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International Humanitarian Law Combating the Indian Enigma

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ABSTRACT

Any society is based on its cultures, as these are the stepping stones, and warfare comprises of a very important content of the culture of any society. Prior to the 19th century there were no set of rules governing the battleground, as every civilisation moved as per there cultural ethics. But, later a set of governing rules and regulations originated which have now taken the form of International Humanitarian Law.

Time and again it is argued that, where lies the inception of the International Humanitarian Law? The law didn't get framed in a day but it went through a crucial procedure of court battles, that lead to the evolution of 'Human Right' methodology.

The Indian society went through a huge process of renovation that lead to the amendment of certain of its customs and acceptance of the global ideologies. Several times Indian courts had the opportunity to build a nexus between the constitution of India and International Humanitarian Laws, but the judgements given, lacked the view, as the courts were unable to harmoniously construe the two mechanisms.

International Humanitarian Law was met with open arms by both Judiciary and Legislature of India, but still a full-fledged application seems like a distant dream.

I. INTRODUCTION

As long as the human memory goes wars have been deconstructing and reconstructing dynasties, and contributing in formation of the societies. India also is no outsider to the art of war. As far as the Vedic period goes wars have been fought on the territory of India for Dharma, Pride, Power etc. The ancient and Holy Texts such as Ramayana, Mahabharata mentions the legitimate conduct of wars. The Vedas such as Manu smriti and Yagnavalakya smriti also lays down the ethical framework that is to be followed in a war. Many of such rules goes like, fighting must begin no earlier than dusk and should end by dawn, no warrior may kill or injure a warrior who has surrendered, no warrior may kill or injure an unarmed warrior, no warrior

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may kill or injure an unconscious warrior.[2]

From the last century the conduct of wars has changed. Unlike the past era where wars were fought on battlefield nowadays the focus and scope of wars have shifted to global scale. With weapons such as technology; mass destruction can be done with just one flick of the finger. The way in which the wars happen has shown a drastic shift lately. In the aftermath of the Second World War, and in particular after the end of the Cold War, we have seen a dramatic increase in civil wars – wars fought between armed groups or wars fought between armed groups and the state.[3]

Since World War II, the majority of armed conflicts in the world have not been international armed conflicts (IACs), but rather non-international armed conflicts (NIACs), involving hostilities between government's armed forces and non-state armed groups (NSAGs)[4]. The huge difference in the practise of war in current and previous era has brought upon numerous challenges to International Humanitarian Law (IHL), which being the body of law who checks the behaviour of the hostilities and work to protect those who suffered due to these armed conflicts need to keep up with the changing phenomenon. After the wars used to get over, apart from a huge cloud of dust and destruction numerous casualties are taken into account as well, and the IHL provides a legal leg to the victims of such disasters to stand upon.

During an armed rebellion the duty of utmost importance is to protect human life and dignity; and to do that, the implementation of the existing rules laid down by the IHL is required. The failure to provide the application of International Humanitarian Law, whether by the State armed forces or by the Non-governmental armed groups; is the biggest cause of suffering during the armed conflicts. Therefore, the biggest challenge possessed during the protection of victims in times of such crisis consists of convincing or even compelling the authorities concerned to follow the rules they are bound to.

The term Humanitarian Law is of relatively recent origin. It would not be unwise to say that International Humanitarian Law is referred to as Law of War. The Modern Humanitarian Law consists of two Historical Law streams: The Law of Hague referred to in the past as the law of war proper and the Law of Geneva or Humanitarian Law[5] The Law of The Hague states the rights and the duties of the people caught up in the battle atmosphere and also hampers the

[2]*Dharma-yuddha*, WIKIPEDIA (April 12, 2020, 08:32 PM), https://en.wikipedia.org/wiki/Dharma-yuddha.
[3]James D. Fearon and David D. Laitin, *Ethnicity, Insurgency and Civil War*, 97(1) AM. POLITICAL SCI. REV. (2003).
[4]IG Haugen, *A study on parallel legal agreements, armed groups and compliance with international humanitarian law*, UiO: Duo, November 11, 2011, 6, 10.
[5] Manish Kumar Yadav, *International Humanitarian Law as a Part of International Law with Special Reference to Its Implementation in the West and South Asian Region*, 20 IOSR-JHSS, 1 (2015).

choices for means of destruction. It creates a periphery to obstruct the wrongful means and methods of the war to cause lesser damage by the militaries.

In the wake of the current warfare scenario the challenges faced are not easily solved, scholars and practitioners have explored, proposed various methods in order to increase NSAGs approach towards International Humanitarian Laws. IHL is the only weapon that can be used to eliminate the injustice caused to the war victims. But the challenge is not the lacunae of laws but the failure to implement and follow the already existing laws. There is an immense need for further rules and regulation's clarification in light of emerging Humanitarian conflicts. It is highly acknowledged that the rules and regulations laid down by the IHL whose soul motive is to work as a shield to the laymen, if implemented at a full pace and on a larger scope, the situation of the civilians during armed rebellions would improve to a great extent.

II. INTERNATIONAL HUMANITARIAN LAW- CHRONOLOGY (JOURNEY TILL DATE)

(A) The Inception- The Nicaragua method of recognising customary International Law

The International Court of Justice (ICJ) or for that matter the international law has never been inclined towards the methodology. Unlike its approach to lay down the methods of treaty interpretation, the ICJ has rarely ever laid down its methodology for determining the existence, content and scope of the rule of customary international law that it applies.[6] The silence received on the methodology doesn't come only from the side of ICJ but the legal literature also doesn't give up too much intake on the matter.

