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Analysing International Humanitarian Law with Special Reference to its Implementation in India***Yagya Bharadwaj****Amity Law School, Amity University Patna*

Contrary to popular belief, everything is not fair in love and war. While no specific rules or laws govern the field of love, there are customary laws and conventions that apply to times of war, specifically the International Humanitarian Law (IHL). In the current world scenario where, as one war between two countries temporarily settles, another one between two other countries erupts, it is important to understand the implications on the parties involved, and more importantly, the impact it has on the civilians. This paper seeks to discuss the concept of IHL and how its implementation affects those in war zones and conflict-ridden States. It also elaborates on the relationship between human rights law and humanitarian law. Further, the paper brings to light India's engagement with IHL and how well India has adopted its principles and integrated them to uphold human rights and save human lives.

1. International Humanitarian Law

International Humanitarian Law (IHL) is a set of rules that apply during wartime, and so it is also called 'the law of armed conflict' or 'the law of war'. It is aimed at the protection of those who are not part of armed conflicts. Such persons could be civilians or people who were involved in hostilities but are no longer taking part in them. The rules of IHL do not govern internal disturbances or general criminal acts, but only when there is an armed conflict.

There are certain principles of IHL like, distinction between civilians and combatants, prohibition on attack on *hors de combat* (those out of combat), prohibition on inflicting unnecessary suffering, necessity, and proportionality¹. These principles are meant to bring a humane structure to wars and armed conflicts. Thus, a clear distinction has to be made between those who are civilians and those who are part of the combat. Further, there is a prohibition on attacking those who are not part of the combat, and also on inflicting any unnecessary suffering during the war or the conflict. Additionally, the principle of necessity requires that only those means and methods may be resorted to which are necessary to achieve the legitimate objectives of the conflict.

The principle of proportionality, which is codified in Article 51(5)(b) of the 1977 Additional Protocol I, prohibits attacks which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated².

Even though wars and conflicts cannot be entirely stopped through IHL, these principles help to ensure that civilian lives are protected and no more suffering and harm is caused than is necessary and proportionate to the objectives of the armed conflict.

2.The Sources of IHL

The sources of IHL can be categorized into:

- i. Treaty Law, and
- ii. Customary Law

2.1 Treaty Law

Treaties are regarded as an important source of international law. A treaty is an agreement between sovereign nations that has binding effects on both parties. Under treaty law, four Geneva Conventions and their Additional Protocols protect people in war zones or armed conflict zones. The First Geneva Convention, the Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, aims at protecting the wounded and sick soldiers on land. The Second Geneva Convention, the Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea protects the wounded, sick and shipwrecked members of the forces at sea. The Third Geneva Convention applies to the Prisoners of War (POWs). It focuses on the rights of those individuals who are captured during wars, and emphasizes on giving them humane treatment. The Fourth Geneva Convention, known as the Convention relative to the Protection of Civilian Persons in Time of War, safeguards civilians from violence and discrimination during wartime.

In addition to these conventions, the two Additional Protocols- Additional Protocol I (relating to the victims of international armed conflicts) and Additional Protocol II (relating to the protection of victims of non-international armed conflict) are concerned with the protection of victims of both international and non-international armed conflicts.

2.2 Customary Law

Unlike treaties, customary law as a source of international law has developed through the international obligations arising from established international practices and not from formal agreements between sovereign nations³.

Customary law can be understood as general practices accepted by law⁴. Also called *opinio juris*, customary law has to be proved by showing state practice over a long period of time. When it comes to IHL, customary law helps in filling gaps left by treaty law, and in doing so, strengthens the protection provided by IHL to those who become victims of conflicts.

Both treaties and customary practices of international law are sources that give effect to international law, and also to international humanitarian law. Agreements and ratifications by sovereign nations and practices carried out by them build the foundation for a binding effect of

international law. All parties to an armed conflict, States and organized non-State armed groups alike, are bound by IHL through treaties or customary IHL. Moreover, rules of customary IHL apply to all the parties at all times, irrespective of the status of their ratification of IHL treaties⁵.

3. The Relationship between Humanitarian Law and Human Rights Law

Sometimes ‘human rights law’ and ‘humanitarian law’ are used interchangeably; however, the two terms do not mean the same thing, albeit they are closely connected. Human rights can be understood as those rights that are inherently available to all humans by virtue of their being human beings. On the other hand, as we have seen previously in this article, humanitarian law is a field of international law that applies during wars and armed conflicts in order to protect those who are not involved in the conflict, like civilians and *hors de combat*.

