

Unmasking Discriminatory Motive of Perpetrators of Sexual Violence through a Feminist Analysis

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Abstract:

This paper explores the overlooked concept of discriminatory motive in sexual violence crimes through the lens of feminist legal theory, international jurisprudence, and human rights law. While sexual violence is commonly prosecuted as a violation of a person's sexual integrity, this work argues that criminal justice systems should understand it as patriarchally motivated behavior rooted in systemic gender-based discrimination, influencing charging and conviction. Drawing on key legal cases such as *Tkheldze v. Georgia*, *A. and B. v. Georgia*, and *Prosecutor v. Kunarac*, the paper demonstrates that international courts have increasingly laid the groundwork for recognizing sexual violence not merely as interpersonal violence, but as a form of gender-based discrimination and inequality.

Through an analysis of international instruments such as CEDAW, European Court and the Istanbul Convention, as well as hate crime law frameworks from OSCE ODIHR, the paper offers a roadmap for identifying sex/gender-based discriminatory motive in sexual violence cases. It does so by examining bias indicators and situating the act within the broader context of inequality and structural discrimination. The paper argues that, despite limited jurisprudence, discriminatory motive in sexual violence should be understood in similar terms to other bias-motivated crimes and treated on par with homophobic or racist violence, given the role of patriarchal norms and structural inequality in perpetuating such acts.

The paper further highlights the need to recognize that perpetrators may act with multiple coexisting motives – without negating the discriminatory nature of the violence. It also addresses scholarly concerns about overextending motive in criminal trials, but argues that a nuanced, context-sensitive approach enhances justice and upholds survivor dignity and recognizes the essence of the crime.

Ultimately, the paper advocates for criminal justice policy reform and intersectional legal frameworks capable of recognizing discriminatory intent. By aligning legal interpretation with international standards and survivor-centered justice, it contributes to a more comprehensive and accountable legal response to sexual violence.