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IMPLEMENTING INTERNATIONAL HUMANITARIAN LAWS; DAUNTING TASK FOR HUMANITY

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ABSTRACT

International Humanitarian law is an offspring of human rights Law. HRL envisages a society free from any discomfort, displeasure and inhuman expositions. Animosity and hatred in the species even amongst animals are naturally gifted and it invites disparagement to the existing scenario. Resentment and discontentment sometimes takes violent shape involving use of force and warlike situation where warring parties aims at destroying and causing loss to the property and human person on a large scale. During the process of overpowering and maintaining supremacy targeting enemy human force reflects disrespect to human rights and flagrant violations of laws in need of the hour. War knows no law and everything is fair in love and war and this is because of emotional height and imbalance in the minds of both the enemy groups. Law is a matter of peacetime exigency and avoiding loss either of manpower or the property is tough task. How to implement or ensure the normative parameters as prescribed under four Geneva Convention is a matter of serious discussion. Impossibility or for that matter unenforceability of prescriptive measures during wartime is known to all of us. This small piece of paper seeks to clarify the gravity of International Humanitarian Law and briefly make a mention of its non enforceability.

Key Words: Human rights, International Humanitarian law, Geneva Convention, Warfare, Prisoners of war, Proxy wars, Civilian Population.

I

Growing consciousness and anxiety about human rights throughout the globe is a clearly perceived phenomenon now days. Recognition of the inherent dignity and equal as well as inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the society irrespective of its nature. World community has also unanimously accepted that disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind. The advent of a world in which human beings shall enjoy freedom of speech, belief and freedom from fear and want is the highest aspiration of the common people. There cannot be two opinions that the peaceful human existence is the highest goal of all the systems. Human life which represents the finest and best in creation has to accord all possible respect. In Mahabharat when Yudhishthira questioned Bheeshma Pitamah 'what is the supreme truth'? He met with the reply that, let it be known by you, O! Yudhishthira that there is nothing greater than man. Thus, the human rights cannot be understood only in the declarations or statements of any individual or bodies but the

dignity of every man borne out of the divinity. Nothing more aptly can be described about these rights what Justice Krishna Iyer explained:

".....human rights spring from a divine fount and the field of human affairs must accept and respect this categorical imperative ... Deny dignity and divinity and you diminish human status to that of a brute Human Rights spring from the spiritual nidus, nourished with a sense of balance, by contentment which is sustained by provision for all basic material needs...."

Taking holistic approach, human rights may be classified corresponding to the existence of life and factors strengthening the human existence. Former envisages right of peaceful living, violence free society, and nothing like physical torture, arbitrary killing or deprivation of life, terrorism, mutilation of organs etc. In other words all persons have the right to live in peace without being the target of any kind of violence. The other group of rights which may be termed as second generation rights includes all those rights which provides an atmosphere for the full development of individual's capacities, i.e., physical, intellectual, moral and spiritual. It also requires rights for political, economic and social development because the very existence of life is not confined merely to physical or animal existence but includes the right to every limb or faculty through which life is enjoyed. It signifies the right to live with basic human dignity, livelihood, shelter, education and health without which there can be no real existence. Plethora of instruments prepared at international level by the world community delineates all these as a common standard of behaviour for the mankind. Humanitarian laws are the outcome of the same pledge in a given context and the situation. Present model of International humanitarian laws came into existence with Geneva Conventions.

Being species of a genus of human rights these laws aimed at securing all the guarantees for the human life during international armed conflicts or strife involving military, semi military action and now the civil commotion. Geneva Conventions have provided for norms for protecting military persons, civilians, prisoners of war, wounded and sick during such armed conflicts. The last two years of Forty's witnessed voluminous international documented measures in the field of human rights (either first or second generations). Now the question is whether these norms pictured in the form of pious declarations and strong commitments have been really adhered to or matched with ground realities. Are violations not being committed, human existence is respected, human dignity is not imperiled? A modest attempt has been made in this paper to project the dichotomy between laws and reality and the task largely desired to be performed by citizenry in this regard. This mismatch has been tried to be tested in relation to the norms prescribed in the four Geneva Conventions and other instruments pertaining to the protection against any harm caused during war period.

