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Research Article

Protection of Civilians in War: The Role of International Humanitarian Law

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Abstract. International Humanitarian Law is a compilation of laws aimed at limiting the consequences of armed conflict for humanitarian purposes. It safeguards those that are not or are no longer involved in fighting and limits the arms and tactics of warfare. It also protects people's lives, welfare, and dignity, prohibits torture and inhuman treatment, prescribes fundamental protections for those facing criminal charges, prohibits prejudices, establishes guidelines for women's and children's safety, and regulates facets of the right to food and health. This study, essentially, theoretical and academic, would focus onto bring about the role and importance of International Humanitarian Law in protection and establishing the rights of civilians during the strife and hostilities.

Keywords: Human Rights, Civilians, International Humanitarian Law, Armed conflict.

INTRODUCTION

Civilians sometimes face unspeakable sufferings and agony as a result of hostilities in the bleak theatre of armed conflicts. International Humanitarian Law (IHL), which is committed to defending the rights and safeguards afforded to people during times of conflict, stands out as a ray of light and justice among the mayhem and destruction. This research paper's subject, "International Humanitarian Law and Protection of Civilians in Times of War," sets out to clarify the complex relationship between IHL and the necessity of protecting civilians in the turbulent environments of armed conflict.

IHL is a crucial legal framework that aims to humanize the conduct of conflict and is based on centuries-old practices and conventions. It clearly outlines standards and guidelines with the goal of reducing harm to civilians. It includes essential ideas including differentiation, proportionality, and preventive measures. In order to ensure the safety, dignity, and well-being of civilians despite the devastation of war, this study critically examines the fundamental principles of international humanitarian law (IHL) and explores its practical applications. The research aims to provide light on the crucial role that IHL plays in protecting civilian life and promoting a more humane and just conduct of hostilities by a thorough review of pertinent treaties, jurisprudence, and case studies.

Let us start by defining the keywords like Human Rights, Civilians, International Humanitarian Law, and Armed Conflict, involved and relevant to the main focus of the article.

Human Rights

Human Rights are inherent in all individuals irrespective of their cast, creed, religion, sex and nationality, ethnicity, language or any other status. Human Rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination.¹ These rights are the basic standards without which people cannot live in dignity.² There are various definitions of human rights. As per the UN report human rights are those rights which are inherent in our state of nature and without which we cannot live as a human being.³ According to D.D. Raphael, Human rights constitute those rights which one has precisely because of being human.⁴

In the context of contemporary world human rights are those rights without which human being cannot live with dignity, freedom and justice in any nation or state regardless of any discrimination. When such rights are denied to an individual, whether by the state or non-state actors, it constitutes human rights violations. When large scale violations of such rights occur, it constitutes human rights violations or abuses.

¹ Dr. H.O Agarwal, *Human Rights* (Central Law Publication, 16th edn, 2016) 02

² Md. Kamruzzaman and Shashi Kanto Das, 'The Evaluation of Human Rights: An Overview in Historical Perspective' (2016) 03 AJS 05

³ Mishra, Pramod, *Human Rights Global Issues* (Kalpaz Publications 2000) 4

⁴ Rajawat, Mamta, *Burning Issues of Human Rights* (Kalpaz Publications 2001) 33-47.

Civilians

The term “civilians” is a modern legal category, broadly accepted by Muslims and non-Muslims, referring to non-military persons and non-combatants those are protected from attack by international treaties and laws. According to the Merriam Webster Dictionary, “One not on active duty in the armed services or not on a police or firefighting force” According to Cambridge Dictionary, “A person who is not a member of the police or the armed force”

The term civilian actually covers a wide range of people and it also includes prisoners of war, medical assistance, humanitarian workers and others. In general a civilian is a person who is not a member of the police, armed force or a fire department. The word “civilian” goes back to the late 14th century and in from Old French “civilien” of the civil law. Civilian is believed to have been used to refer to non-combatants (those who are not taking part of hostilities) as early as 1892.⁵ According to Article 50(1) Protocol I of Geneva Convention 1949 that a civilian is any person who does not belong to one of all the categories of persons referred to I Article 4A(1,2,3 and 6) of the 3rd Convention and in Article 43 of this Protocol.⁶

International Humanitarian Law(IHL)

