

**HARNESSING HINDU AND BUDDHIST SOURCES AS “DICTATES OF THE
PUBLIC CONSCIENCE”: A GAP-FILLER TO ADDRESS SEXUAL VIOLENCE
AGAINST WOMEN DURING CONDUCT OF HOSTILITIES?**

by

Ritika Sharma

Under the supervision of

Dr Michael Wiener

*Submitted in partial fulfilment of the requirements of the LL.M. in International
Humanitarian Law and Human Rights*

Academic year 2023-2024

30 August 2024

Word count: 9762

TABLE OF CONTENTS

I. INTRODUCTION	3
II. HOW THE CURRENT IHL IS LACKING IN THE PROTECTION OF WOMEN DURING CONDUCT OF HOSTILITIES?.....	4
III. RELEVANCE AND CONTENTS OF THE “DICTATES OF THE PUBLIC CONSCIENCE”.....	9
IV. PROTECTIONS GRANTED TO WOMEN IN HINDUISM AND BUDDHISM	13
Although not all the verses discussed relate directly to war, they reflect an unwavering and absolute code of conduct that must not be deviated from, even during wartime.....	14
Lessons and curses against rape and sexual violence under Hinduism.....	14
Buddhism’s code of conduct and practices against sexual misconduct.....	16
V. REALITY CHECK.....	18
Moral ethics forgotten during the Sri Lankan civil war.....	18
Highly unethical conduct against women during the Myanmar NIAC.....	20
Sexual violence by the Hindu Nationalists	22
VI. THE WAY FORWARD	23
ANNEXES.....	27
Annex A: Ramayana	27
Annex B: Anattalakkhaṇasutta—Bhikkhu Sujato/ The Great Discourse on the Buddha’s Extinguishment.....	29
Annex C: Mahāparinibbānasutta/Principles That Prevent Decline.....	31
Annex D: Pañcasikkhāpadasutta/The Five Precepts	32
BIBLIOGRAPHY	33

I. INTRODUCTION

Ashoka, the king of the Mauryan dynasty of India, invaded the Kalinga kingdom in 261 BCE, leading to a war that resulted in the deaths of over 100,000 warriors. The immense bloodshed and suffering led Ashoka to abandon his plans for further conquests and he took recourse to Buddhism, embracing its principles of spreading peace and non-violence and took a vow to never wage war again. Centuries later, on 24 June 1859, Henri Dunant was similarly moved by the horrific sight of thousands of wounded and dead military personnel at the Battle of Solferino. This experience led him to found the International Committee of the Red Cross (hereinafter “ICRC”) to alleviate the suffering and protect the wounded during armed conflicts. Both personalities, though separated by centuries and cultures, sought to transform their experiences of war into powerful forces for peace and humanity.

In stark contrast to the story of Ashoka embracing the Buddhist doctrines of *dharma* and non-violence to reign in his kingdom, in today’s era religion is considered to be a sword that propagates war. Some consider it to be a powerful tool for the subjugation of women. Yet, the invocation of "dictates of the public conscience"¹ in various international and domestic laws raises an intriguing question: Can religion, often seen as a source of aggression, instead be harnessed to offer protection? Could the concept of “dictates of the public conscience” be a mechanism to prohibit sexual violence during armed conflicts?

This paper delves into a critical and universal issue: the protection of women during the Conduct of Hostilities (hereinafter “CoH”). It will explore three key facets – gender, IHL and religion and is divided into the following sections: (i) It will present a critique of the current International Humanitarian Law (hereinafter “IHL”) from a feminist perspective, arguing that it inadequately protects women during CoH. The paper will discuss only conflict-related sexual violence against women during CoH. Other issues include the protection of women in the Power of the enemy and post-conflict sexual violence and issues of coping and recovering

¹ It is important to note that the term “des exigences de la conscience publique” translated as "requirements of the public conscience" first appeared in the 1899 Hague Convention (II) and was used in subsequent treaties, including the Hague Convention No. IV of 1907 (also originally in French), the four Geneva Conventions of 1949 and Additional Protocol II to the Geneva Conventions of 12 August 1949 as "dictates of the public conscience". The four Geneva Conventions and their Additional Protocols have authentic versions in six languages with an inconsistency. In Additional Protocol I to the Geneva Conventions of 12 August 1949, the phrase appeared as "dictates of public conscience," omitting "the". The absence of "the" in this version can be interpreted as reflecting a more general concept of right and wrong, whereas "dictates of the public conscience" implies a more specific moral standard. Given its prevalent usage (and not because of any line of interpretation), this paper will use the term "dictates of the public conscience".

from the stigma attached to it also have an adverse impact on women. However, this paper's scope is limited to sexual violence against women during CoH. It also does not cover sexual violence against men and the LGBTQ+ community. (ii) Secondly, the paper will examine the origin, meaning and relevance of the "dictates of the public conscience" as expressed in the Martens Clause. (iii) Thirdly, the paper will dive into the Hindu and Buddhist religious texts which lay down the ethical standards of conduct with respect to women. There will be an exploration of original religious texts that prohibit rape and sexual violence against women absolutely in all circumstances. (iv) Then, the paper will analyse some armed conflicts in South Asia with religious undertones, assessing whether the conduct of war aligns with or breaches the ethical standards of the relevant religious doctrines. (v) The final section will take up some controversial questions that are necessary to address in order to decide whether the "dictates of the public conscience" can be harnessed from the religious doctrines to cover the gaps of inadequate protection or inefficiency of the current IHL regime, in protecting women during CoH. It will highlight efforts by the ICRC and the UN to leverage religious principles in enhancing the effectiveness of international law in mitigating severe violations during armed conflicts.

Although the paper uses the research of scholars around the world, it will be largely based upon the perspectives, examples and research on armed conflicts concerning Hindus and Buddhists and will provide a comprehensive analysis of the interplay between the "dictates of the public conscience", gender and religion.

II. HOW THE CURRENT IHL IS LACKING IN THE PROTECTION OF WOMEN DURING CONDUCT OF HOSTILITIES?

*"Sex and death, reproduction and war, become part of the same configuration of ideas and institutions through which the nation-state sets up defenses to stave off the uncertainty emanating from dangerous aliens and from the ravages of time."*²

This complex interrelation is reflected in the way IHL fails to provide adequate protection to women during the CoH. The following discussion will explore how IHL lacks adequate protection for women during CoH, focusing on rape and sexual violence against women.

² Veena Das, 'Violence, Gender and Subjectivity' (2008) 37 Annual Review of Anthropology 283, 285.

The issue of inadequacy of IHL has already been reported and raised by many feminists³. Feminists argue, “*Women should not be viewed as passive victims; their situation and coping abilities demand a more complex understanding of their situation.*”⁴ Moreover, it is also argued that the provision such as Article 27 of the Fourth Geneva Convention is framed in a sense that makes it a protection instead of an “express prohibition”⁵.

According to Valerie Oosterveld, there are two schools of thought: the first one asserts that IHL is adequate for the protection of women but just lacks proper enforcement, while the second school of thought which is the “revision school of thought” highlights the inadequacy of IHL as it fails to provide for provisions that take into account the unique experiences of women during armed conflicts.⁶ In the words of Gardam, “*Rules are not adequate for women even if fully enforced*”⁷.

After looking into the issue of varied definitions of rape around the world, ICTY observed that the following may consist of the objective elements:

“(i) *the sexual penetration, however slight: (a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or (b) of the mouth of the victim by the penis of the perpetrator;*
(ii) *by coercion or force or threat of force against the victim or a third person.*”⁸

This definition was refined in the *Kunarac case*⁹. The case “... ‘replaced’ in the *Kunarac case* the second part of the *Furundžija* definition with ‘where such sexual penetration occurs without the consent of the victim’.”¹⁰

³ Christine Chinkin, ‘Gender and Armed Conflict’ in Andrew Clapham and Paola Gaeta (eds), *The Oxford Handbook of International Law in Armed Conflict* (OUP 2014).

⁴ Valerie Oosterveld, ‘Feminist Debates On Civilian Women and International Humanitarian Law’ (2009) 27 *Windsor YB Access Just* 385, 399.

⁵ *Ibid* 682.

⁶ Oosterveld (n 4) 387.

⁷ Judith Gardam, ‘Women and the Law of Armed Conflict: Why the Silence?’ (2008) 46 *ICLQ* 55, 59.

⁸ *Prosecutor v. Anto Furundžija*, Trial Judgment [1998] International Criminal Tribunal for the former Yugoslavia, Trial Chamber, IT-95-17-1, (International Criminal Tribunal for the former Yugoslavia (ICTY), para 185.

⁹ *Prosecutor v. Dragoljub Kunarac and Others*, Trial Judgment [2001] International Criminal Tribunal for the former Yugoslavia, Trial Chamber, IT-96-23&23/1, (International Criminal Tribunal for the former Yugoslavia (ICTY), para 438.

¹⁰ Gloria Gaggioli, ‘Sexual violence in armed conflicts: A violation of international humanitarian law and human rights law’ (2014) 96 *International Committee of the Red Cross* 508.

Apart from rape, sexual violence includes, “*forced prostitution, sexual slavery, forced impregnation, forces maternity, forces termination of pregnancy, enforced sterilization, indecent assault, trafficking, inappropriate medical examinations and strip searches*”.¹¹ This type of violence is different from gender-based violence as gender-based violence which is a broader category encompasses acts based on gender roles such as domestic violence, honour killings, and dowry deaths, alongside sexual violence.¹² Thus, “gender-based violence” includes “sexual-based violence” of which “rape” is one element.

Rape and sexual violence have been used as “weapons of war” or “tools of war” in most of the armed conflicts, regardless they occur in East, West, North or South. In South Asia, this is evident from the Bangladesh Liberation War of 1971¹³, the Sri Lankan Civil War¹⁴ and the ongoing Myanmar conflict¹⁵. While IHL absolutely prohibits such acts against women when in the power of an enemy state, it nonetheless fails to provide absolute protection when used as a “method of warfare”.

The term such as “honour” used under Article 27 of the Fourth Geneva Convention makes it a crime against the victim, her family and community, perpetuating the crime of sexual violence which is used during armed conflicts with this exact intent of “dishonouring” the enemy. The usage of the term “honour” for the protection of women implies that their protection is required because of their position in a society (or in relation to their “belonging to men”)¹⁶ and not because of their inherent vulnerabilities during war times due to her gendered roles and social responsibilities. ICRC also noted, “*Women who are wives, mothers, daughters etc of the combatants are specifically targeted as a means of retaliation and to put pressure on one party*”¹⁷.

¹¹ International Committee of the Red Cross, Addressing the Needs of Women Affected by Armed Conflict: An ICRC Guidance Document (ICRC 2004) 25 <<https://www.refworld.org/policy/legalguidance/icrc/2004/en/47248>> accessed 28 August 2024.