II

Successive wars and the loss of human person therein created a tremor in the minds of world leaders. The loss of human life was beyond imagination which posed serious threat to peace, security and the civilization. Since humanity has been the hallmark of any civilization and quite naturally comes under stake during armed conflict. So international humanitarian laws are meant to protect the human being during these critical hours. The process extending protection to individual against the evils of war and treatment is not new. Humanitarian Laws have developed mostly at two stages - Hague and Geneva Conventions. Former determines the rights and duties of belligerents in the conduct of operation and limits the choice of means of causing harm. The Hague Convention of 1907 revised these rules which was delineated in the Ist Hague Convention 1899. The most significant part of Convention of 1907 relates to the status of Prisoners of War, wounded and shipwrecked persons in maritime warfare and civilians in occupied territory. The Geneva Convention on the other hand gives protection to persons engaged in armed conflict. These conventions popularly known as International Humanitarian Law safeguards military personnel and persons not taking part in the hostilities. The

law consists of four Conventions of 1949 and the two additional protocols of 1977 codifying the rules for protecting the persons in the armed conflict. Legal measures provided in these Conventions and Protocols have been developed exclusively for the protection of victims of war and it guarantees virtually no right to states against individuals. Thanks to the sensitivity of Henry Dunant and International Committee of Red Cross which inspired for these rules and developed commitment about such rules after realising the distress caused in the battle field of Solferino. Mr. Dunant professed for equal care and attention to be bestowed on all the wounded alike be they friend or foes.

Besides these protection extended to the persons engaged in armed conflict there are instruments which tries to ensure the same protection. The first Geneva Convention of 1864 which deals with amelioration of wounded military persons during armed conflict was the milestone of humanitarian laws. Efforts started when four citizens of Sweden met Dunant in 1783 requesting for constituting an International Committee for the aid to the wounded soldiers. Declaration of St. Petersburg 1878, which for the first time recognised the laws of war, accepted the principle that use of explosives and highly inflammable weapons are violation of human values. The Protocol for the Prohibition of the use in war of Asphyxiating, Poisonous or other Gases and of Bacteriological Methods of warfare in the year 1925 were measures dealing for humanitarian values. The Post Geneva period appears to be more fertile in relation to humanitarian laws. By and large enough laws are there for protecting individuals either military or civilian population. Undoubtedly the list is too long to mention at this juncture. There are some documents which condemn use of force or recourse to war. While others talks of measures to be adopted during wartime. There are documents containing measures like Tehran Declaration 1968, 21st International conference of the Red Cross at Istanbul in 1969 which resolved underlining 'the necessity and the urgency of reaffirming and developing humanitarian rules of international law applicable in armed conflicts of all kinds in order to strengthen the effective protection of the fundamental rights of human being. Keeping in view the Geneva Convention 1949, General Assembly Resolutions (A/Res/2444/XXIII), Secretary General reports A/7720 (1969) and A/8052 (1970), ICRC Draft 1972 which supported Geneva Convention's protective measures. One can witness development reflecting extreme sensitivity of world community in avoiding use of weapons. However, these measure indicate only the commitment for the protection of humanity. This three tier approach aimed at securing a world community where peace and joy flourish allowing humanism to prevail so that civilization must not be endangered in the hands of few.

