Haryana*[417], a minor[418] faces numerous challenges in exercising her right to terminate her 21-week pregnancy. Multiple medical inspections and court hearings in front of medical boards prompted her to extend her gestation to 25 weeks, after which her application was denied. The High Court concluded that the woman's preferences must be balanced with the rights of the “future child” due to the vitality of the pregnancy. Furthermore, by personifying the unborn and declaring “rape and abortion are breaches and infringements of the right to life”, the judgement created a hazardous precedent by using stereotype-laden wording.

On the other hand, numerous writ petitions have been brought before the Apex Court and different High Courts requesting authorization to terminate pregnancies past 20 weeks in the instance of foetal anomalies or those caused by rape suffered by women, according to the amendment’s Objectives and Reasons. Only in circumstances wherein a Medical Board detects significant foetal abnormalities can a pregnancy be terminated after 24 weeks. This means there is hardly any change in the process for aborting foetuses due to rape that have passed the 24-week mark: the only option is to obtain approval via a writ petition.

Even though in some recent exceptional instances of *X v. State of Uttarakhand*[419], *Pratibha Gaur v. Govt. of NCT of Delhi &Ors*[420], or *Niveta Basu v. State of West Bengal*[421], termination of pregnancies from rape were allowed beyond 24 weeks, a former study conducted[422] before the 2021 amendment was passed recorded that courts in India rejected the request of nearly 20% of rape survivors for abortion even beyond 20 weeks of gestation (the then upper limit), despite past instances where decisions interpreted the Medical Termination of Pregnancy (MTP) Act 1971 so that the physical and mental distress caused to a sexually abused woman was regarded as a grave threat to her life. Pratigya Campaign’s legal report titled ‘Assessing the Judiciary’s Role in Access to Safe Abortion- II’ finds that High Courts in India are currently witnessing a substantial increase in abortion cases. It analysed cases seeking permission of termination of pregnancy from the High Courts in India from May 2019 to August 2020 had a total 243 cases filed across 14 High Courts and one appeal before the Supreme Court. In 84% of the cases, permissions were given to terminate the pregnancy. Where, 74% of the total cases, were filed post the 20-week gestation period, 23% of the total cases were filed within the 20-week gestation period and should not have gone to the courts at all. Out of 74% cases (filed after 20 weeks cut off) 29% cases were related to rape/sexual abuse, 42% related to foetal

[417] *R v State of Haryana* [2016] CWP 6733
[418] ‘Minor’ is a standard legal term used in almost all common law jurisdictions to refer a person who is not adult. In Indian jurisprudence, a minor is a person who is below 18 years of age.
[419] *X v State of Uttarakhand* [2022] WP No. 201 of 2022 (M/S)
[420] *Pratibha Gaur v Govt. of NCT of Delhi &Ors* [2021] WP (C) 14862/2021
[421] *NivetaBasu v State of West Bengal* [2022] WPA 2513 of 2022
[422] International Campaign for Woman’s Rights to Safe Abortion, ‘Pratigya Campaign: Overcoming Access Barrier to Safe Abortion in India’ (*ICWRSA*, 30 March 2020) <https://www.safeabortionwomensright.org/pratigya-campaign-overcoming-access-barriers-to-safe-abortion-in-india/> accessed 15 April 2022

anomalies; and out of 23% cases (filed even before 20 weeks) 18% cases were related to sexual abuse/rape and 6% of foetal anomaly.

However, in recent past instances the courts have seen to deny abortion on the ground of the pregnancy crossing the upper gestation limit. One of the landmark examples was of the Nikita Mehta case[423]. In this case, the gestational period had progressed past twenty-five weeks. The petitioners pleaded that the defect in the heart of the unborn child was detected at a late stage. The Mumbai high court held that no categorical opinion of experts had emerged to state that the child would be born with serious handicaps. The court thus denied recourse to medical termination of the pregnancy and an opinion emerged that terminating the life of a viable unborn on grounds of possible handicap is akin to mercy killing.

Commenting on the legal aspect in India and the study findings, Anubha Rastogi, Pratigya Campaign Advisory Group Member said in a press release[424], "The increasing number of cases only indicate to the fact that access to safe and legal abortion services in this country still leaves a lot to be desired. It is imperative that any change in law takes note of these increasing trends and moves towards a rights based, inclusive and accessible legislation on abortion. Any new law/amendment cannot be based on third party authorisation like the medical boards and has to be respectful of a decision that involves the registered service provider and the pregnant person."

In the absence of a mandatory procedure for checking for pregnancy as soon as the rape is discovered, the MTP Act enables a woman to only allege rape to bring her case under Section 3 of the Act, without the need to prove the rape. The authors believe that inherent lacunae like such in a national legislation not only increases the chances for the courts to take conservative views but also increases the chance of misuse of the law. The most prevalent conclusion that can be made rationally when the courts reject a rape victim's plea for an abortion is that they do not consider the potential for severe harm. It must be considered that a person can severely be hurt and yet not be dying. Rape incidents may leave victims highly traumatised for a longer time which may exceed than the generalised limit of gestation period ascertained in the Act. Because a hate crime like rape is individual in nature and the detrimental experience of a victim is particular and exceptional to such person only.

VS Chandrashekar, Pratigya Campaign Advisory Group member said, the fact that even women/girls with gestation below 20 weeks have had to go to courts is distressing. The MTP Act allows termination of a pregnancy upto 20 weeks. A large number of the below 20 weeks cases are of survivors of sexual abuse and this only increases their trauma. He quoted that *"…gestation limit from 20-24 weeks' should be extend to all pregnant persons who need to terminate a pregnancy, instead of being restricted to only to certain categories of women as defined in the MTP Rules. Similarly, the 'no upper gestational limit proposed for foetal anomalies' should be*

[423] *Nikita Mehta v State of Maharashtra* [2008]

[424] AnubhaRastogi, 'Assessing the Judiciary's Role in Access in Safe Abortion-II' (2020) <https://pratigyacampaign.org/wp-content/uploads/2020/09/assessing-the-role-of-judiciary-in-access-to-safe-abortion-II.pdf> accessed 25 August 2022.

extended to survivors of sexual abuse/rape. Forcing a person to carry a pregnancy out of rape to term is a violation of her right to life and dignity."[425]

The legislation yet to provide adequacy for the rape survivors to exercise their right of personal liberty under Article 21 of the Constitution of India with regard to abortions. If the autonomy of making decisions was left to the women themselves, it would relieve the court from the burden of deciding to incline with either pro-life or pro-choice stances from an emotionally unfamiliar third person perspective. Secondarily, in such situation the cases arising out of the problems relating to abortion could also be expected to significantly drop thereby reducing the contribution in the ever-increasing backlog of pending trials, especially in the constitutional courts.

Overdependence on MTP Rules

There are no specific classes of women who can abort a pregnancy between 20 and 24 weeks. Certain kinds of women are allowed to abort their pregnancies between the ages of 20 and 24 weeks under the bill. These groups will be notified by the federal government. It might be contended that the classes of women who are allowed to abort a pregnancy between the period of 20 and 24 weeks are required to be defined by Parliament rather than left to the discretion of the administration. The amendment provides for the abortion of a pregnancy exceeding 24 weeks if the Medical Board determines that there are significant foetal abnormalities.

In today's society, there is still stigma attached to abortion services. Even the husband, in-laws, and other family members should not be allowed to know about the abortion decision of the pregnant woman without her consent. Mothers used MT tablets without oversight and without following any instructions about dosage, intervals, or adverse effects. They frequently report hospitals as sites for difficult abortions. Lack of contraceptive information and access to contraception are significant impediments to achieving Comprehensive Abortion Care ('CAC') goals, particularly among single and teenage mothers.[426]

Furthermore, under certain instances, the Act allows "pregnant women" to abort their pregnancies. It is worth noting that India's Transgender Persons (Protections and Rights) Act 2019, acknowledges transgender as a separate gender. According to some medical research, people who identify as transgender may conceive after receiving of hormonal treatment to change from female to male, necessitating abortion services. It is uncertain if transgender people will be encompassed by the Bill because the Act only provide for abortion of pregnancies when the seeker is a woman. The social preconceptions regarding gender, womanhood, and motherhood are reflected in the notion that all people who are affected by this law are women. This highlights a bigger issue with inclusion in public policy language. India's policymaking ignores the absence of intersectionality in its discourse, pushing marginalised identities even further to the margins. Linguistics reflects reality and when cis-gender, heterosexual people establish legal systems, institutions and social structures, and the subject of language, inclusion becomes hard to address.