¹² Gaggioli (n 10), 509-510.

¹³ Nayanika Mookherjee, “Occupying’ the womb: Disrupted kinship futures and sovereign logics in sexual violence during wars’ (2023) 43(4) *Critique of Anthropology* 422, 430-431.

¹⁴ Richard Traunmüller et al, ‘The Silent Victims of Sexual Violence during War: Evidence from a List Experiment in Sri Lanka’ (2019) 63(9) *Journal of Conflict Resolution* 2015.

¹⁵ Afroza Anwary, ‘Sexual violence against women as a weapon of Rohingya genocide in Myanmar’ (2022) 26 *The International Journal of Human Rights* 400.

¹⁶ Marco Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare* (Edward Elgar Publishing Limited 2024) 600.

¹⁷ ICRC, Addressing the Needs of Women Affected by Armed Conflict (n 11) 20.

It is also comparatively difficult for women to flee the combat zones due to various factors, making them more prone to attacks than their male relatives. During conflicts, the traditional roles of fetching water and food from outside create unique obstacles for women, which IHL does not account for. Despite these risks, they are still classified as “civilians” on par with men.

Gardam succinctly summarises this:

*“This is not surprising as it is traditionally the case that men compile the data and inevitably treat women under the rubric of (male) civilians. The unique suffering of women thus remains hidden.”*¹⁸

This coupled with the factor that IHL favours the protection of combatants over non-combatants¹⁹, protection of women take a backseat. Women have been granted special protection only in cases of pregnancy and are otherwise included within the term “civilians” along with other war victims, thereby neglecting their unique vulnerabilities and sufferings. UN Resolution 1325²⁰ was the first resolution to express concern about the adverse impacts of armed conflicts on women and called upon all parties to take “special measures” to tackle this issue.²¹

Both feminist schools have a similar approach towards looking at the provisions of sexual violence under IHL. While the revisionists argue that IHL fails to make it the crime of violence, the proponents of enforcement school highlight that IHL defines the crime in terms of "value" rather than focusing on the victim.²² Apart from these inherent discrimination in the provisions, it is important to look at the ones that explicitly prohibit “rape” during CoH.

Article 75 of the Additional Protocol I to the Geneva Conventions of 12 August 1949 [hereinafter “API”] states that acts such as “outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault” are “prohibited at any time and in any place whatsoever”. Article 76 of API lays down the provision of “protection” of women in a language that objectifies women, stating that

¹⁸ Gardam (n 7) 58.

¹⁹ Gardam (n 7) 64.

²⁰ United Nations Security Council, ‘Resolution 1325 (2000)’ (31 October 2000) UN Doc S/RES/1325 (2000).

²¹ United Nations Security Council, ‘Resolution 1325 (2000)’ (n 20) 3.

²² Oosterveld (n 4) 393.

“women shall be object of special respect and shall be protected in particular against rape, forced prostitution and any other form of indecent assault”.

For non-international armed conflicts (hereinafter “NIACs”), Article 4(2)(e) of the Additional Protocol II to the Geneva Conventions of 12 August 1949 [hereinafter “APII”] prohibits rape and indecent assault during armed conflicts; however, it makes rape a crime against the dignity and not against violence²³. This provision has a very high threshold²⁴ and is not inapplicable in most of the conflicts. The customary provision of Common Article 3 of the Geneva Conventions, although, applicable in all types of conflicts contains a similar wording as that of Article 75 where rape and sexual violence have to be read within the terms of “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture” or “outrages upon personal dignity, in particular, humiliating and degrading treatment”.

Despite these provisions, rape and sexual assault are prevalent in every armed conflict, highlighting both inadequacy of the IHL to explicitly prohibit rape and sexual violence and the failure of enforcement of the current IHL regime. These crimes are not even included within the ambit of “grave breaches” under the Geneva Conventions, underscoring that they are not serious enough from the lens of IHL. Sexual violence is notably absent from explicit recognition as a “grave breach” under IHL including in Common Article 3 of the Geneva Conventions, which outlines essential protections during armed conflict. For rape to qualify as a grave breach, it must be interpreted under existing categories such as “willful killing,” “torture or inhumane treatment,” or “willfully causing great suffering or serious injury to body or health.” While the ICRC’s Customary IHL Study (Rule 93) acknowledges some forms of sexual violence as war crimes, this recognition does not fully equate to its express classification as a grave breach under IHL.²⁵

The International Fact-Finding Mission in Myanmar highlighted this grave issue in the following words: *“The Mission determined that rape and other forms of sexual violence was at such a level of normalisation in the “clearance operations” that such violence was only*

²³ Chinkin (n 3) 682.

²⁴ Gardam (n 7) 76.

²⁵ Charya Samarakoon, ‘Addressing The Causes Of Conflict-Related Sexual Violence With The Buddhist Doctrine Of Lack Of A Permanent Self And Meditation Training’ in Andrew Bartles-Smith et al (eds), *Buddhism and International Humanitarian Law* (Routledge Taylor & Francis Group 2024) 346.

possible in a climate of long-standing tolerance and impunity, where military personnel had no reasonable fear of punishment or disciplinary action". Rape and sexual violence had been used in a methodical and systematic manner during this period [25 August 2017 – 5 September 2017]."²⁶ And this is not just about this armed conflict. The majority of armed conflicts around the world have the same pattern of widespread sexual violence against women. Thus, it is submitted that the challenges in categorising sexual violence as a 'grave breach,' despite its potential classification under the Geneva Conventions, combined with the inadequacies in addressing the unique vulnerabilities of women and the pervasive issues in enforcement, make the current IHL framework insufficient for protecting women against sexual violence during CoH.

To address these issues, a solution suggested by one group of revisionist feminists is to revise the current IHL framework or add a new Protocol specifically for the protection of women²⁷. Nonetheless, revising the Geneva Conventions and the Additional Protocols has its own serious challenges.²⁸ Therefore, in order to solve this conundrum, another viable approach could be to invoke the "dictates of the public conscience" to fill the gaps. In this regard, Veuthey has previously hinted that "dictates of the public conscience" could be one of the instruments that can provide protection to gender-based violence to war victims in all situations and stated, "[war victims] could also be protected by ... in all civilizations, by religious and traditional values as well as by ethics (military, medical), and by the "public conscience" (embodied in the "Martens Clause" since the 1899 Hague Regulations)"²⁹.

III. RELEVANCE AND CONTENTS OF THE "DICTATES OF THE PUBLIC CONSCIENCE"

The Martens clause was introduced by a Russian diplomat and Professor Fyodor Fyodorovich Martens at the First International Peace Conference, Hague in 1899, marking a significant development in the evolution of the laws of war, 40 years after the Battle of Solferino. The

²⁶ UN Human Rights Council, UN Report on Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts (22 August 2019) UN Doc A/HRC/42/CRP.4, para 72.

²⁷ Gardam (n 7) 77-80.

²⁸ Sassòli, *International Humanitarian Law* (n 16) 46-48.

²⁹ Michel Veuthey, 'Gender Based Violence and International Humanitarian Law: Steps to Improve the Protection of Women in War' in National Defense Institute (Portugal) (ed), *Gender Violence in Armed Conflicts* (National Defense Institute, Portugal 2013) 93.

clause was intended to be useful in addressing the inadequacies of the laws of war, which were incomplete and inconsistent at the time, but also to meet the issue of the absence of specific treaties. The clause encouraged the invocation of the “usages established between civilised nations”, and “principles of humanity” to fill the gaps. It was also included in Hague Convention No IV of 1907, though the wording slightly changed.

Under the 1949 Geneva Conventions, it appears only in the provisions related to denunciation under Articles 63(4), 62(4), 142(4) and 158(4) of the four Geneva Conventions, respectively that ensures that the protections offered by the conventions remain in place, even if a party withdraws. Its relevance was further solidified with its inclusion of the First Additional Protocol of the Geneva Conventions, Article 1 and Second Additional Protocol, Preamble, albeit the language of the text changed again. Notably, in the First Additional Protocol, the clause was moved from the preamble to a substantive provision, highlighting its continued significance in contemporary IHL.³⁰

First Additional Protocol, Article 1(2):

In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.

Second Additional Protocol, Preamble:

“...Recalling that, in cases not covered by the law in force, the human person remains under the protection of the principles of humanity and the dictates of the public conscience...”

Two questions immediately arise - Is it relevant in today’s times, and if yes, what are the contents of public conscience?

This text demonstrates how the Martens Clause remains relevant in addressing modern challenges in armed conflict, including the protection of women during the CoH.

The evolving nature of armed conflicts necessitates a discussion on whether the “dictates of the public conscience” can provide for the loopholes in the current codified laws, potentially

³⁰ Rupert Ticehurst, *The Martens Clause and the Laws of Armed Conflict*, (1997) 37 *International Review of the Red Cross* 125, 127.

broadening the scope of protection under IHL. It has been discussed widely before. For example, it has been used to study whether it can prohibit autonomous weapon systems³¹. Another scholar explored the capacity of the Martens Clause to enhance environmental protection during NIACs.³²

In 1994, the International Law Commission also glorified the clause's application in the protection of international watercourses and related installations during armed conflicts by stating that martens clause "*provides that even in cases not covered by specific international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience*".³³ In an ICTY judgment, the Trial Chamber observed that a customary rule against reprisals under API has emerged due to the "requirements of humanity and the dictates of public conscience"³⁴, also stating that "*this Clause [Martens Clause] enjoins, as a minimum, reference to those principles and dictates any time a rule of international humanitarian law is not sufficiently rigorous or precise*".³⁵ Further highlighting the important of Martens Clause, ICTY stated, "*this Clause clearly shows that principles of international humanitarian law may emerge through a customary process under the pressure of the demands of humanity or the dictates of public conscience, even where State practice is scant or inconsistent*".³⁶ In another case, Court while examining the Martens Clause and its relevance for APII, highlighted that the APII must, "at all times", be interpreted in the contexts of all humanitarian principles.³⁷

ICJ, in its *Advisory Opinion on Nuclear Weapons* case emphasized that the "*continuing existence and applicability [of Martens Clause] is not to be doubted*". Furthermore, in the

³¹ Tyler D. Evans, 'At War with the Robots: Autonomous Weapon Systems and the Martens Clause' (2013) 41(3) Hofstra Law Review 697, 731-732; Also see UN General Assembly, 'Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns' (28 August 2024) 29th Session UN Doc A/HRC/29/37 p. 19.

³² Tara Smith, 'Challenges in identifying binding Martens Clause rules from the 'dictates of the public conscience' to protect the environment in non-international armed conflict' (2019) 10 Transnational Legal Theory 184.