Custom being an important wheel in the functioning of the society have also contributed into the formation of the law as we see it today. As confirmed by the International Court of Justice in the Nicaragua case, custom is constituted by two elements, the objective one of 'a general practice' and the subjective one 'accepted as law', the so-called opinio juris.[7]

The case of Nicaragua gives an insight on the formation and role of customs in international law. In Nicaragua, the ICJ held, in relation to the customary norms on the use of force, that '[t]he Court must satisfy itself that the existence of the rule in the opinio juris of States is confirmed by practice.'[8] In doing so, it hinted that percieving opinio juris logically precedes

[6] Stefan Telmon, *Determining Customary International Law: The ICJ's Methodology between Induction, Deduction and Assertion*, 26 EUR. J. INT. LAW, 417, 418 (2015).
[7] Precious Muleya, *how does international customary law develop in the field of human rights and what is its impact?*, Academia (April 19, 2020, 7:32 PM), http://www.academia.edu/5189481/HOW_DOES_INTERNATIONAL_CUSTOMARY_LAW_DEVELOP_IN_THE_FIELD_OF_HUMAN_RIGHTS_AND_WHAT_IS_ITS_IMPACT
[8] Nicaragua v. United States, ICJ Rep 14, 98, para 184 (1986).

the analysis of State practice. This hence created an implication that opinio juris credibility plays a major role in ascertaining the state practice, since, as long as opinio juris is not in doubt, the consistency of State practice, which is a cherished and important element of customary rule, was not to be the first consideration. In Nicaragua, the ICJ was brought into notice to ascertain the customary norms over the usage of force. These are the rules which no one pays heed to follow as they are violated time and again by the States.

In situations where customary law principles were identical to treaty provisions, the Court held that even if principles of customary international law were subsequently codified into treaties, they continue to exist side by side. For any party to treaties, both customary and treaty law apply. If, for some reason, the treaty ceases to apply between treaty parties, the identical customary law provision continues to apply between them[9]

As a principle, the Nicaragua method, lays special focus on the opinio juris as compared to the state practice in determining the customary international law. In general, international humanitarian norms and human rights both prohibits the usage of force, evidenced by a firm opinio juris, enshrined in international conventions, and characterized by inconsistence state practice.

(B) THE NEXT STEP

It was in the 1995 Tadic (Appeals) case before the International Criminal Tribunal for the Former Yugoslavia (ICTY) that an international tribunal most eloquently set out the practical reasons for downplaying battlefield practice in the process of customary law ascertainment. The result of the Tadic method is that 'humanizing' customary norms of international humanitarian law will be more easily ascertained.[10] Battlefield is the place where nothing is certain, it is of utmost difficulty to predict the nature of the troops when they are in a situation where the matter is of their own existence, one uncalculated move can cause the destruction of many lives, thus the battlefield practices often are far less humane then they may appear from the coated wording of officials and their projection in military manuals. Hence, the battlefield practice is not taken into consideration to substantially subscribe to the creation of the customary international law if contrary verbal or written practice is present.

The Tadic Method takes the Nicaragua method one step ahead as it not only hinders the

[9] Ruwanthika Gunaratne, *Nicaragua vs United States: An Analysis of the Jurisprudence Relating to Customary International Law*, Wordpress, (April 17, 2020, 10:22 AM), https://ruwanthikagunaratne.wordpress.com/tag/customary-international-law-in-the-nicaragua-case/

[10] Jan Wouters and Cedric Ryngaert, *The Impact of Human Rights and International Humanitarian Law on the Process of the Formation of Customary International Law*, K.U.Leuven Inst. of Inter. Law, Feb. 2008, at 3.

inconsistence state practise on the battlefield, in the coating of more humane verbal state practise and opinio juris, it also considers the battlefield practise incredible based on the untrustworthiness caused due to the uncertainty they portray.

(C) THE END RESULT: -THE CONTACT OF THE HUMANITARIAN LAW METHOD OF CUSTOMARY LAW FORMATION WITH THE GENERAL INTERNATIONAL LAW

It should be recalled that, while general principles of law are a positive source of law, they are undoubtedly the source of law most open to moral influences. Morals are an intrinsic part of the law as they provide a steady base for the creation of legal premises. Though it is not compulsory for a moral to have a legal status but a law should be morally valid.

The state's consent plays a vital role in the modern approach to the customary laws. Modern customary laws are often based on the practice of a treaties with universal application, whereas traditional customary law derived its power from its practise in the state or by number of states.

The method of determining customary law in the field of human rights and humanitarian law have a huge impact on the general international law. They both affects each other, especially in the fields where the stakes are high. In case of matters regarding the global or planetary interest, unlike the individual or private interest, there is a lot to lose. Thus, in these fields, the traditional requirement of consistency of state can be prioritize a bit low, because it is the strong and firm opinio juris, democratically implicated by the global states consent, that has crystallized and lead to the general international law.

III. THE INDIAN SCENERIO

International Humanitarian Law that is now applied in armed conflicts must be as old as the armed conflicts itself. In early era when the Indian society was in the wheel of getting civilised, wars between tribal communities to obtain power over each other was a normal scenario, but even then, a periphery of rules was pre-decided. As society began to develop and became more politically, socially and economicaly civilised, the events happened in Mahabharata and Ramayana started laying down a structure of "Dharma Yuddha". Dharma-yuddha is a Sanskrit word made up of two roots: *Dharma* meaning righteousness, and *yuddha* meaning warfare. In the Ancient Indian texts, dharma-yuddha refers to a war that is fought while following several rules that make the war fair.[11] It was based upon the principle of righteousness.

Then came the medieval period and the total definition of war got modified. The introduction

[11] KAUSHIK ROY, HINDUISM AND THE ETHICS OF WARFARE IN SOUTH ASIA: FROM ANTIQUITY TO THE PRESENT 28.

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of all new armoury and the international forces trying to invade India lead to the modification of warfare. The Persians and the Mughals started capturing areas of India with a goal in mind to contain power over all of India and since they belonged to a whole new territory their rules and means of fighting were different from that of those living in the territory. Invaders such as Mahmud of Ghazni, Mohammad of Ghaur, Nader Shah of Persia, and Timur of Samarkand (Tamerlane) invaded India mainly to plunder her riches, and therefore their military campaigns were marked by senseless pillaging, looting, destruction and slaughter. Ala-ud-Din Khalji's incursions into southern India were associated with "the sack of cities, the slaughter of the people and the plunder of temples"[12] There was huge difference in not only the fighting strategy of the battle but even the motive to fight the battle varied.

In contemporary times, post-independence India has fought four wars with Pakistan, one with China and has militarily intervened in the Sri Lankan civil war. Governments have also persistently faced situations of internal armed conflict against Maoists in the 'red corridor' and insurgents in Kashmir and the Northeast.[13] India being the largest democracy globally, confers it to its citizens the application of International Humanitarian Law (IHL) in its legal framework, but there is still a lacuna in the context of the same.

