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Trends. Rape as Terrorism: Difficulties in Criminal Justice Adjudication

Editor

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IBPP has previously reported on difficulties in adjudicating alleged terrorism within a criminal justice system (November 1, 1996, 1(1)). In this initial article, the focus was on evaluating the alleged perpetrator's competency to stand trial--especially in a case involving terrorism perpetrated by a religious fanatic. The current article focuses on psychological complexities in successfully adjudicating allegations of terrorist rape--i.e., rape committed intentionally to achieve formal political objectives.

In The Hague, the ongoing ad hoc United Nations (U.N.) tribunal that was formed to adjudicate alleged crimes against humanity, war crimes, and genocide from the recent Bosnian political violence has found it difficult to complete proceedings in a rape case. The case revolves around the Bosnian Croat use of rape to drive Bosnian Muslims from an area in central Bosnia. Here rape would be conceived not as a common crime of sexuality and aggression but as a political tool of terror--to induce a psychological state leading to behaviors with political consequences. The difficulties include the following: (1) Does the defendant's legal representation have the right to receive all medical reports on the victim--stripping the latter of any vestige of confidentiality and risking further stigma and ostracization if the information leaks from the criminal justice proceedings? (2) Does the victim's psychological residua from rape--in this case typified by symptoms of post-traumatic stress disorder including memory dysfunction--as well as the many variables deleteriously affecting the reliability of eyewitness testimony preclude acceptance of the victim's testimony? (3) Are requirements that the victim repeat testimony at different levels of adjudication and in response to procedural errors of others a prescription to be--in essence--multiply raped? (4) Can rape be successfully adjudicated in the absence of confirming physical evidence? In the absence of an "impartial" observer of the alleged crime? (5) Does rape as a common accusation and allegation of hostile propaganda decrease accurate identification of rape cases? (6) In war, is rape more egregious a commission than killing in combat? Assassination of adversary leaders? Rape in a so-called peacetime context? (7) How is adjudication affected if the victim is also a combatant or a support cadre of a combatant? (8) Does the tribunal's process of using three judges as opposed to a larger number of jurors differentially favor the victim or the defendant? (9) Should establishers of a politico-military policy of rape be subject to the tribunal along with or instead of those who carry out or otherwise are present at rapes?

Psychological Issues--moral and ethical values concerning rape, social psychological variables contributing to rape, clinical sequelae of rape--permeate the above adjudication difficulties. Now that rape has been formally viewed as a politico-military tool--a strategy and tactic of terrorism--it behooves political psychologists to help manage and resolve adjudication difficulties in the service of substantive, procedural, distributive and other variants of justice. (See Erian, M., Lin, C., Patel, N., Neal, A., Geiselman, R.E. (1998). Juror verdicts as a function of victim and defendant attractiveness in sexual assault cases. *American Journal of Forensic Psychology*, 16, 25-40; Foley, L.A., & Pigott, M.A. (1997). Race, age and jury decisions in a civil rape trial. *American Journal of Forensic Psychology*, 15, 37-55; Simons, M. (July 29, 1998). Landmark Bosnia rape trial: A legal morass. *The New York Times*, <http://www.nytimes.com>; Terrorism and legal competence. (November 1, 1996). *IBPP*, 1(1); Young, S.A. (1995). Rape trauma syndrome in the military courts. *Bulletin of the American Academy of Psychiatry and the Law*, 23, 563-571.) (Keywords: Criminal Justice, Rape, Terrorism.)