

**PROTECTION OF WOMEN IN ARMED CONFLICT AND INTERNATIONAL HUMANITARIAN LAW****MOHD RAFEE**

Assistant Professor, Ramjas College

University of Delhi

**SABA FATIMA**

Research Scholar at west Asian Studies

Jamia Millia Islamia

**Introduction**

*"All too often, conflict happens in societies that can least afford it, takes its toll on those who least deserve it and hits hardest those least equipped to defend themselves. Civilians have become the main targets of warfare. From rape and displacement to the denial of the right to food and medicines, women bear more than their fair share of the burden".*

Contemporary wars and conflicts have been complex in nature. The focus on the study of nature and consequences of conflicts was put forward by the United Nations Organization which brought out a twist in the analysis of conflicts. It is true that every international community has some or the other interest in every conflict, may be because no conflict these days are in isolation. In such situation the role of United Nation becomes very important to make sure every party is satisfied with decisions when it comes to war. To look after the conduct of the parties during a conflict, International organizations have developed certain laws which guarantee human safety to a large extend. One such law is International Humanitarian Law or the Law of Armed Conflict; basically it regulates the conduct of armed conflicts. Its basic constituent is the Geneva conventions followed by subsequent treaties, case law and customary international law<sup>[1]</sup>. It also deals with the responsibilities of the parties involved which may include neutral nations and individuals in warfare. Its violations are known as war crime for those nations who are bound by appropriate treaties. There are also other customary unwritten rules of war as well as prohibitions on their conduct when dealing with irregular forces and non-signatories. International humanitarian law operates on a strict division between rules applicable in international armed conflict and those relevant to armed conflicts not of an international nature.

Contemporary International Humanitarian Law is made up of two historical streams: the law of The Hague referred to in the past as the law of war proper and the law of Geneva or humanitarian law. The two streams take their names from a number of international conferences which drew up treaties relating to war and conflict, in particular The Hague Conventions of 1899 and 1907, and the Geneva Conventions, the first which was drawn up in 1863.<sup>[2]</sup>

The Law of The Hague determines the rights and duties of belligerents in the conduct of operations and limits the choice of means in doing harm. In particular, it concerns itself with the definition of combatants, establishes rules relating to the means and methods of warfare, and examines the issue of military objectives.

<sup>[1]</sup> <http://www.icrc.org/eng/resources/documents/misc/57jmfj.htm>

<sup>[2]</sup> <http://www.icrc.org/eng/resources/documents/misc/57jmfj.htm>

## Role of women in armed conflict

Women have played a crucial role in a conflict scenario. Sometimes as participant and most of the time as victims, women are the sole bearers of the devastating effects of a conflict situation. Before the occurrence of World War I, there wasn't any requirement to create special laws to protect the women sect as their participation was in majority during wars. Post World War 1, a need for protection of women, was felt and this resulted into creation of separate laws for the protection of women in armed conflict under International Humanitarian laws. This did not mean that women lacked any protection earlier. Since the creation of the International humanitarian law, the women had the same general legal protection as men. If they were wounded, they were protected by the provisions of the 1864 Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field; if they became prisoners of war, they benefited from the Regulations annexed to the Hague Conventions of 1899 and 1907 on the Laws and Customs of War on Land.<sup>[3]</sup>

Since 1929, women experienced special protection under International Humanitarian Law. After adoption of Geneva Convention related to protection of Prisoner of wars, sought to take into an account the mass participation of women during the First World War and come up with other laws for their protection. This International law included two provisions:

"Women shall be treated with all consideration due to their sex" (Art. 3). "Differences of treatment between prisoners are permissible only if such differences are based on the military rank, the state of physical or mental health, the professional abilities, or the sex of those who benefit from them" (Art. 4).<sup>[4]</sup>

## Problems faced by women in armed conflict

In contemporary conflicts, almost up to 90 percent of casualties occur among civilians, in which women and children mostly turn out to be the prime victims. Women in war-torn societies face devastating kind of violence both physically as well as sexually. During a conflict situation, women are the first to be affected by infrastructure breakdown; they go through a continuous struggle to look after the family, meet their needs and keep the family together in war like situation. Women are sexually abused and exploited and several crimes such as rape, torture, forced pregnancy and prostitution are conducted on them which affect them adversely making the situation of conflict worse. Some of the major threats to women in an armed conflict situation can be explained in a deeper manner.<sup>[5]</sup>