³³ International Law Commission, 'Report on the Work of its Forty-Sixth Session' (1 August 1994) UN Doc A/49/10. 131 <https://legal.un.org/ilc/documentation/english/reports/a_49_10.pdf> accessed 28 August 2024.

³⁴ *Prosecutor v. Kupreskic*, Trial Judgment [2000] International Criminal Tribunal for the former Yugoslavia (ICTY), Trial Chamber, IT-95-16-T International Criminal Tribunal for the former Yugoslavia (ICTY), para 527.

³⁵ *Kupreskic* (n 34) para 525.

³⁶ *Kupreskic* (n 34) para 527.

³⁷ International Committee of the Red Cross, 'Colombia, Constitutional Conformity with Protocol II' (ICRC Casebook, 2023) para 22 <<https://casebook.icrc.org/case-study/colombia-constitutional-conformity-protocol-ii>> accessed 28 August 2024.

Dissenting Opinion of Judge Shahabuddeen, he asserted that the Clause provided its “*own self-sufficient conclusive authority*” for the existing principle of international law.³⁸

The next question arises: what are the contents of the “dictates of the public conscience”? For Hobbes, ‘*whatever a man does against his conscience, is sin*’.³⁹ According to Cassese, it can be identified from “resolutions and other authoritative acts of representative international bodies”⁴⁰. Another author suggests that it can be culled out from the instruments of “institutions highly qualified to assess the laws of war”⁴¹. However, it has also been linked to morals, religions and natural law. Conscience has two elements: belief and response where belief is the “individual notions of rights and wrong”⁴² and response “is a kind of moral imperative”⁴³. This could explain why many today believe that the “dictates of the public conscience” flow from widely accepted statements on acceptable conduct, as laid down in resolutions, decisions, etc.

Nonetheless, it is submitted that equating “public conscience” solely with these relatively new sources is misguided. Public conscience is considered to be the norms that have achieved the peremptory character and include the elements derived from the dictates discovered as civilisational progresses.⁴⁴ Moral fairness and equity are considered the elements of public conscience which the codified laws are not able to ensure.

Hobbes, in one of his definitions in *Leviathan*, calls “public conscience” “a thousand witnesses”, which can be interpreted to be the acts as witnesses to our “inner thoughts and beliefs”, reflecting one’s “deepest yearnings and desires”⁴⁵. Furthermore, spirituality is an

³⁸ Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion, Dissenting Opinion of Judge Shahabuddeen) [1996] ICJ Rep 226, <<https://www.icj-cij.org/index.php/node/141841>> accessed 28 August 2024; also see analysis of Rupert (n) 126-128.

³⁹ Larry May, ‘Hobbes, law, and public conscience’ (2016) 19 *Critical Review of International Social and Political Philosophy* 12, 15

⁴⁰ Antonio Cassese, ‘The Martens Clause: Half a loaf or Simply Pie in the Sky’ (2000) 11 *European Journal of International Law* 187, 212.

⁴¹ Ticehurst (n 30) 130.

⁴² Lucien J. Dhooze, ‘The Equivalence of Religion and Conscience’ 2017 31 *Notre Dame Journal of Law, Ethics & Public Policy*, 253, 266.

⁴³ *Ibid* 269.

⁴⁴ Jesús Francisco Ramírez Bañuelos, ‘Are Dictates Of Public Conscience A Norm Of Jus Cogens In International Humanitarian Law?’ (2022) 28(1) 254, 258 <https://www.researchgate.net/publication/359944287_Are_the_dictates_of_public_conscience_a_norm_of_jus_cogens_in_international_humanitarian_law> accessed on 28 August 2024.

⁴⁵ Amy Gais, ‘Thomas Hobbes and ‘gently instilled’ conscience’ (2021) 47(8) 1211, 1214 <<https://doi.org/10.1080/01916599.2021.1894591>> accessed on 28 August 2024.

internal process of reflection acquired through focusing on one's religious key goals⁴⁶, which can also be intertwined with public conscience.

Rupert Ticehurst, declaring that IHL consists of both positive legal and moral code, noted that “*the Martens Clause provides a link between positive norms of international law relating to armed conflicts and natural law*”. This makes IHL “richer”.⁴⁷ Michel Veuthey in his research “Public Conscience in International Humanitarian Law Action” notes, “*It [public conscience] is found in Judaism (Deuteronomy), Christianity (Matthew 7:12, 22, 3640; Luke 6:31), Islam, as well as in the Analects of Confucius, in Hinduism (Mahabharata, Anusasana Parva), Buddhism (Udana-Varga, Sutta Nipata) and the philosophers of ancient Greece (Thaïes, Plato, Aristotle) and Rome (Seneca)*”.⁴⁸ Although Judge Shahabuddeen pointed out that the contents of the public conscience must be limited to sources with authority, he stated, “*the Court does not have to find whether there is an opinion juris. Its task is that of evaluating a standard embodied in an existing principle by way of making a finding as to what it is that the "principles of humanity and ... the dictates of public conscience" require of military conduct in a given situation.*”⁴⁹

While it is submitted that the “dictates of the public conscience” can be harnessed from religion, it would also be incorrect to claim that they consist solely of religious standards.

However, the relevance of the “dictates of the public conscience” is clear. Regardless of the original purpose⁵⁰ of the Martens Clause and the intention behind its rewording (especially in APII which was to eliminate the scope of “excessive intrusion”⁵¹), the potential of “dictates of the public conscience” to enhance protection and alleviate the suffering of women during CoH must not be overlooked.

IV. PROTECTIONS GRANTED TO WOMEN IN HINDUISM AND BUDDHISM

⁴⁶ Tamsin Bradley, *Religion and Gender in the Developing World: Faith-Based Organisations and Feminism in India* (I.B. Tauris & Co Ltd 2011) 20.

⁴⁷ Ticehurst (n 30) 133.

⁴⁸ Michel Veuthey, ‘Public Conscience in International Humanitarian Law Action’ (2003) 22 Oxford University Press 197, 198.

⁴⁹ Legality of the Threat or Use of Nuclear Weapons (Dissenting Opinion of Judge Shahabuddeen) [1996] ICJ Rep 226.

⁵⁰ Cassese (n 40) 193 to 198 – He explains that it was not proposed with a humanitarian goal.

⁵¹ Cassese (n 40) 209.

A few previous studies on Hinduism⁵² and Buddhism⁵³ have explored the ethical principles of war and how these relate to the current IHL regime. However, this paper specifically focuses on interpretations of Hindu and Buddhist texts concerning women.

Although not all the verses discussed relate directly to war, they reflect an unwavering and absolute code of conduct that must not be deviated from, even during wartime.

Lessons and curses against rape and sexual violence under Hinduism

In ancient India, the concept of *desha dharma* was well-established in the context of conflicts with other states, which is now known as *jus in bello* or the laws of war.⁵⁴ Hinduism relies heavily on the principles of *dharma*, which Hindus consider to be the “rightful way of living”. It can be translated as “an individual's duty fulfilled by observance of custom or law”⁵⁵ or “religious and moral duties that apply to individuals and communities”⁵⁶.

The Mahabharata, one of the key Hindu scriptures, depicts the epic war between the Pandavas, the protectors of the *dharma*, and the Kauravas and contains profound teachings on ethics and conduct during warfare, highlighting the importance of righteous behaviour even in conflict, calling it *dharma yuddha* (or righteous war). During the Mahabharata war, the Kaurava king honoured and protected women, demonstrating the strict ethical code concerning women's safety, which transcends the wartime context.⁵⁷

Another revered Hindu religious text is Ramayana. It recounts the story of Rama who engages into an ethical war against Ravana, the demon king of Lanka. Ravana is known for his bad deeds, and he abducts Seetha, Rama's wife. This Hindu epic contains various lessons on compassion and ethical conduct, demonstrated by the virtues of Rama and Seetha. Amongst other codes of conduct during war, the text highly condemns rape and sexual violence against women, which are met with the gravest punishments in the form of curses.

⁵² For e.g., Raj Balkaran and A. Walter Dorn, ‘Charting Hinduism's rules of armed conflict: Indian sacred texts and international humanitarian law’ (2022) 104 International Review of the Red Cross 1762 ; Raj Balkaran and A. Walter Dorn, ‘Exploring Hindu ethics of warfare: The Purāṇas’ (2024) International Review of the Red Cross 1; Manoj Kumar Sinha, ‘Hinduism and international humanitarian law’ (2005) 87(858) International Review of the Red Cross 285.

⁵³ For e.g., Andrew Bartles Smith et al., *Buddhism and International Humanitarian Law* (Taylor & Francis Group 2024).

⁵⁴ B.C. Nirmal, ‘International Humanitarian Law in Ancient India’ in V.S. Mani (ed), *Oxford Handbook of International Humanitarian Law in South Asia* (OUP 2007) 25-26.

⁵⁵ Merriam-Webster, ‘Dharma’ <<https://www.merriam-webster.com/dictionary/dharma>> accessed 28 August 2024.

⁵⁶ Collins, ‘Dharma’ <<https://www.collinsdictionary.com/dictionary/english/dharma>> accessed 28 August 2024.

⁵⁷ Raj Balkaran and A. Walter Dorn, ‘Charting Hinduism's rules of armed conflict: Indian sacred texts and international humanitarian law’ (2022) 104 International Review of the Red Cross 1762, 1795.

The war with Vali accounts for a saying by Rama asserting that one should refrain from mistreating women post-war. Vali has previously defeated his brother Sugreeva in a battle and mistreated his wife after that. However, during the war between Vali and Rama, Rama explains to him that his conduct of mistreating Ruma (Sugreeva's wife) was against the principles of *dharma* and also assures him (Vali) that his wife will be taken care of after his death.⁵⁸

Furthermore, Ravana, the king of Lanka and enemy of Rama earned a curse from Brahma for raping a woman:

*"From today onwards, if you revel with any other woman forcibly, your head then undoubtedly will break asunder into a hundred pieces."*⁵⁹

Curses given by sages and Lords acted as powerful tools to highlight acceptable ethics and conduct. Ravana, for example, is widely criticised for abducting Seetha, and Rama called him to be "not a person of prowess"⁶⁰

Vibhishana, the brother of Ravana who fights on the side of Rama to follow *dharma*, tries to instruct his nephew (Ravana's son) who comes to fight against Rama's army that sexual misconduct against the wife of another person is one of the causes of destruction and invites the greatest punishment. He says:

*"The wise men say that an evil-natured fellow, who is intent on taking away other's property and lustfully touches another's wife, is worth shunning, as one abandons a house in flames."*⁶¹

*"Three faults produce destruction. Taking away other's property, lustfully touching another's wife and excessive distrust with one's friends."*⁶²

Similarly, Ravana's wife, Dhanyamalini tries to convince him to follow ethical behavior by saying the following words:

⁵⁸ Srimad Valmiki Ramayana, Book IV: Kishkindha Kanda - The Empire of Holy Monkeys, Chapter (Sarga) 18; Verse 60 <https://valmikiramayana.net/utf8/kish/sarga18/kishkindha_18_frame.htm> accessed 28 August 2024; See Annex A5.