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[425] *Ibid.*

[426] SnehaKumari, Jugal Kishore, 'Medical Termination of Pregnancy (Amendment Bill, 2021): Is it Enough for Indian Women Regarding Comprehensive Abortion Care??' (2021) 46 IJCM 367

In public policy, exclusionary language has become the norm, and although it is not explicitly transphobic or caustic, it results in marginalised categories being denied access to resources and welfare programs. Despite the fact that the 2014 NALSA decision[427] recognises the reality of a "third gender", little has changed on the grounds for trans-persons who still struggle to find inexpensive medical treatment. The critics of this amendment therefore are not very hopeful about the possibility of enactment of an inclusive MTP Rules by the different states.

The Amendment Act allows for the termination of pregnancy after 24 weeks based on the opinion of the Medical Board in the case of substantial foetal abnormalities. The Act however, does not stipulate a deadline for the Board to make its decision. Abortion of pregnancy is a time-sensitive affair, and deferring of judgement by the Medical Board may lead to further hardships for the pregnant woman as was observed in the case of *R v. State of Haryana (Supra)*. As the amendment shifts a major part of responsibility with regards to abortion from courts to independently functioning Medical Boards with regards to not only the examination of cases of abortion of foetal abnormalities but also taking the final decision to that effect, a proper and exhaustive system of check and balance must be established. Such crucial aspects have also been left to be formulated under the MTP Rules that are to be enacted by the respective State Legislatures.

Furthermore, according to the amendment's Statement of Objects and Reasons, there remains a need to expand access for women to legal and responsible termination services in order to reduce maternal deaths from unsafe abortions and their squeals. There is a scarcity of certified medical personnel who can perform abortions as only gynaecologists and obstetricians are only allowed to operate. In 2017, 1.8 million registered health graduates served India's populace of 1.33 billion people (including AYUSH Practitioners). As a result, in 2017, there were 1.34 doctors per 1,000 Indian citizens. This means that, even with the most conservative estimations and strict attrition standards, India has already met the WHO standard of 1 doctor per 1000 people. India, on the other hand, is a nation of villages, with 68.8% of the population living in them. As a common trait of the practical economy few doctors desire to work in the areas remote from the metropolitans or the financial/business hubs for that matter. As a result of the lack of skilled abortion services, the rural population has endured a variety of difficulties and consequences[428]. According to the All-India Rural Health Statistics (2018-19), there are 1,351 gynaecologists and obstetricians at public medical centres in rural regions across India, with a 4,002-doctor shortage, or a 75 percent deficiency[429]. Women's

[427] *National Legal Services Authority v Union of India* [2014] AIR 2014 SC 1863

[428] Raman Kumar and Ranabir Pal, 'India achieves WHO recommended doctor population ratio: A call for paradigm shift in public health discourse!' (2018) 7(5) J Family Med Prim Care <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6259525/> accessed 25 August2022.

[429] National Health Mission, 'Rural Health Statistics 2018-2019' (Ministry of Health and Family Welfare, Government of India, 2019) <https://ruralindiaonline.org/en/library/resource/rural-health-statistics-2018-19/#:~:text=There%20were%203%2C204%20SCs%3B%203%2C456,increased%20from%203%2C346%20to%205%2C335> accessed 25 August2022.

access to safe abortion procedures may be limited in the future due to a dearth of skilled medical practitioners.[430]

Anubha Rastogi in the abovementioned press release *(Supra)* opined that medical boards should not be constituted and the decision to terminate a pregnancy should be solely between a pregnant person and the provider. The number of specialist doctors to constitute such boards is limited in many districts and smaller towns. She said "constituting Medical boards at all levels would be an operational nightmare. Medical boards will further add to delays and complicate access to abortion, apart from putting unnecessary burden on an already weak health system".

With the advent of the COVID-19 pandemic, India has faced a tremendous challenge with its weak medical infrastructure and shortage of doctors and healthcare professionals. The situation has been so poor in most places that doctors and medical staff were required to serve continuously for over 24 hours on many days, exposing the precarious shortages of doctors and poorly planned health systems. The Act envisages state level medical boards to be formed but such shortages of specialised doctors make it an apparently futile provision.

The division between voices that believe a life begins after fertilisation and the voices that believe it does not is proportionate; hence the innate need for law. They may not always reflect societal values, but in the face of ambiguity, laws must establish a framework within which individuals can navigate, understanding what is and is not legal. This emphasises the notion that while the restrictions may appear to be arbitrary, it is required. It is hardly a representation of what is correct or incorrect. In the instance of abortion, lawmakers have set a time limit for the procedure. Gestation period varies on a wide range among the countries over the world but so does the interpretational severity of their laws. Currently abortion is a conditional right and is available only based on the opinion of the doctor in India. Whereas, 66 countries around the world including Canada, Nepal, Netherlands, Sweden, South Africa and Vietnam allow abortion at will of the pregnant person for up to 12 or more weeks of gestation.[431]

Therefore, the lengthy debate on abortion essentially comes down to two primary questions – i) From when is the life of the foetus qualifies for being protected? ii) When is it justifiable to limit a woman's right to medical termination of pregnancy?

Most liberal thoughts on abortion laws point to the ground-breaking case of *Roe v. Wade (Supra)* in which it was claimed that the Due Process Clause of the Fourteenth Amendment protects a woman's right to choose to have an abortion prior to viability. The Court overturned the Roe trimester framework in favour of a viability analysis, thereby allowing states to implement abortion restrictions that apply during the first trimester of pregnancy. The Court also replaced the strict scrutiny standard of review required by Roe with the undue burden standard, under which abortion restrictions would be unconstitutional when they are enacted for "the purpose or effect of placing

[430]AnubhaRastogi, 'Assessing the Judiciary's Role in Access in Safe Abortion-II' (2020) <https://pratigyacampaign.org/wp-content/uploads/2020/09/assessing-the-role-of-judiciary-in-access-to-safe-abortion-II.pdf> accessed 25 August2022.

[431]Susheela Singh and others, 'Abortion Worldwide 2017: Uneven Progress and Unequal Access' (*Guttmacher Institute*, March 2018) <https://www.guttmacher.org/report/abortion-worldwide-2017> accessed 25 August2022.

a substantial obstacle in the path of a woman seeking an abortion of a nonviable foetus."

In India, voluntarily terminating a pregnancy is considered a criminal offence under the Indian Penal Code, 1860[432] (IPC). The Medical Termination of Pregnancy Act 1971 was enacted as an exception to the IPC, to provide for the termination of pregnancies (in certain situations determined by law) by registered medical practitioners. However, the first instance of India's attempt to bring major reforms in its abortion law was witnessed through the introduction of the 2008 Amendment Bill[433] to the MTP Act. The bill, unlike usual legislative practices of the country, articulated an incident in its statement of objects. It reads as, *"In July 2008 the case of a 31-year-old mother, torn between trauma and ethics, has highlighted the shortcomings in MTP Act in its present form. The young mother, when told in the twenty fourth week of her pregnancy, that her foetus had congenital heart blockage along with transposition of the great vessels and would require a pacemaker to pull through life, had wanted to terminate her pregnancy. Her appeal was rejected by the High Court on the plea that the MTP Act does not allow termination of pregnancy after twenty weeks, although both the paediatricians and the cardiologists had suggested the termination. Today, medical advancement allows detection of congenital health problems which generally surface after 22-24 weeks of pregnancy in unborn children. It should, therefore, be the right of the parents, who alone have to ultimately look after the child born with incurable congenital defects, to decide whether to abort the foetus or not based on sound medical advice."*

Similar views were kept while introducing and forwarding the several amendment bills to the MTP Act from 2014 to 2019[434]. None of the amendment bills could see the light. Therefore, the enactment of the 2021 amendment was nothing less than a landmark for the country in the evolution of its jurisprudence of abortion law. However, it is almost impossible to call a law perfect. Hence, even after the recent amendment, India continues to struggle to achieve the best legal framework guiding the laws of abortion.

For example, in India, though abortion is legally permissible under a wide range of situations, the doctor has the final say even when abortion is done outside of the upper gestation period as courts to put complete unverified reliance on the opinion of its Medical Board. A woman has to justify that her pregnancy occurred despite her having tried to prevent it or that it had been intended but circumstances changed or made it unwanted later. Possibilities may be that the pregnancy was unwanted from the start, but to justify abortion within the legal framework, the woman may have to provide reasons otherwise.

