

# SECURING LEGAL PROTECTION FOR VICTIMS OF ARMED CONFLICTS VIS-À-VIS INTERNATIONAL HUMANITARIAN LAW

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## ABSTRACT

*The armed conflicts lead to innumerable suffering for innocent civilians who are not even interested in the political set of affairs. However, during such conflicts, this section of society is forced to bear severe miseries. These innocent civilians are killed, deprived of minimum basic necessities, and sometimes compelled to leave their native place and flee as refugees. International Humanitarian Law has a major responsibility in resolving the plight of such people. Children, women, and elderly persons with disabilities are prioritized for protection. However, despite International laws and standard protocols, the instances regarding the violation of the human rights of innocent civilians are proliferating. A recent example is of the Ukraine citizens, where civilians are fleeing as refugees, getting killed, or being compelled to live a life full of atrocities. Therefore, it is indisputable that such instances convey disgrace to the notions of International Human Rights Law and International Humanitarian Law. In this study, the author will highlight how International Humanitarian Law protects civilians and special groups. Moreover, the ultimate aim of the study is to critically analyse the contribution of International Humanitarian Law in safeguarding the rights of civilians.*

**Keywords:** *Armed Conflict, Civilians, International Humanitarian Law, Legal protection, Victims.*

## I. INTRODUCTION

Armed conflicts are a way towards destruction, devastation, and innumerable suffering for mankind. The worst aspect of such conflicts is that a large number of civilians get killed, detained, wounded, and separated from their families. The recent example of the Russia- Ukraine conflict per se highlights the plight and miseries of the innocent citizens who sacrifice their lives at the hands of such conflicts.<sup>1</sup> They have to bear a heavy cost w.r.t. their lives, family, health, education, etc.

Sometimes, the civilians are compelled to leave their native place for the survival of their families. And, if they cross the border of the concerned State, they come within the ambit of refugees. Unfortunately, they get deprived of their basic human rights. Such suffering of the people, when they are denied the minimum necessities such as; food, water, and shelter, reveals the sorry State of affairs of the International regulations and International Cooperation.

International Humanitarian Law ensures the protection of the rights of civilians from the adverse consequences of armed conflicts. Even the special attention among the civilian population is attributed to children, women, elderly persons with disabilities, and displaced people who have specific needs. However, the instances of gross human rights violations of innocent citizens because of armed conflicts [for example, a large number of citizens of Ukraine died and fled as refugees because of the Russian invasion]<sup>2</sup> convey disgrace to the

principles of International Humanitarian Law, and its purpose stands defeated. Therefore, it is a major contemporary challenge across the globe how to safeguard the victims of an armed conflict.

This study attempts to highlight the plights and miseries of civilians as the victims of armed conflicts. The author aims to explore human rights violations, the increasing trend of such instances, and the legal remedies that such civilians possess by virtue of International Humanitarian Law. Moreover, it attempts to elucidate to the author how International Humanitarian Law ensures the protection of special groups. Moreover, the ultimate aim of the study is to critically analyze the contribution of International Humanitarian Law in safeguarding the rights of civilians. The author has resorted to the doctrinal form of research methodology.

## II. PROTECTION OF CIVILIANS IN ARMED CONFLICTS

A large number of deaths of non-combatants take place during armed conflicts. This trend has been observed in the past. During the First World War, approximately 5% of casualties were civilians. In the Second World War, the figure was 50%. Whereas unfortunately, today, 80-90% of war casualties are of civilians, the majority of them are women and children.<sup>3</sup> Unfortunately, innocent citizens lost their lives because of the undesired wars. Some die directly, while a large number of people lose their lives with the indirect effects of conflict

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[disease, famine, lack of essential services].<sup>4</sup>

Therefore, this threat of such excruciating effects on civilians is a major issue for the International community. These civilians can be broadly considered non-combatants. The Third Geneva Convention of 1949 was expanded in 1977 by Additional Protocol I to grant equivalent protection to all those engaged in combat.

