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INDIA AND INTERNATIONAL HUMANITARIAN LAW: COMMITMENTS, CHALLENGES, AND THE PATH FORWARD

AUTHORED BY - EZHILARASI M & NIKITHA SHREE T

I. Introduction

International Humanitarian Law (IHL), also known as the law of armed conflict or the law of war, is a specialized branch of international law that seeks to limit the effects of armed conflict on people and property. It protects persons who are not or are no longer participating in hostilities and restricts the means and methods of warfare. Rooted in principles of humanity, military necessity, distinction, and proportionality, IHL aims to balance humanitarian concerns with military objectives.

India, as a key regional power and a longstanding democracy, has had a complex engagement with IHL. While it is a party to the four Geneva Conventions of 1949, India has not ratified the Additional Protocols of 1977, citing various legal and political concerns. At the same time, India's internal security dynamics, including insurgencies and counterterrorism operations, have brought to the forefront challenges in IHL application and compliance. This article examines the foundational elements of IHL, evaluates India's legal commitments and practices, discusses existing challenges, and outlines the path forward for enhancing humanitarian protection in the Indian context.

II. Sources of International Humanitarian Law

IHL primarily derives from two sources: treaty law and customary international law.

A. Treaty Law

The cornerstone of modern IHL is the **four Geneva Conventions of 1949**, which India ratified in 1960. These include:

1. Convention I – Protection of the wounded and sick in armed forces in the field.
2. Convention II – Protection of the wounded, sick, and shipwrecked at sea.
3. Convention III – Treatment of prisoners of war.
4. Convention IV – Protection of civilians in times of war.

The **1977 Additional Protocols (AP I and AP II)** further develop the Conventions, with AP I covering international armed conflicts (IACs) and AP II dealing with non-international armed conflicts (NIACs). India is not a party to these protocols, largely due to concerns about sovereignty and the definition of internal conflicts.

B. Customary International Law

Customary IHL, recognized by the **International Committee of the Red Cross (ICRC)** and affirmed by the **International Court of Justice (ICJ)**, binds all states regardless of treaty ratification. It includes unwritten norms arising from general and consistent state practice accepted as law. This body of law becomes particularly relevant in cases where India has not ratified specific treaties but still follows certain established humanitarian norms.

C. International Criminal Law and Human Rights Law

While not strictly part of IHL, instruments like the **Rome Statute of the International Criminal Court (1998)** and the **Universal Declaration of Human Rights (1948)** interact with humanitarian law, particularly in cases of war crimes and crimes against humanity. India is not a signatory to the Rome Statute, citing concerns over sovereignty and potential misuse.

III. India's Commitments to IHL

India's approach to IHL reflects a cautious blend of legal obligation, strategic interest, and domestic political considerations.

A. Treaty Ratification

India ratified the **1949 Geneva Conventions** on November 9, 1960. These conventions are widely accepted and considered part of customary international law. However, India has **not ratified Additional Protocols I and II**, citing:

- Ambiguity in the definition of national liberation movements in AP I.
- Potential interference in internal affairs due to AP II's provisions on NIACs.
- Concerns over the application of IHL to internal conflicts like insurgencies.

India's decision is also influenced by its complex internal security situation, especially in Kashmir, the Northeast, and areas affected by Maoist insurgency.

B. Domestic Legal Framework

India lacks a standalone legislation dedicated to IHL. Nevertheless, several laws incorporate humanitarian principles:

- The **Army Act, 1950** and **Manual of Military Law** reflect adherence to the Geneva Conventions.
- The **Protection of Human Rights Act, 1993** empowers the National Human Rights Commission (NHRC) to investigate violations during conflict.
- The **Criminal Procedure Code (CrPC)** and **Indian Penal Code (IPC)** cover offenses akin to war crimes, though not explicitly categorized as such.

Indian armed forces are trained in IHL principles, and the country has organized regular IHL seminars in collaboration with the ICRC.

C. India and the International Criminal Court

India has refrained from joining the **ICC**, primarily due to:

- Concerns about politically motivated prosecutions.
- Jurisdictional overreach that could affect Indian troops in UN peacekeeping missions.
- Absence of comprehensive safeguards for non-state actors.

IV. Application of IHL in Armed Conflicts Involving India

India has experienced various forms of conflict—international, non-international, and hybrid—which bring IHL considerations to the fore.

A. Kargil War (1999)

The Kargil conflict between India and Pakistan is a clear example of an **international armed conflict (IAC)**. India treated captured Pakistani soldiers in accordance with the **Third Geneva Convention**, offering medical care and repatriation. India also allowed access to the battlefield by the ICRC—a rare move in the region—highlighting its de facto compliance with IHL.