While both human rights law and IHL ultimately seek to protect human life and dignity, they do differ in their approach and application. IHL is applicable only during armed conflicts and has an extraterritorial reach accepted by the international community. The extraterritorial reach refers to the regulation of the conduct of two or more sovereign States involved in a war or armed conflict.

IHL seeks to protect lives on all sides of such conflict, and is not restricted to any one party to the conflict. For example, in the recent Israel-Iran conflict, or the Russia-Ukraine conflict, innocent lives were lost on both sides, and life as these people knew changed within a span of days. Even so, Israel’s attack on Iran is lawful due to the presence of an imminent threat to Israel’s sovereignty⁶. Similarly, Ukraine’s attacks were a result of self-defense against Russia. Despite this, there were civilian lives and properties destroyed, violating the principles of IHL.

When it comes to the application of human rights law, even though it is universally applicable, States exercise control over their territories and persons, deciding the extent of human rights that can actually be exercised by individuals⁷. Thus, the focus of IHL is wartime, and the primary focus of human rights law is peacetime. Also, the application of IHL goes beyond territories and such application is widely accepted, but the universally applicable human rights sometimes take a backseat if the State does not believe in them or restricts their applicability, for example, very recently, the Taliban authorities in Afghanistan have banned girls and women from attaining secondary and university education, and with that they have also restricted women’s right to work, assemble, and even their right to speech. Women in Afghanistan can no longer speak loudly in public, or show their faces in public⁸.

Human rights are the inherent rights that all individuals have since birth as a virtue of them being humans. These rights should not be taken away by another individual or the State, however under certain circumstances, some of these rights are sometimes restricted or taken away by the State following due process or procedure established by law. But, sometimes they are snatched without any reasonable basis or process. Such arbitrary action leads to disregard of human life. On the other hand, IHL, even though aimed at protecting human life, takes a different approach to its application. Its primary agenda remains protection of non-

combatants and civilians during wartime.

4. IHL: The Indian Chapter

India has always been at the forefront of efforts to safeguard human rights and ensure the protection of human lives. Since gaining independence, India has consistently ratified important IHL treaties and conventions, including the four Geneva Conventions of 1949 and also the Additional Protocols of 1977, which elaborate on the protection of civilian objects in armed conflict⁹. India's active participation in drafting these Additional Protocols and upholding its commitment to their principles through actions and accountability shows its sincere engagement with IHL.

Article 51 of the Constitution of India further emphasizes India's commitment to international law. The Article provides that the State shall endeavour to:

- (a) Promote international peace and security.
- (b) Maintain just and honourable relations between nations.
- (c) Foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and encourage the settlement of international disputes by arbitration¹⁰.

Also, Article 253 of the Constitution makes way for the Indian government to enact laws for the implementation of any treaty or agreement to which India is a party, or any decision taken in an international conference. Along with this, the Indian Armed Forces have adopted the principles of IHL into their training manuals and directives to ensure that the Indian soldiers are aware of the IHL principles and understand their own duty in upholding the principles in their conducts during conflicts. However, the implementation of IHL in India does come with its challenges, as there is still no universal acceptance of IHL, making its application difficult in conflicts. Further, there is also a lack of awareness and training regarding IHL principles. More can be done to embed humanitarian law in domestic laws and integrate it within the legal system of India by running awareness campaigns, making military training more efficient and effective with respect to IHL, collaborating with civil bodies and international organizations on how to make IHL compliance more robust etc.

Conclusions

In a world where wars and armed conflicts are more common than we would like them to be, and where violence takes away a lot from our lives, humanitarian law serves as that safeguard that protects civilians and *hors de combat*. The principles of IHL are aimed at alleviating the ill-effects of such times and ensuring that no more harm is done than necessary to achieve legitimate military objectives. The relationship between human rights law and IHL, considering both their similarities and differences, helps us understand the two concepts holistically and also clarify the scope and extent of their applications. Both concepts are like two sides of a coin; one applies only during armed conflicts, while the other applies during peacetime as well. Needless to say, both hold a lot of value and are necessary for the protection of human lives. India's

engagement with IHL can be well described through India's consistent efforts and steps to uphold international law and integrate the principles of IHL in its military directives, and through the provisions of the Indian Constitution. Having been part of multiple armed conflicts, it is crucial that India actively works to strengthen the protection IHL provides so that the rights of the people are safeguarded and human dignity is given priority during conflicts.

Wars may not always be avoided, but the destruction they bring can be limited, and human lives can be saved through the proper implementation of IHL.

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