International Humanitarian Law (IHL) is a branch of the law of nations, or international law, which governs relations between members of the international states. Its goals are to maintain peace, to protect the human beings in a just order and social freedom. According to the Soviet Academy of Science, IHL is “the aggregate of rules governing relations between states and the process of their conflict and cooperation, designed to safeguard their peaceful co-existence, expressing the will of the ruling classes of these states and defend in case of need by coercion applied by states individually or collectively.”⁷

International Humanitarian Law is also known as Law of War or Armed Conflict, which governs the situation of armed conflicts whether internal or international in nature.⁸ According to ICRC, IHL is part of the body of International law that governs relations between states. Its aims to protect persons who are not or no longer taking part in hostilities, the sick and wounded, prisoners and civilians and to define the rights and obligations of the parties to a conflict in the conduct of hostilities.⁹

The term Humanitarian Law is of recent origin because it was not used in Geneva Conventions of 1949, where the committee used the word humanitarian activities and humanitarian organizations rather than International Humanitarian

⁵<http://en.m.wikipedia.org/wiki/Civilian#:~:text=In%20general%20ouse%2C%20a%20Civilians,r iots%2C%20conflagrations%2C%20and%20wars.>

⁶ Frist Kalshoven and Liebeth Zegveld, *Constraints on the Waging of war: An Introduction to International Humanitarian Law* (ICRC, 3rd edn, 2001) 98

⁷ Magaji Chiroma and Umar A. Oseni and Usman Ansari ‘An Analytical Review of Islamic and International Laws on Civilian Right to life and Human Dignity’ (2013) 11 JHSS 24

⁸ V.K Ahuja, *Public International Law* (LexisNexis, 2016) 264

⁹ Amanda Alexander, ‘A Short History of International Humanitarian Law’ (2015) 26 EJIL 111

Law.¹⁰ The term was used in the early 1950s but it appeared in 1965 in Resolution XXVIII of the XXII International Red Cross Conference which was held in Vienna.¹¹ It deals with those matters which have impact of armed conflict on the life, personal integrity and liberty of human beings. Thus Humanitarian law may be referred to that body of law which defines those principles and rules which limit the use of violence in times of war.¹²

Armed Conflict

Armed Conflict is defined as a political conflict in which armed combat involves the armed forces of at least one state or one or more armed factions seeking to gain control of all or part of the state and in which at least 1000 people have been killed by the fighting during the course of the conflict. An armed conflict is a contested incompatibility that concerns government and or territory where the use of armed force between two parties of which at least one is the government of a state, results in at least 25 battle related deaths in one calendar year. It is also referred to as state based conflict as opposed to non-state conflict in which none of the warring parties is a government.¹³

International Humanitarian Law defines two types of armed conflicts, International and Non-International Armed Conflict (NIAC). International Armed Conflict (IAC) occurs when one or more states have been recourse to armed force against another state, regardless of the reason or intensity of this confrontation. Non-international armed conflicts are protracted armed confrontations occurring between governmental armed forces and the forces of one or more armed groups, or between such groups arising on the territory of a state¹⁴.

DISCUSSION

Role Of International Humanitarian Law During Armed Conflict

International Humanitarian Law is a specialized branch of international law that outlines the rules and regulations that govern the conduct of warfare with the aim of mitigating human suffering and protecting the most vulnerable entities, primarily civilians and non-combatants. While chaos often reigns supreme and the human toll can be devastatingly high in an armed conflict, the principles and provisions of IHL emerge as a beacon of order, compassion, and moral obligation.

The importance of IHL stems from its steadfast dedication to balancing the demands of military necessity with the humanitarian ideal, guaranteeing that some inviolable norms remain intact even in the face of war's horrors. These values, which include, among other things, the need for humane treatment of prisoners of war, the prohibition of indiscriminate strikes, and the distinction between fighters and civilians, represent a collective global conscience that aims to lessen the devastation caused by armed conflict.

¹⁰ Article, 9 of Geneva Convention I, III and Article, 10 of Geneva Convention IV

¹¹ Dr.H.O. Agarwal, *Human Rights* (Central Law Publication 16th edn, 2018) 230

¹² Ibid.