(A) Status of Humanitarian propositions in the current Indian Legal machinery

At the time of drafting of our constitution, the founding fathers inculcated the principles of Justice, Equality, Fraternity in the very Preamble of the Constitution to safeguard the dignity of an individual. It can not be said that while drafting the constitution the founding fathers were unaware of the Universal Declaration of Human Rights (UDHR). Thus, paying importance to the necessity of the human rights mentioned in the UDHR, certain principles were included in the constitution. And to provide firmness to the implementation of human rights mentioned in UDHR they were included in Part III and Part IV of the constitution. As an effect some of the civil, political and cultural rights were able to find place in the Part III i.e. Fundamental Rights of the Indian Constitution, making them enforceable. Some of the economic and social rights were included in the Part IV i.e. Directive Principles of State Policy thus making them not enforceable. But again, the question arises that whether the human rights can be segregated into two compartments of enforceable and non-enforceable? The answer to this is No, as the dignity of an individual can not be put in just two compartments. As human rights cannot be

[12] A.C. RAYCHAUDHURI, KALIKINOV DATTA & R.C. MAJUMDAR, AN ADVANCED HISTORY OF INDIA 298 (1988).
[13] Chintan Chandrachud, *International Humanitarian Law in Indian Courts: Application, Misapplication and Non-Application*, SSRN, Sep. 23, 2013.

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segregated as per the time and demand, because if some human rights are recognised, it must not lead to the neglection of the other human rights for they are indivisible and independent. Denial of judicial relief in the case of violation of some human rights will result in the denial of such relief for all human rights and to follow this parameter it is of utmost importance that a proper balance or harmony is to be built between the Fundamental Rights and Directive Principles of State Policy. So, Supreme Court of India in State of Kerala vs. N. M. Thomas, has made it clear that the Fundamental Rights and Directive Principles are complementary and supplementary to each other and therefore principles and rights should be harmoniously construed.

- Nexus between The Constitution of India and Universal Declaration of Human Rights (UDHR)

Several provisions of the Indian Constitution make direct or indirect references to international law. The framers' view about acceptance of international humanitarian laws could be seen in the constitution of India.

Article 14 of the Constitution of India, can be seen as reflecting the views of article 7 of UDHR[14] The Article says that "the State shall not deny to any person equality before the law, or the equal protection of the laws within the territory of India".[15] The Supreme Court of India in E. P. Royappa V. State of Tamil Nadu[16] held that equality is a dynamic concept with many aspects and dimensions and it cannot be, cribbed, cabined or confined‟ within the traditional and doctrinal limits. The laws distinguishing any strata of the society can be made by the legislature only if they are based on certain reasonable grounds. The classification in any case must not be arbitrary, biased and evasive.

As mentioned in the Article 19 of the constitution of India, Indian citizens are guaranteed the freedom of speech and expression, peaceable assembly, association or union of co-operative society, free movement, and residence.[17] Freedoms preached in this article also goes hand in hand with the ideologies mentioned in the UDHR.

Criminal justice has also been one of the most important mottos of the UDHR and in that context, Article 20 of the constitution of India, provides the following safeguards to the persons accused of crimes:

[14] Art. 7 of UDHR says, "All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination".
[15] INDIA CONST. art. 14.
[16]E.P. Royappa v. State of Tamil Nadu, A.I.R. 1974 S.C. 555 (India).
[17]INDIA CONST. art. 19.

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(a) Ex post facto law: Clause (1) of Article 20

(b) Double Jeopardy: Clause (2) of Article 20

(c) Prohibition against self-incrimination: Clause (3) of Article 20[18]

This Article constitutes a limitation on the legislative power of the Parliament or the State Legislature under Article 246 read with the three Legislative Lists contained in the Seventh Schedule to the Constitution.[19]

As per the Article 3 of UDHR "everyone has the right to life, liberty and security of person."[20] Similarly, Constitution of India under Article 21 says that "no person shall be deprived of life or personal liberty except according to the procedure established by law".[21] The prescription of some sort of procedure is not enough, the procedure must be right, just and fair and not arbitrary, fanciful or oppressive[22]. The Supreme Court of India, by adopting a wide interpretation has extended the constitutional guarantee of Article 21 to right to privacy[23], and freedom from torture or cruel, inhumane or degrading treatment.[24]

Article 22 of the Constitution of India provides those procedural requirements which must be adopted and included in any procedure adopted and included in any procedure enacted by the legislature. Clause (1) and (2) of Article 22 guarantee four rights on a person who is arrested for any offence under an ordinary law-

(a) The right to be informed 'as soon as maybe' of ground arrest,

(b) The right to consult and to be represented by a lawyer of his own choice,

(c) The right to be produced before a Magistrate within 24 hours,

(d) The freedom from detention beyond the said period except by the order of the Magistrate.[25]

These principles are tainted somewhere by the Article 9 of UDHR i.e. "no one should be subjected to arbitrary arrest, detention or exile."[26] and Article 9 of International Covenant on Civil and Political Rights (ICCPR) that also says that every person has the right to liberty and

[18]INDIA CONST. art. 20.
[19]A. K. Gopalan v. State of Madras, A.I.R. 1950, S.C. 27 (India).
[20]Peter Danchin, *Article 3: Life, Liberty and security of person*, THE UNIVERSAL DECLARATION OF HUMAN RIGHTS (April 10, 2020, 2:30 PM), http://ccnmtl.columbia.edu/projects/mmt/udhr/article_3.html
[21]INDIA CONST. art. 21.
[22]Maneka Gandhi v. Union of India, A.I.R. 1978 S.C. 597 (India).
[23]Kharak Singh Vs. State of Punjab, (1994) 2 S.C.R. 375 (India).
[24]Francis Coralie Mullin Vs. Union Territory of Delhi, A.I.R. 1981 S.C. 746 (India).
[25]DR. J.N. PANDEY, CONSTITUTIONAL LAW OF INDIA, pg. 334-335.
[26]*#Arbitrary Detention*, FRONTLINE DEFENDERS (April 17, 2020, 11:09 AM), https://www.frontlinedefenders.org/en/violation/arbitrary-detention

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security and should not be subjected to arbitrary arrest. Alike principles have also been inserted in the Code of Criminal Procedure (CrPC),1973 under Sections 41 to 60.

