

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary  
Peer Reviewed

[www.ijlra.com](http://www.ijlra.com)

## **DISCLAIMER**

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner what sever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

## **EDITORIALTEAM**

### **EDITORS**

#### **Dr. Samrat Datta**

*Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board*



#### **Dr. Namita Jain**



*Head & Associate Professor*

*School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC-NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.*

*Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrish Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019*

## Mrs.S.Kalpna

Assistant professor of Law

*Mrs.S.Kalpna, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law,Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

## **ABOUT US**

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN- 2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

# **A STUDY ON INTERNATIONAL HUMANITARIAN LAW AND THE OVERLOOKED DIMENSION OF MENTAL HEALTH IN ARMED CONFLICTS**

AUTHORED BY - RUTHRESH KUMARAN.M

## **Abstract**

This study critically explores the intersection between International Humanitarian Law (IHL) and the mental health needs of civilian populations affected by armed conflict. While IHL traditionally focuses on the physical protection of civilians, the psychological harm inflicted during war—such as trauma, PTSD, and long-term mental disorders—remains under recognized in both legal provisions and humanitarian responses. The paper traces the evolution of IHL and analyses its core principles to reveal the implicit yet insufficient coverage of mental well-being. It further examines the complementary role of International Human Rights Law (IHRL) in affirming mental health as a fundamental right, especially for vulnerable populations like children, women, refugees, and detainees. Using doctrinal methodology, the study draws from case law, treaties, and empirical reports to identify legal and operational gaps. Case studies from Syria, Gaza, Ukraine, and the Democratic Republic of Congo underscore the severe psychological toll of conflict and the failure of existing frameworks to ensure adequate mental health support. The paper concludes with concrete recommendations for reforming IHL through doctrinal reinterpretation, integration with human rights standards, and operational changes that prioritize mental health as an essential component of humanitarian aid. It calls for a paradigm shift that recognizes mental integrity not just as a humanitarian concern, but as a protected legal right during and after conflict.

## **Introduction**

Armed conflicts inflict profound and multifaceted suffering upon civilian populations. While the physical devastation of war—manifested in deaths, injuries, displacement, and destruction of infrastructure—is visible and often documented, the psychological trauma experienced by civilians frequently remains obscured. The mental health toll of warfare is insidious, complex, and long-lasting, affecting not only individuals directly exposed to violence but also future generations through intergenerational trauma, disrupted social structures, and the erosion of

trust in human relationships. In such a context, the role of IHL in protecting civilians must be revisited through a broader lens—one that accounts for mental as well as physical integrity.

IHL, rooted in the Geneva Conventions of 1949 and their Additional Protocols, establishes a legal framework for the protection of individuals who are not—or are no longer—participating in hostilities.<sup>1</sup> The central humanitarian aim of IHL is to limit the effects of armed conflict, safeguarding fundamental rights and minimizing unnecessary suffering. However, the bulk of IHL's provisions focus on physical protections. These protections, while essential, are incomplete when one considers the full spectrum of harm experienced during war.

Mental health, though profoundly affected by armed conflict, is often addressed only implicitly. Provisions related to humane treatment and the dignity of persons may be interpreted to include psychological well-being, but there is a lack of explicit recognition of mental health as a standalone concern. For example, Common Article 3 of the Geneva Conventions prohibits “violence to life and person” and “outrages upon personal dignity,” which can be interpreted to encompass psychological harm, though without precision.<sup>2</sup>

The gap between the lived realities of civilians in conflict zones and the protections offered under IHL is particularly stark when one considers the prevalence of PTSD, depression, anxiety, and other disorders. These conditions disrupt community resilience and undermine post-conflict recovery. Despite this, mental health services are rarely prioritized in humanitarian responses, which focus primarily on physical needs.<sup>3</sup>

Legal systems and humanitarian institutions have historically prioritized tangible harms over intangible ones. Changing this mindset requires a paradigm shift: recognizing that the psychological wounds of war are as debilitating and deserving of redress as physical injuries.

