Violence against Women as Torture and Positive State Obligations to Prevent – How much Diligence is Due?

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Abstract

Violence against women committed in the private sphere (such as domestic abuse or rape) is a global phenomenon of pervasive prevalence. Feminists have analogised these forms of violence to torture and have criticised the state actor requirement contained in the definition of torture in human rights law, as it seemingly leads to an exclusion of privately inflicted suffering from the scope of protection. This thesis is concerned with examining the applicability of the torture definition to privately committed violence against women and discusses how these private acts can be attributed to states under human rights law. In particular, it examines the concept of “consent or acquiescence” (as contained in the definition of torture of the UN Convention against Torture) and the doctrine of “due diligence” (as developed in the jurisprudence of various human rights bodies) and explores the extent of positive state obligations to prevent harm by private actors, in particular violence against women.
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