III

The protection provided under these instruments are symptomatic of the fact that every possible efforts have been made by the international community to secure human values even in the worst situation. As Conventions provide that non-combatants,; wounded and sick during conflict needs to be treated with humanity. Cruelty against life, mutilation of organs, bondage and disrespect behaviour against the combatants is violation of the norms according to the Convention. Armed attack on sleeping personnel, camps, places of food and shelter, medicinal units, moving hospitals, places of religious worship etc. is not allowed. Equally Prisoners of War must be treated with human touch. Captive State is obliged to behave Prisoners of War as its own citizens. These prisoners need not be mutilated, cruelly treated, tortured or oppressed. Every facility like food, shelter, medicine, clothing properly be given so that they can enjoy their life. Women prisoners should be provided every facility keeping in mind their privacy and decency. Any action outraging their modesty, femininity and respect in war is not allowed. Civilian population is equally protected. Geneva convention IV specifically provides for every possible safety to the civilians of both side. Places of civilian hospital, educational and religious worships, means of transport, unreserved area can never be subjected to attack. Thus, Conventions provide that right to life and the human existence as well as dignity of mankind must be respected and activities like genocide, serfdom, bondage are to be discouraged as these strike at the very root of humanity.

IV

In order to make the commitments meaningful and relevant there is need to see whether these are effectively implemented. Voluminous international documents well worded and systematically arranged undoubtedly have very bleak scenario at the ground level. It is not surprising that all the powerful institutions meant to work against arbitrary violation of human rights are not properly functional. This raises doubts regarding implementation of the ornamental pledges. Old saying that "war knows no law" stands perfectly right in all the ages to come. War is an emotional play between two peace loving entities and always roam and developed in the minds and not on the ground. It is the reflection of the grudge developed in the minds leading to retaliate from the various visible symptoms and the modes aiming to destroy the properties and the person of the enemy. There cannot be two opinions that world community fight sometimes for genuine cause and sometimes for superficial reasons just to establish the whim. However aggressor always has substantial reasons to recourse for war. The very psychology of warfare reigns under instinct of supremacy where steps are taken deliberately. Once a state chooses to attack on the other (irrespective of the factors) he intends to weaken his enemy and in this process he hardly bothers for the paper written laws. Superiority complex where all the nations must bow to the sovereignty of the aggressive state propels to do everything just or unjust. Laws are written during peace times and they have to be implemented during war times where parties are engaged to win over the situations anyhow. Thus, violations of human rights are a foredrawn conclusion and compulsion of the warring groups. Opting for no war or non-violence against the other state is a psychological impossibility and doing violent act with peaceful means is a fiction. The respect for humanism (women, children, civilian etc.) can be exercised before conflict situations. So it is better that states must learn the principle of harmony and mutual assistance. Preventive steps are the only remedy which can be taken without no loss of either side.

The situation prevailing since UN charter the political minds of the states are fickle regarding use of force. Under the Charter the word 'war' has been replaced by 'use of force' knowing the hard core realities of the sovereign states. Situations undergone change and the principle of self-determination and non-colonialism are accepted resulting into sophisticated power grabbing. Theory of empire expansion has gone to dogs but sovereign supremacy exists.

Proxy Wars in the Asian continent, trans-boundary terrorism, internalised political system worked by semi-armed process are ongoing where rampant violation do occur. Cases of Bosnia-Harzegovina, Kosovo, East-Timor, Chechnya, Iraq and Kargil conflict on the Indo-Pak border are instances reflecting the amount of the respect for humanism. Protection extended to international terrorist groups by Sovereign States with a view to destabilize other one hardly have any concern for human rights in mind. Although UN peace keeping forces tries to have a close look on the human rights violations.

Undoubtedly Geneva conventions are very apt instruments dealing with international armed conflicts and war. These Conventions do not speak about non-international conflicts, domestic violence, situations of simmering political discontent, sophisticated intervention in the sovereignty of other states etc. where possibility of violation can never be ruled out. This is an unattended field of humanism or violation of humanitarian laws. Thus no one would deny that the prospect of human rights in the coming years is more a thing of fancy and fiction devoid of any reality. Challenges faced by WTO, GATT, Globalization, economic universalisation etc. are prone for humanism and one has to look for a peculiar type of conflict which is no less important than the armed conflicts.