Another area of potential abuse of women's reproductive rights is the mandatory reporting of post-abortion contraceptive use required by MTP Regulations (Form 2)[435], which the State, the authors believe, may use to compel abortion providers to

[432]Indian Penal Code 1860
[433]Medical Termination of Pregnancy Amendment Bill 2008
[434]Medical Termination of Pregnancy Amendment Bill 2014
Medical Termination of Pregnancy Amendment Bill 2016
Medical Termination of Pregnancy Amendment Bill 2017
Women's Sexual, Reproductive and Menstrual Rights Bill 2018
Medical Termination of Pregnancy Amendment Bill 2019
[435]Medical Termination of Pregnancy (Amendment) Act 2002

achieve family planning targets. Such monitoring often results in a form of coercion of women seeking abortion, especially in the public sector.

It is precedentially evident that the Indian judiciary has been simultaneously instrumental in the process of evolution of laws governing abortion and has even shown activism to a certain proportion by entertaining Public Interest Litigations (PILs)[436] time and again. In *X and ors. v. Union of India and ors.*[437], the Supreme Court was concerned with a pregnancy which had advanced into the 24th week. The Medical Board which was constituted had opined that the condition of the foetus was incompatible with extra uterine life, (i.e., outside the womb) because prolonged absence of amniotic fluid results in pulmonary hypoplasia leading to severe respiratory insufficiency at birth. This was mainly a case where there was substantial risk that if the child was born, it would suffer from such physical or mental abnormalities as to be seriously disabled. Still, the Supreme Court, after referring to the dictum in *Suchita Srivastava v. Chandigarh Administration*[438] - that a woman's right to make reproductive choices is also a dimension of 'personal liberty' as understood under Article 21 of the Constitution of India, permitted the pregnant mother to undertake the termination of pregnancy.

Nonetheless, in order to have a balanced debate, it is important to discuss the status of an unborn and develop a basic understanding of the matter in the light of jurisprudential theory in order to determine its legal correctness.

In Common law jurisprudence, it has been doubted whether an infant born alive is entitled to recover from injuries inflicted upon before birth. If the unborn child is accorded little or no legal personality, considerations of maternal autonomy almost invariably trump foetal autonomy. To the extent that the unborn child is accorded substantive legal personality, the road is open to the balancing of foetal and maternal autonomy that may, in concrete circumstances, result in the prioritising of one over the other. For common law jurisdictions, the basic position in relation to the legal status of the unborn child is circumscribed by what is known as the "born alive" rule. This rule ordains that, except if expressly mentioned in a statute, a person cannot be held responsible for injuries inflicted on a foetus *in utero* unless and until it is born alive.[439] For a charge of murder or manslaughter it must be shown that the person killed was one, in being. It is neither a murder nor manslaughter if an unborn child, while still in its mother's womb, is killed, although it may constitute statutory offences of child destruction or abortion. Therefore, it is apparent that common law has a view that although a foetus is regarded as a separate legal entity from its mother-to-be, the mother which already has an existence is more prominent as a 'person' than a foetus whose personhood is a mere legal fiction. On the contrary, a legal fiction of a foetus has sprouted only due to its viability in medical terms.

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[436] The chief instrument through which judicial activism has flourished in India is Public Interest Litigation (PIL) or Social Action Litigation (SAL). Public interest litigation (PIL) refers to litigation undertaken to secure public interest and demonstrates the availability of justice to socially-disadvantaged parties and was introduced by Justice P. N. Bhagwati. It is a relaxation on the traditional rule of *locus standi*.

[437] *X &Ors v Union of India &Ors* [2017]

[438] *Suchita Srivastava & Anr v Chandigarh Administration* [2009]

[439] Attorney General's Reference No 3 of 1994 Attorney General's Reference No 3 of 1994 [1997] UKHL 31, [1998] 1 Cr App Rep 91, [1997] 3 All ER 936, [1997] 3 WLR 421, [1997] Crim LR 829, [1998] AC 245 (24 July 1997), House of Lords

A ‘person’ is recognised jurisprudentially as an entity having recognized by the law and as a holder of legal rights with a duty to operate legally. It means both- a human being, and a body of persons, corporation or other legal entities that is recognised by law as subjects of rights and duties. Savigny has defined ‘person’ as “the subject or bearer of rights”; but, to Salmond’s understanding, the rights of a person entail duties as well.[440]

Law of status is concerned with the legal characteristics of a man in its quotidian pursuits in a law-abiding civilization. Aside from household affairs, the law of extra domestic status deals with the status of persons such as ‘lunatics’, ‘lower animals’, ‘deceased persons’ etc. Unborn child is one of such persons who do not enjoy the status of a legal person but the society is bound with some duties towards them. Two kinds of persons are recognised by law - natural persons and legal persons. Legal persons are also known as artificial, juristic or fictitious persons. According to Holland, a natural person is “such a human being as is regarded by the law as capable of rights and duties—in the language of Roman law, as having a status.”[441]The first requisite of a moral human being is that he must be recognised as possessing a sufficient status to enable him to possess rights and duties. The second requisite is that he must be born alive. Moreover, he must possess essentially human characteristics. He, who is a natural person, must have the characteristics of independent power of thought, speech and choice.

Relying on the above facts, the authors have developed and attempted to provide a theoretical explanation with a novel approach on the principle of possession in the legal jurisprudence as to strike a balance on whether it an absolute right of the pregnant woman in deciding on the autonomy of bearing the child. The authors argue that –

Law attributes by legal fiction a personality of life existing. A fictitious thing is that which does not exist in fact but which is deemed to be in existence in the eyes of law. There are two components essential to be a legal person – *Corpus* and *Animus*. The *corpus* is the body into which the law infuses the *animus* which is the personality or the will of the person. But if the principle of *corpus animus* is to be applied in the possession of an unborn child, and from the perspective of a ‘to-be mother’, a possibility of construing the dilemma of carrying an unwanted pregnancy arises well. There lies no predicament when a woman, pregnant with a child, voluntarily has the intention of giving birth; because in such cases the component of *corpus possessionis* is express and prominent. The debate surfaces when a pregnant woman, at her free will and non-coerced assent, talks in favour of and is of the opinion not to continue the pregnancy. With the mere presence of the *corpus*, the intention of the woman with regard to such pregnancy should not be assumed. If a woman has no wilful intention to continue a pregnancy up to the birth, the *animus* of such woman in the pregnancy should be considered absent. According to the primordial jurisprudential principle of possession, *animus* is not sufficient without *corpus* and in most cases, vice-versa. Therefore, it is not an unjust claim that a carrying-woman with no intention to continue her pregnancy further, should by any means, be compelled to do the unwanted.

[440]Prof. S. N. Dhyani, Jurisprudence & Indian Legal Theory, Fourth edition, 2011(reprint), Central Law Agency.
[441]V. D. Mahajan, Jurisprudence and Legal Theory, Fifth edition, 2013, Eastern Book Company.

Furthermore, a pregnant woman, being a natural person in the eyes of law, has the right of privacy and freedom of choice as enshrined in Article 21 of the Constitution of India. In *Justice (retd.) K.S.Puttaswamy v. Union of India*[442], a nine-judge bench of the Supreme Court of India expressly affirmed the centrality of decisional autonomy in any discourse on privacy. The judgement recognised sexual and reproductive autonomy as fundamental choices protected by the right to privacy. It was held that *"Privacy includes at its core the preservation of personal intimacies,…procreation,... Privacy safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life."*

However, authors opine that the civilised reasoning is a juxtaposition of morality and legal sanctity. Hence, when a mother's reason to refuse the chance of a life is frivolous, it might be logical to allow the law of the land to immunise the gentle life, with a standing as *parenspatriae*[443].

Pro-life school of thought argues as to why this becomes important to legally restrict abortion before the third trimester in general cases. The answer lies in the fact that the baby becomes viable at this stage. In other words, the baby is no longer indispensably dependent on its mother's body and stands a chance of survival upon delivery, albeit with suitable aids at this premature stage. As it grows, it becomes more and more capable of independent survival and, from seven months of gestation onwards, the chances of its survival upon birth increase.[444]

Thus, in addition to state interest, the interests of the fully formed unborn child at this stage become noteworthy. The unborn find explicit or implicit protection through many international and national laws. The United Nations Convention on the Rights of the Child recognized the need for special protection of children before and after birth on account of their physical and mental immaturity.