The constitution of India understood the need of an apex authority in the tier of Judiciary to act as the Custodian of the Constitution. The centralization of some power was must to create a stable mechanism for justice. Hence, under Article 32 of the Constitution of India every citizen can directly approach the Supreme Court for the enactment or enforcement of any fundamental rights. This right is in consonance with Article 8 of the UDHR i.e." Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law." [27]

Thus, this not only shows the farsighted view of our Constitution makers but also gives an insight about their view to accept the global laws into the legal framework of India. As without the garnish of Human Rights Law the constitution of any nation would be lacking in some way or another.

(B) Application in Indian Courts

Though the constitution of India has somethings in common with that of the universal principles of human rights. The founding fathers while drafting the Constitution of India felt the need of building a bridge between the ideologies of our society with that of the global principles. Hence, while drafting the Indian Constitution, Part III was incorporated which provides the fundamental freedoms for every individual without distinguishing on the basis of race, sex, language, cast and religion. However as such there are no such explicit provisions in the constitution of India that gives status to the international law in the Indian legal system. Only the Article 51(c) of the Constitution of India[28] that "foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and encourage settlement of international disputes by arbitration." But being enshrined in Part IV of the constitution of India which states Directive Principles of State Policy, the article has no enforceability in the courts.

India as a member of the United Nations is bound by the UN Charter, which pleads its members to promote and encourage respect for human rights. Thus, the Indian Constitution also is inclined towards promoting international peace and security and is also of a respectable view towards the international laws and treaties.

[27] *The Universal Declaration of Human Rights,* CLAIMING HUMAN RIGHTS (April 10, 2020, 08:38 PM), http://www.claiminghumanrights.org/udhr_article_8.html
[28]INDIA CONST. art. 5, cl. 2.

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India has accepted the dualism principle in respect to implementation of law. Dualist approach towards international law requires their acceptance into the national law to provide them the enforceability in the territory of the nation. They have to be passed by the legislature in form of an act to get a legal standing. For that matter, Article 246 read with entries 13 and 14 of the Union List of the Seventh Schedule empower Parliament to participate in international conferences, associations and other bodies and implementation of decisions made thereto and to legislate in relation to entering into treaties and agreement with foreign countries and to implementing of treaties, agreement and conventions with foreign countries respectively. Further, Article 253 says that, Legislation for giving effect to international agreements Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body[29] Gujrat High Court said that, "There is no law in India which specifically obliges the State to enforce or implement the international treaties and convention including the implementation of International Humanitarian Law."[30]

IV. CASE ANALYSIS

Rev. Mons Sebastiao Fransisco Xavier Dos Remedios Monterio V. State of Goa[31]

Historical Background:

Goa was a Portuguese colony for about 450 years, having been seized by force of arms. On December 19, 1961 Goa was occupied by the Indian Armed Forces following a short military action. It then came under Indian Administration from December 20, 1961 and was governed under the Goa, Daman and Diu (Administration) Ordinance 1962 promulgated by the President of India. Under the Ordinance all authorities were to continue performing their functions and all laws (with such adaptations as were necessary) were to continue in force and power was conferred on the Central Government to extend to Goa other laws in force in India.

The Ordinance was later replaced by an Act of Parliament bearing the same title and numbered as Act I of 1962. It re-enacted the provisions of the Ordinance and in addition gave representation to Goa in Parliament amending for the purpose the Representation of the People Act. The same day (March 27, 1962), the Constitution (Twelfth Amendment) Act. 1962 was enacted and was deemed to have come into force on December 20, 1961. By this amendment

[29] INDIA CONST. art. 253.
[30] Ktaer Abbas Habib Al Qutaifi and Another v. Union of India (UOI) and ors. 1999 C.R.I. L.J. 919 (India).
[31] A.I.R. 1970 S.C. 329 (India).

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Goa was included in Union Territories and a reference to Goa was inserted in Article 240 of the Constitution.

Many Acts in force in India were then extended to Goa and many Regulations and Orders were promulgated. Among the Acts so extended were the Citizenship Act of 1955, the Foreigners Act 1946 and the Registration of Foreigners Act, 1939.

Facts:

The appellant (Rev. Father Monteiro) is a resident of Goa. After the annexation of Goa by India, he had the choice of becoming an Indian national or retaining Portuguese nationality. He chooses the latter and was registered as a foreigner. The period of stay expired and he did not ask for its extension or renewal. He was ordered to leave India by the Lt. Governor of Goa. The Lt. Governor is empowered by a notification of the President of India issued under Article 239 of the Constitution to discharge the functions of the Central Government and his order has the same force and validity as if made by the Central Government. Rev. Father Monteiro disobeyed the order, and in consequence was prosecuted under Section 14 read with Section 3(2)(c) of the Foreigners Act. He was convicted and sentenced to 30 days simple imprisonment and a fine of Rs. 50/- (or 5 days' further simple imprisonment). He appealed unsuccessfully to the Court of Session and his revision application to the Court of the Judicial Commissioner, Goa also failed. Finally, he appeals by special leave of this Court against the order of the Judicial Commissioner, Goa.

Contentions of the Appellant:

The defence of Rev. Father Monteiro was that he was protected by the Geneva Conventions Act, 1960, that the order of the Lt. Governor for his deportation was ultra vires the Act and that he had committed no offence. The Judicial Commissioner and the two courts below have held, for different reasons, that the Geneva Conventions ceased to apply after Goa became a part of India and that the Municipal Courts in India can, give him no redress against an Act of State.

Decision of the Supreme Court:

The Supreme Court of India in this case,

- Noted the limitation on the Geneva Convention Act of 1960.
- Held that the Act though in force within the entire territory of India, has not been made enforceable against the Government of India
- Neither the act provides for any specific mechanism to give a cause of action to any party for enforcement of the provisions of this Act or to its Schedules.

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- The court's conclusion that 'true annexation' brought the occupation to an end seems to contradict fundamental notions of modern IHL.

In many other cases Supreme Court also tried to Harmoniously Construe Indian Constitution with the International Laws,

In Apparel Export v. A. K. Chopra[32], the Supreme Court held that in cases involving violation of human rights, the courts must ever remain alive to the international instruments and conventions and apply the same to a given case where there is no inconsistency between the international norm and domestic law occupying the field.