B. Internal Armed Conflicts

India's internal armed conflicts fall under the category of **non-international armed conflicts (NIACs)**. These include:

- **Kashmir insurgency.**
- **Maoist (Naxalite) insurgency** in central and eastern India.
- Separatist movements in the **Northeast.**

While AP II is not ratified, customary IHL applies. Indian forces are required to distinguish between combatants and civilians and ensure proportionality. However, reports of **excessive use of force, custodial killings, and civilian casualties** have raised questions about

compliance.

C. Detention and Use of Force

Detained individuals in NIACs do not qualify as prisoners of war (POWs), but basic protections under Common Article 3 of the Geneva Conventions apply. There have been criticisms about the lack of judicial oversight and prolonged detentions under laws like the **Unlawful Activities (Prevention) Act (UAPA)** and **Public Safety Acts** in Jammu and Kashmir.

V. Challenges in India's IHL Compliance

Despite its formal commitments, India faces structural, legal, and political challenges in fully aligning with IHL.

A. Non-ratification of Key Protocols

India's refusal to ratify **AP I and II** prevents full legal incorporation of modern IHL norms. This creates ambiguity in applying IHL to non-international armed conflicts, which constitute most of India's contemporary conflicts.

B. Armed Forces (Special Powers) Act (AFSPA)

AFSPA grants sweeping powers to the military in "disturbed areas", including:

- Arrest without warrant.
- Shoot-to-kill authority based on suspicion.

The law has been heavily criticized for enabling **impunity** and **human rights abuses**, particularly in Kashmir and Northeast India. While India argues it is necessary for national security, it runs counter to the IHL principle of **proportionality and accountability**.

C. Counterterrorism vs. Humanitarian Obligations

India's **counterterrorism framework** has increasingly blurred the lines between law enforcement and armed conflict. Special laws like **UAPA** prioritize preventive detention over due process, raising concerns under **Article 3 common to the Geneva Conventions**, which mandates humane treatment of detainees.

D. Lack of IHL Legislation

India's failure to enact **specific legislation** implementing IHL standards results in ad hoc application. This weakens enforcement, monitoring, and accountability.

VI. Judiciary, Civil Society, and Awareness

A. Judicial Interpretation

The **Supreme Court of India** has played a vital role in integrating IHL principles into domestic jurisprudence. In **Naga People's Movement for Human Rights v. Union of India (1997)**, the Court upheld the constitutionality of AFSPA but emphasized the need for restraint and accountability.

In **Extra Judicial Execution Victim Families Association v. Union of India (2016)**, the Court questioned the blanket immunity for armed forces under AFSPA and ordered investigation into fake encounters in Manipur, reflecting a shift toward ensuring **individual accountability**.

B. Role of NHRC and NGOs

The **National Human Rights Commission (NHRC)** has investigated IHL violations and recommended compensation and prosecution in several cases, albeit with limited enforcement powers.

Civil society organizations, such as the **Commonwealth Human Rights Initiative (CHRI)** and **Human Rights Law Network (HRLN)**, have been instrumental in documenting abuses and advocating for compliance.

C. Public and Military Training

The **Indian armed forces**, in collaboration with the **ICRC**, conduct IHL training programs. However, **awareness among law enforcement and paramilitary forces is limited**, leading to inconsistent application of rules.

VII. The Way Forward

India's global stature and security challenges necessitate a forward-looking approach to IHL. Recommendations include:

A. Ratify Additional Protocols I and II

India should reconsider its position on the 1977 Additional Protocols, possibly with reservations. Ratification would:

- Signal commitment to international norms.
- Improve protection for civilians and combatants in internal conflicts.

B. Enact Comprehensive IHL Legislation

India must codify IHL into domestic law to:

- Clearly define war crimes and command responsibility.
- Establish mechanisms for investigation and prosecution.
- Fulfill obligations under **Common Article 1** to "respect and ensure respect" for IHL.

C. Reform AFSPA and Security Laws

Repeal or amend AFSPA to include:

- Judicial oversight.
- Independent complaints mechanisms.
- Training in IHL for personnel.

Counterterrorism laws should incorporate safeguards to prevent abuse and ensure compliance with IHL.

D. Strengthen Institutions

Empower the **NHRC** and **judiciary** to proactively monitor IHL compliance. Set up independent commissions to investigate violations and recommend reparations.

E. Promote Awareness

Introduce IHL into school and university curricula, especially in law and military academies. Encourage media and civil society engagement to build a culture of accountability and humanitarian concern.

VIII. Conclusion

India's relationship with International Humanitarian Law reflects both commitment and caution. While it has ratified the core Geneva Conventions and applies several IHL principles in practice, significant gaps remain, especially in the treatment of internal armed conflicts. To uphold its democratic values and international standing, India must embrace a more robust IHL framework. Ratifying key protocols, enacting comprehensive legislation, and reforming security laws can ensure that the conduct of hostilities remains within the bounds of law, humanity, and dignity.

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