¹³ <http://rfmsot.appsoi.yorku.ca/glossary-of-terms/armed-conflict>

¹⁴ <https://www.icrc.org/en/doc/assets/files/other/opinion-paper-armed-conflict.pdf>

Human Rights violations are not a new phenomenon especially in contemporary world. Today world is full of human rights violation by State and Non-State actors. Everywhere in the world civilians were facing such type of violations during conflict. Throughout the history, they have been targeted by belligerents, who make no distinction between combatants and civilians during combat. During the past 60 years the main victims of war have been civilians. The protection of civilians during armed conflict is therefore a cornerstone of IHL. This protection extends to their public and private property. IHL also identifies and protects particularly vulnerable civilian groups such as women, children and the displaced.

During World War II, and in many of the conflicts since, civilians have been the main victims of armed conflict. Civilians have always suffered in war, but the brutal impact of World War II, which included mass extermination, indiscriminate attacks, deportations, hostage taking, pillage and internment, took a high toll of civilian life¹⁵. Civilians are facing lot of issues at the time of war such as, massacre, torture, rape, starvations, displacements etc. They are affected directly and indirectly by war, like death, torture, rape, diseases, malnutrition etc.

International Humanitarian law is comprised of international rules, established by treaty or custom which are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflicts. Its principle aims are to protect persons and property that be, or may be effected by conflict e.g. civilians, prisoners and their properties etc.¹⁶

The fundamental aim of International law is to limit the effects of armed conflicts by protecting persons not involving in hostilities and regulating the means and methods of warfare. It does not apply to internal disturbance or tensions such as riots, demonstrations and isolated or sporadic acts of violence. It is a part of universal international law whose purpose is to forge and ensure peaceful relations between peoples. It makes a substantial contribution to the maintenance of peace in that it promotes humanity in time of war. Its aim is to prevent, or at least to hinder mankind's decline to a state of complete barbarity. Four Geneva Conventions of 12 August 1949 and its two Additional protocols are the main sources of International Humanitarian law which are helping the world powers to maintain peace and protection of humanity in the world.

Before 19th century there was no concept of rights of civilians. It was used after the 2nd World War; where number of civilians lost their lives, when France in Algeria, Britain in India in 1857, Portugal and Spain during the peninsular war had massacred the civilians mercilessly.¹⁷ After these massacres the Jurists have been stressing on the determination of the rights of civilians, a practical beginning could be made only in the 1874 Brussels Conference. It was regulated by Hague Conference in 1899 and in 1907 it gave them a final shape.¹⁸ These Conventions did not prevent the world from disastrous wars like World War I and World War II. The World Powers were agreed

¹⁵ <https://www.icrc.org/en/doc/war-and-law/protected-persons/civilians/overview-civilians>

¹⁶ Commentary of International Humanitarian law, ICRC, 1993

¹⁷ Maulana Syed Abul A'la maududi, *Jihad in Islam* (Markazi maktaba Islami Publishers 2016, Trns. Dr. Abdul Karim) 561

¹⁸ Ibid

to formation of such conventions which helps them to maintain peace and harmony in the world. So they adopted Geneva Conventions in 1949. There are four conventions and three Additional Protocols which help the International Community to maintain peace in the world. Each Convention and Protocol played its role in different period and situation as per their needs to maintain peace and harmony in the globe.

Before 1949 the Geneva Conventions protected wounded, sick, shipwrecked and captured combatants. The “civilians’ convention” recognized the changing nature of warfare and established legal protection for any person not belonging to armed forces or armed groups. The protection also included civilian property. Such protection was later reinforced with the adoption of the Additional Protocols to the Geneva Convention in 1977.¹⁹

The 4th Convention played a very important role in protection of civilians during war times. It lays down certain rules of protection of civilians affected by conflicts, irrespective of their nationality and territory in which they live.²⁰ According to Article (16) of 4th Geneva Convention that the wounded and sick, as well as the infirm and expectant mothers are to be protected and taken special care. Protected persons are entitled to respect for their property, their homes, honor, family rights, and their religious conventions and practices, and are treated humanely without any discrimination of race, sex, religion, nationality etc.²¹ According to Article (35) of 4th Geneva Convention 1949, all protected persons (civilians) in enemy territory who may desire to leave the territory at outset of, or during a conflict, shall be entitled to do so, unless their departure is contrary to the national interest of the State. As per this article those persons permitted to leave may provide themselves with the necessary funds for their journey. According to Article (38) of 4th Geneva Convention of 1949, if they do not leave or are detained, following rights shall be granted to them:

- They shall be enabled to receive the individual or collective relief that may be sent to them.
- They shall, if their state of health so requires, receive medical attention and hospital treatment to the same extent as the nationals of the State concerned.
- They shall be allowed to practice their religion and to receive spiritual assistance from ministers of their faith.
- If they reside in an area particularly exposed to the dangers of war, they shall be authorized to move from that area to the same extent as the nationals of the State concerned.
- Children under 15 years, pregnant women and mothers of children under 7 years shall benefit by any preferential treatment to the same extent as the nationals of the State concerned.

