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# **A STUDY ON VIOLENCE AGAINST CHILDREN** **IN ARMED CONFLICT AREA**

AUTHORED BY - AKSHARA B.<sup>1</sup>

## **INTRODUCTION**

Armed conflict is a situation where a person's life is totally changed. In that situation, we are witnessing for the violation of human and legal rights of people's in the conflicted area. Children's are badly affected by this armed conflict due to their vulnerability in the society. International Humanitarian Law is protecting the rights of the people who are affected by the armed conflict, not the rights of the people, who are directly involved in the war. International humanitarian law mandates that the armed forces and groups to take measures to protect children during the conflict. We are having various conventions and protocols for protecting the rights of vulnerable peoples. But still, in current scenario, we have to make more efforts to protect the rights of children, who are affected by armed conflict. The researcher aims to study on the legal protection available to children in conflicted area and violations against children in times of war.

“A child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier”.<sup>2</sup> The Geneva Conventions and Additional Protocols use different age-limits with respect to different protective measures for children, although 15 is the most common.<sup>3</sup> There are at least 350 million children living in armed conflict area in the world. This paper aims to examine the violations against children in conflicted area and legal protection available to children in armed conflict area.

## **Violations against children in times of war**

- Killing and maiming of children

Any act in the context of the armed conflict that effects in the death of one or more children is called killing and any act that causes a grave, permanent, disabling injury, scarring or mutilation

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<sup>2</sup> Convention on Child Rights, 1989, Article 1, General Assembly resolution 44/25 (United Nations)

<sup>3</sup> International Humanitarian Law Databases, [https://ihl-databases.icrc.org/customary-ihl/eng/docindex/v1\\_rul\\_rule135#Fn\\_4C6E6F6A\\_00019](https://ihl-databases.icrc.org/customary-ihl/eng/docindex/v1_rul_rule135#Fn_4C6E6F6A_00019) (last visited Dec. 01, 2023)

to a child is called maiming. As a result of direct targeting and also indirect actions such as, crossfire, landmines, cluster munitions, improvised explosive devices or other indiscriminate explosive devices causes killing and injuring of children. It is happening on the context military operations, house demolitions, search and-arrest campaigns or suicide attacks.

- Recruitment or use of children in armed forces and armed groups

Recruitment or use of children in armed forces and armed groups are widely happening in almost all conflicted area. The armed forces and groups is recruiting and using these children, both boys and girls, as fighters, porters, cooks, spies, messengers, collaborators and sex slaves. The recruitment or use of children in the war field or conflicted areas may be compulsory, forced or voluntary conscription or enlistment. The international treaties are prescribed minimum age for the same too.

- Attacks on schools and hospitals

Nowadays, attacks on schools and health facilities are becoming normal in armed conflicts. Children living in conflict zones are increasingly vulnerable at their school and in hospital beds. Direct or indirect violence and threats against schools and health facilities have an overwhelming effect on children. The Safe School Declaration contains a number of commitments aimed at strengthening the prevention of, and response to, attacks on education during armed conflict, including by reducing the military use of education infrastructure

- Abduction of children

The unlawful removal, confiscation, seizure, apprehension, taking or enforced disappearance of a child either temporarily or permanently for the purpose of any form of exploitation of the child is called abduction. This includes, but is not limited to, recruitment in armed forces or groups, participation in hostilities, sexual exploitation or abuse, forced labour, hostage-taking and indoctrination. These children are taken for forced conscription, domestic servitude and sexual exploitation, or kidnapped for ransom or revenge. Sometimes, these children are subjected for horrific ill-treatment when they are being held in detention, from rape to being forced to kill other children. These activities may create overwhelmed impact on victims and their families. If a child is recruited by force by an armed force or group, this is considered as two separate violations – abduction and recruitment.