In the 1960s, abortion discourse was influenced largely by medical and demographic concerns.[445] The human and reproductive rights agenda took centre stage post the establishment of International Conference on Population and Development. The National Population Policy of India 2003 encourages the promotion of family planning services to prevent unwanted pregnancies, but also recognises the importance of provision of safe abortion services which are affordable, accessible and acceptable for women who need to terminate an unwanted pregnancy.[446]

Foeticide is a practice prevalent in India for quite few decades now, emerging concurrently with the advent of technological advancements in prenatal sex determination on a large scale. Foetal sex determination and sex-selective abortion by medical professionals has grown into a Rs.1000 crore industry.[447] Despite making pre-natal sex determination a penal offence, numerous clinics offering ultrasound

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[442] *Justice (retd.) K.S. Puttaswamy v Union of India* [2017] 10 SCC 1

[443] *Parenspatriae* is Latin for "parent of the nation". In law, it refers to the public policy power of the state to intervene against an abusive or negligent parent, legal guardian, or informal caretaker, and to act as the parent of any child, individual or animal who is in need of protection.

[444] See *Roe v Wade* [1973] 410 US 113

[445] Siddhivinayak S. Hirve, 'Abortion Law Policy and Services in India: A Critical Review' (*T&F Online*, 2004) 12 IJSRHR 114

[446] *Ibid*

[447] SugandhaNagpal, 'Sex-selective Abortion in India: Exploring Institutional Dynamics and Responses' (2013) 3 MSR <https://www.mcgill.ca/msr/volume3/article2> accessed 25 August 2022.

scanning facilities have mushroomed throughout the country, rampantly violating this law in exchange for quick money.[448] The demographic crisis will lead to increasing sexual violence and abuse against women and female children, trafficking, increasing number of child marriages, increasing maternal deaths due to abortions and early marriages and increase in practices like polyandry. A paradigm shift is needed for operationalizing reproductive health programs. A change in focus from a population control approach of reducing numbers to a client-based approach of addressing the reproductive health needs of individuals, couples and families, is necessary.

Conclusion

According to the decision in *Roe v. Wade (Supra)*, the expression "liberty" stipulated within the clause which states *"the freedom of choice in the basic decisions of one's life respecting marriage, divorce, procreation, contraception and the education and upbringing of children."* John Stuart Mill in his 'Essay on Liberty' says *"consists in doing what one desires. But the liberty of the individual must be thus for limited. He must not make himself a nuisance to others."*[449] Hence, unless the exercise of liberty by a person is creating or aids in the creation of nuisance *in rem* or *in personam*, such liberty is absolute.

Thus, it can be concluded that an unborn foetus in India is not an entity with human rights. The pregnancy takes place within the body of a woman and has profound effects on her health, mental well-being and life. As a result, how she wants to deal with this pregnancy must be a decision she and she alone can make. The right to control their own body, fertility and motherhood choices should be left to the women alone. Let us not lose sight of the basic and the jus-natural claim of women: the right to autonomy and to decide what to do with their own bodies, including whether or not to get pregnant and stay pregnant.

However, let us not forget those who despite being severely disabled have made outstanding contributions to society throughout the history of modern civilisation. For instance, Dr. Stephen Hawking, the world-renowned scientist who suffered from extremely debilitating motor neuron disease; or Ludwig van Beethoven, in spite of his deafness has established himself to be one of the greatest music composers of all times. Had there been mechanisms to detect such disabilities in the foetus then, these people may have never been born. In other words, we cannot completely ignore the possibility of committing grave mistakes by extinguishing potentially great life with our limited understanding of the future and our fear of deformity. Advancement in medical science bestows great power on humanity that must be used for noble causes. Unfettered or arbitrary misuse of such power may lead to grave consequences for the society on multiple fronts.

[448] *Ibid*
[449] *Allegeyer v Louisiana* [1897] 165 US 578

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Allegeyer v Louisiana [1897] 165 US 578

Youth Knife Crime in London and Croydon: A Data and Literary Analysis

Emily Brenner

Abstract:

Rising rates of youth-involved knife crime in London and Croydon have created a culture of fear, drawing criticism of criminal justice practices which aim to tackle this issue. Research shows there is no one core motivator for knife crime among juveniles, but instead an array of possibilities for why young people engage in knife crime. Ranging from lack of community and youth centres to gangs preying on vulnerable young people, different reasons for involvement means creating a layered solution that is not one-size-fits-all. Opposing political approaches from the Conservative and Labour parties demonstrate how policy and political agendas play a role in juvenile crime, as well as present potential strategies for combating youth crime. The fallout of austerity measures and financial cuts to community and social services has been cited as a major factor in the rise of juvenile knife crime. This report seeks to demonstrate the aspects and potential causes of juvenile knife crime and criminality, and present possible solutions. Ultimately, a public health approach shows the potential to be effective, as noted by both researchers and young people at risk. Methods used to aid juveniles at risk of engaging in knife crime should account for the intersections of vulnerability. Resources including youth centres, mental health services, and a collaboration of social services would be beneficial in reducing levels of youth-involved knife crime.

Introduction:

The Mayor's Office for Policing and Crime defines knife crime as a criminal offense with attempt to cause harm where a sharp object or knife has been used to threaten or injure the victim, or the offender was found with a knife or sharp object on their person.[450] An offense involving a sharp object is recorded as such when one is present during the offense, or a threat made by the perpetrator with the sharp object is perceived to be real by the victim or authorities.[451] The use of the weapon itself is not necessary to constitute an offense involving a sharp object or knife.[452]

As they are easily accessible as everyday household objects, knives

[450]The Mayor's Office for Policing and Crime. 2017. "The London Knife Crime Strategy." London, UK: Greater London Authority
[451]*ibid*
[452]*ibid*

have frequently been used in Britain as weapons, leading to what the public has viewed as an "epidemic".[453] This fear is especially projected onto juveniles, who are becoming increasingly at risk of involvement with violent crimes and gang. Organizations such as Barnardos, Ofsted, and the College of Policing cite vulnerabilities and social factors which increase the potential of a young person to become involved in knife crime. In densely populated areas such as Croydon, where young people make up a quarter of the population, it is important to try and understand the data associated with juvenile knife crime and potential causal factors.[454]

That is the purpose of this report: to analyse both the data associated with violent crimes involving knives or sharp objects used as weapons and the data showing juveniles' involvement in said violent crime. By doing so, a picture of the state of youth violence in London and Croydon can emerge, allowing for further examination of possible causal factors and vulnerabilities that can lead to involvement in knife crime, gangs, and other related forms of deviance. A comparison of approaches by the Conservative Party and the Labour Party will be presented to demonstrate the effects various policy approaches have on juvenile knife crime. Finally, there will be a discussion on the most beneficial approach to preventing knife crime involvement amongst young people.

Why Knives?

There are four main identified reasons why a juvenile may choose to carry a knife on their person: to help facilitate robbery, for intent to cause harm, for feelings of safety to their own self, or to establish *machismo* or for self-image purposes.[455] Similarly, the College of Policing note three main motivators for carrying a sharp object: self-protection and fear, self-presentation, and utility.[456]

According to a report released by the All-Parliamentary Party Group (APPG) on Knife Crime (2019), young people noted that knives were an easily accessible form of protection.[457]Due to an increase in the number of their peers carrying knives, many young people felt compelled to do so as well, viewing this as the 'norm'.[458]

[453]Muncie, John. 2015. *Youth and crime: 4th edition*. London, UK: SAGE Publications; Grimshaw, Robert and Matt Ford. 2018. "Young People, Violence and Knives - Revisiting the Evidence and Policy Discussions." *UK Justice Policy Review*, 3: 1-31.
[454]Safer Croydon Partnership. 2017. "Safer Croydon Community Safety Strategy 2017/2020." Croydon, UK: Safer Croydon Partnership.
[455]The Mayor's Office for Policing and Crime. 2017. "The London Knife Crime Strategy." London, UK: Greater London Authority; Sethi et al., 2010. "European Report on Preventing Violence and Knife Crime Among Young People." Copenhagen, DK: World Health Organization;Grimshaw, Robert and Matt Ford. 2018. "Young People, Violence and Knives - Revisiting the Evidence and Policy Discussions." *UK Justice Policy Review*, 3: 1-31.
[456]McNeill, Abigail and Levin Wheller. 2019. "Knife Crime Evidence Briefing." Coventry, UK: College of Policing Limited.
[457]Smith, Nicola and Thomas Hughes. 2019. "'There is No Protection on the Streets, None': Young People's Perspective on Knife Crime". London, UK: All-Party Parliament Group on Knife Crime.
[458]*ibid*

Furthermore, the Deputy Mayor for Policing and Crime visited incarcerated juveniles who were considered high risk offenders in order to discuss other possible motivators for knife crime.[459] The young offenders stated that many of them had been exposed to knife crime and other forms of violence at a young age, resulting in a perception of increased danger in their communities, thus motivating them to carry knives or other sharp objects on their person for defence should the situation call for it.

