

Scholar Name: Amita Devi

Supervisor Name: Dr. Ghulam Yazdani

Department: Faculty of Law

Title of the Thesis: Protection of Civilians under International Humanitarian Law- A Critical Study

ABSTRACT

In ancient time, effect of armed conflicts was limited only to combatants; the main reason of which was that both conflicting parties stand *vis a vis* each other in the battlefield. Now- a-days parties don't stand *vis a vis* each other for armed conflicts, yet attack on each other. Today not only the weapons of destruction are developing but the sources which fit exact on target due to which civilians are affected at large level are also developed.

Thus in the existing circumstances, the researcher hypothesises that present legal framework is not adequately equipped to deal with emerging challenges in International Humanitarian law and not able to provide a satisfactory protection to the Civilians in Non International armed conflict. Thus the procedural laws should be reformulated and periodically reviewed to make it consistent with the rights of the accused and the victim both.

Thus in this study focus is at analyzing and pointing out the humanitarian principles embedded in the four Geneva Conventions of 1949 and its Additional Protocols of 1977 based on the historical concepts of Just War Theory and customary principles of law of war.

For the purpose of this study, primary sources are preferred in the form of comprehensive Geneva conventions, other conventions and judgments of International Tribunals. Secondary sources are available and are utilized in the form of journals, reports of ICRC, periodicals, magazines and articles. The research method adopted for this study is doctrinal.

Observing the situation and provisions of Non-international armed conflicts, it may be stated that the law regarding the internal conflicts is not so much developed as international conflicts. In this study it is found that in the development of this law, major problem is the principle of state sovereignty.

At the end of thesis it is suggested that It is recommended that IHL also should draw its validity in moral principles. Although it has been suggested that there is a strong presumption that at least the 'grave breaches' provisions of the four Geneva Conventions have gained preemptory status it has also been acknowledged that many of the norms contained within the conventions do not fulfill the criteria which are necessary for such a norm to be considered as jus cogens.

It is also suggested even though we have the ICC and ICJ under UN as judicial system as a solution for international disputes, they are having their own limited jurisdiction to try the cases, for this reason here I recommend separate judicial body to try the disputes in violation of IHL. It is in this perspective that the relevance and adequacy of IHL should be revised to deal with the problems encountered today.

The law which is in existence that prohibit the violation of human rights and IHL need to be strengthened. Moreover, there should be an exploration of new legal mechanisms that would enforce application of these sanctions, for example, a thematic resolution from the Security Council on the protection of civilians in situations of armed conflict. Such a resolution would need to be reflected in actual mandates, which is what commander in peacekeeping units. Therefore, it has become difficult to have an effective system for monitoring the implementation of IHL in non international armed conflicts. International There is need to redefine the term Armed conflict. NGO's and national humanitarian rights commissions should be encouraged to play an effective role through education, dissemination of information and as observers as is happening in the field of observance of human rights, arms control, environment etc.

These observations of the researcher also supported by the various Supreme courts of States. So ultimately the hypothesis of the research is proved.