⁵⁹ Srimad Valmiki Ramayana, Book VI: Yuddha Kanda - Book of War; Chapter [Sarga] 13, Verse 14 <https://www.valmikiramayana.net/utf8/yuddha/sarga13/yuddha_13_frame.htm> accessed 28 August 2024; See Annex A1.

⁶⁰ Ramayana, Book VI: Yuddha Kanda, Chapter [Sarga] 103, Verses 11-13 (n 59); <https://www.valmikiramayana.net/utf8/yuddha/sarga103/yuddha_103_frame.htm>; See Annex A2.

⁶¹ Ramayana, Book VI: Yuddha Kanda, Chapter [Sarga] 87, Verse 22 (n 59) <https://www.valmikiramayana.net/utf8/yuddha/sarga87/yuddha_87_frame.htm>; See Annex A3.

⁶² Ramayana, Book VI: Yuddha Kanda, Chapter [Sarga] 87, Verse 23 (n 59); See Annex A3.

*"The body of one who desires a woman without desire suffers pain. Good happiness will occur to one who loves a woman who desires him."*⁶³

Given that Hinduism is a polytheistic religion, it venerates from both Gods and Goddesses, with the latter often described as *Shakti* or immense energy or life force⁶⁴. The prohibition against rape and sexual violence is deeply embedded in Hindu scriptures, which emphasise the respect and protection of women. These texts impart essential lessons on honouring women and ensuring their safety, reflecting the religion's broader ethical framework.

Buddhism's code of conduct and practices against sexual misconduct

Although it is quite popular that Buddhism strongly preaches non-violence, and like Hinduism believes in the Law of *Karma* according to which doing actions against the moral conduct (which is based upon *dhamma* (or *dharma*)) create the negative *karmas*, leading to negative consequences in future, it also has the concept of "righteous war"⁶⁵. It has been argued that while Buddhism is undoubtedly against aggression, the correct interpretation of *ahimsā* and *karma* does not completely rule out a soldier's duty to protect.⁶⁶ Theravada Buddhism lays down a moral code of conduct for laymen to follow in the form of "Five Precepts"⁶⁷ The third precept is about refraining from sexual misconduct.

It is pertinent to understand the definition of 'sexual misconduct'. In ancient India, it was defined negatively as an "injunction against abduction, rape and adultery". However, its ambit is much wider and also includes sexual harassment in workplaces.⁶⁸ Another author argues that "sexual misconduct" according to the Third Precept does not include rape. The exact Pali translation of the term "*kāmesu micchācāra*" is "*misconduct in sexual pleasures*" which "*is not a blanket term covering all kinds of sexual misdeeds, but a euphemism referring to a specific kind of sexual misconduct, i.e., one that victimizes a particular third party even though carried out with mutual consent.*" Thus, the cases of sexual intercourse in

⁶³ Srimad Valmiki Ramayana, Sundara Kanda - Book of Beauty, Chapter [Sarga] 22, Verse 42 <https://www.valmikiramayana.net/utf8/sundara/sarga22/sundara_22_frame.htm> accessed 28 August 2024; See Annex A4.

⁶⁴ Bradley (n 46) 36-37.

⁶⁵ Mahinda Deegalle, 'Norms of war in Theravada Buddhism' in Vesselin Popovski, Gregory M. Reichberg and Nicholas Turner (eds) *World Religions and Norms of War* (United Nations University Press 2009) 74.

⁶⁶ Daniel Ratheisera and Sunil Kariyakarawana, 'The Paradox of the Buddhist Soldier' (2021) 22 *Routledge Taylor & Francis Group*, 102, 106-110.

⁶⁷ Buddhaghosa, 'Five Precepts of Buddhism Explained' (*Tricycle*) <https://tricycle.org/magazine/the-five-precepts/> accessed 28 August 2024.

⁶⁸ Winton Higgins, 'Buddhist Sexual Ethics' (*BuddhaNet's Magazine Articles*) https://www.buddhanet.net/winton_s.htm accessed 29 August 2024

which a woman is not “sexually taboo” to the man is not included within the third precept.⁶⁹ This implies it covers all the cases, except marital rape.

Vajjians were considered to be undefeatable during the war because they practiced seven conditions of welfare taught to them by Buddha. One of which was not to forcibly abduct others’ wives and daughters, coercing them to live with them⁷⁰. Thus, the conversation of Buddha with Ānanda, recorded in Mahāparinibbāna Sutta, lays down the code of conduct of “not abducting women and making them live with them by force”, which prevents decline. This adherence to ethical principles made Vajjians invincible in war, demonstrating the importance of maintaining moral conduct in conflict situations.

One scholar very succinctly targeted the very reason behind conflict-related sexual violence via Buddhist ideals. As it is the gender constructs and the feeling of superiority, dominance and masculinity that perpetuate conflict-related sexual violence⁷¹, it has been advised to take recourse to the Buddhist doctrine of *anattā* to remove these gendered constructs. This doctrine coupled with the practice of meditation (which both Theravāda and Mahāyāna Buddhism strongly propose) sheer away the perception of “powerful self” or “I as powerful” amongst men, thereby abstaining them from indulging in sexual violence against women of a different community, caste, race or group during armed conflicts.⁷² Moreover, the feelings of hatred, dominance and lust can be overcome by the Buddhist practices of *mettā* (loving-kindness) and *Abhaya-dāna* (gift of fearlessness).⁷³ Another “remedial nature” of Buddhism against conflict-related sexual violence can be culled out from the *Saccavibhaṅga Sutta*. Answering the question, “what is right action?”, the text states, “*Abstaining from taking life, from stealing, and from sexual misconduct: This is called right action*”.⁷⁴ Similarly, one of the five precepts under Pañcasikkhāpadasutta—Bhikkhu Sujato instructs to refrain from

⁶⁹ Ven. Pandita, ‘Sexual Misconduct in Early Buddhist Ethics: A New Approach’ (2019) 26 Journal of Buddhist Ethics, 151, 158.

⁷⁰ Popovski (n 65) 64.

⁷¹ See e.g., Gaggioli (n 10) 504.

⁷² Samarakoon (n 25) 348-352; See Annex B.

⁷³ Andrew Bartles-Smith et al, (n 25) 300.

⁷⁴ Saccavibhaṅga Sutta (An Analysis of the Truths) (MN 141), <<https://www.dhammadata.org/suttas/MN/MN141.html>> accessed 28 August 2024.

sexual misconduct.⁷⁵ It “explicitly forbids adultery, rape, or sex with someone who is engaged to another, imprisoned, or ordained”.⁷⁶

These remedies under Buddhism directly aim at healing the roots that make people indulge in sexual violence. This together with profound teachings of abstaining from such misconduct strengthens the argument that Buddhist ethics prohibit rape and sexual violence under any circumstance.

Although Hindu texts provide a fair glimpse into the idea that under Hinduism, sexual violence against women is prohibited during both peace and war times, it is also true that most of the religious texts examined above do not directly address the context of war. Therefore, it is pertinent to raise the question at this stage of whether these texts qualify as the “dictates of the public conscience” for situations of armed conflicts from the perspective of IHL. For this, it is appropriate to ask the question of whether sexual violence against women becomes a lesser evil or even slightly acceptable if committed during wartime. The fact that most of the above teachings do not explicitly denote that the conduct is equally applicable during wartime does not imply that they do not. The prohibition is so strict and unacceptable and applies to the “nature” of acts of sexual violence. Sexual violence or sexual misconduct fundamentally contradicts the key teachings of both Hinduism and Buddhism, making the prohibition absolute and universally applicable.

V. REALITY CHECK

While religion undeniably plays a significant role in South Asian countries, adherence to true religious teachings is less convincing in practice. The harnessing of the “dictates of public conscience” from Hinduism and Buddhism remains incomplete without assessing whether the teachings discussed earlier are actually followed on the battlefield. This reality check examines contemporary conflicts in South Asia to explore this further.

Moral ethics forgotten during the Sri Lankan civil war

⁷⁵ Pañcasikkhāpadasutta—Bhikkhu Sujato (The Five Precepts) <<https://suttacentral.net/sn14.25/en/sujato?lang=en&layout=plain&reference=none¬es=asterisk&highlight=false&script=latin>> accessed 28 August 2024; See Annex D.

⁷⁶ The Third Precept: Refrain from Sexual Misconduct, <<https://tricycle.org/beginners/decks/precepts/?continue=1>> accessed on 12 August 2024.

The Sri Lankan civil war, which lasted from 1983 to 2009 was marked by widespread human rights abuses, including sexual violence against women, particularly those belonging to the Tamil minority. Sri Lanka, being a Buddhist majority nation, these principles were grossly violated, particularly in the context of sexual violence against women. Reports from various human rights organisations, including Amnesty International⁷⁷ and Human Rights Watch⁷⁸, have documented numerous cases of sexual violence perpetrated by government forces against Tamil women who were suspected of being collaborators with the Liberation Tigers of Tamil Eelam (LTTE). These acts of violence starkly contrast with the Buddhist precept of refraining from sexual misconduct, demonstrating a grave violation of ethical norms that are supposed to guide behaviour, even in times of conflict.

One particularly harrowing account involves a Tamil Hindu woman married to a Sinhalese Buddhist man, who demanded that she convert to Buddhism and threatened to kill their daughter if she did not comply. When she reported this abuse to the police, she received no support, highlighting the systemic failure to protect vulnerable women during the conflict. This case is illustrative of the additional vulnerability faced by religious minority women and girls during the war.⁷⁹ The threat of sexual violence and the lack of support reveal a deep-seated violation of Buddhist ethical teachings. Further evidence of the violation of Buddhist principles is found in the systematic use of sexual violence against Tamil women by government forces. Research indicates that half of all Tamils who assisted rebel groups or had family members who did were subjected to sexual assault during the war.⁸⁰ This widespread use of sexual violence as a tool to dominate and intimidate directly contravenes the Buddhist precept against sexual misconduct and the doctrine of *anattā*.

The psychological and physical trauma inflicted on these women reflects how far the actions of the perpetrators were from the ethical teachings of Buddhism. The silence and reluctance of victims to report these crimes, due to fear of reprisal and violence, further underscore the failure of the state to uphold the moral principles that are central to Buddhist teachings. These incidents, often high-profile and attracting the attention of the international community,

⁷⁷ Amnesty International, 'Sri Lanka: Rape in custody' (*Amnesty International* 28 January 2002) <<https://www.amnesty.org/en/documents/asa37/001/2002/en/>> accessed 28 August 2024.