In Gramophone Co. of India Ltd. Vs. Birendra Bahadur Pandey[33] the Supreme Court of India held that, due to the comity of Nations the Rules of International law may be accommodated in the Municipal law even without express legislative sanction, provided they do not run into such conflict with Acts of Parliament. But, when they do run into such conflict, the sovereignty and the integrity of Republic and the supremacy of the constituted legislatures in making the laws may not be subjected to external rules except to the extent legitimately accepted by constituted legislature themselves. The doctrine of incorporation recognizes the position that, the rules of international laws incorporated into national law and considered to be part of the national law, unless they are in conflict with an Act of Parliament.

V. Nexus Between War, Terrorism And International Humanitarian Law

Another issue that has been brought in front of Indian Courts has been of the concern of the treatment of War victims, Prisoners of War and Terrorism. In many cases of cross-country disputes, the court has given decisions in the wake of International Laws.

(A) Prisoners of War

- A prisoner of war (POW) is a person, whether combatant or non-combatant, who is held in custody by a belligerent power during or immediately after an armed conflict.[34]
- In the Indian Scenario, there are several cases where the after effects of war were brought to the court and justice was sought but since the matter regarding this issue is between nations, international treaties are to be looked upon.

In the case of Angrej Kaur V. Union of India (UOI) and Ors.[35] The wife of a constable in

[32] A.I.R.1999 S.C. 625 (India).
[33] A.I.R. 1984 S.C. 667 (India).
[34] *Prisoner of War*, WIKIPEDIA (April 15, 2020, 5:30 PM), https://en.wikipedia.org/wiki/Prisoner_of_war
[35] Angrej Kaur v. Union of India (UOI) and Ors, (2005) 4 S.C.C. 446 (India).

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Border Security Force (BSF), who was declared to have died in the war, petitioned to Supreme Court under Article 32[36] of the Constitution of India.

Based on news reports and verbal testimonies of prisoners of war who had been repatriated, she believed that her husband was alive and languishing in Pakistani jails for over three decades. Accordingly, she prayed for a writ of habeas corpus seeking the repatriation of her husband.[37] The Court recognised that issuing a writ of habeas corpus to Pakistani authorities was beyond the boundaries of its jurisdiction. But it sought to pass appropriate directions, since in its view, human emotions made it difficult to accept the 'legal landline' between the two nations.

The Court was satisfied that the Indian authorities had taken a number of steps, including engaging in bilateral discussions with Pakistan, to trace the whereabouts of the petitioner's husband.[38]

The court therefore, dispose of this writ petition with the direction that the authorities shall continue the efforts to find out the actual position and expeditiously intimate the petitioner, the results of the efforts/inquiries made by them.

Clarifying that its directions related to Indian officials alone, the court said: If a soldier, while fighting for the country's security, is captured and taken to other [sic] country's prison contrary to the official belief that he was dead, it would be in the interest of not only petitioner and her family members but also for the armed forces of this country to see that he is brought back to our country.[39]

Even though the court did not explicitly refer the principles of IHL in its judgement, its judgment was in furtherance of laid down norms regarding the repatriation of prisoners of war, laid down in Article 118 of the Third Geneva Convention, 1949 that establishes the principle that prisoners of war shall be released and repatriated without delay after the cessation of active hostilities.[40]

Supreme Court being an Indian Court, even though it is the apex authority of judgement delivery, it was beyond its jurisdiction to give directions to another nation thus, the Supreme

[36]Article 32 provides for the right to petition the Supreme Court at first instance for the enforcement of fundamental rights under Part III of the Constitution. It also states that the Supreme Court has the power to issue directions, orders or writs for the enforcement of fundamental rights.
[37] Angrej Kaur v. Union of India (UOI) and Ors, (2005) 4 S.C.C. 446 (India).
[38] Ibid.
[39] Ibid.
[40]Raunak Samdani, *Third Geneva Convention of 1949,* ACADEMIKE (April 18, 2020, 2:32 PM), https://www.lawctopus.com/academike/third-geneva-convention-of-1949/

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Court gave instructions to the rightful authorities to carry on the investigation further.

Another case arose in the similar circumstances, but the scope was vast as the matter was not regarding one individual but of 54 Indian Prisoners of War. In Jagjit Singh Aurora & Ors. v. Union of India[41], former members of the Indian armed forces petitioned the Gujarat High Court in relation to fifty-four prisoners of war who were allegedly languishing in Pakistani jails for over three decades after the 1971 Indo-Pak war, and were presumed dead by the Government of India.

The petitioners had two principal contentions:

- First, that since the prisoners of war were still alive, they should be treated as having been alive for the purposes of the payment of salary, pension and benefits to their next of kin.[42]

In other words, rather than being treated as dead since the 1971 war, members of the armed forces should be treated as though they had served their full tenure until retirement.

- Second, that the court was asked to direct the government to petition the International Court of Justice (ICJ) requesting Pakistan to honour its agreements on the repatriation of prisoners of war.[43]

The second contention of the petitioners was based on the fact that the Indian and Pakistani governments had entered into the Simla Agreement in July 1972, under which it was agreed that the modalities for the repatriation of prisoners of war would be discussed.[44]

Pursuant to this agreement, it was subsequently decided that the governments would release and repatriate the prisoners of war.[45] The petitioners claimed that India acted in accordance with the Geneva Conventions by treating prisoners with respect and repatriating them in accordance with the agreement with Pakistan. The government of Pakistan, on the other hand, was in breach of IHL and their treaty obligations by failing to repatriate a large number of Indian prisoners of war.[46]

But even after all these efforts of the Government of India the problem persists that India can't go to the ICJ unilaterally. The ICJ would have jurisdiction only if reference was made by India and Pakistan both. Not only this, seeking the intervention of ICJ into the matter would

[41] Jagjit Singh Aurora & Ors. v. Union of India, 2012 G.L.H. (1) 362 (India).
[42] Ibid.
[43] Ibid.
[44]Agreement Between the Government of India and the Government of the Islamic Republic of Pakistan on Bilateral Relations (Simla Agreement) (2 July 1972), Clause VI.
[45] Jagjit Singh Aurora & Ors. V. Union of India, 2012 G.L.H. (1) 362 (India).
[46] Ibid.

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contradict India's consistent approach that its disputes with Pakistan should be resolved Bilaterally without any intervention of a third party.

The Gujarat High Court held that since the prisoners of war were still alive, the state could not presume them dead. Hence, their next of kin would be entitled to service and retirement benefits as though they were in service until the age of retirement.[47]

Controversially, the Court also directed the government to refer the matter to the ICJ, since Pakistan was in breach of an international treaty.[48] It correctly recognised that apart from a special agreement referring a dispute to the court, the ICJ's jurisdiction can also be invoked through compromissory clauses[49] in treaties.