Data:

Datasets for violent crime with a weapon in 2019, show that a 7 percent increase in violent offenses involving a sharp object or knife has been reported by police, reaching 44,076 reported offenses.[460] Notably, however, the rise in recorded offenses with a sharp object or knife has decreased from the previous year: in 2018, there was a 14 percent rise in knife crime, compared to the aforementioned 7 percent increase in 2019.[461]From 2011 to 2019, the number of recorded offenses involving a sharp object or knife has risen from 30,620 to 44,074: a 44% increase.[462] This is the highest recorded number by the Office of National Statistics since March of 2010.[463] The Office of National Statistics has also noted that recorded knife crimes are more concentrated in urban areas: in 2019, 32 percent of all offenses involving a sharp object or knife occurred in London.[464]Police have reported a 22 percent increase in knife possession, reaching 22,962 recorded offenses.[465] This is the highest recorded increase since March 2009 and is possibly motivated by targeted police action such as stop and search procedures.[466]

An increase in juvenile offenders has been reported as well: between 2015 and 2019 there was a rise of 48 percent in the number of young people convicted or cautioned for offenses involving a knife or sharp object.[467] This is higher than the increase in adult offenders, which rose 31 percent from 2015 to 2019.[468] In the Crime Survey for England and Wales in 2016, young people aged 10 to 15 were asked about experiences with knives and sharp objects.[469]The survey showed an increase in the

[459]The Mayor's Office for Policing and Crime. 2017. "The London Knife Crime Strategy." London, UK: Greater London Authority.
[460]Elkin, Meghan. 2019. "Offenses Involving the Use of Weapons: Data Tables." Newport, Wales: Office for National Statistics; Elkin, Meghan. 2019. "Crime in England and Wales: Year Ending June 2019." Newport, Wales: Office for National Statistics;Ministry of Justice. 2019. "Knife and Offensive Weapons Sentencing Statistics: January to March 2019." London, UK: Ministry of Justice.
[461]*ibid*
[462]Elkin, Meghan. 2019. "Crime in England and Wales: Year Ending June 2019." Newport, Wales: Office for National Statistics
[463]*ibid*
[464]*ibid*
[465]Metropolitan Police. 2019. "Stats and Data." London, UK: Metropolitan Police
[466]*ibid*
[467]Elkin, Meghan. 2019. "Crime in England and Wales: Year Ending June 2019." Newport, Wales: Office for National Statistics.
[468]*ibid*
[469]*ibid*

amount of young people who personally know of someone who carried a knife, with a slight decrease in young people reporting carrying a knife themselves.[470]The APPG on Knife Crime's report (2019) focusing on young people's perspective on knife crime showed that it is necessary for young people to feel safe in their own communities in order to see a decrease in possession of a knife or sharp object as a weapon.[471]In 2017, Croydon ranked 6th (1 being the highest) in volume for violent crimes and 16th by rate per 1,000 offenses.[472] Crime rates are higher in the north of Croydon, this may be due to a higher population density and higher levels of inequalities and deprivation.[473] Findings from the 2016 Fear of Crime Survey found that 23 percent of Croydon residents feel unsafe, and that residents felt that more crime occurred than what was actually reported to police.[474]

Croydon has one of the highest populations of young people in London, making up 24.05 percent of the population of 390,800 in 2022.[475] Children in Croydon were found to be more in need than those living in other London boroughs, and these figures were well above the national average.[476]As of March 2020, 563 per 10,000 children in Croydon were in need.[477]The most vulnerable age group for victimization of knife crime in Croydon was reported to be between 15 and 34.[478]Additionally, an approximate 20% of victims of crime harm are aged between 10 and 17 years old.[479]Offenders most likely to commit violent offenses were found to be between the ages of 15 and 29, and offenders aged 15 to 19 were most likely to commit an offense involving a knife or a sharp object as a weapon.[480]Data provided by the Centre for Crime and Justice Studies indicate that individuals aged 10 to 29 are more likely to be both the victims and perpetrators of knife crime.[481]The 2017-2020 Croydon Safety Strategy reported that youth crime overall is one of the biggest fears of Croydon residents, while the updated 2022-2024 Croydon Safety Strategy

[470]Grimshaw, Robert and Matt Ford. 2018. "Young People, Violence and Knives - Revisiting the Evidence and Policy Discussions." *UK Justice Policy Review*, 3: 1-31.
[471]Smith, Nicola and Thomas Hughes. 2019. "'There is No Protection on the Streets, None': Young People's Perspective on Knife Crime". London, UK: All-Party Parliament Group on Knife Crime.
[472]Safer Croydon Partnership. 2017. "Safer Croydon Community Safety Strategy 2017/2020." Croydon, UK: Safer Croydon Partnership.
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[475]Roskams, Michael. 2022. "Population and Household Estimates, England and Wales: Census 2021." London, UK: Office of National Statistics.
[476]Safer Croydon Partnership. 2022. "Community Safety Strategy: 2022 to 2024." Croydon, UK: Safer Croydon Partnership.
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[478]Safer Croydon Partnership. 2017. "Safer Croydon Community Safety Strategy 2017/2020." Croydon, UK: Safer Croydon Partnership
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[480]Safer Croydon Partnership. 2017. "Safer Croydon Community Safety Strategy 2017/2020." Croydon, UK: Safer Croydon Partnership
[481]Grimshaw, Robert and Matt Ford. 2018. "Young People, Violence and Knives - Revisiting the Evidence and Policy Discussions." UK Justice Policy Review, 3: 1-31.

reported one sixth of residents under 25 felt unsafe in their neighbourhoods due to knife crime.[482]

An article from the Croydon Advertiser gives a more local account of knife crime in Croydon.[483] According to the cited report from the House of Commons Library, there was an increase of knife crime from 337 offenses involving a knife or sharp object in the 2015/2016 financial year to 683 offenses in the 2016/2017 financial year: a 103 percent increase.[484] This was reported as the highest increase for a violent crime with a knife or sharp object throughout London. The article includes a statement from Raymond Robb, the co-founder of the LIONS Society which aims to deter young men from becoming involved in knife crime.[485] Robbs states the increase may be due to a lack of intervention and support for at-risk youth. This article suggests one of the best ways to tackle youth knife crime in Croydon is to work with juveniles to identify direct causes of the problem and to help intervene.[486]As is suggested in the Safer Community Strategy report, constituents in Croydon believe that knife crime is higher than it actually is.[487]The report notes that knife crime over a six-month period had decreased from 60 reported offenses in the same time frame the previous financial year, to 30 reported offenses during the six-month period in the 2016/2017 financial year. The report suggests that these decreases may be caused by increased communication with community-based outreach groups by the police in order to work with at-risk juveniles to help deter them from crime.[488]

Motivations and Relevant Factors:

It is important to examine the driving factors of knife crime in communities because it helps to examine fluctuations in violent crime over time. The relationships between groups of people and the societies in which they live, the resources available to them, and the characteristics of a community all have an effect on overall crime trends and behaviours.[489] By understanding influencing factors in youth knife crime, more thorough and accurate approaches to combating this issue can be enacted; this is further discussed in the section *Possible Solutions.* Contributing factors are

[482]Safer Croydon Partnership. 2017. "Safer Croydon Community Safety Strategy 2017/2020." Croydon, UK: Safer Croydon Partnership; Safer Croydon Partnership. 2022. "Community Safety Strategy: 2022 to 2024." Croydon, UK: Safer Croydon Partnership
[483]Truelove, Sam. 2018. "Croydon Ranked as One of the Worst London Boroughs for Knife Crime, Report Reveals." London, UK: Croydon Advertiser.
[484]*ibid*
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[487]Safer Croydon Partnership. 2017. "Safer Croydon Community Safety Strategy 2017/2020." Croydon, UK: Safer Croydon Partnership
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[489]The Mayor's Office for Policing and Crime. 2017. "The London Knife Crime Strategy." London, UK: Greater London Authority;Ofsted. 2019. "Ofsted Research on Knife Crime: Safeguarding Children and Young People in Education." Manchester, UK: Ofsted; Smith, Nicola and Thomas Hughes. 2019. "'There is No Protection on the Streets, None': Young People's Perspective on Knife Crime". London, UK: All-Party Parliament Group on Knife Crime; Grimshaw, Robert and Matt Ford. 2018. "Young People, Violence and Knives - Revisiting the Evidence and Policy Discussions." *UK Justice Policy Review*, 3: 1-31.