- Denial of humanitarian access for children

The denial of humanitarian access has become too familiar in armed conflicts. The intentional deprivation of, or impediment to the passage, of humanitarian support indispensable to children's survival, by the parties to the conflict, including wilfully impeding relief supplies as provided for under the Geneva Conventions; and significant impediments to the ability of humanitarian and assist affected children, in situations of armed conflict.

- Rape or other grave sexual violence

Sexual violence means any sexual act, attempt to obtain a sexual act, or acts to traffic a child's sexuality. It takes many forms, including rape, sexual slavery or trafficking, forced pregnancy, sexual harassment, sexual exploitation, abuse and forced abortion.

Sexual violence against both adults and children has been used as a tactic of war across all conflicted area. The effect of sexual violence on children is catastrophic – physically, psychologically and socially. Children who have been victims of sexual violence are often left with serious physical injuries. The children who has been subjected to rape or sexual violence are at high risk of damage to children's reproductive systems, contracting sexually transmitted infections etc. The result of the rape or other grave sexual violence are child pregnancy, drop out of school, social exclusion and stigmatisation. This makes them more vulnerable in the society and diminishing the scope of further education, livelihood and marriage.

## **Role of IHL in the protection of children in conflicted area**

Humanitarian law deals with those matters which have an impact of armed conflicts on the life, personal integrity and liberty of human beings.<sup>4</sup> The objectives of the humanitarian law is to protect persons who are not or are no longer, directly engaged in hostilities such as wounded, ship wrecked, prisoners of war and civilians and to limit the effects of violence in fighting and to restrict on prohibit those means and methods of warfare which are indiscriminate in character or came unnecessary sufferings to attainment of the objectives of the conflict.<sup>5</sup> Humanitarian law is meant to evade human sufferings, barbarism and cruelty in armed conflicts. It provides protection to human beings from the consequences of armed conflict and applies to international armed conflict as well as non-international armed conflict.

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<sup>4</sup> DR. H. O. AGARWAL, INTERNATIONAL LAW AND HUMAN RIGHTS 927 (Central Law Publications 2019).

<sup>5</sup> DR. H. O. AGARWAL, INTERNATIONAL LAW AND HUMAN RIGHTS 927 (Central Law Publications 2019).

The humanitarian law concept may be found in Quran, Bible and Dharma in the Vedic period in India. To humanize warfare and to protect the victims of armed conflicts, a systematic development of modern humanitarian law in armed conflicts originated in the second half of the 19<sup>th</sup> century. The Convention for the Amelioration of the Wounded in Time of War, 1864, was the first Convention for providing certain rules regarding the conditions of wounded soldiers in land armies. Later in 1868, the Declaration of St. Petersburg expressly stated that the use of weapons is against the laws of humanity. In 1899, the Peace Conference held at Hague and the conference resulted in the adoption of three significant conventions i.e., Convention for the Pacific Settlement of International Disputes, Convention with respect to the Laws and Customs of War on Land and Convention concerning the adaptation of the Geneva Convention to Naval Warfare. Later in 1907, second Hague Conference held and it produced thirteen new conventions. The Hague Convention No. IV of 1907 mandates the maximum possible protection for victims of war-wounded, sick and shipwrecked members of armed forces and civilian persons and rules were made accordingly. The rules made by Hague Conventions which laid down the foundations of the law of war were sapped because of the instances of their non-observance.<sup>6</sup> During Second World War, warring parties had barbarously negated human values and dignity. The entire world witnessed for the purposeful destruction of civilian targets. In 1948, International Red Cross Conference held at Stockholm and developed four Conventions which were approved in Geneva on 1949 i.e., Convention for the Amelioration of the Condition of the Wounded, Sick in Armed Forces in the Field (Convention No: I), Convention for Amelioration of the Condition of the Wounded, Sick and Ship-wrecked Members of the Armed Forces at Sea (Convention No: II), Convention Relative to the Treatment of the Prisoners of War (Convention No: III) and Convention Relative to the Protection of Civilian Persons in Time of War (Convention No: IV). One of the important aim of these Conventions was to reduce or limit the suffering of individuals, and to circumscribe the area within which the savagery of armed conflict is permissible.<sup>7</sup> Hague Law and Geneva Law applicable in armed conflict have become so closely interrelated, known today as International Humanitarian Law. Hague Law includes St. Petersburg Declaration of 1868, Conventions of 1899 and 1907. It also included the Geneva Protocol of 1925 and the Hague Convention of 1954. Further, the Geneva Law included the Conventions of 1864, 1906, 1929 and 1949 and the three Protocols added later on. The Conventions protected the victims of war and