In the matter of the nation's dignity the Indian Judiciary even though were hand-cuffed due to the lack of Jurisdiction, but still took measures by giving the instructions to deal with the issue properly and deliver justice.

(B) Waging war on Terrorism

Terrorism has been one of the biggest menaces in the Indian society and the war with it has been going on for a very long time. The terrorism activities and attacks have not only affected the lives of individuals who fell victim to it but also have shaken the nation as a whole to its core.

The terrorist attack on parliament, which provide a context of cases can be mentioned to throw some light on the issue.

On 13 December 2001, a group of five terrorists infiltrated the Parliament of India in New Delhi while it was in session. Their objective was to take members of Parliament and government officials' hostage and blow up the parliamentary premises.[50] The attempt failed. The terrorists were killed following an exchange of fire with security personnel.[51] Four people were tried for engaging in a conspiracy along with the terrorists to perpetrate the attack. Three of them were convicted by a special court[52], while the fourth was convicted for a lesser offence. State v Mohammed Afzal[53] concerned the appeals from the judgment of the special court. Although the accused were charged with committing a range of criminal offences, the offence

[47] Jagjit Singh Aurora & Ors. v. Union of India, 2012 G.L.H. (1) 362 (India).
[48] Ibid.
[49] Compromissory clauses refer to clauses in international treaties and conventions that provide for the resolution of disputes through the ICJ or other international bodies.
[50] State v. Mohd. Afzal And Ors., (2003) 107 D.L.T. 385 (India).
[51] State v. Navjot Sandhu AIR 2005 SC 3820 **[3]** (India).
[52] The special court was constituted under Section 23 of the Prevention of Terrorists Activities Act, 2002, No. 15, Acts of Joint session of Parliament, 2002 (India).
[53]State v. Mohd. Afzal And Ors., (2003) 107 D.L.T. 385 (India).

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that is of interest for this chapter is provided for in Section 121 of the Indian Penal Code 1860, which penalises the waging of war against the government of India.[54]

Prior to the independence of India, this capital offence was introduced by the britishers to prosecute and punish those who attacked state institutions and several times those who initiated violence against the government. Post-independence, it was turned into a mechanism to guide the society from terrorist activities as it was used frequently against those accused of terrorist acts.

In Mohammed Afzal, the state and the defendant parted ways on the interpretation of the notion of 'war' under Section 121 of the Indian Penal Code. The defendant argued that 'war' should be interpreted as seeking to overthrow the government by conquest or rebellion and attacking combatants as opposed to civilians.[55] But since, war was fought between nations according to the rules of international conventions. Since the terrorists did not seek to overthrow the government of the day, they could not be prosecuted under Section 121. Further, unlike war, which signified an ongoing state of hostilities, terrorist acts were intermittent, and hence fundamentally different.[56]

In response, the state contended that there was a difference between inter-state war and intra-state war. The illustration accompanying Section 121 provided a glimpse into the minds of the enacting legislature. Since joining an insurrection against the government constitutes 'waging war' against the government of India, the legislative intent was not meant to restrict the meaning of 'war' to cases where rival states were engaged in an armed conflict of a certain magnitude.[57]

Speaking for the Court, Justice Nandrajog rejected the interpretation of Section 121 put forth by the counsel for the defendant. The Court held that 'war' was a flexible expression that had different connotations in international law and municipal law. Insurgency, as a legal concept, fell within the auspices of 'waging war' as understood in Indian domestic law.[58] Even international law drew a distinction between inter-state wars and intrastate wars.

Thus, the Court concluded that wars could occur even where the belligerents were not states.

[54] Section 121 of the Indian Penal Code 1860 reads as follows: 'Waging, or attempting to wage war, or abetting waging of war, against the Government of India. - Whoever wages war against the Government of India, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or imprisonment for life and shall also be liable to fine. Illustration. A join an insurrection against the Government of India. A has committed the offence defined in this section.'.
[55] State v. Mohammed Afzal, (2003) 107 D.L.T. 385 (India).
[56] Ibid.
[57] Ibid.
[58] Ibid.

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Individuals who had a different allegiance could use arms to engage against the state

The Court provided an example to drive home the point: … a single person may have infiltrated into India with a nuclear bomb, a missile and a navigation system to guide a missile. He uses it to bomb the parliament when it is in Session and particularly when the President of India is to address it. The entire executive and the legislature are present…He intends by his attack to wipe out the entire legislative and executive body. This solitary act by one man would be more devastating than 1000-armed men attacking the Parliament. Indeed, it would be an act of war.[59]

The court found that where a group of five terrorists attacked Parliament, the seat of Indian sovereignty, while it was in session, this would constitute an act of war for the purposes of Section 121 considering the cache of arms and fire-power that was at their disposal. Thus, The Delhi High Court relied upon the difference between international armed conflict and non-international armed conflict in order to expound upon the meaning of war under Section 121 of the Indian Penal Code.

Later, the matter went in appeal to the Supreme Court.[60] The Supreme Court agreed with the Delhi High Court's interpretation of the term 'war' under Section 121 of the Indian Penal Code. According to it, there was a difference between the understanding of war in municipal law and international law.[61] In international law, war referred to military operations between two or more hostile states. Given the illustration to Section 121[62], it was clear that war was ascribed a different meaning under the Indian Penal Code. It was intended to include acts of insurrection or insurgency (as opposed to belligerency) against the government.

As a result, while writing the Court's judgment, Justice Venkatarama Reddi did not acknowledge the distinction between international armed conflict and non-international armed conflict that was expounded upon by the High Court. Instead, the Supreme Court chose to highlight that there was divergence of opinion about how war was defined in the international sphere as well.[63]

In failing to recognize and understand that IHL creates a distinction between international armed conflict and non- international armed conflict, the court misunderstood the law in two ways:

[59] Ibid.
[60] State v. Navjot Sandhu, A.I.R. 2005 S.C. 3820 (India).
[61] This conclusion has been cited in several subsequent cases. For example, Mohammed Afzal Kumhar v. State (2009) 158 D.L.T. 549 (India); State of Maharashtra v. Ajmal Kasab A.I.R. 2011 Bom. 648 (India).
[62] Indian Penal Code, 1860, No. 45, Act of Legislative Council, 1860 (India).
[63] State v. Navjot Sandhu, A.I.R. 2005 S.C. 3820 (India).