⁷⁸ Human Rights Watch, 'Sri Lanka: Rape of Tamil Detainees Politically Motivated Sexual Assaults in Custody Continue Since Conflict' (*Human Rights Watch*, 26 February 2013), <<https://www.hrw.org/news/2013/02/26/sri-lanka-rape-tamil-detainees>> accessed 28 August 2024.

⁷⁹ UN General Assembly 'Report of the Special Rapporteur on Freedom of Religion or Belief' (25 August 2020) UN Doc A/HRC/43/48/Add.2, para 47.

⁸⁰ Richard Traunmüller, Sara Kijewski, and Markus Freitag, 'The Silent Victims of Sexual Violence during War: Evidence from a List Experiment in Sri Lanka' (2019) 63 *Journal of Conflict Resolution* 2015.

reflect the severe breaches of the principle of consent and go against the principles of *mettā* and *abhaya-dāna* under Buddhist ethics. The concept of "rape by consent" where the consent of women is manipulated or coerced further illustrates the moral degradation that occurred during the war.⁸¹ The grooming of young female soldiers in the LTTE for future marriages, often under coercive circumstances, represents sexual misconduct that violates Buddhist teachings. These forced marriages, which some might inaccurately view as consensual, are in reality a continuation of the cycle of sexual violence and exploitation, violating the core Buddhist principles of respect, autonomy, and equality. The war also accounted for the numerous violations of the Buddhist principle of refraining from sexual misconduct. The manipulation of the consent and the failure to protect vulnerable women severely violated the Buddhist principles with the systematic use of sexual violence. These actions highlighted moral failure in a society where Buddhism plays a central role in shaping ethical behaviour.

The 2019 Report by the Special Rapporteur is crucial in understanding the influence of religious leaders during such times. In 2017, incidents of violence instigated by Buddhist monks were reported. For example, a Masjid was attacked in anti-Muslim protests by mobs which according to reports were led by the Buddhist monks.⁸² Similarly, clergy and church members were attacked and church was desecrated and Hindu festivities were also being interfered with.⁸³ This behaviour completely disregarded the Buddhist principle of non-violence.

Highly unethical conduct against women during the Myanmar NIAC

The Myanmar NIAC, particularly the brutal campaign against the Rohingya people in August 2017 and in continuation till now, is an example worthy of discussion as it highlights how sexual violence has been employed as a weapon of war in a nation with a majority Buddhist population. Apart from severe ethnic and religious hatred flourishing in the country, sexual violence was rampant and being used to assert dominance and control over the Rohingya, a Muslim minority group.

In August 2017, Myanmar's security forces launched a violent campaign that resulted in the widespread deaths of Rohingya people and forced the masses to flee across the border into

⁸¹ Florence Carrot, 'Sexual grooming in armed forces as war crime; The practices of the Liberation Tigers of the Tamil Eelam against female, pre-pubescent Soldiers' (Master's dissertation, Queen's University of Belfast) 73-74.

⁸² UNGA 'Report of the Special Rapporteur on Freedom of Religion or Belief' (n 79) para 28.

⁸³ UNGA 'Report of the Special Rapporteur on Freedom of Religion or Belief' (n 79) para 36.

Bangladesh. For the current research, it is important to highlight that the campaigns against Rohingya were also led by radical Buddhist monks, who played a critical role in this process, calling themselves the “protector” of Buddhist women. Utilising social media and other platforms, these monks propagated the narrative of an "endangered" Buddhism, threatened by Muslim "overpopulation" and high birth rates, further fuelling the conflict.⁸⁴

This conflict and the propaganda of the military junta justified sexual violence. Rohingya men were portrayed as violent sexual predators, supposedly targeting "defenseless" Buddhist women to convert them to Islam and use them for breeding purposes and hence the same was subsequently carried out against Rohingya women.⁸⁵ Despite the lack of direct evidence showing explicit orders from commanders, sexual violence was carried out against the Rohingya. The denial of Rohingya citizenship, calling them “outsiders” or “intruders” provided a justification for using sexual violence. The context of ethnic cleansing, coupled with the effective control that commanders had over their forces, suggests that sexual violence was a deliberate strategy. The military’s distinct pattern of sexual violence against the Rohingya, which included acts aimed at destroying reproductive capacity, mass rape during massacres and forced displacement, indicates a systematic approach to using sexual violence as a weapon. This long-standing impunity for and ongoing tolerance of sexual violence during the CoH highlights the inadequacy of the current IHL framework. The lack of accountability for these crimes has allowed sexual violence to become a normalised concept of the conflict.⁸⁶

The gendered nature of the violence against the Rohingya reflects broader patterns in how sexual violence is used in conflict settings. In Myanmar, these acts were not random or isolated but were part of a systematic effort to destroy the Rohingya community, both physically and psychologically. The use of rape and other forms of sexual violence had multiple purposes: it was a means of terrorising the population, asserting ethnic and religious dominance, and disrupting the social fabric of the Rohingya community. This violence also had long-term consequences for the survivors, many of whom were left with deep psychological scars, stigmatised within their communities, and unable to marry or rebuild their lives due to the shame associated with sexual violence, was a direct attack on the future

⁸⁴ Mohammad Musfequs Salehin, *Gendered Vulnerabilities and Violence in Forced Migration: The Rohingya from Myanmar* (Palgrave Macmillan 2024) 52; Also see, UNHRC, UN Report on Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts (n 26), para 242-244.

⁸⁵ Ibid 94.

⁸⁶ UNHRC, UN Report on Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts (n 26) para 230-233.

of the Rohingya people, aimed at eliminating their presence from Myanmar altogether. Moreover, according to reports, the rape and gang rapes against Rohingya were more prevalent than against Rakhine women.⁸⁷ This again shows severe disregard to the Buddhist ethics of refraining from sexual misconduct, compassion and kindness that Buddha always taught.

In a Buddhist-majority country where religious teachings emphasise non-violence and compassion, the use of sexual violence as a tool of ethnic cleansing highlights the moral failings of those who carried out and condoned these atrocities. However, it should also be noted that some Buddhist monks organised non-violent protests against the human rights violations by the junta in Myanmar⁸⁸ and some others in community groups facilitated donation drives to assist people in need⁸⁹. The role of religious leaders during conflicts is crucial, as they not only discourage violent acts but also aid those in distress, reinforcing the ethical teachings that should guide behaviour, even in the darkest times.

Sexual violence by the Hindu Nationalists

Although the Indian government has long denied the existence of a NIAC within its borders⁹⁰, debates and claims to the contrary persist, particularly in relation to the violence in Kashmir and North-Eastern India, thereby denying its responsibility under the UN Resolution 1325⁹¹.

In Kashmir, the widespread sexual abuse of women, including by security forces, has been documented, with such crimes often going unpunished. The conflict has left many women economically vulnerable, particularly widows who have lost their husbands or sons in the violence.⁹² This is in sheer disregard to the Hindu ethics that prohibit rape and sexual violence against women.

⁸⁷ UNHRC, UN Report on Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts (n 26) Para 100-105; Also see, Mayesha Alam and Elisabeth Jean Wood, 'Ideology and the Implicit Authorization of Violence as Policy: The Myanmar Military's Conflict-Related Sexual Violence against the Rohingya' (2022) 7(2) Journal of Global Security Studies 1, 6.

⁸⁸ Popovski (n 65) 19-20.

⁸⁹ Human Rights Council, 'Detailed Findings of the Independent International Fact-Finding Mission on Myanmar' (16 September 2019) UN Doc A/HRC/42/CRP.5, para 405.

⁹⁰ Sadhana Mishra, 'Women and Armed Conflict: A Focus on North-East India' (2015) 76 The Indian Journal of Political Science 957, 958.

⁹¹ UN Resolution 1325 (n 20).

⁹² Pooja Bakshi, 'Sexual Violence in Conflict Zones and State Responses in India' (TOAEP 2016) <<https://www.toaep.org/pbs-pdf/53-bakshi>> accessed 28 August 2024.

UN Human Rights Committee has also raised alarms in its recent findings on widespread and severe human rights violations including sexual violence in areas such as districts in Manipur, Jammu and Kashmir and Assam.⁹³

VI. THE WAY FORWARD

The fact that religious notions are mostly attacked for perpetuating violence, patriarchy and hatred is not hidden. Therefore, the question of whether religious doctrines must be followed is also not new.

To address this question of reliability, there could be no better example than that of Hinduism which is often targeted for flourishing patriarchal values in Indian society. However, if one delves deeper into the original religious texts, one will find the “independent feminine theology”⁹⁴, symbolised by Kali and Durga. During pre-vedic times, “the richness in gender differences were elevated and celebrated, each one playing the part they can, keeping their own biological, psychological and emotional temperaments in mind”.⁹⁵ However, the time rusted this importance and granting of equal status (if not superior) to women, which also led to the emergence of Buddhism in which Buddha encouraged a society equal to both men and women⁹⁶. This is a distinct example of how religions have been manipulated to propagate violence and conflicts.

Controversies will always exist when it comes to rights and religions, but this should never justify dismissing the original texts, as they undoubtedly mirror society's conscience. A thorough study of historical sources and natural law can be an invaluable tool to combat issues such as the one highlighted in this work. Therefore, rather than blindly attacking the reliability of religious sources, it is crucial to emphasise their correct interpretations to make them applicable to the dynamics of war and the shortcomings of the IHL framework. It has

⁹³ OHCHR, ‘UN Human Rights Committee Publishes Findings on Croatia, Honduras, India, Maldives’ (OHCHR, 25 July 2024) <<https://www.ohchr.org/en/press-releases/2024/07/un-human-rights-committee-publishes-findings-croatia-honduras-india-maldives>> accessed 30 August 2024.

⁹⁴ Arvind Sharma, *Classical Hindu Thought: An Introduction* (Oxford University Press, 2001) 4.

⁹⁵ Naisha Didwania and Maya Novak-Herzog, ‘The Potential for Liberation Feminism in Hindu Practices and its Patriarchal Origins’ (2021) 10(2) *Journal of Student Research*, 1, 15.

⁹⁶ See e.g., Arpita Mitra, ‘Gender Equality and Sustainable Society: A Buddhist View for Modern World’ in Most Ven. Dr. Thich Thien Nhon and Most Ven. Prof. Brahmapundit (eds) *Buddhist Approach to Global Leadership and Shared Responsibilities for Sustainable Societies* (Religion Publisher, 2019). ; Sitthiporn Khejoi et al, ‘Buddhism: The Reason for the Equality of Gender’ (2020) 11 *Journal of International Buddhist Studies*, 25, 29-31.

also been said that “sensitivity to local context and culture is crucial to understanding and responding to the effects of conflicts”⁹⁷, and religion plays a significant role in this regard.