IHL prohibited the use of such weapons which may cause huge destruction in the civilian areas. It also put stress on the protection of the victims of armed conflicts and the civilians. Additional Protocol I of 1977 lays down additional provisions for the

¹⁹ <https://www.icrc.org/en/doc/war-and-law/protected-persons/civilians/overview-civilians>

²⁰ V.K Ahuja, *Public International Law* (LexisNexis 2016) 277

²¹ *ibid*

protection of victims of armed conflict. It prohibits the employment of weapons, materials and methods of warfare, which may cause unnecessary suffering and destruction; it also prohibited the means of warfare which may be expected to cause widespread, long-term and severe damage to the natural environment.²² Additional Protocol II of 1977 gave the protection of members of armed forces who have laid down their arms and those who are sick, wounded, detention, or any other cause shall be treated as humanly, without the any discrimination.²³

According to the International Law, people who do not directly involve in the hostility are entitled to respect their lives and honor. It is forbidden to kill such type of people under IHL. Weapons and methods of warfare are not allowed in war which causes unnecessary losses and excessive suffering of human beings. IHL gives protection for those who are wounded and sick and the persons who are from the medical assistant fields. Article 3 of Geneva Conventions of 1949 protects civilians through the explicit prohibition of violence to life and person (in particular murder, mutilation, cruel treatment or torture) taking of hostages, outrages upon personal dignity (in particular humiliating or degrading treatment) and the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable. These acts are prohibited at any time and in any place whatsoever. Additionally, a number of norms contained in the Geneva Conventions of 1949 and Additional Protocols I and II of 1977, have reached the status of customary international law, meaning that they are binding on all parties involved in armed conflicts, international or non-international, even if the State has not acceded to the relevant convention.²⁴

The main aim of this law is to distinction between combatants and non-combatants during conflict. According to IHL all feasible precautions must be taken in order to avoiding the loss of life and minimizing the incidental lose of civilian lives and protection of their objects.

Common Article (03) Geneva Conventions of 1949 mandates the minimum protection of civilians in armed conflict:

- No adverse distinction based upon race, religion, sex, etc.;
- No violence to life or person;
- No taking hostages;
- No degrading treatment;
- No passing of sentences in absence of fair trial, and;
- The wounded and sick must be cared for.²⁵

Article 15 of Geneva Convention provides the shelter for the civilian population who are affected by the war; wounded and sick combatants and non-combatants; civilians, who are not the part of hostilities, and who, while they reside in the zones,

²² Ibid.278

²³ Ibid. 279

²⁴ Report on the Protection of civilians in the Armed Conflict in Iraq (2014) 05

²⁵ MAJ Keith E. Puls, *Law of War Handbook* (International and Operational Law Department 2005) 143-144

perform no work of a military character. Article 14 of Geneva Conventions also provides the shelter for them who are affected by the war;

Mothers of children under seven, wounded, sick, and infirm; Aged, children under the age of 15 and Expectant mothers.²⁶ According to the article (16) of Geneva Convention, the wounded,

Sick, infirm and expectant mothers must be respected and protected by all parties to the conflict at all times. According to the Article (17) Agreements should be reached to allow for removal of special needs individuals from besieged areas and the passage of ministers and medical personnel to such areas.

Article (04) of Protocol II prohibits the actions which violates the civilian rights during conflicts such actions are:²⁷

- Violence to life, health and physical or mental well-being;
- Murder, cruel treatment, torture, mutilation and corporal punishment;
- Collective punishment, taking hostages, actor of terrorism;
- Humiliating degrading treatment, rape, enforced prostitution and indecent assault;
- Slavery slave trade, pillage, and threats to commit any of the foregoing.