varied: austerity measures, which resulted in cuts to youth centres and community services, have been cited by both professional organizations and young people as a reason for the rise in youth violence in London.[490]Socioeconomic inequalities, school exclusion, mental illness and adverse childhoods can all play a part in shaping a young person in ways which have been shown to be connected to knife crime and youth violence.[491] Gangs have also been known to take advantage of young people rendered vulnerable by these causes, further driving juveniles towards crime.[492]

Austerity:

In the book *Austerity Bites: A Journey to the Sharp End of Cuts in the UK* (2015), austerity is defined as "the economic conditions created by government measures to reduce a budget deficit, especially by reducing public spending".[493]Following a global recession and financial panic in 2008, a Conservative-led U.K. government enacted austerity measures which cut government-funded budgets for public services. Youth centres saw a significant cut to funding, to the point in which many closed down as a result. After-school clubs and youth centres became few and far between, leaving young people without designated spaces where they could go that didn't require money to be spent as they would allow young people regardless of financial background to take part in social activities.[494]The author concludes by noting that those made vulnerable and financially insecure are those who were poor to begin with, resided in low-income areas, and suffered from disabilities or socioeconomic inequalities.

A report from Barnardos (2019), utilizing data from the APPG on Knife Crime, has found that areas seeing significant cuts to funding for youth centres and relevant services have also seen an increase in youth knife crime.[495]Over the past three years, the average borough council has cut approximately 40 percent of funding for youth services and youth workers.[496] These areas have also been reported to have significant increases in youth involved violence, most notably a 47 percent increase reported by London's Metropolitan Police.[497] Alongside this, a resounding request from young people throughout London is an increase of funding for youth services and the building up of youth centres. Sarah Jones, the leader of the APPG on Knife

[490]Barnardo's. 2019. "Research Suggests Growing Link Between Cuts to Youth Services and the Country's Knife Crime Epidemic." Barkingside, UK: Barnardo's.
[491]; Ofsted. 2019. "Ofsted Research on Knife Crime: Safeguarding Children and Young People in Education." Manchester, UK: Ofsted; Smith, Nicola and Thomas Hughes. 2019. "'There is No Protection on the Streets, None': Young People's Perspective on Knife Crime". London, UK: All-Party Parliament Group on Knife Crime
[492]Goldson, Barry. 2011. Youth in crisis? gangs, territoriality and violence. Oxfordshire, UK: Routledge
[493]O'Hara, Mary. 2015. Austerity bites: a journey to the sharp end of cuts in the UK. Bristol, UK: Policy Press, pg. V
[494]O'Hara, Mary. 2015. Austerity bites: a journey to the sharp end of cuts in the UK. Bristol, UK: Policy Press.
[495]Barnardo's. 2019. "Research Suggests Growing Link Between Cuts to Youth Services and the Country's Knife Crime Epidemic." Barkingside, UK: Barnardo's.
[496]*ibid*
[497]Metropolitan Police. 2019. "Stats and Data." London, UK: Metropolitan Police

Crime, notes that this is what she hears from young people the most: “Every time I speak to young people they say the same thing: they need more positive activities, safe spaces to spend time with friends and programmes to help them grow and develop”.[498] Furthermore, a BBC article (2019) reporting on how young people cope with knife crime cites youth centres as important sources of positive reinforcement for young people, and thus crucial in deterring them from crime.[499]Boleto (2019) notes how the free services provided to young people in the apartment complex she had grown up in had served as a positive environment where young people felt safe and protected.[500]Bolteo’s (2019) report further showed that areas with little funding for youth services also suffered higher proportions of youth involved knife crime.

The report from the APPG on Knife Crime (2019) presents the perspectives of young people affected by knife crime, echoing the previous statements: young people are in need of spaces in which they can interact with one another in a positive environment and build a community.[501] Expulsion from school heavily influences this, as without any source of community, young people are more susceptible to gang involvements.[502] Young people in the report also mentioned positive interactions with community leaders, such as teachers, helped to deter them from becoming involved in crime.[503] Schools have become important in providing a place where young people can be safe and interact with positive influences and role models; however, many of those surveyed in the report noted a lack of resources both outside of school, and for those teachers interacting with disadvantaged and vulnerable students. By better connecting with their students, teachers would be able to build a more positive relationship and thus deter at risk youth from crime. Young people also noted that students who have been excluded from school or are at risk of being excluded should be offered more support to further deter them from getting involved in crime.[504]

In a report from Coram (2019), which also examines young people's perspectives, knife crime is seen as the result of a lack of opportunity: by not having healthy and positive ways to spend their time, young people become more vulnerable to crime.[505]The young people interviewed also acknowledged that possession of a knife and crime involvement may hinder future job opportunities, but that the use of knife crime involved with selling drugs would be a quick way to make money instead.[506] Juveniles may feel a sense of belonging when carrying a knife, as it may be prevalent amongst their peers or they may feel they are “looking out” for one

[498] *ibid*
[499] Boleto, Leah. 2019. “Youth Clubs: How Children in London are Coping with Knife Crime.” London, UK: CBBC Newsround.
[500] *ibid*
[501] Smith, Nicola and Thomas Hughes. 2019. “‘There is No Protection on the Streets, None’: Young People’s Perspective on Knife Crime”. London, UK: All-Party Parliament Group on Knife Crime.
[502] *ibid*
[503] *ibid*
[504] *ibid*
[505] Michelmore, et al., 2019. “Young People’s Views on Knife Crime.” London, UK: Coram.
[506] *ibid*

another, giving themselves a sense of purpose.[507]This sense of community can be provided both by youth services and youth centres, as well as by gang involvement. The Coram report also notes that juveniles reported that more community engagement and youth centres would help to deter young people from crime involvement.[508]

Socioeconomic Inequalities

The Centre for Crime and Justice found that higher levels of inequality correlate with higher levels of crime both nationally and internationally.[509] The Centre for Crime and Justice also notes that social factors and levels of trust in individual communities can affect rates of crime.[510] A community with high levels of social inequality and low levels of trust may find it difficult to create a safe community and thus may be more likely to see crime occur.[511]The most common factor in juvenile knife crime and other violent crimes was the individual's vulnerability.[512] Children who were raised in adverse households, who have experienced abuse, poverty, or other forms of trauma were more likely to later become involved in knife crime.[513]Social exclusion due to socioeconomic family backgrounds, race, and other factors also contributed to this statistic.[514] School leaders reported to Ofsted that all students who had been expelled from their schools due to possession of a knife or sharp object had at least one of these experiences prior to expulsion.[515]

School Expulsion

School expulsion makes young people more vulnerable to knife crime and gang involvement. Attitudes towards young people carrying knives or sharp objects on school grounds varies for each education institution. For some school leaders, this is an automatic expulsion regardless of the reason why the student had the knife or sharp object on their person. For others, this may prompt an investigation into why the student felt the need to carry a knife, with attention paid to their home life and any possible vulnerability.[516]Schools also face difficulties in funding appropriate programmes that help educate students on knife crime and deterrence programmes to help prevent students from becoming involved in crime. Furthermore, Ofsted (2019) notes that some gangs who may be grooming students will encourage the individual to carry a knife or sharp object on their person on school grounds with the

[507]Smith, Nicola and Thomas Hughes. 2019. "'There is No Protection on the Streets, None': Young People's Perspective on Knife Crime". London, UK: All-Party Parliament Group on Knife Crime.
[508]Michelmore, et al., 2019. "Young People's Views on Knife Crime." London, UK: Coram.
[509]Grimshaw, Robert and Matt Ford. 2018. "Young People, Violence and Knives - Revisiting the Evidence and Policy Discussions." UK Justice Policy Review, 3: 1-31.
[510]*ibid*
[511]*ibid*
[512]Ofsted. 2019. "Ofsted Research on Knife Crime: Safeguarding Children and Young People in Education." Manchester, UK: Ofsted.
[513]*ibid*
[514]*ibid*
[515]*ibid*
[516]Michelmore, et al., 2019. "Young People's Views on Knife Crime." London, UK: Coram.

intent of expulsion, so they may be better integrated into the gang.[517] If the student is not admitted into another school or inclusive programme, they then become more vulnerable to violence and gang affiliations.[518]