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(I) Its judgement delivers the impression that the concept of war in international law is always understood as involving belligerency between states (although the court did accept that precise definitions of war within this framework varied).

(II) Second, it implies that rules of international law govern only war between sovereign states.

Both of these propositions are mistaken, since IHL not only takes cognizance of intra-state wars, but also prescribes rules for the conduct of such wars. IHL actively participate in the protection of victims of non-international armed conflicts.

VI. CONDITION OF INTERNATIONAL HUMANITARIAN LAWS IN INDIAN COURTS

The Indian courts have always been open with their thinking of accepting the international laws. Time and again the courts have accepted the implication of foreign laws, principles in its judgements. But still the full-fledged application is awaited.

(A) Infrequent References to IHL:

If we look at the Indian case judgements, the reference made by the courts of IHL and the Geneva Conventions is very scant. Especially when co-related to International Human Rights convention such as the International covenant on Civil and Political Rights.[64]and the Convention on the Elimination of All Forms of Discrimination Against Women[65].

The IHL is still not accepted in its fullest and purest form. It is treated as a side option more like a second priority. It is still not given special emphasis in the curriculum of the Law Schools, as IHL is not in the list of Compulsory law subjects to be taught to LLB aspirants.

(B) The Importance and Nature of the Role of IHL in Case Law:

The importance of IHL in the Indian scenario has varied from time to time. In the context of Rev. Monterio case[66], the whole issue could not have been solved without the help of IHL, as the dispute was hinged on whether and when India's occupation of Goa has ceased. Similarly, in the Prisoners of War cases, the IHL norms demanding the repatriation of prisoners of war

[64]Madhav Hoskot v. State of Maharashtra A.I.R. 1978 S.C. 1548 (India); Prem Shankar Shukla v. Delhi Administration A.I.R. 1980 S.C. 1535 (India); Bachan Singh v. State of Punjab (1982) 3 S.C.C. 24 (India); Indian Express Newspapers v. Union of India A.I.R. 1986 S.C. 515 (India); Nilabati Behera v. State of Orissa A.I.R. 1993 S.C. 1960 (India).

[65] Madhu Kishwar v. State of Bihar A.I.R. 1996 S.C. 1864 (India); Vishaka v. State of Rajasthan A.I.R. 1997 S.C. 3011 (India); Githa Hariharan v. Reserve Bank of India A.I.R. 1999 S.C. 1149 (India); Municipal Corporation of Delhi v. Female Workers (Muster Roll) A.I.R. 2000 S.C. 1274 (India); Seema v. Ashwani Kumar A.I.R. 2006 S.C. 1158 (India).

[66]Rev. Mons Sebastiao Fransisco Xavier Dos Remedios Monterio v. State of Goa A.I.R. 1970 S.C. 329 (India).

after the end of hostilities laid down the major principles for the courts' judgement. In the Terrorism case, the definition of war was interpreted, but while giving that interpretation, the court had to look down at the mention in the IHL. The interpretation of 'Waging War' that court gave was relevant to a certain extent with that of the IHL.

The cases mentioned in the first two themes depicts the IHL's applicatory role. As in the case regarding the annexation of Goa, the Supreme Court directly relied upon the notions of occupation and annexation as noted down in the Geneva Conventions and Hague Regulations in order to determine whether India's belligerent occupation had ceased. In the case regarding the prisoners of war, the principle of repatriation of prisoners of war after the close of hostilities and the agreements between India and Pakistan in the context of this principle laid down the turf for the court's decision.

The second role that IHL plays in Indian Legal System encompasses situations where a principle or concept of IHL has been cited to distinguish it from a concept in domestic law. This can be stated as IHL's 'distinguishing role'. The cases described in the other theme bring out the distinguishing role of IHL. As, in terrorism case, the definition of 'war', as enshrined in the IHL was used as a vantage point, to look at the meaning of 'war' mentioned in the Indian Penal Code.

(C) Misapplication and Mislabelling:

In Jagjit Singh Aurora[67] and Navjot Sandhu[68] cases a failure to appreciate and take account of the nuances of IHL, even though it was referred to can be seen. In Jagjit Singh Aurora, the infirmity lies in failing to understand the specificity required for clauses to be considered as 'compromissory' under Article 36(1) of the ICJ Statute. The Supreme Court's error in Navjot Sandhu was subtler: it was a failure to appreciate the qualitatively different kinds of armed conflict that IHL may be applicable to.

In Ktaer Abbas Habib v Union of India,[69] the petitioners were Iraqi refugees who had left their home country to avoid having to serve in the army. They had a fear of persecution in their home country and requested that they be handed over to the United Nations High Commissioner for Refugees instead of being deported to Iraq. Treating the problem as one of international humanitarian law, the Gujarat High Court said: There is no law in India which contain [sic] any specific provision obliging the State to enforce or implement the international treaties and

[67] Jagjit Singh Aurora & Ors. v. Union of India, 2012 G.L.H. (1) 362 (India).
[68] State v Navjot Sandhu A.I.R. 2005 S.C. 3820 (India).
[69] Ktaer Abbas Habib v Union of India 1999 Cri. L.J. 919 (India).

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conventions including the implementation of International Humanitarian Law (IHL). Amongst the domestic legislation, the only law that directly deals with the principle of IHL is the Geneva Convention Act, 1960.[70]

Admittedly, the lines of distinction between IHL, international criminal law, international human rights law and international refugee law have been increasingly blurring. But as per the various decisions passed by the Indian courts it can be seen that they failed to recognize the broad jurisdictional domains of different aspects of international law.

(D) The non-application of IHL

Sometimes the courts have not applied IHL where it was deemed fit. Applying of certain principles of IHL may have affected the judgement of the case. One such case was, Nandini Sundar v State of Chhattisgarh[71]. It was a high profile and politically controversial case that came into the courts in 2011.

From the last few decades, the state of Chhattisgarh has been critically affected by insurgent militant groups with a Maoist ideology. With the objective of combating this insurgency, the state established an armed civilian vigilante group which went by the name of 'Salwa Judum'.[72] Untrained and poorly paid tribal youth were appointed as special police officers, participating in ant insurgency operations. It is widely believed that the 'Salwa Judum' itself was involved in widespread human rights violations and atrocities.[73] As a result, a petition was filed in the Supreme Court seeking that this force be declared unconstitutional.