Therefore, a civilian is any individual who is not a member of one of the following groups:<sup>5</sup>

- a. The regular armed forces, even one that professes allegiance to a government or authority not recognized by the adverse power.
- b. The armed forces of a party to the conflict, as well as militias or volunteer corps, form part of such armed forces.
- c. All organized groups and units, as long as these groups and units are under a command that is responsible for the conduct of its subordinates. It includes organized resistance movements and other small armed groups.<sup>6</sup>

It is a matter of grave concern that the population of civilians gets adversely affected, and they have to bear brutal torture, exploitation, sexual violence, forced recruitment into the armed forces, and other forms of abuse<sup>7</sup>. Hence, the protection of this non-combatant community is the sine qua non to ensure the majesty of justice.

The points mentioned below elucidate in-depth how International Humanitarian Law attempts to safeguard the rights of these civilians.

1. Article 51 (1) of the Additional Protocol I of 1977 provides that civilians shall enjoy protection against dangers arising from military operations. Further, Article 48 of the Additional Protocol I of 1977 affords fundamental protection to the civilian population. It provides that the parties to a conflict shall distinguish between the civilian population and combatants and between civilian objects and military objectives. And, the operations can only be directed against the military objectives.<sup>8</sup>
2. Indiscriminate attacks are prohibited against civilians. These attacks are defined as the ones; (i) which are not directed at a specific military objective; (ii) which employ a method or means of combat which cannot be directed at a specific military objective; or (iii) which employ a method or means of combat the effects of which cannot be limited.<sup>9</sup>
3. Treatment of Protected persons: Part III of the Geneva Convention IV (Articles 27-141) defines the status and treatment of protected persons. The protected persons include two categories of persons [enemy nationals within the national territory of each of the parties to the conflict and the whole population of occupied territories

(excluding nationals of the occupying power). Such persons are protected under Geneva Convention and are entitled to humane treatment, protection from violence, insult, public curiosity, etc. Moreover, ensuring such treatment for these people is the duty of the occupying State.<sup>10</sup>

4. Protection of foreigners: The protection of foreigners in the territory of the State in a conflict is ensured under the provisions of Article 35-46 of the Geneva Convention IV. Such people must be allowed to leave the territory of such a state when they desire to do so.<sup>11</sup>
5. Protection of workers: Article 51 of the Geneva Convention IV specifies an important provision the occupying State is forbidden to force protected persons to serve in its armed Or auxiliary forces. Also, the workers cannot be denied work in any domain, and they are entitled to a fair wage.<sup>12</sup>
6. Protection from military attack: It is the responsibility of the occupying power while they are conducting a military operation; they should not to harm civilians and civilian objects. It has to ensure that the loss of civilian life should be minimized. The State in power must take all the necessary steps required to protect the life of the citizens.<sup>13</sup>
7. Other important safeguards: There are a plethora of provisions to ensure protection for non-combatants, such as journalists. Also, there are well-established provisions regarding food and clothing, medical supplies, etc. However, the major concern is non-compliance with such well-established principles of International Humanitarian Law at the time of armed conflicts. E.g., during the Russia-Ukraine war, the excruciating condition of the civilians tells the other dark side of the story.<sup>14</sup>

### **III. PROTECTION OF SPECIAL GROUPS [WOMEN AND CHILDREN] DURING ARMED CONFLICTS**

The recent armed conflicts have shown a serious concern regarding the specific targeting of women by both State and Non-State actors. For example, in the conflicts of Bosnia, Rwanda, Sierra Leone, and Liberia, sexual assault, rape, forced prostitution, sexual slavery, forced pregnancy, and other forms of sexual violence have been used as a method of warfare.<sup>15</sup>

It is pertinent to mention that women ensure protection under Article 12 of the First and Second Geneva Conventions, which provide that women shall be treated with all regard due to their sex. And the Third Geneva Convention stipulates that there should be separate shelters and sanitary facilities for female prisoners of war.<sup>16</sup>

Article 12 to 15 of the Third Geneva Convention provides general protection to female prisoners of war. These articles ensure that such women prisoners of war should get respect for their person and honour. They must be treated humanely

and should not be subjected to torture, physical mutilation, or medical or scientific experiments which are not justified by medical treatment.<sup>17</sup>

Furthermore, there are certain special protections for women as well. The Third Geneva Convention makes such provisions for privileged treatment based on the considerations of rank, sex, State of health, age or professional qualifications of women prisoners of war. Some special protections are mentioned hereunder:

1. Article 25 para 4 of the Third Geneva Convention specifies that in the camps where women and men prisoners of war are accommodated, separate dormitories and toilets shall be provided for women.<sup>18</sup>
2. Article 29 of the Third Geneva Convention ensures toilets for women prisoners of war when accommodated in war camp.<sup>19</sup>
3. The provisions of Article 30 para 2, secure medical facilities for Prisoner of war who requires special treatment. They can be admitted to a military or civilian medical unit for treatment.<sup>20</sup>
4. Article 49 specified conditions when women prisoners of war could be put into labour, considering their physical and mental health.<sup>21</sup>
5. According to Article 88, the women prisoner of war shall not be awarded or sentenced to a punishment more serious/severe than women members of the detaining power dealt with for a similar offense.
6. Article 97 secures separate quarters for women prisoners of war undergoing disciplinary punishment. Moreover, they shall be under the supervision of women.<sup>22</sup>

Therefore, the Third Geneva Convention endeavours to ensure protection for women who are the victims of armed conflicts. Moreover, it is pertinent to mention that the International Committee on Red Cross is an independent humanitarian organization that endeavours to bring protection and assistance to victims of armed conflicts. It is more concerned with the protection of women from the effects of hostilities, especially against acts of violence. Hence, it ensures the protection of women from inhumane and degrading treatment.<sup>23</sup>

#### IV. PROTECTION OF CHILDREN

According to UNICEF, more than two million children have died as a direct result of armed conflict over the last decade. More than 1 million have been orphaned or separated from their families. And between 8,000 to 10,000 children are killed or maimed by landmines every year.<sup>24</sup> There is no iota of the doubt after ascertaining these figures that armed conflicts become a brutal nightmare for children. They get subjected to exceptional barbarity, violence, sexual violence, and other excruciating plights.

The International Humanitarian Law protects children in three

ways: (i) it recognizes the need to provide children with special protection because of their age, which is a norm of customary international law; (ii) it questions the use of children in military operations; and (iii) it takes into account children's immaturity if they commit offences during armed conflicts.<sup>25</sup> Furthermore, the Fourth Geneva Convention contains a sizeable number of provisions that afford protection to children. Some of them are mentioned below;<sup>26</sup>

1. In times of peace, the State Parties and, after the outbreak of hostilities, the belligerents need to establish hospitals and safety zones and localities with a view to protecting from the effects of war wounded, sick and aged people children under 15, expectant mothers and mothers of children and seven.<sup>27</sup>
2. The parties to the conflict must endeavour to ensure the evacuation of children who are wounded, sick or infirm for proper medical treatment.<sup>28</sup>
3. The State parties must ensure the free passage of all consignments of essential foodstuffs, clothing, medicines, etc. Even the State parties have to ensure that they take certain child welfare measures.<sup>29</sup>

Hence, the Geneva Conventions have ensured that children during armed conflicts shall not be subjected to unfair atrocities. Moreover, it is pivotal to acknowledge that International Humanitarian Law attempts to secure the basic rights of child victims in case of armed conflicts.

#### V. CONCLUSION

It is the sine qua non to safeguard the rights of the victims of armed conflicts to ensure the prevalence of justice and the rule of law in society. International Humanitarian Law is an instrument to secure legal protection for the victims of armed conflicts. The rights of civilians and special groups are explained in depth in this study. Hence, the IHL lays machinery which can uplift the status and dignity of the victims of armed conflicts and ensures protection from barbarous existence.

Well, it is truly undeniable that there are rules and regulations for the protection of the legal rights of the victims. Even though there are standard protocols that different nations aim to adhere to secure humanity. However, it is highly unfortunate that during times of armed conflicts, non-adherence to such rules and regulations leads to innumerable suffering for mankind. There are a large number of examples that established that torture, death, and rape become common practices during armed conflicts.

Therefore, International Humanitarian Law which is an important instrument in safeguarding the rights of the victims of armed conflicts must be strictly interpreted and adhered, to so that humanity should prevail, even at the time of massive destruction. Hence, the strict implementation of the rules and regulations and international cooperation backed by effective global governance can secure the rights of the victims during such conflicts.

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