Gangs

Gangs may use social media as a recruitment tool to lure in vulnerable young. They may be able to use their social media presence to make the lifestyle of a gang member appear tempting to someone who is vulnerable, whether it be by portraying a sense of community, protection from perceived dangers, or wealth and goods.[519] Gangs can provide a source of community or familial bonds for vulnerable youth with adverse home lives. Joining a gang may be perceived as a form of protection, especially if the individual has a history of victimization. Individuals with low self-esteem may also join gangs as a way to boost their self-image and self-worth.[520] County lines drug dealing has become a significant issue for juveniles involved in knife crime and gang-affiliated violence. This process involves the selling of drugs, namely heroin and crack-cocaine, from urban regions into rural and coastal areas of England and Wales.[521]Vulnerable young people who have been recruited into gangs are more likely to be used for this form of drug dealing. These juveniles are exploited by gangs to carry out the dealings, which usually involve serious violence. In association with county line drug dealing, young people may feel the need to carry knives on them for protection.[522]

Mental Health

Mental illness is closely related to crime amongst juveniles and is one of the more frequently explored subtopics of violence amongst young people. Factors that may lead to violent behaviour may include difficulties in the home or "adverse childhood environments".[523] In addition to this, a separate study provided by the Centre for Crime and Justice shows thathigh levels of mental illness, a history of using mental health services, and a history of trauma can be found amongst young men in Britain who have been or are currently involved in gang-affiliated activities.[524]Juveniles who have been inducted into gangs face an increased potential for victimization, which

[517]Ofsted. 2019. "Ofsted Research on Knife Crime: Safeguarding Children and Young People in Education." Manchester, UK: Ofsted.
[518]*ibid*
[519]Smith, Nicola and Thomas Hughes. 2019. "'There is No Protection on the Streets, None': Young People's Perspective on Knife Crime". London, UK: All-Party Parliament Group on Knife Crime.
[520]Hughes, Karen, Katherine Hardcastle, and Clare Perkins. 2015. "The Mental Health Needs of Gang-Affiliated Young People." London, UK: Public Health England.
[521]Hughes, Karen, Katherine Hardcastle, and Clare Perkins. 2015. "The Mental Health Needs of Gang-Affiliated Young People." London, UK: Public Health England.
[522]Grimshaw, Robert and Matt Ford. 2018. "Young People, Violence and Knives - Revisiting the Evidence and Policy Discussions." UK Justice Policy Review, 3: 1-31.
[523]*ibid*
[524]*ibid*

can further adversely affect their mental health.[525] Repetitive exposure to violence of any kind has a notable effect on the individuals' mental health, as reported by Public Health England (2015).[526] Adverse childhood experiences (ACEs) also contribute to knife crime amongst young people. Having experienced poverty, abuse, or other stressful and traumatic events can negatively impact the young person's mental health as early life trauma can have a lasting effect on an individual. Public Health England (2015) found that juveniles with ACEs had higher risks for weapon carrying, bullying, and violence.[527]

Young people who have been inducted into gangs have shown an increased risk of mental illness, including conduct disorders, anxiety, depression, antisocial personality disorders, and drug and alcohol dependence. Hughes et. al (2015) argue youth knife crime, gang involvement, and mental illness are connected: those who suffer from mental illnesses are more vulnerable and more likely to be groomed by a gang, whereas being a part of a gang can have adverse effects on one's mental health. Data taken from screenings of juvenile gang members showed that 40 percent of those arrested had signs of mental illness, compared with only 13 percent of non-gang affiliated juvenile offenders.[528] This combination of factors demonstrates the increased risk of knife crime, both as an offender and victim, for juveniles involved in gang violence and suffering from a mental illness.

Opposing Political approaches

As made apparent by the data and information provided, juvenile knife crime has continued to pose a serious risk: both to society and to potential victims, as well as to the juveniles themselves, who are more likely to have suffered from ACEs and vulnerabilities that push them towards violent crime. The 2019 General Election saw proposed policies and plans regarding crime and juvenile justice from all major parties. The Conservative and Labour manifestos both included policies which focused on deterring young people from crime. As established by the literature, governmental financial cuts play a significant role in the rise and severity of juvenile violence and knife crime. Policies presented by major political parties, namely the Conservative and Labour parties, can thus influence whether or not a solution is reached. Taken from the Conservative and Labour Manifesto's from the 2019 General Election, proposed solutions to rising juvenile knife crime and violence demonstrate the varied and opposing approaches both parties take.

Conservative plans for violence and knife crime implement a 'tough on crime' approach, with a focus on increased police presence and faster prosecution and

[525]Haylock, Sara, et al. 2020. "Risk Factors Associated with Knife-Crime in United Kingdom Among Young People Aged 10-24 Years: A Systematic Review." *BMC Public Health,* 20:1415.
[526]Hughes, Karen, Katherine Hardcastle, and Clare Perkins. 2015. "The Mental Health Needs of Gang-Affiliated Young People." London, UK: Public Health England.
[527]*ibid*
[528]*ibid*

sentencing for those found with a knife or sharp object on their person.[529]Stop and search procedures are favoured, giving officers the ability to search individuals known or suspected to have knives on their person. A Serious Violence Reduction Order, part of the Police, Crime, Sentencing, and Courts Bill announced in 2021, allows police officers to stop and search known offenders and individuals who have previously been found to have knives or other weapons on their persons.[530]Those found with a weapon would be arrested, charged or cautioned, as well as receiving a court date all within 24 hours.[531] Both custodial and non-custodial offenders would be subject to the Order, and thus it would act as a deterrent to further commit a crime or carry a weapon. It is worth noting that a 2022 update to this order stipulates that stop and search procedures are only to be allowed on over-18s.[532]

As the Labour party is an outspoken critic of austerity cuts,[533] the 2019 Labour manifesto outlined a public health perspective. This approach aimed to collaborate with different professionals to help figure out root causes of youth violence in order to prevent juveniles from getting involved in crime. Police funding would have also been adjusted, allowing for an increase of officers as well as funding for relevant training and equipment. Labour plans included building trust between police officers and the communities they serve by collaborating with youth service workers, social services, mental health professionals, schools, and drug rehabilitation programmes in order to better prepare them for working with diverse communities and constituents.[534]

Possible Solutions

Thus far, this report has presented the climate of youth-involved knife crime in Croydon and greater London through data and relevant literature. Although this report does not seek to propose a conclusive solution, as approaches to this issue can be as multifaceted as the young people involved, it does offer two primary arguments for combating youth knife crime. Considered opposing ends, stop and search procedures and a public health approach to juvenile knife crime demonstrate the varied perspectives on working with local communities and it's young people to lower rates of knife crime. Evidence and literature centring the experiences of young people is presented for both proposed solutions, followed by a conclusion noting which of the two options may provide more favourable outcomes.

[529]Conservative Party. 2019. "'We Will Empower Police To Tackle Scourge of Violent Knife Crime,' Pledges PM." Retrieved Dec 5, 2019
[530] Home Office. 2022. "Serious Violence Reduction Orders: Police, Crime, Sentencing and Courts Act 2022 Factsheet." London, UK: HM Government; Ryan, J., Brown, J., and Holland, S. 2021. "Tackling Knife Crime". House of Commons Library Debate Pack. Retrieved from: https://researchbriefings.files.parliament.uk/documents/CDP-2021-0129/CDP-2021-0129.pdf
[531]Conservative Party. 2019. "Get Brexit Done, Unleash Britain's Potential: The Conservative and Unionist Party Manifesto." Retrieved Nov 15, 2019
[532]Home Office. 2022. "Serious Violence Reduction Orders: Police, Crime, Sentencing and Courts Act 2022 Factsheet." London, UK: HM Government.
[533]Labour Party. 2019. "It's Time for Real Change: The Labour Party Manifesto 2019." Retrieved Nov 15 2019.
[534]*ibid*

Stop and Search Procedures

Young people reported feeling that stop and search procedures created tension between police and juveniles, despite having positive interactions with the police previously.[535] This is due in part to the racial profiling of Black, Asian and Minority Ethnicity (BAME) juveniles.[536]Young people in these surveys felt police had little respect for the individuals they stopped, and that young black men were more likely to be stopped by police.[537] Many of the interviewees believed one's appearance, including clothing choice, affect whether or not they would be stopped, adding to frustrations with the police.[538] Furthermore, the young people interviewed felt that if police stop and searches occurred in private and were more patient with the individual being searching, the overall experience could be more positive.[539] These experiences can be traumatic for young people, especially BAME individuals due to a potential racial bias. Stop and search procedures may also push individuals who have been searched towards gang-affiliated violence or other forms of crime as a reaction to the procedure. This can be due to a need to feel safe from tense police relations or a response to having been labelled a potential offender.[540]The Centre for Crime and Justice notes that the humiliation that comes from these stop and search procedures, combined with a need to be respected, may inadvertently result in crime involvement.[541]