### **Mental Health and Armed Conflict**

Armed conflict is one of the most devastating events a society can endure. Beyond deaths and displacement, the psychological wounds often remain hidden and unattended. The World Health Organization (WHO) estimates that one in five people in conflict zones suffers from a

---

<sup>1</sup> Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field art. 3, Aug. 12, 1949, 75 U.N.T.S. 31.

<sup>2</sup> Id.

<sup>3</sup> Rebecca Barber, *The Right to Mental Health in Armed Conflict*, 102 Int'l Rev. Red Cross 1, 7 (2020).

mental health condition.<sup>4</sup>

Historically, war-related mental suffering has long been observed: “shell shock” in World War I, “combat fatigue” in World War II, and the formal recognition of Post-Traumatic Stress Disorder (PTSD) following the Vietnam War.<sup>5</sup>

Common disorders in conflict settings include PTSD, depression, anxiety, substance abuse, and psychosomatic illnesses.<sup>6</sup> Vulnerable populations—women survivors of sexual violence, displaced children, and refugees—bear disproportionate psychological burdens.<sup>7</sup> Studies consistently show mental health prevalence in conflict settings is more than double that in non-conflict areas.<sup>8</sup>

## Legal Framework under International Humanitarian Law

### Historical Evolution

IHL traces its roots to moral and religious traditions, but its modern codification began with the Lieber Code (1863), which inspired the Geneva and Hague Conventions.<sup>9</sup>

### Core Principles

The Geneva Conventions of 1949 and Additional Protocols (1977) enshrine four key principles: distinction, proportionality, necessity, and humanity.<sup>10</sup> Though primarily concerned with physical protections, these principles are broad enough to support interpretations inclusive of psychological well-being.

### Primary Instruments

- **Geneva Convention I–IV (1949):** Focused on wounded soldiers, POWs, and civilians.<sup>11</sup>

---

<sup>4</sup> World Health Organization, Mental Health in Emergencies (2019), <https://www.who.int/news-room/fact-sheets/detail/mental-health-in-emergencies>.

<sup>5</sup> Allen S. Keller & David Eisenman, *Psychological Impact of Armed Conflict on Civilians* 23–25 (2010).

<sup>6</sup> Hanna Kienzler, Mental Health in War and Post-War Contexts: The Case of Kosovo, 6 *Intervention* 241, 245–47 (2008).

<sup>7</sup> Zachary Steel et al., The Mental Health Impact of Refugee Trauma, 7 *BMC Med.* 1, 3–5 (2009).

<sup>8</sup> Fiona Charlson et al., New WHO Prevalence Estimates of Mental Disorders in Conflict Settings: A Systematic Review and Meta-Analysis, 394 *Lancet* 240, 242–44 (2019).

<sup>9</sup> Francis Lieber, *Instructions for the Government of Armies of the United States in the Field* (Lieber Code), Gen. Orders No. 100 (Apr. 24, 1863).

<sup>10</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) arts. 48, 51, 35, June 8, 1977, 1125 U.N.T.S. 3.

<sup>11</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War arts. 27, 32, Aug. 12, 1949,

- **Additional Protocol I (1977):** Expands civilian protection, expressly mentioning “mental well-being.”<sup>12</sup>
- **Additional Protocol II (1977):** Applies to non-international conflicts, prohibiting violence to the “mental well-being” of persons.<sup>13</sup>

## Enforcement

Enforcement mechanisms include the International Criminal Court (ICC) and ad hoc tribunals like the ICTY and ICTR. For instance, in *Prosecutor v. Tadić*, the ICTY confirmed that violations of Common Article 3 apply in non-international conflicts.<sup>14</sup>

## Intersection of IHL, Mental Health, and Human Rights Law

While IHL indirectly safeguards psychological well-being, International Human Rights Law (IHRL) explicitly recognizes it.

