

Geneva Convention for Protection of Civilians in Time of War: Legal Discourse With Reference To The Geneva Conventions Act 1960

ABSTRACT:

State is established for the welfare of its citizens. It owes its existence to the people and enjoys its allegiance from the people. State is constituted out of the elements of Population, Territory, Sovereignty and Government.¹ Most important of all these elements is the 'people' or the 'citizens' residing in the territory of State. The State has an indispensable obligation to protect the life, liberty and property of its citizens. Even to secure sovereignty is secondary to the solemn obligation of the State to its people. Governance and Development Report defines governance: **the manner in which power is exercised in the management of a country's economic and social resources for development.**²

However, the belligerent forces entered in the territory of civilian population and attacked them mercilessly in the first and second World Wars. Such an abnegation of the human rights of people at large sought to be mitigated by the International Convention Relative to the Protection of Civilian Persons in Time of War. The paper provides provisions of Geneva Convention on War. It further endeavours to compare the provisions of the International Convention for the Protection of Civilian Persons in Time of War with the Geneva Conventions Act 1960.

KEYWORDS: Geneva Convention Act, Civilian, Wounded, War, Human Rights.

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I. INTRODUCTION:

International Humanitarian law is a branch of international law which provides protection to human beings from the consequences of armed conflicts.³ The aims of humanitarian law are:

1. to protect persons who are not or are no longer, directly engaged in hostilities- the wounded, shipwrecked, prisoners of war and civilians; and
2. to limit the effects of violence in fighting to attainment of the objectives of the conflict.⁴

In respect of the barbarous war crimes committed during the second world war, it is stated that they "... destroyed the basic distinction of the law of war, i.e. the difference between the armed forces and the civilian population and between military and non-military objectives. Therefore, it was decided to extend and codify the existing provisions in an International Red Cross Conference in Stockholm held on August 23 to 30, 1948. The Conference developed four Conventions which were approved in Geneva on August 12, 1949. These Conventions were:

1. Convention for the Amelioration of the Condition of the Wounded, Sick in Armed Forces in the Field.
2. Convention for the Amelioration of the Condition of the Wounded, Sick and Ship-Wrecked Members of the Armed Forces at Sea.
3. Convention Relative to the Treatment of the Prisoners of War.
4. Convention Relative to the Protection of Civilian Persons in Time of war.

All the above Conventions came into force on October 21, 1950.

One of the purposes for the conclusion of these conventions was to reduce or limit the sufferings of individuals, and to circumscribe the area within which the savagery of armed conflict is permissible.⁵

¹ Dr. Eddy Ashiwartham and K.K. Misra, *Political Theory* 60-61 (2011 Edn. reprint 2012, S. Chand).

² <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/604951468739447676/governance-and-development> (last visited 07.02.2023).

³ Dr. H.O. Agrawal, *Human Rights* 230 (Central Law publications) Allahabad, 15th edn. 2014)

⁴ *ibid.*

⁵ Dr. H.O. Agrawal, *Human Rights* 234 (Central Law publications) Allahabad, 15th edn. 2014)

Dr. H.O. Agrawal stated with reference to The Geneva Convention and the like that “these fundamental rules are to be observed by all States whether or not they have ratified the conventions that contain them, because they constitute the intransgressible principle of international customary law.”⁶

GENEVA CONVENTION RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR:

“When the Second World War broke out, civilians were not provided with effective protection under any convention or treaty.⁷ **The lack at that time of any recent international convention for the protection of civilians is explained by the fact that it was until quite recently a cardinal principle of the law of war that military operations must be confined to the armed forces and that the civilian population must enjoy complete immunity.**⁸

This traditional conception was to be profoundly modified as a result of the First World War.⁹ President Max Huber stated: "War, as it becomes more and more total, annuls the differences which formerly existed between armies and civilian populations in regard to exposure to injury and danger ".¹⁰

Until then the Geneva Conventions had only applied to the armed forces, a well-defined category of persons, placed under the authority of responsible officers and subject to strict discipline ;it was now necessary to include an unorganized mass of civilians scattered over the whole of the countries concerned.¹¹

Furthermore, as has already been pointed out, the new Geneva Convention could not confine itself, as the earlier Conventions had done, to protecting people who had already become the victims of war-the wounded, prisoners or internees ; it had to prevent such people from becoming victims.¹²

II. OBJECT OF THE GENVA CONVENTION:

The main object of the Convention is to protect a strictly defined category of civilians from arbitrary action on the part of the enemy, and not from the dangers due to the military operations themselves.

Such a principle demands that, in time of war, all those not actively engaged in the hostilities and all those placed *hors de combat* by reason of sickness, wounds, capture, or any other circumstance, shall be given due respect and have protection from the effects of war, and that those among them who are in suffering shall be succoured and tended without distinction of race, nationality, religious belief, political opinion or any other quality. . .