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<sup>6</sup> DR. H. O. AGARWAL, INTERNATIONAL LAW AND HUMAN RIGHTS 930 (Central Law Publications 2019).

<sup>7</sup> J. G. STARKE, INTRODUCTION OF INTERNATIONAL LAW 553 (Butterworths 1989)

aimed to provide safeguards for disabled armed forces personnel and persons not taking part in the hostilities. In 1977, two Additional Protocols to the Geneva Conventions of 1949 were adopted and later in 2005 adopted the Third Additional Protocol to the Geneva Conventions. The four Geneva Conventions of 1949 and their three Additional Protocols presently form the basis and main source of international humanitarian law.

International humanitarian law provides wide protection for children, who are considered as most vulnerable population in our society. The Geneva Conventions of 1949 and Additional Protocols of 1977 lay down a series of rules for providing special protection to the children. The Geneva Convention, Additional Protocols, Convention on the rights of child, 1989 and its Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, mandates special protection for children's but also sets limits on children's participation in conflicts. Moreover, the ILO Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, which prohibits the forced or compulsory recruitment of children for use in armed conflict.

- ***The Geneva Conventions of 1949 (including Additional Protocols)***

International humanitarian law provides wide-ranging protection for children as persons taking no part in hostilities, and special protection as persons who are particularly vulnerable.<sup>8</sup> Moreover, children taking part in hostilities are also protected.<sup>9</sup>

Firstly discussing about the general protection of children, as members of the civilian population. Children's are protected by Fourth Geneva Convention, which protects the civilian persons in time of war. So they can take the benefit of all the provisions of the fourth Geneva Convention which is available to the civilians. The Fourth Geneva Convention provides the principles of humane treatment and forbidding coercion, torture, corporal punishments etc. Moreover, children benefit from the provisions of international humanitarian law, Protocol I of 1977, relative to the conduct of the hostilities. Protocol II, 1977 codifies the principles according to which the civilian population shall not be subjected for attack.

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<sup>8</sup>Denise Plattner: *Protection of Children in International Humanitarian Law*, International Review of the Red Cross No.240 (1984).

<sup>9</sup>Denise Plattner: *Protection of Children in International Humanitarian Law*, International Review of the Red Cross No.240 (1984).

Secondly, discussing about the special protection of children, as members of the civilian population. The Fourth Geneva Convention provides many provisions in favour of children. The Convention recognizes the need of special protection for children against warfare. But it is not explicitly mentioned anywhere in the Convention. However, Article 77 of the Protocol I states that: *“Children shall be the object of special respect and shall be protected against any form of indecent assault. The parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason.”* Protocol II of 1977 provides similar provisions for non-international armed conflicts. Article 4 of the Protocol II mandates that, *“Children shall be provided with the care and aid they require.”* It provides special measures to protect the rights of the children.

Further it provides the special provisions for protection against the effects of hostilities. Article 41 of the Fourth Geneva Convention states that: *“Children who have not attained the age of fifteen years and mothers of children under seven come into the categories of the civilian population who can be received into the hospital or safety zones established by the parties to an international armed conflict.”* Article 17 of the Fourth Geneva Convention mandates that, *“the children and maternity cases come into the category of civilian persons who should be evacuated from the encircled areas.”* In addition to this, Article 78 of Protocol I provides for the temporary evacuation of children on account of their safety, if necessary. In case of non-international armed conflicts, Article 4 of Protocol II provides for the temporary evacuation of children from the conflicted area to a safer area within the country.