Furthermore, addressing the unique challenges posed by conflicts in different parts of the world requires an in-depth analysis and a deeper awareness of the core values inherent in these communities. This approach encourages the invocation of the "dictates of the public conscience," which genuinely resonate and influence the conscience of that particular community. Moreover, this linking of religion with resolving the issue of sexual violence against women is not new. Various studies have also been explored to discuss how religious ethics confront sexual violence⁹⁸ and ICRC’s work with religious circles also aims to enhance the “effectiveness of humanitarian action”⁹⁹.

Apart from the ICRC, the UN has also recognised this need of combating violence and conflicts with the study of correct interpretations of religions and dialogue. Faith4toolkit¹⁰⁰ is one initiative creating awareness about how all religions, if interpreted, correctly are the sources of utmost peace and paths of wisdom. In a world where gender bias and discrimination persist, particularly in humanitarian settings, the intersection of faith and human rights is a powerful tool for promoting equality and justice. The "Faith for Rights" framework, which comprises various commitments by religious leaders and institutions, plays a crucial role in addressing and eliminating gender bias within religious contexts. By revisiting and reforming religious interpretations, defending minority rights, denouncing hate speech, and leveraging the moral authority of religion, these commitments work collectively to create an environment of equality and respect for all genders.

One of the core commitments of the "Faith for Rights" framework is the pledge to ensure non-discrimination and gender equality by revisiting religious understandings that perpetuate harmful stereotypes or condone gender-based violence. This commitment recognises that certain interpretations of religious texts and teachings have historically contributed to the marginalisation and oppression of women and girls. By pledging to reexamine these

⁹⁷ International Committee of the Red Cross, Addressing the Needs of Women Affected by Armed Conflict: An ICRC Guidance Document (n) 10.

⁹⁸ Elisabet Le Roux, The role of African Christian churches in dealing with sexual violence against women : the case of the Democratic Republic of Congo, Rwanda and Liberia (PhD Dissertation, Faculty of Arts and Social Sciences at Stellenbosch University); Iffatin Nur, ‘Islamic Law On Gender Based Sexual Violence’ (2013) 13 Islamic Law on Gender Based Violence.

⁹⁹ International Committee of the Red Cross, Religion and Humanitarian Principles, <<https://blogs.icrc.org/religion-humanitarianprinciples/about/>> accessed on 28 August 2024.

¹⁰⁰ Faith for Rights Toolkit (Office of the High Commissioner for Human Rights 2019) <<https://www.ohchr.org/sites/default/files/Documents/Press/faith4rights-toolkit.pdf>> accessed 28 August 2024.

interpretations, religious leaders and communities can challenge and change the narratives that have allowed gender inequality to persist. This commitment is particularly important in humanitarian settings, where women and girls are often disproportionately affected by conflict, displacement, and poverty. Harmful practices such as FGM, child marriages, and gender-based violence are often justified using religious or cultural arguments. By actively working to reinterpret these teachings, religious leaders can play a critical role in protecting women and girls from these practices and ensuring that their rights are upheld.¹⁰¹

The sixth commitment of the "Faith for Rights" framework focuses on standing up for the rights of all persons belonging to minorities, including their freedom of religion or belief and their right to participate equally in all aspects of life. In humanitarian settings, minority women and girls experience unique vulnerabilities, not only due to their gender but also because of their marginalised position within society.¹⁰²

The seventh commitment within the "Faith for Rights" framework emphasises the responsibility of religious leaders to publicly denounce all forms of advocacy that incite violence, discrimination, or hostility, especially when such advocacy is conducted in the name of religion. In many cases, religious justifications have been used to perpetuate harmful gender norms and practices. The example of Buddhist monks encouraging violence in the NIAC in Myanmar is one prominent example that highlights the importance of this commitment.¹⁰³

The sixteenth commitment of the "Faith for Rights" framework calls on religious leaders to leverage the spiritual and moral authority of their faiths to strengthen the protection of universal human rights. This includes developing preventative strategies that are adapted to local contexts and supported by relevant United Nations entities. This commitment highlights the potential for religious leaders to be agents of change by using their influence to promote justice, equality, and the dignity of all people, regardless of gender. This is also one way of harnessing the "dictates of the public conscience" to alleviate the suffering during war times and the current research work presents one way of doing it. Where the prohibitions under the

¹⁰¹ Faith for Rights Toolkit, Commitment V (n 100) 31-36.

¹⁰² Faith for Rights Toolkit, Commitment VI (n 100) 37-42.

¹⁰³ Faith for Rights Toolkit Commitment VII (n 100) 43-47.

religions are so absolute and strict that they become the spirit of the religions, these can be used to fill the gaps.¹⁰⁴

UN Resolution 1829 of 2008 stressed how sexual violence when used as a tactic of war needs to be addressed with, amongst other things, dialogues from proper institutions and women.¹⁰⁵ Moreover, UN Resolution 1888 has also reflected on this issue and called to address it by encouraging the adoption of a “holistic national approach”¹⁰⁶, coordinating “domestic and international efforts and resources”¹⁰⁷, etc. It also highlights the role of religious leaders who can play their part by “sensitizing communities on sexual violence to avoid marginalization and stigmatization of victims, to assist with their social reintegration, and to combat a culture of impunity for these crimes”.¹⁰⁸

In the words of the Sri Lankan lawyer, Weeramantry, *“If, as a growing body of scholarship indicates, humanitarian law is in need of a fresh approach the teachings contained in the revered texts of the great religions are a powerful source of inspiration, and the Buddhist scriptures can be brought into these discussions for stressing the importance of humanitarian conduct during military action”*.¹⁰⁹

Therefore, this discourse provides an attempt to demonstrate that the “dictates of the public conscience” can be harnessed from the religious sources of Hinduism and Buddhism. It offers a twofold solution to addressing the issue of sexual violence against women during CoH. First, they can be utilised in making the prohibition against such violence absolute and strict, addressing concerns about the current IHL framework. Second, the notion of “public conscience” can be employed to enhance the enforcement of IHL on the ground. By engaging entities like the United Nations, ICRC, and both international and domestic institutions, as well as religious leaders, the “dictates of the public conscience” can be mobilised to challenge dominance and lust and establish a moral standard aimed at reducing the suffering during CoH. This work proposes a pathway by which religious prohibitions can become the ethical core of IHL, serving to bridge the gaps both in its insufficiency and enforcement and making the framework more robust in protecting women during CoH.

¹⁰⁴ Faith for Rights Toolkit, Commitment XVI (n 100) 75-81.

¹⁰⁵ UN Security Council, ‘Resolution 1820 (2008)’ (19 June 2008) UN Doc S/RES/1820 (2008), 1-2

¹⁰⁶ UN Security Council, ‘Resolution 1888 (2009)’ (30 September 2009) UN Doc S/RES/1888 (2009) para 8b.

¹⁰⁷ Ibid para 8c.

¹⁰⁸ Ibid para 15.

¹⁰⁹ C.G. Weeramantry, ‘Buddhism and Humanitarian Law’ in Mani (n 54) 3.

ANNEXES

Annex A: Ramayana

Source: Srimad Valmiki Ramayana, https://www.valmikiramayan.net/utf8/vr_index.htm

A1. Book VI : Yuddha Kanda - Book Of War; Chapter [Sarga] 13, Verse 14

अद्यप्रभृति यामन्याम् बलान्नारीम् गमिष्यसि ।

तदा ते शतधा मुर्धा फलिष्यति न संशयः ॥ ६-१३-१४

14. adya prabhR^ti = from today onwards; gamishhyasi = if you revel with ; yaam anyaam = any other; naariim = woman; balaan = forcibly; tadaa = then; te = your; muurthaa = head; phalishhyati = will break asunder; shatadhaa = into hundred (pieces); na samshayaH = there is no doubt."

"From today onwards, if you revel with any other woman forcibly, your head then undoubtedly will break asunder into a hundred pieces."¹¹⁰

A2. Book VI : Yuddha Kanda - Book Of War Chapter [Sarga] 103, Verses 11, 12, 13

मम भार्या जनस्थानादज्ञानाद्राक्षसाधम ।

हता ते विवशा यस्मात्तस्मात्त्वं नासि वीर्यवान् ॥ ६-१०३-११

11. raakShasaadhama = O the worst of demons!; yasmaat = since; mama bhaaryaa = my wife; hR^itaa = was taken away; te = by you; janasthaanaat = from Janasthana; vivashaa = helpless as she was; ajNaanaat = when I was unaware; tasmaat = hence; tvam = you; naasi = are not; viiryavaan = a person of prowess.

"O the worst of demons! Since you took away my helpless wife without my notice from Janasthana, hence you are not a person of prowess."

मया विरहितान् दीनान् वर्तमानां महावने ।

वैदेहीं प्रसभन् हत्वा शूरोअहमिति मन्यसे ॥ ६-१०३-१२

12. hR^itvaa = having taken away; prasabham = by force; diinaam = the miserable; vaidehiim = Seetha; vartamaanaam = while she was staying; mahaavane = in the great forest; virahitaam = away from me; manyase = am a champion."

¹¹⁰ Book VI : Yuddha Kanda - Book Of War; Chapter [Sarga] 13

"Having taken away by force the miserable Seetha while she was staying in the forest away from me, you think: ❖I am a champion'."

स्त्रीषु शूर विनाथासु परदाराभिमर्शके ।

कृत्वा कापुरुषन् कर्म शूरोअहमिति मन्यसे ॥ ६-१०३-१३

13. kR^itvaa = having done; karma = an act; kaapuruSham = of cowardly persons; paradaaraabhimarshaka = of laying your hands on another's wife; shuura = posing as a hero; striiShu = in relation to women; vinaathaasu = without a protector; manyase = you think; iti = that; aham = I; shuuraH = am a champion.

"Having done an act of cowardly persons of laying your hands on another's wife, posing as a hero in relation to women without a protector, you think: "I am a champion'."

A3. Book VI : Yuddha Kanda - Book Of War Chapter [Sarga] 87, Verses 22 and 23

परस्वहरणे युक्तं परदाराभिमर्शम् ॥ ८७-६-२२

त्याज्यमाहुर्दुरात्मानं वेश्म प्रज्वलितं यथा ।

22. aahuH = (the wise men) say that duraatmanam = an evil-natured fellow; yuktam = who is intent; para svaharaNe = on taking away other's property; paradaaraabhimarshakm = and lustfully touches another's wife; tyaaajyam = is worth shunning; prajvalitam veshmayathaa = as one abandons a house in flames.