### Sexual abuse

One of the main problems that threaten not only the security of the women but also directly impacts the dignity of the female gender is Sexual Abuse. This problem is not restricted to just conflict

<sup>[3]</sup> <http://www.icrc.org/eng/resources/documents/misc/57jmj.htm>

<sup>[4]</sup> <http://www.icrc.org/eng/resources/documents/misc/57jmj.htm>

<sup>[5]</sup> <http://www.womenwarpeace.org>

situation but has adverse affects even post- conflict. Women are forced to turn to sexual exploitation and even after a conflict has ended the impacts of the violence; physical or sexual, persists for long and may result into other problems such as unwanted pregnancies, sexually transmitted infections and stigmatization.<sup>[6]</sup> As a consequence of insecurity and to save oneself from the punishments and the severity of the conflict situation women give in to the sexual abuse or violence taking place. Also because of conflict, a number of women are left alone either because of their husbands participating in the conflict or because they have been killed. Thus under such circumstances, women become more vulnerable towards sexual abuse sometimes made due to military or political objectives.

### **Displacement**

The problem of displacement is a part and parcel of a conflict scenario. Conflict leads to mass displacement of civilians. Among the lot of the mass population being displaced during a conflict situation, women and children accounts a large portion. Displacement increases the vulnerability of civilians to many crimes, including forcible recruitment into armed groups, sexual and gender-based violence, enforced prostitution and human trafficking. Displacement of women during a conflict not only hampers the living and social condition but also leaves a psychological impact and leads to a continuous struggle to be able to get back with their families. Sometimes, displacement may also lead to women being indulged into forced prostitution, sexual abuse, rape and also becoming active combatant.

### **Rape**

Rape is a serious crime being committed during a conflict situation on women, who generally have a lower social and economic status than men.<sup>[7]</sup> In a conflict situation, rape has been addressed as a serious problem that has posed deep threat to the women. As women are not generally active participants in a conflict, they become the easiest target for several reasons. Sometimes the purpose is to weaken the opposite parties by targeting the women and exploiting them and raping them in order to show strength. And at times rape is committed to breakdown the moral of the conflicting party as women are regarded as the symbol of ethnicity of a community or group or state. Rape is not only an issue concerning with women physically but it is the issue that has the most adverse psychological, sociological and emotional affect on a woman and the impact of the crime is long lasting and turbulent.

### **Women protection and I.H.L**

The Four Geneva Conventions, 1949 and the Additional Protocols of 1977 (A.P.-I and A.P.-II) provide protection to women both as civilian, that is by not participating as combatants and not taking part in hostilities if the fall into the territory of the enemy. International Humanitarian Law seeks equality of men and women and thus guarantees laws equal to both without any discrimination. To this

<sup>[6]</sup> [http://www.unicef.org/emergencies/files/ICRC\\_women\\_war.pdf](http://www.unicef.org/emergencies/files/ICRC_women_war.pdf)

<sup>[7]</sup> [http://www.unicef.org/emergencies/files/ICRC\\_women\\_war.pdf](http://www.unicef.org/emergencies/files/ICRC_women_war.pdf)

International Humanitarian Law adds that “Women shall be treated with all the regard due to their sex.” (Art. 12, GC-I and GC-II, Art.14, GC-III).<sup>[8]</sup>

This law cannot be legally defined but it clearly puts focus on the physiological specify, Honor and modesty, pregnancy and childbirth concepts, irrespective of the status of a women (Third Geneva Convention, ICRC, Geneva 1960, Article 14, P.147).<sup>[9]</sup>

Women are protected by the Fourth Geneva Convention relative to the protection of civilian persons in time of war. Apart from the general protection from which all civilians benefit, “women shall be especially protected against any attack on their honor, in particular against rape, enforced prostitution or any form of indecent assault” (Art. 27, Para 2, GC-IV, Art.75 and 76, A.P.-I). The provision was put to action to bring down certain practices which occurred during war and led to number of women of different ages experiencing worst treatment and problems such as rape committed in occupied territories, brutal treatment of every sort, mutilations etc.<sup>[10]</sup>