Protocol I mandates the State Parties to an international armed conflict should provide care and aid to the children. The Fourth Geneva Convention having various provisions to protect the basic human rights of the children by considering the particular needs of children. Article 23 of the Convention of 1949 states that, the Contracting Party must allow the free passage of relief intended for children under fifteen and maternity cases. Further, Article 50 of the Convention directs the occupying power to make the appropriate arrangements for proper working of institutions, which provides care to children. The Convention of 1949 mandates the State Parties in conflict should provide adequate means of support, in case, if they are unable to earn a living.<sup>10</sup> The Parties to the Conflict shall provide additional food to nursing mothers and children under

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<sup>10</sup> Fourth Geneva Convention, 1949, Article 81 (United Nations)

fifteen, if there is any need arises.<sup>11</sup> While distributing the relief consignments, priority shall be given to children and maternity cases.<sup>12</sup> Article 78 of Protocol I states that, the temporary evacuation shall provide in case of any health emergency or medical treatment required by any children in the conflicted areas.

It is the duty of High Contracting Parties and parties to conflict to facilitate the reuniting of families dispersed as a result of an international armed conflict.<sup>13</sup> In the case of non-international armed conflicts, all appropriate steps shall be taken to facilitate the reuniting of families temporarily separated.<sup>14</sup> By protecting a child's family, international humanitarian law is also protecting the moral values, religion, culture and traditions in which he has been brought up. Article 24 of the Fourth Geneva Convention mandates that, "*the parties to a conflict shall ensure in all circumstances that children under fifteen who are orphaned or separated from their families may continue 'the exercise of their religion and their education'; as far as possible, their education shall be entrusted to persons of a similar cultural tradition.*" Further Article 78 of Protocol I lays down that, "*each child's education, including his religious and moral education as his parent's desire, shall be provided while he is away with the greatest possible continuity.*" The Geneva Convention and its additional protocols provides wide range of protection for the children in armed conflict areas.

### ***Convention on the rights of child***

In 1989, Convention on the Rights of Child has been adopted by the United Nations. This treaty covers all the fundamental rights of the child. The Convention refers that States parties are required to make efforts to protect the rights of children to survival; to develop to their full potential; to protection from abuse, neglect, and exploitation; and to participate in family, cultural, and social life. And also the Convention recognizes the family as "*the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children.*" The Convention prohibits discrimination, economic and sexual exploitation, or cruel, degrading, or inhuman treatment.

While laying down common standards, the Convention takes into account the different cultural,

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<sup>11</sup> Fourth Geneva Convention, 1949, Article 89 (United Nations)

<sup>12</sup> Protocol I of 1977, Article 70 (United Nations)

<sup>13</sup> Protocol I of 1977, Article 74 (United Nations)

<sup>14</sup> Protocol II of 1977, Article 4 (United Nations)

social, economic and political realities of individual States so that each State may seek its own means to implement the rights common to all. There are four general principles enshrined in the Convention. These are meant to help with the interpretation of the Convention as a whole and thereby guide national programmes of implementation. The four principles are formulated, in particular, in Articles 2, 3, 6 and 12.<sup>15</sup>

- *Non-discrimination (Art. 2)*
- *Best interests of the child (Art. 3)*
- *The right to life, survival and development (Art. 6)*
- *The views of the child (Art 12)*