"The wise men say that an evil-natured fellow, who is intent on taking away other's property and lustfully touches another's wife, is worth shunning, as one abandons a house in flames."¹¹¹

परस्वानां च हरणं परदाराभिमर्शनम् ॥ ८७-६-२३

सुहृदामतिशङ्कां च त्रयो दोषाः क्षयावहाः ।

23. trayaH = three; doShaaH = faults; kShayaavahaaH = produce destruction; parasvaanaamharaNam = taking away other's property; para daaraabhi marshanam = lustfully touching another's wife; suhR^idaam atishaN^kaacha = and excessive distrust with one's friends.

"Three faults produce destruction. Taking away other's property, lustfully touching another's wife and excessive distrust with one's friends."¹¹²

¹¹¹ Book VI : Yuddha Kanda - Book Of War Chapter [Sarga] 87

A4. Book V : Sundara Kanda - Book Of Beauty Chapter [Sarga] 22, Verse 42

अकामां कामयानस्य शरीरमुपतप्यते ॥ ५-२२-४२

इच्छन्तीं कामयानस्य प्रीतिर्भवति शोभना ।

42. shariiram = the body; kaamayaanasya = of one who desires; akaamaam = (a woman) without desire; upatapyate = suffers pain; shobhanaa = good; priitiH = happiness; bhavati = will occur; kaamayaanasya = to one who loves; icchantiim = (a woman) who desires (him).

"The body of one who desires a woman without desire suffers pain. Good happiness will occur to one who loves a woman who desires him."

A5. Book IV : Kishkindha Kanda - The Empire of Holy Monkeys Chapter [Sarga] 18 Verse 60

न संतापः त्वया कार्यम् एतत् अर्थम् प्लवंगम ।

न वयम् भवता चिंत्या न अपि आत्मा हरिसत्तम ।

वयम् भवत् विशेषेण धर्मतः कृत निश्चयाः ॥ ४-१८-६०

60. plavan gama = oh, fly-jumper; etat artham = for this, reason; tvayaa sataapaH na kaaryaH = by you, remorse, not, doable; hari sattama = oh, monkey, the best; bhavataa vayam = by you, we [who are now left behind you, Tara, Angada and us]; na cintyaa = not, those that are to be bothered; aatmaa api na = about yourself, even, not [to be bothered]; vayam = we; bhavat = in your respect; visheSeNa = [anugraha buddhyaa] = considerateness; dharmataH = according to rightness; kR^itaH nishcayaaH = made, decision - we took a decision.

"Oh, fly-jumper, you need not be remorseful about your wife, son and others you leave behind, because we take care of them... nor you should bother about us thinking that we have arbitrarily eliminated you, nor necessarily bother about yourself for committing sins, as we took this decision according to rightness and considerateness in your respect. [4-18-60]

Annex B: Anattalakkhanasutta—Bhikkhu Sujato/ The Great Discourse on the Buddha's Extinguishment

Source:

<https://suttacentral.net/sn22.59/en/sujato?lang=en&layout=plain&reference=none¬es=asterisk&highlight=false&script=latin>

¹¹² Book VI : Yuddha Kanda - Book Of War Chapter [Sarga] 87

The Characteristic of Not-Self – Anatta

At one time the Buddha was staying near Varanasi, in the deer park at Isipatana. There the Buddha addressed the group of five mendicants:

“Mendicants!”

“Venerable sir,” they replied. The Buddha said this:

“Mendicants, form is not-self. For if form were self, it wouldn’t lead to affliction. And you could compel form: ‘May my form be like this! May it not be like that!’ But because form is not-self, it leads to affliction. And you can’t compel form: ‘May my form be like this! May it not be like that!’

Feeling is not-self ...

Perception is not-self ...

Choices are not-self ...

Consciousness is not-self. For if consciousness were self, it wouldn’t lead to affliction. And you could compel consciousness: ‘May my consciousness be like this! May it not be like that!’ But because consciousness is not-self, it leads to affliction. And you can’t compel consciousness: ‘May my consciousness be like this! May it not be like that!’

What do you think, mendicants? Is form permanent or impermanent?”

“Impermanent, sir.”

“But if it’s impermanent, is it suffering or happiness?”

“Suffering, sir.”

“But if it’s impermanent, suffering, and perishable, is it fit to be regarded thus: ‘This is mine, I am this, this is my self?’”

“No, sir.”

“Is feeling permanent or impermanent?” ...

“Is perception permanent or impermanent?” ...

“Are choices permanent or impermanent?” ...

“Is consciousness permanent or impermanent?”

“Impermanent, sir.”

“But if it’s impermanent, is it suffering or happiness?”

“Suffering, sir.”

“But if it’s impermanent, suffering, and perishable, is it fit to be regarded thus: ‘This is mine, I am this, this is my self?’”

“No, sir.”

“So you should truly see any kind of form at all—past, future, or present; internal or external; solid or subtle; inferior or superior; far or near: all form—with right understanding: ‘This is not mine, I am not this, this is not my self.’

Any kind of feeling at all ...

Any kind of perception at all ...

Any kind of choices at all ...

You should truly see any kind of consciousness at all—past, future, or present; internal or external; solid or subtle; inferior or superior; far or near: all consciousness—with right understanding: ‘This is not mine, I am not this, this is not my self.’

Seeing this, a learned noble disciple grows disillusioned with form, feeling, perception, choices, and consciousness. Being disillusioned, desire fades away. When desire fades away they’re freed. When they’re freed, they know they’re freed.

They understand: ‘Rebirth is ended, the spiritual journey has been completed, what had to be done has been done, there is nothing further for this place.’”

That is what the Buddha said. Satisfied, the group of five mendicants approved what the Buddha said. And while this discourse was being spoken, the minds of the group of five mendicants were freed from defilements by not grasping.

Annex C: Mahāparinibbānasutta/Principles That Prevent Decline

Source:

<https://suttacentral.net/dn16/en/sujato?lang=en&layout=plain&reference=none¬es=asterisk&highlight=false&script=latin>

Pali text: Mahāparinibbānasutta

Kinti te, ānanda, sutam, ‘vajjī yā tā kulitthiyo kulakumāriyo, tā na okkassa pasayha vāsentī’”ti?

“Sutam metaṃ, bhante: ‘vajjī yā tā kulitthiyo kulakumāriyo tā na okkassa pasayha vāsentī’”ti.

English version: Principles That Prevent Decline

Ānanda, have you heard that the Vajjis don’t forcibly abduct the women or girls of the clans and make them live with them?”

“I have heard that, sir.”

“As long as the Vajjis don’t forcibly abduct the women or girls of the clans and make them live with them, they can expect growth, not decline.

Annex D: Pañcasikkhāpadasutta/The Five Precepts

Source:

https://suttacentral.net/sn14.25/en/sujato?lang=en&layout=sidebyside&reference=none¬e_s=asterisk&highlight=false&script=latin

Pali text: Pañcasikkhāpadasutta

At Sāvattihī.

Sāvattiyam viharati.

“Dhātusova, bhikkhave, sattā saṃsandanti samenti.

Pāṇātipātino pāṇātipātīhi saddhim saṃsandanti samenti;

adinnādāyino adinnādāyīhi saddhim saṃsandanti samenti;

kāmesumicchācārino kāmesumicchācārīhi saddhim saṃsandanti samenti;

musāvādino musāvādīhi saddhim saṃsandanti samenti;

surāmerayamajjappamādaṭṭhāyino surāmerayamajjappamādaṭṭhāyīhi saddhim saṃsandanti samenti.

Pāṇātipātā paṭiviratā pāṇātipātā paṭiviratehi saddhim saṃsandanti samenti;

adinnādānā paṭiviratā adinnādānā paṭiviratehi saddhim saṃsandanti samenti;

kāmesumicchācārā paṭiviratā kāmesumicchācārā paṭiviratehi saddhim saṃsandanti samenti;

musāvādā paṭiviratā musāvādā paṭiviratehi saddhim saṃsandanti samenti;

English Version: The Five Precept

“Mendicants, sentient beings come together and converge because of an element:

those who kill living creatures,

those who steal ...

commit sexual misconduct ...

lie ...

consume alcoholic drinks that cause negligence ...

Those who refrain from killing living creatures ...

who refrain from stealing ...

who refrain from sexual misconduct ...

who refrain from lying ...

those who refrain from consuming alcoholic drinks that cause negligence with those who refrain from consuming alcoholic drinks that cause negligence.

BIBLIOGRAPHY

Table of Cases

Prosecutor v. Anto Furundžija, Trial Judgment [1998] International Criminal Tribunal for the former Yugoslavia, Trial Chamber, IT-95-17-1

Prosecutor v. Dragoljub Kunarac and Others, Trial Judgment [2001] International Criminal Tribunal for the former Yugoslavia, Trial Chamber, IT-96-23&23/1

The Prosecutor v. Kupreskic et al., Trial Judgment (2000) International Criminal Tribunal for the former Yugoslavia (ICTY), Trial Chamber, IT-95-16-T

Treaties

Geneva Conventions I-IV (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 3

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (adopted 8 June 1977, entered into force 7 December 1978) 1125 UNTS 609

Secondary Sources

Alam M and Wood E, 'Ideology and the Implicit Authorization of Violence as Policy: The Myanmar Military's Conflict-Related Sexual Violence against the Rohingya' (2022) 7 *Journal of Global Security Studies*

Amnesty International, 'Sri Lanka: Rape in custody' (*Amnesty International* 28 January 2002) <<https://www.amnesty.org/en/documents/asa37/001/2002/en/>> accessed 28 August 2024

Anwary A, 'Sexual violence against women as a weapon of Rohingya genocide in Myanmar' (2022) 26 *The International Journal of Human Rights*

Bakshi P, 'Sexual Violence in Conflict Zones and State Responses in India' (TOAEP 2016) <https://www.toaep.org/pbs-pdf/53-bakshi> accessed 28 August 2024

Balkaran R and Dorn A, 'Charting Hinduism's rules of armed conflict: Indian sacred texts and international humanitarian law' (2022) 104 *International Review of the Red Cross*

Balkaran R and Dorn A, 'Exploring Hindu ethics of warfare: The Purāṇas' (2024) *International Review of the Red Cross* 1; Manoj Kumar Sinha, 'Hinduism and international humanitarian law' (2005) 87 *International Review of the Red Cross*

Bañuelos Jesús, 'Are Dictates Of Public Conscience A Norm Of Jus Cogens In International Humanitarian Law?' (2022) 28(1) https://www.researchgate.net/publication/359944287_Are_the_dictates_of_public_conscience_a_norm_of_jus_cogens_in_international_humanitarian_law accessed on 28 August 2024

Bradley T, *Religion and Gender in the Developing World: Faith-Based Organisations and Feminism in India* (I.B. Tauris & Co Ltd 2011)

Buddhaghosa, 'Five Precepts of Buddhism Explained' (Tricycle) <https://tricycle.org/magazine/the-five-precepts/> accessed 28 August 2024.