V

Now the issue is what is the remedy and who should be made responsible to ensure these humanitarian laws. There are few ideas to be advanced in this respect. Drawing a negative conclusion or living in pessimism is no remedy. Thus, one would project that the states must learn to

be humanitarian and this can be done only by withdrawing militarisation. International rules must be translated within their own municipal legal system so that others may recourse against violation and situations of belligerency need to be recognised. Cruelty, mass killing, genocide, war crimes, terrorism of any nature must be quelled by mutual cooperation and be treated as crimes against entire mankind. Setting up of tribunals and International Criminal Court or other like courts needs to be harnessed for keeping pace with humanitarian laws. Revitalising United Nations, democratising the Security Council, arms control and disarmament measures, UN conciliation system, effective arbitration process in the event of a threat to world peace, amendment in the Charter allowing parties to compel submission of disputes to the International Court of Justice or International Criminal Court, strengthening the UN's human rights machinery and effective intervention by the UN in conflict situations are a few suggestions.

Now to quote J. Krishna Iyer - 'Awesome terrorism is not the violence of extremist groups and insurgents but the callous business deals of powerful nations selling weapons, thus, aiding and abetting mass homicide and a farewell to human rights'.

Thus, we need to be introspective regarding protection of humanitarian law, avoid hypocrisy and shedding crocodile tears.

References

1. V.R. Krishna Iyer - The Dialectics and Dynamics of Human Rights in India - Tagore Law Lectures, 1999. quoted by N.R. Madhav Menon - Hindu 5.9.1999.
 2. Treaty of Mutual Assistance 1923; Geneva Protocol 1924; Locarno Treaty 1925; Pan American Conference 1928; Kellogg-Briand Pact 1928; Anti-war Treaty of Non-Aggression and Conciliation 1933; Lima Declaration 1938; UN Charter 1945; Declaration on Enhancement of the Effectiveness of the Principles of Retraining from the threat or use of force in International Relations 1988.
 3. Convention on Protection of Cultural Property during Armed Conflict 1954; Convention of Inhuman Weapons 1981; Declaration on the Prohibition of the use of Nuclear and Thermonuclear weapons 1961; Convention on the Prohibition of the Development, Production, Stockpiling and use of Chemical Weapons and on their destruction 1993; Convention on the Biological and Toxin Weapons and their Destruction 1972; Convention on the Prohibition of Military or any other Hostile use of Environmental Modification Techniques (ENMOD) 1977.
 4. Partial Test Ban Treaty 1963; Treaty on Non-Proliferation of Nuclear Weapon 1968; Antarctica Treaty 1954; Treaty of Tlateloco 1967; Outer Space Treaty 1966; Sea Bed Treaty 1971; Treaty of Rarotonga 1985; Moon Agreement 1979; NWFZ 1995; Comprehensive Test Ban Treaty (CTBT) 1996. Some bilateral treaties are - Memorandum of Understanding 1963; Nuclear Accident Agreement 1971; Agreement on the Prevention of Incidents on and over the High Seas 1972; Anti Ballistic Missile Treaty 1972; Interim Agreement SALT -I 1972; Agreement on the Prevention of Nuclear War 1973; Threshold Test-Ban Treaty 1974; Peaceful Nuclear Explosions Treaty 1976; SALT-II 1979; Agreement on the Establishment of Nuclear Risk Reduction Centres 1987; INF Treaty 1987; Ballistic Missiles Agreement 1988; START I - 1991; START - II 1993.
Geneva Convention I - Amelioration of the conditions of the wounded and sick in Armed Forces in the Field.
Geneva Convention II - Amelioration of the condition of wounded and sick and shipwrecked members of Armed Forces at sea
Geneva Convention III - Treatment of Prisoners of war.
Geneva Convention IV - Protection of Civilian Persons in Time of War.
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