- **ICESCR, art. 12** guarantees “the highest attainable standard of physical and mental health.”<sup>15</sup>
- **CRC, art. 39** mandates psychological recovery and reintegration of child victims of armed conflict.<sup>16</sup>
- **CRPD, art. 11** requires states to protect persons with psychosocial disabilities during armed conflict and humanitarian emergencies.<sup>17</sup>
- **ICCPR, art. 7** prohibits torture, including psychological harm.<sup>18</sup>

The ICJ has affirmed that IHRL applies concurrently with IHL in armed conflict, notably in its *Nuclear Weapons Advisory Opinion* and *Wall Advisory Opinion*.<sup>19</sup>

Together, IHL and IHRL create a complementary framework: humane treatment, prohibition of torture, and protection of vulnerable populations all converge to safeguard mental health.

---

75 U.N.T.S. 287.

<sup>12</sup> Protocol I, supra note 10, art. 75.

<sup>13</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) art. 4, June 8, 1977, 1125 U.N.T.S. 609.

<sup>14</sup> *Prosecutor v. Tadić*, Case No. IT-94-1-A, Judgment, ¶ 98 (Int’l Crim. Trib. for the Former Yugoslavia July 15, 1999).

<sup>15</sup> International Covenant on Economic, Social and Cultural Rights art. 12, Dec. 16, 1966, 993 U.N.T.S. 3.

<sup>16</sup> Convention on the Rights of the Child art. 39, Nov. 20, 1989, 1577 U.N.T.S. 3.

<sup>17</sup> Convention on the Rights of Persons with Disabilities art. 11, Dec. 13, 2006, 2515 U.N.T.S. 3.

<sup>18</sup> International Covenant on Civil and Political Rights art. 7, Dec. 16, 1966, 999 U.N.T.S. 171.

<sup>19</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. 226, ¶ 25 (July 8); *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. 136, ¶ 106 (July 9).

## Case Studies

- **Syria:** Save the Children reported three-quarters of children exhibited toxic stress symptoms.<sup>20</sup>
- **Gaza:** WHO estimates over 210,000 people suffer PTSD and depression, with nearly 90% of children experiencing trauma.<sup>21</sup>
- **Ukraine:** One in four Ukrainians is at risk of developing a war-related mental health condition.<sup>22</sup>
- **DRC:** Sexual violence as a weapon of war leaves thousands with untreated trauma and social exclusion.<sup>23</sup>

These case studies show that despite strong legal norms, implementation remains inadequate.

## Challenges and Gaps

1. **Fragmentation of Law:** IHL lacks explicit mental health provisions; IHRL obligations are often derogable.
2. **Lack of Infrastructure:** War devastates health systems, including psychiatric care.
3. **Cultural Stigma:** Societal taboos discourage treatment-seeking.
4. **Weak Enforcement:** Few cases prosecute psychological harm as a war crime.

## Conclusion and Suggestions

Mental health must be explicitly recognized within IHL as a core humanitarian concern.

Suggested reforms include:

- Adding mental health provisions in future IHL instruments.
- Interpreting existing IHL through IHRL obligations.
- Operationalizing mental health support within humanitarian aid.
- Prioritizing vulnerable groups such as women, children, and displaced persons.

The protection of civilians must extend beyond the body to encompass the mind. Only then will international law provide holistic humanitarian protection.

---

<sup>20</sup> Save the Children, *Invisible Wounds: The Impact of Six Years of War on the Mental Health of Syria's Children* (2017).

<sup>21</sup> World Health Organization, *WHO Special Situation Report: Gaza Strip* (2023).

<sup>22</sup> World Health Organization & Ministry of Health of Ukraine, *Ukraine Mental Health Response Report* (2023).

<sup>23</sup> Human Rights Watch, *Soldiers Who Rape, Commanders Who Condone: Sexual Violence and Military Reform in the Democratic Republic of Congo* (2009).