Carrot F, 'Sexual grooming in armed forces as war crime; The practices of the Liberation Tigers of the Tamil Eelam against female, pre-pubescent Soldiers' (Master's dissertation, Queen's University of Belfast)

Cassese A, 'The Martens Clause: Half a loaf or Simply Pie in the Sky' (2000) 11 *European Journal of International Law*

Chinkin C, 'Gender and Armed Conflict' in Andrew Clapham and Paola Gaeta (eds), *The Oxford Handbook of International Law in Armed Conflict* (OUP 2014)

Collins, 'Dharma' <<https://www.collinsdictionary.com/dictionary/english/dharma>> accessed 28 August 2024.

Das R, '*Women in Manu's Philosophy*' (ABS Publications 1993)

Das V, 'Violence, Gender and Subjectivity' (2008) 37 *Annual Review of Anthropology*

Dasgupta S.N., *Hindu Mysticism* (first published 1927, Motilal Banarasidass 1987)

Deegalle M, 'Norms of war in Theravada Buddhism' in Vesselin Popovski, Gregory M. Reichberg and Nicholas Turner (eds) *World Religions and Norms of War* (United Nations University Press 2009)

Dhooge Lucien, 'The Equivalence of Religion and Conscience' 2017 31 *Notre Dame Journal of Law, Ethics & Public Policy*

Didwania N and Novak-Herzog M, 'The Potential for Liberation Feminism in Hindu Practices and its Patriarchal Origins' (2021) 10 *Journal of Student Research*

Evans T, 'At War with the Robots: Autonomous Weapon Systems and the Martens Clause' (2013) 41 *Hofstra Law Review*

Faith for Rights Toolkit (UN Office of the High Commissioner for Human Rights 2019) <https://www.ohchr.org/sites/default/files/Documents/Press/faith4rights-toolkit.pdf> accessed 28 August 2024

Gaggioli G, 'Sexual violence in armed conflicts: A violation of international humanitarian law and human rights law' (2014) 96 *International Review of the Red Cross*

Gais A, 'Thomas Hobbes and 'gently instilled' conscience' (2021) 47 <<https://doi.org/10.1080/01916599.2021.1894591>> accessed on 28 August 2024

Gardam J, 'Women and the Law of Armed Conflict: Why the Silence?' (2008) 46 *ICLQ*

Human Rights Council, UN Report on Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts (22 August 2019) UN Doc A/HRC/42/CRP.4

Human Rights Watch, 'Sri Lanka: Rape of Tamil Detainees Politically Motivated Sexual Assaults in Custody Continue since Conflict' (*Human Rights Watch*, 26 February 2013), <<https://www.hrw.org/news/2013/02/26/sri-lanka-rape-tamil-detainees>> accessed 28 August 2024

International Committee of the Red Cross and Inter-Parliamentary Union, 'International Humanitarian Law Handbook for Parliamentarians N° 25' <<https://www.icrc.org/en/publication/1090-respect-international-humanitarian-law>> accessed on 29 August 2024

International Committee of the Red Cross, Addressing the Needs of Women Affected by Armed Conflict: An ICRC Guidance Document (ICRC 2004) <<https://www.refworld.org/policy/legalguidance/icrc/2004/en/47248>> accessed 28 August 2024

International Committee of the Red Cross, 'Colombia, Constitutional Conformity with Protocol II' (ICRC Casebook, 2023) <<https://casebook.icrc.org/case-study/colombia-constitutional-conformity-protocol-ii>> accessed 28 August 2024

International Committee of the Red Cross, Religion and Humanitarian Principles, <https://blogs.icrc.org/religion-humanitarianprinciples/about/> accessed on 28 August 2024

International Law Commission, 'Report on the Work of its Forty-Sixth Session' (1 August 1994) UN Doc A/49/10 <https://legal.un.org/ilc/documentation/english/reports/a_49_10.pdf> accessed 28 August 2024

Khejoi S et al, 'Buddhism: The Reason for the Equality of Gender' (2020) 11(1) *Journal of International Buddhist Studies*

Krishna G, *Contributions to South Asian Studies I* (Oxford University Press 1979)

Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion, Dissenting Opinion of Judge Shahabuddeen) [1996] ICJ Rep 226, <<https://www.icj-cij.org/index.php/node/141841>> accessed 28 August 2024

May L, 'Hobbes, law, and public conscience' (2016) 19(1) *Critical Review of International Social and Political Philosophy*

Merriam-Webster, 'Dharma' <<https://www.merriam-webster.com/dictionary/dharma>> accessed 28 August 2024

Mitra A, 'Gender Equality and Sustainable Society: A Buddhist View for Modern World' in Most Ven. Dr. Thich Thien Nhon and Most Ven. Prof. Brahmapundit (eds) *Buddhist Approach to Global Leadership and Shared Responsibilities for Sustainable Societies* (Religion Publisher, 2019)

Mookherjee N, "'Occupying' the womb: Disrupted kinship futures and sovereign logics in sexual violence during wars' (2023) 43 *Critique of Anthropology*

Nirmal B.C., 'International Humanitarian Law in Ancient India' in V.S. Mani (ed), *Oxford Handbook of International Humanitarian Law in South Asia* (OUP 2007)

Nur I, 'Islamic Law On Gender Based Sexual Violence' (2013) 13 *Islamic Law on Gender Based Violence*

The Office of the High Commissioner for Human Rights, 'UN Human Rights Committee Publishes Findings on Croatia, Honduras, India, Maldives' (OHCHR, 25 July 2024) <https://www.ohchr.org/en/press-releases/2024/07/un-human-rights-committee-publishes-findings-croatia-honduras-india-maldives> accessed 30 August 2024

Oosterveld V, 'Feminist Debates On Civilian Women and International Humanitarian Law' (2009) 27 *Windsor YB Access Just*

Pañcasikkhāpadasutta—Bhikkhu Sujato (The Five Precepts) <<https://suttacentral.net/sn14.25/en/sujato?lang=en&layout=plain&reference=none¬es=as terisk&highlight=false&script=latin>> accessed 28 August 2024

Ratheisera D and Kariyakarawana S, 'The Paradox of the Buddhist Soldier' (2021) 22
Routledge Taylor & Francis Group

Roux E, The role of African Christian churches in dealing with sexual violence against women: the case of the Democratic Republic of Congo, Rwanda and Liberia (PhD Dissertation, Faculty of Arts and Social Sciences at Stellenbosch University)

Saccavibhaṅga Sutta (An Analysis of the Truths) (MN 141),
<<https://www.dhammadata.org/suttas/MN/MN141.html>> accessed 28 August 2024

Salehin M, Gendered Vulnerabilities and Violence in Forced Migration: The Rohingya from Myanmar (Palgrave Macmillan 2024)

Samarakoon C, 'Addressing The Causes Of Conflict-Related Sexual Violence With The Buddhist Doctrine Of Lack Of A Permanent Self And Meditation Training' in Andrew Bartles-Smith et al (eds), *Buddhism and International Humanitarian Law* (Routledge Taylor & Francis Group 2024)

Sassòli M, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare* (Edward Elgar Publishing Limited 2024)

Sharma A, *Classical Hindu Thought: An Introduction* (Oxford University Press, 2001) 4

Smith A et al., *Buddhism and International Humanitarian Law* (Taylor & Francis Group 2024)

Smith T, 'Challenges in identifying binding Martens Clause rules from the 'dictates of the public conscience' to protect the environment in non-international armed conflict' (2019) 10
Transnational Legal Theory

Srimad Valmiki Ramayana, Book IV: Kishkindha Kanda - The Empire of Holy Monkeys,
Chapter (Sarga) 18

<https://valmikiramayan.net/utf8/kish/sarga18/kishkindha_18_frame.htm> accessed 28 August 2024

Srimad Valmiki Ramayana, Book VI : Yuddha Kanda, Chapter [Sarga] 87, Verse 23

Srimad Valmiki Ramayana, Book VI: Yuddha Kanda - Book of War; Chapter [Sarga] 13, <https://www.valmikiramayan.net/utf8/yuddha/sarga13/yuddha_13_frame.htm> accessed 28 August 2024

Srimad Valmiki Ramayana, Book VI: Yuddha Kanda, Chapter [Sarga] 103, <https://www.valmikiramayan.net/utf8/yuddha/sarga103/yuddha_103_frame.htm> accessed 28 August 2024

Srimad Valmiki Ramayana, Book VI: Yuddha Kanda, Chapter [Sarga] 87, <https://www.valmikiramayan.net/utf8/yuddha/sarga87/yuddha_87_frame.htm> 28 August 2024

Srimad Valmiki Ramayana, Sundara Kanda - Book of Beauty, Chapter [Sarga] 22, <https://www.valmikiramayan.net/utf8/sundara/sarga22/sundara_22_frame.htm> accessed 28 August 2024

The Third Precept: Refrain from Sexual Misconduct, <<https://tricycle.org/beginners/decks/precepts/?continue=1>> accessed on 12 August 2024

Ticehurst R, The Martens Clause and the Laws of Armed Conflict, (1997) 37(317) International Review of the Red Cross

Traunmüller R, Kijewski S, and Freitag M, 'The Silent Victims of Sexual Violence during War: Evidence from a List Experiment in Sri Lanka' (2019) 63 Journal of Conflict Resolution

UN Documents for Protection of Civilians: Secretary-General's Reports, <https://www.securitycouncilreport.org/un_documents_type/secretary-generals-

[reports/?ctype=Protection%20of%20Civilians&cbtype=protection-of-civilians>](#) accessed 28 August 2024

UN General Assembly 'Report of the Special Rapporteur on Freedom of Religion or Belief' (25 August 2020) UN Doc A/HRC/43/48/Add.2

UN Human Rights Council, 'Detailed Findings of the Independent International Fact-Finding Mission on Myanmar' (16 September 2019) UN Doc A/HRC/42/CRP.5

UN Human Rights Council, UN Report on Sexual and gender-based violence in Myanmar and the gendered impact of its ethnic conflicts (22 August 2019) UN Doc A/HRC/42/CRP.4

UN Security Council, 'Resolution 1820 (2008)' (19 June 2008) UN Doc S/RES/1820 (2008)

UN Security Council, 'Resolution 1888 (2009)' (30 September 2009) UN Doc S/RES/1888 (2009)

UNGA, 'Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns' (28 August 2024) 29th Session UN Doc A/HRC/29/37

United Nations Security Council, 'Resolution 1325 (2000)' (31 October 2000) UN Doc S/RES/1325 (2000)

Veuthey M, 'Gender Based Violence and International Humanitarian Law: Steps to Improve the Protection of Women in War' in National Defense Institute (Portugal) (ed), *Gender Violence in Armed Conflicts* (National Defense Institute, Portugal 2013)

Veuthey M, 'Public Conscience in International Humanitarian Law Action' (2003) 22 Oxford University Press.