According to the International Humanitarian Law the warring parties should allow those organizations who are trying to help the civilians, especially those groups who are from medical assistant field, humanitarian or from NGOs which are providing essentials such as food, shelter, medical supplies etc.²⁸

International Humanitarian Law protects the civilian population from dangers arising from armed conflicts. Some groups of civilian population such as, children, women, the elderly, persons with disabilities and displaced people were need of much attention and protection from such type of dangers arising from military operations. Civilians can also expect, under humanitarian law, adequate care and respect. But one of the most acute challenges facing humanitarian organizations at present is access to all the victims of an armed conflict.

There are number of articles which will help the international community to protect the civilians and their objects from these types of conflicts. According to Article 48 of Protocol I, Article 13 par. 2 of Protocol II that:

- Distinction between the civilian population and combatants, and between civilian objects and military objectives.²⁹

Article 3 common to the four Geneva Conventions, Article 27 of the Fourth Geneva Convention, Article 4 of Protocol II states that:

All people not taking a direct part in hostilities shall be treated humanely in all circumstances, without any adverse distinction. They are entitled to respect for themselves, their honour, their family rights, their religious convictions and

²⁶ Ibid. 146

²⁷ Ibid. 145

²⁸ <https://www.icrc.org/en/doc/war-and-law/protected-persons/civilians/overview-civilians>

²⁹ <https://www.icrc.org/en/doc/resources/documents/misc/57jm93.htm>

practices, and their manners and customs.³⁰ The article also states that the wounded and sick shall be collected and cared.

Article 23 of the First Geneva Convention, Articles 14 and 15 of the Fourth Geneva Convention, Articles 59 and 60 of Protocol I states that;

- Establish humanitarian zones for the protection of the wounded and civilians against the effects of hostilities.³¹

Article 49 of the Fourth Geneva Convention and in Article 17 of Protocol II respectively states that;

- Forcibly displacing the civilian population for reasons related to the conflict is prohibited. Civilian shall not be compelled to leave their own territory unless the security of the civilians involved or imperative military reason so demand.

Article (3) common to the Geneva Conventions, Article (99) of the Third Geneva Convention, Article (71) of the Fourth Geneva Convention, Article (75) of Protocol I, and Article (6) of Protocol II states that;

- Prisoners of war and detainees have to be protected and respected in all circumstances. The detaining authorities are held responsible for unlawful acts or omissions causing the death or seriously endangering the health of prisoners. If subjected to judicial proceedings, detainees, internees and prisoners of war enjoy all the fundamental judicial guarantees and no sentence may be passed except pursuant to a conviction pronounced by an impartial and regularly constituted court.³²

Articles (23, 59, 60) of the Fourth Geneva Convention, Article 70 of Protocol I, Article 18 paragraph 2 of Protocol II states that;

- In situations of armed conflict, States have first and foremost the responsibility for protecting and assisting the populations under their control, and should organize and carry out necessary relief actions. In addition, if civilians are suffering hardship because supplies essential to their survival and well-being are lacking, the warring parties should support and facilitate relief actions undertaken by humanitarian and impartial organizations.³³

In 1995 two meetings were organized by the ICRC, with experts from military and academic some other fields to clarify the scope of application of IHL. They prepared a draft set of guidelines and reviewed by UN office of Legal Affairs and ICRC, and later the final text was established in 1996. Finally it was published in 10 August 1999 by UN Secretary General under the title Observance by United Nations Forces of International Humanitarian Law.

CONCLUSION

Human rights violation in the world is burning issue and it is important for world to overcome such type of issue. Every corner of the world is facing this issue

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ Ibid.

especially civilian right to protection in war zones which is a hot debate. World powers have the responsibility to solve hot and burning issue of civilian's protection in war time. The protection of civilians provided by the Geneva Conventions and Additional Protocols is extensive. Neither States nor non-State armed groups have respected their obligations adequately. Civilians have continued to suffer excessively in almost every armed conflict. So it is the responsibility of the International Community to protect such type of violations. On this issue they drafted the humanitarian law. International Humanitarian Law is a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. It also protects the life, health and dignity of individuals and also prohibit to torture or cruel treatment, prescribe basic rights for persons subject to criminal process, prohibit discrimination, contain provisions for the protection of women, children, and regulate aspects of the right to food and health.

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