While stop and search practices may be temporarily beneficial in which a sharp object or weapon is confiscated, research shows this is not effective in the long term.A ten-year study demonstrated stop and search procedures had an insignificant deterrent effect on violent crime over the period studied.[542]The Centre for Crime and Justice Studies (2018) cite a report from the Home Office in 2008 which found no significant long-term changes in possession of a knife or sharp objects as a result of stop and search procedures.[543]A College of Policing report in 2017 also noted over a ten-year period that there was a weak relationship between stop and searches and knife crime and possession.[544]A Home Office report published in 2017 found that of the 32,852 stop and searches for offensive weapons, 7,097 arrests were made for possession of a knife or sharp object.[545] There was a total recorded 303,845 stop

[535]Murray, Kyle. 2018. "Croydon Youth Summit 2018: Enough is Enough". Croydon, UK: Croydon BME Forum.
[536]*ibid*
[537]*ibid*
[538]*ibid*
[539]*ibid*
[540]Grimshaw, Robert and Matt Ford. 2018. "Young People, Violence and Knives - Revisiting the Evidence and Policy Discussions." UK Justice Policy Review, 3: 1-31.
[541]*ibid*
[542]*ibid*
[543]*ibid*
[544]McNeill, Abigail and Levin Wheller. 2019. "Knife Crime Evidence Briefing." Coventry, UK: College of Policing Limited.

[545]Grimshaw, Robert and Matt Ford. 2018. "Young People, Violence and Knives - Revisiting the Evidence and Policy Discussions." UK Justice Policy Review, 3: 1-31.

and searches that year, indicating that stop and searches are ultimately an ineffective way of dealing with knife crime.[546]It is important to note that in 2020/2021, a rate of 69.5 per 1,000 black people in London were stopped, compared to a rate of 20.4 per 1,000 white people, and an overall rate of 38.1 per 1,000 people of all ethnicities.[547] This is consistent with findings from previous years, and demonstrates stop and searches performed at the discretion of the police officer disproportionately affected members of the BAME community.[548]

Public Health Approach & Youth Services

The study *Confronting Gang Membership and Youth Violence: Intervention Challenges and Potential Futures* (2019) notes that one of the most promising routes to reducing gang violence and youth violence is through a public health approach which focuses on the individual, root causes.[549] These procedures have been the most successful in regard to youth crime deterrence, showing that a collaboration of social welfare, violence prevention, and community engagement produces the most positive results.Investing in the community and its services and providers has the potential to positively impact young people, especially regarding areas impacted by austerity cuts.[550]Research suggests that a public health approach to knife crime would be the most beneficial to produce a decrease in knife crime in communities. By using a multi-faceted collaborative approach, professionals and law enforcement can help diagnose underlying causes and work towards a solution. This can also be seen in the "pulling levers" approach, which focuses on targeting repeat-offenders by providing support services and interventions via direct and consistent communication to the offender, so that they are aware of what is taking place and why they are being targeted.[551] Key findings from the College of Policing Knife Crime Evidence Briefings shows that motivations and other factors involved in knife crime vary by the individual, and that a tailored approach to violence reduction may be necessary to see a decrease in knife crime.[552]This would work by focusing on specific problems such as mental health, cuts to youth services, and social and economic inequalities.[553] Early prevention work and problem-oriented policing is also believed to be hugely effective in combating youth involved knife crime.[554]

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[546] *ibid*
[547] Home Office. 2022b. Stop and Search. London, UK: HM Government.
[548]Pepin, Sarah, Lipscombe, Sally, Zayed, Yago, and Allen, Grahame. 2018. "Effect of Police Stop and Search Powers on BAME Communities." London, UK: House of Commons Library.
[549]Wood, Jane L. 2019. "Confronting Gang Membership and Youth Violence: Intervention Challenges and Potential Futures." *Criminal Behaviour & Mental Health* 29(2): 69–73.
[550]Hagell, Ann. 2019. "Youth Knife Crime – What Does 'Taking a Public Health Approach' Mean?" London, UK: Coram
[551] Braga, Anthony, David Weisburd, and Brandon Turchan. 2019. "Focused Deterrence Strategies Effects on Crime: A Systematic Review." *Campbell Systematic Reviews* 15(3) https://doi.org/10.1002/cl2.1051
[552]McNeill, Abigail and Levin Wheller. 2019. "Knife Crime Evidence Briefing." Coventry, UK: College of Policing Limited.
[553]*ibid*
[554]*ibid*

Ofsted's (2019) research on knife crime showed that while children were more likely to be safe on school premises while school was in session, the hours between four to six after school was the most dangerous for young people in terms of crime and gang involvement.[555] Incidents of knife crime amongst young people are more prevalent outside of school hours and on the weekends. This is especially true for juveniles who have been excluded from school and have few resources outside of the home. The overall resounding need communicated by young people themselves is more services made for them as places to go during their free time, in which positive social and community interactions can be made to benefit their personal relationships, sense of self and self-worth, and their relationship with their community.[556]

Conclusion

To conclude this report, the findings suggest that public health based approaches are the most beneficial in tackling knife crime. Where stop and search procedures target the individual in confiscating a knife, a public health approach utilizes preventative action based on community needs to work with young people in rejecting crime involvement[557]. Specifically regarding the contributing factors raised in this report, a public health approach can provide a positive impact for young people. Austerity measures impacted many of the contributing factors noted; funding cuts to youth centres restored through a public health approach can provide no-cost community engagement and activities, providing young people with alternatives to potential gang or crime involvement.[558] While a public health approach to knife crime cannot solve underlying socioeconomic issues experienced by young people, it can address the ramifications of it as it pertains to young people.[559] In doing so, it can provide solutions to these issues stemming from socioeconomic inequalities that unaddressed may later contribute to youth crime and knife violence. A public health approach which invests in places of learning as well as staff and educators can better equip those working with young people struggling with engagement, one of the noted factors contributing to juvenile knife crime.[560] Support services for young people would be prioritized under a public health approach, whether this is towards

[555]Ofsted. 2019. "Ofsted Research on Knife Crime: Safeguarding Children and Young People in Education." Manchester, UK: Ofsted.
[556]Jones, Sarah. 2019. "These 60 Depraved Children from Croydon Could Tell Us Exactly Why We're Facing a Knife Crime Epidemic." London, UK: The Independent.
[557]Hagell, Ann. 2019. "Youth Knife Crime – What Does 'Taking a Public Health Approach' Mean?" London, UK: Coram
[558]Potter, Rachel. 2020. "Taking a Public Health Approach to Tackling Serious Violent Crime: Case Studies." London, UK: Local Government Association.
[559]Hagell, Ann. 2019. "Youth Knife Crime – What Does 'Taking a Public Health Approach' Mean?" London, UK: Coram
[560]Ofsted. 2019. "Ofsted Research on Knife Crime: Safeguarding Children and Young People in Education." Manchester, UK: Ofsted; Hagell, Ann. 2019. "Youth Knife Crime – What Does 'Taking a Public Health Approach' Mean?" London, UK: Coram; Potter, Rachel. 2020. "Taking a Public Health Approach to Tackling Serious Violent Crime: Case Studies." London, UK: Local Government Association.

providing mental health services or other community support for young people vulnerable to gang involvement.[561]

There is no one specific reason as to why young people may get involved in knife crime, and the methods used to help deter violent crime must be just as multi-faceted as the individual. Not all members of law enforcement are trained in mental health and social services, which is why it is important to collaborate with an array of professionals to help intervene in situations where vulnerable juveniles become at-risk for knife crime or gang involvement. Furthermore, funding and reinstating of youth centres, clubs and services throughout boroughs will provide young people with safe and inclusive places for them to positively spend time with peers, regardless of their educational or socioeconomic background.

[561]Wood, Jane L. 2019. "Confronting Gang Membership and Youth Violence: Intervention Challenges and Potential Futures." *Criminal Behaviour & Mental Health* 29(2): 69–73; Hagell, Ann. 2019. "Youth Knife Crime – What Does 'Taking a Public Health Approach' Mean?" London, UK: Coram

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