Article 3 mentions, for example, that in an armed conflict which is not international in character, the contending Parties must at least comply with the following rule.

Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.”¹³

Some of the basic provisions of Geneva Convention relative to the Protection of Civilians during War are:

Article 1: (Respect for the Convention)

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances in addition to the provisions which shall be implemented in principles of the law of nations, as the result from the usages ed war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

Article 2: (Application of the Convention)

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance. Although one of the Powers in conflict may not be a party to the present Convention, the Power who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

⁶ Dr. H.O. Agrawal, *Human Rughts* 235 (Central Law publications) Allahabad, 15th edn. 2014)

⁷ https://www.loc.gov/rr/frd/Military_Law/pdf/GC_1949-IV.pdf , last visited on 31st Mar. 2016.

⁸ *ibid.*

⁹ *ibid.*

¹⁰ *ibid.*

¹¹ *ibid.*

¹² *ibid.*

¹³ https://www.loc.gov/rr/frd/Military_Law/pdf/GC_1949-IV.pdf , last visited on 31st Mar. 2016.

Article 3: (Conflicts not of an international character)

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions.

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth or any other similar criteria. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:-

- (a) violence to life and persons, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Article 4: (Definition of protected persons)

Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals. Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a cobelligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are. The provisions of Part II are, however, wider in application, as defined in Article 13. Persons protected by the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, or by the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949, or by the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, shall not be considered as protected persons within the meaning of the present Convention.

GENEVA CONVENTION FOR PROTECTION OF CIVILIANS DURING WAR: COMPARISON WITH THE GENEVA CONVENTIONS ACT 1960:

1. PUNISHMENT FOR OFFENCES COMMITTED DURING INTERNMENT:

Article 117 of the Geneva Convention For Protection Of Civilians During War: Subject to the provisions of the present Chapter, the laws in force in the territory in which they are detained will continue to apply to internees who commit offences during internment. If general laws, regulations or orders declare acts committed by internees to be punishable, whereas the same acts are not punishable when committed by persons who are not internees, such acts shall entail disciplinary punishments only. No internee may be punished more than once for the same act, or on the same count.

Article 3 of the Geneva Conventions Act, 1960 (enacted by the Parliament of India) reads:
Punishment of grave breaches of conventions.-

(1) If any person within or without India commits or attempts to commit, or abets or procures the commission by any other person of, a grave breach of any of the Conventions he shall be punished,-

- (a) Where the offence involves the wilful killing of a person protected by any of the Conventions, with death or with imprisonment for life; and
- (b) in any other case, with imprisonment for a term which may extend to fourteen years.

(2) Sub-section (1) applies to persons regardless of their nationality or citizenship.

(3) For the purposes of this section,-

(a) a grave breach of the First Convention is a breach of that Convention involving an act referred to in article 50 of that Convention committed against persons or property protected by that Convention;

(b) a grave breach of the Second Convention is a breach of that Convention involving an act referred to in article 51 of that Convention committed against persons or property protected by that Convention;

(c) a grave breach of the Third Convention is a breach of that Convention involving an act referred to in article 130 of that Convention committed against persons or property protected by that Convention; and

(d) a grave breach of the Fourth Convention is a breach of that Convention involving

an act referred to in article 147 of that Convention committed against persons or property protected by that Convention.

2. LIABILITY FOR OFFENCES COMMITTED OUTSIDE INDIA:

Article 4 of the Geneva Convention Act, 1960 reads:

Liability of persons for offences committed outside India:-

When an offence under this Chapter is committed by any person outside India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found.

Section 3 of the Indian Penal Code, 1860 reads:

“Any person liable, by any India law, to be tried for an offence committed beyond India shall be dealt with according to the provisions of this Code for any act committed beyond India in the same manner as if such act had been committed within India.”

3. JURISDICTION OF COURT:

Article 5 of the Geneva Conventions Act, 1960 reads:

“No Court inferior to that of a Chief Presidency Magistrate or a Court of Session shall try any offence punishable under this Chapter.”

4. APPLICATION OF CONVENTION:

Article 2 of the Geneva Convention For The Protection Of Civilians During War reads:

In addition to the provisions which shall be implemented in principles of the law of nations, as the result from the usages ed war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

(Application of the Convention)

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance. Although one of the Powers in conflict may not be a party to the present Convention, the Power who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof.

Section 6 of the Geneva Conventions Act, 1960 reads:

Proof of application of convention.-

If in any proceeding under this chapter in respect of a grave breach of any of the Conventions a question arises under article 2 of that Convention (which relates to the circumstances in which the Convention applies), a certificate under the hand of a Secretary to the Government of India certifying to any matter relevant to that question shall be conclusive evidence of the matter so certified.