In a Non-International armed conflict situation, women are protected by the fundamental guarantee, which governs the treatment experienced by persons not taking part in conflict. These guarantees are contained in Common Article 3, which is common to all four conventions. However, this article does not provide special protection for women. Additional Protocol II completes and develops this provision. Article 4 of AP II clearly forbids “Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault.”<sup>[11]</sup>

“Pregnant women and mothers of children under seven years shall benefit by any preferential treatment to the same extent, as the nationals of the State concerned”. (Art.38, GC-IV)

Likewise, the occupying power shall not hinder the application of any preferential measures which may have been adopted prior to the occupation in favor of children under fifteen years, expectant mothers, and mothers of children under seven years.” (Art.50, GC-IV)<sup>[12]</sup>

Though the Geneva Conventions do not have any specification on the death penalties imposed on women, but the Additional Protocol- I makes up for it and drawing inspiration from the International Covenant on Civil and Political Rights provides that a death penalty must not be executed on pregnant women as per its Article 6, Para 5.<sup>[13]</sup>

International Humanitarian Law thus provides extensive protection to women.

### **Relevant legal framework**

The Fourth Geneva Convention prohibits any kind of indecent assault on women like Rape, enforced prostitution, torture, inhuman and degrading treatment and outrages against personal dignity.

[8] <http://www.sharmalawco.in>

[9] <http://www.sharmalawco.in>

[10] <http://www.sharmalawco.in>

[11] <http://www.sharmalawco.in>

[12] <http://www.sharmalawco.in>

[13] <http://www.sharmalawco.in>

Sexual violence also falls within the scope of “Willfully causing great suffering or serious injury to body or health”, falls under Sexual violence and thus is considered to be breach of the Fourth Geneva Convention. Slavery, in any form, is also prohibited.

Acts of sexual violence are self-standing crimes under the Statutes of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), as well as the Statute of the International Criminal Court (ICC). The jurisprudence of these bodies has reinforced the status of rape as a war crime and a crime against humanity.<sup>[14]</sup>

Although numerous human rights instruments deal with violence against women in general – including the 1994 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, the 1974 Declaration on the Protection of Women and Children in Emergency and Armed Conflict and the 1993 UN Declaration on the Elimination of Violence against Women – express references to sexual offences and violence are more limited.<sup>[15]</sup>

International humanitarian law (IHL) expressly prohibits the forcible displacement, of civilian populations within a country or across a border. Exceptionally, the inhabitants of a particular area may be “evacuated” if their security or imperative military reasons so demand.

### **Conclusion**

The International Humanitarian Law has drafted a number of laws to provide necessary protection to women with the adoption of the Fourth Geneva Convention and the Additional Protocols. But the fact lies in the implementation of these laws for the benefit and protection of women in practical situation. Success cannot be achieved by just adopting new rules but by enforcing it appropriately in the International front. The implementation of the different provisions created for the protection of women and the various Laws of the International Humanitarian Law should be consensually followed by the states, party to the Geneva Conventions of 1949 and the Additional Protocols of 1977, which have undertaken to respect and ensure respect for these rules.

Protection of women can also be catered through the activities of ICRC, whether by visiting women held as prisoners of war or in civilian detention or internment, by providing material assistance or by making enquiries into the whereabouts of missing persons.

Every effort made in this respect undoubtedly contributes in the implementation of international humanitarian law and thus serves the purpose of protecting women in the best possible manner.<sup>[16]</sup>

<sup>[14]</sup> [http://www.unicef.org/emergencies/files/ICRC\\_women\\_war.pdf](http://www.unicef.org/emergencies/files/ICRC_women_war.pdf)

<sup>[15]</sup> [http://www.unicef.org/emergencies/files/ICRC\\_women\\_war.pdf](http://www.unicef.org/emergencies/files/ICRC_women_war.pdf)

<sup>[16]</sup> [http://www.unicef.org/emergencies/files/ICRC\\_women\\_war.pdf](http://www.unicef.org/emergencies/files/ICRC_women_war.pdf)