The preamble of convention recalls the basic principles of the United Nations and specific provisions of certain relevant human rights treaties and proclamations. It reaffirms the fact that children, because of their vulnerability, need special care and protection, and it places special emphasis on the primary caring and protective responsibility of the family. It also reaffirms the need for legal and other protection of the child before and after birth, the importance of respect for the cultural values of the child's community, and the vital role of international cooperation in securing children's rights.<sup>16</sup> The CRC does not offer a precise definition of the best interests of the child. While the term “best interests” broadly describes the well-being of a child, it is not possible to give a conclusive definition of what is in the best interests of the child, as this depends on a variety of individual circumstances, such as the age and the level of maturity of the child, the presence or absence of parents, the child’s environment, etc. It is important to be aware that for certain specific actions, including adoption and separation from parents against their will, the CRC requires that the best interests be the determining factor, whereas for other actions it has to be a primary consideration, which does not exclude other considerations to be taken into account.<sup>17</sup>

Article 38 extends the field of application of Art. 77 Additional Protocol I to non-international armed conflict. Article 38 urges States Parties to take all feasible measures to ensure that those aged of less than 15 years do not take a direct part in hostilities and that priority be given in

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<sup>15</sup> UNICEF, [http://www.unicef.org/india/children\\_3220.htm](http://www.unicef.org/india/children_3220.htm) (last visited Dec. 20, 2023)

<sup>16</sup> CHILD RIGHTS INTERNATIONAL NETWORK, <http://www.crin.org/docs/resources/treaties/unrcr.asp> (last visited Dec. 20, 2023)

<sup>17</sup> UNHCR Guidelines on the Formal Determination of the Best Interests of the Child, Part 1, 2006 (United Nations)

recruitment to the oldest of those aged between 15 and 18. It thus falls short of the ban on direct or indirect participation laid down by Additional Protocol II.

- ***Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict***

The objective of this protocol is that to protect and promote the rights of the child and further it is recognising the requirement of the special protection as well as continuous improvement of the situation of children without any discrimination. The protocol highlights, “*the need to increase the protection of children from involvement in armed conflict and it is condemning the targeting of children in situations of armed conflict and direct attacks, including places that generally have significant presence of children, such as schools and hospitals.*”<sup>18</sup> Article 1 of the Protocol states that, “*State Parties shall take all measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.*” Further the Protocol mandates that no child shall be compulsorily recruited into the armed forces and the State Party should ensure the same.<sup>19</sup> It is strictly prohibiting the armed groups from recruiting or use in hostilities persons under the age of 18 years and it is directing the State parties to take actions to prevent such acts by adopting effective legal measures.

## Conclusion

The four Geneva Conventions of 1949 and their three Additional Protocols contain number of provisions for the protection of certain categories of persons which the parties to armed conflicts are required to observe in the interest of humanity. The Geneva Conventions of 1949 and their three Additional Protocols require the States Party to enact a national legislation to make serious violations of these treaties punishable offences. India has ratified the fourth Geneva Conventions of 1949 in 1959 and enacted the Indian Geneva Conventions Act in 1960 incorporating them in the Indian legal system.

Continued violations against children will have consequences for future generations. The States should take measures to prevent children being put at risk by upholding international laws and standards and holding violators to account. And finally State Parties to conflict should take

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<sup>18</sup>OHCHR, <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-rights-child-involvement-children> (last visited on Dec.25, 2023)

<sup>19</sup> Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict, Article 2, General Assembly Resolution A/RES/54/263, 2000 (United Nations)

appropriate measures to rehabilitate the affected children. The States should adopt strategies for protecting civilians and ensure that their forces are acting under the mandate of United Nations standards. Further, armed forces and groups should avoid the use of explosive weapons in highly populated area.

The States should implement existing mechanisms to protect children in conflict, including the Geneva Conventions, the Convention on the Rights of the Child and its Optional Protocol on the Involvement of Children in Armed Conflict. Governments should investigate and prosecute perpetrators of serious violations against children, including the individuals in the sequence of command that are accountable for violations. Children caught up in conflict violations must be treated as victims, not perpetrators. There is a requirement of stronger political will and pressure to guarantee that International Criminal Court (ICC), international tribunals, commissions of inquiry and other mechanisms focus on crimes against children.