The Court held that the mobilisation of the Salwa Judum violated Article 14 of the Constitution, the right to equality before the law. According to the Court, subjecting untrained, poorly educated members of the tribal communities to the same dangers as the regular state police force was discriminatory.[74] Moreover, the right to life[75] was breached on account of the fact that, as experience had shown, employing such persons in counterinsurgency operations endangered the lives of others in society.[76]

The Bench made it clear that the State of Chhattisgarh should take all appropriate measures to prevent the operation of any group, including but not limited to Salwa Judum and that in any

[70] Ibid.
[71] Nandini Sundar v State of Chhattisgarh, A.I.R. 2011 S.C. 2839 (India).
[72] *What is Salwa Judum*, WORDPRESS (April 12, 2020, 6:46 PM), https://cpjc.wordpress.com/what-is-salwa-judum/
[73] Nandini Sundar v State of Chattisgarh A.I.R. 2011 S.C. 2839 [64] (India).
[74] Ibid.
[75] INDIA CONST. art. 21.
[76] Nandini Sundar v State of Chattisgarh A.I.R. 2011 S.C. 2839 [64] (India).

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manner or form seek to take law into private hands, act unconstitutionally or otherwise violate the human rights of any person.

The Court therefore disbanded the Salwa Judum and directed the state to recall the firearms provided to its members.[77]

While delivering the judgment the court did not cite any principle of IHL in its judgement. This case had the perfect scenario for the application of Additional Protocol II of the Geneva Convention, which concerns the protection of victims of non-international armed conflicts.

As renowned journalist Siddharth Varadarajan has noted in the context of the insurgency in Chhattisgarh and the Salwa Judum, 'if ever there was a textbook case of the kind of conflict envisaged by Protocol II, the tragedy that is playing out in Chhattisgarh is surely it'.[78]

A lot many provisions could have been applied on the basis of the facts of the case. For example,

- Article 4 of Additional Protocol (II) provides for the humane treatment of those who do not or have ceased to take part in hostilities.
- Article 13 of Fourth Geneva Convention provides that '[t]he civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations.

Even if one were to attribute the Court's omission to cite the Additional Protocol to the fact that India is not a party to it, the court could have referred to common Article 3 of the Geneva Conventions, which applies to non-international armed conflicts and requires the humane treatment of persons not taking active part in the hostilities.

Another case, which was, People's Union for Human Rights v State of Assam AIR 1992 Gau 23. This case was set in the backdrop of insurgency movements in the state of Assam. A group of petitions in the Guwahati High Court challenged the Presidential proclamation of emergency[79] in the state, as well as the characterisation of the state as a 'disturbed area' under two statutes, i.e. Armed Forces (Special Powers) Act 1958 and the Assam Disturbed Areas Act 1955. The 'disturbed area' status granted the army sweeping powers in conducting counter-insurgency operations.[80]

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[77] Ibid.
[78] Siddharth Varadarajan, *Salwa Judum & international humanitarian law*, THE HINDU (April 12, 2020, 4:43 PM), https://www.thehindu.com/todays-paper/tp-opinion/Salwa-Judum-amp-international-humanitarian-law/article14831121.ece
[79] The proclamation was made under INDIA CONST. art. 356
[80] People's Union for Human Rights v State of Assam, A.I.R. 1992 Gau. 23 (India).

One of the petitioners sought the enforcement of Additional Protocol II of the Geneva Convention. The petitioner described the army as a combatant force and the people of Assam as non-combatant civilian population. He claimed that the army action had forced villagers to flee their villages. Army personnel kidnapped civilians and raped women. Farmers were also prevented from working.[81]

Although the court understood the gravity of the matter and agreed with the petitioner, so, court immediately imposed some safeguards in the form of directions to the government, but the court neither expressed any sort of opinion, not it indulged with the usage of IHL norms invoked in the argument of one of the petitioners. Just like Nandini Sundar's case[82], this would have been a fit case for the invocation of Additional Protocol (II) or common Article 3 of the Geneva Conventions.

It would be unfit to ascribe the judicial reluctance on the application of IHL norms in the Indian Jurisprudence to a single factor. For instance, in Nandini Sundar's Case[83] there could have been several factors that lead to courts resistance, such as

(a) Firstly, the parties to the case did not seem to invoke the IHL norms, and so it is of sheer possibility that the application of IHL norms did not cross Court's mind.

(b) Another explanation to this could be that the courts had home-grown legal tools, such as constitutional provisions, at their ease in order to achieve the same result that would have been achieved by taking the help of norms of IHL.

(c) A third reasoning to this could be that, at least vis-à-vis Additional Protocol (II), India is not a party to the international convention.

Nevertheless, not only in this scenario, but also in other spheres of international law, such as international criminal law or international human rights law, Indian courts have not been as reluctant to refer to agreements to which India is not a party.

VII. CONCLUSION

The art of warfare has seen drastic shift in nature with the passing time. As, in old times the wars were fought on different norms but after the development took pace the battleground has seen some heavy changes. All the new additions to the warfare lead to challenges to the International Humanitarian Law (IHL).

[81] Ibid.
[82] Nandini Sundar v State of Chattisgarh A.I.R. 2011 S.C. 2839 (India).
[83] Ibid.

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International Humanitarian Law got developed with time, as its methodology was laid down by the International Court of Justice during a case. IHL has to keep on evolving, as with time the technology is evolving and fields like Bioterrorism, Nuclear Weapons etc. which were way beyond the thinking limit of human being at a time, are being introduced. Thus, norms should be laid down to prevent the harm caused by such man-made calamities which could perish millions of lives in just a fraction of seconds.

The Indian scenario is quite blurry in the context. Even though India has shown its acceptance to the international laws, but still the full-fledged application of such laws can't be seen. The judiciary of India can be seen to be a little bit reluctant in the application of the IHL norms into its judgements. There were many cases where the norms could have been brought into the picture and justice could be done, but the courts choose to give their judgement without considering the international laws. It would not be unwise to say that even though India is a part of a lot of Treaties and Conventions, still the Judiciary and Legislature hesitates in implying the International Law in the Indian Society.

It is now evident that the old saying that, "Everything is fair in Love and War" is strictly restricted to the literal arena, because IHL firmly choose to disagree.

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