5. PROCEDURE FOR TAKING COGNIZANCE OF OFFENCES:

Section 8 of the Geneva Conventions Act, 1960 reads:

Notice of trial of protected persons to be served on protecting power, etc.-

(1) The Court before which-

(a) a protected prisoner of war is brought up for trial for any offence; or

(b) a protected internee is brought up for trial for an offence for which that court has power to sentences him to death or to imprisonment for a term of two years or more, shall not proceed with the trial until it is proved to the satisfaction of the court that a notice containing the particulars mentioned in the next following sub-section, so far as they are known to the prosecutor, has been served not less than three weeks previously on the protected prisoner of war on the accused and the prisoners' representative.

(2) The particulars referred to in the foregoing sub-section are-

(a) the full name and description of the accused, including the date of his birth and his profession or trade, if any, and if the accused is a protected prisoner of war, his rank and arm, regimental, personal or serial number;

(b) his place of detention, internment or residence;

(c) the offence with which he is charges; and

(d) the court before which the trial is to take place and the time and place appointed for the trial.

(3) For the purposes of this section a document purporting-

(a) to be signed on behalf of the protecting power or by the prisoners' representative or by the person accused, as the case may be; and

(b) to be an acknowledgment of the receipt by that power, representative or person on a specified day of a notice described therein as a notice under this section, shall, unless the contrary is shown, be sufficient evidence that the notice required by sub-section (1) was served on that power, representative or person on that day.

(4) In this section, the expression "prisoners' representative" in relation to a particular protected prisoner of war at a particular time means the person by whom the functions of prisoners' representative within the meaning of

article 79 of the Third Convention were exercisable in relation to that prisoner at the camp or place at which that prisoner was, at or last before that time, detained as a protected prisoner of war.

(5) Any court which adjourns a trial for the purpose of enabling the requirements of this section to be complied with may, notwithstanding anything in any other law, authorise the detention of the accused in such custody as it may think fit for the period of the adjournment.

Section 17 of the Geneva Conventions Act, 1960 reads: Cognizance of offences .- No court shall take cognizance of any offence under this Act except on complaint by the Government or of such officer of the Government as the Central Government may, by notification in the Official Gazette, specify.

PROVISIONS RELATED TO WOUNDED AND SICK:

The Geneva Convention for the Protection of Civilians During War provides for provisions related to wounded and sick, some of which are as under: Article 3 of Geneva Convention for the Protection of Civilians During War reads:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions. (Conflicts not of an international character)

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth or any other similar criteria. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:-

(a) violence to life and persons, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) taking of hostages;

(c) outrages upon personal dignity, in particular humiliating and degrading treatment;

(d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for. An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict. The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Article 14 of Geneva Convention for the Protection of Civilians During War reads: (Hospital and safety zones and localities) In time of peace, the High Contracting Parties, and, after the outbreak of hostilities, the parties thereto, may establish in their own territory and, if the need arises, in occupied areas, hospital and safety zones and localities so organized as to protect from the effect of war, wounded sick and aged persons, children under fifteen, expectant mothers and mothers children under seven. Upon the outbreak and during the course of hostilities, the Parties concerned may conclude agreements on mutual recognition of the zones and localities they have created. They may for this purpose implement the provisions of the Draft Agreement annexed to the present Convention, with such amendments as they may consider necessary. The Protecting Powers and the International Committee of the Red Cross are invited to lend their good offices in order to facilitate the institution and recognition of these hospital and safety zones and localities. Article 18 of Geneva Convention for the Protection of Civilians During War reads: (Protection of hospitals) Civilian hospitals organized to give care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of attack but shall at all times be respected and protected by the Parties to the conflict.

PROVISIONS RELATING TO PROTECTION OF CIVILIANS DURING WAR IN THE CONSTITUTION OF INDIA:

During War, if National Emergency is promulgated under Article 352 of the Constitution of India, then all the Fundamental Rights except Article 20 and 21 are suspended. Article 20 provides for ex post facto law, double jeopardy and self-incrimination. Article 21 reads: "No Person shall be deprived of his life or personal liberty except according to the procedure established by law." Article 21 guarantees the basic Human Right to live even during the time of War. Thus it is basic for the protection of Civilians during war.

III. CONCLUSION:

It is salutary that the International Committee endeavoured to make the High Contracting Parties to accept the provisions of Geneva Convention and enact a law on it.

The Geneva Convention Relating to the Protection of Civilians during War is important because War, in traditional sense took between the armed forces on the principle that both belligerent forces show their talents of military attacks. Thus there was no question of involvement of Civilians in War.

But in 1st and 2nd World War, lakhs of Civilians have been attacked, have been made hostages, put as internees and in concentration camps and were killed in the most brutal manner, one could ever think. So it became quintessential to enact a law relating to protection of Civilians during War.