

STATUS OF PRISONERS OF WAR IN INTERNATIONAL HUMANITARIAN LAW

*Nabil Iqbal and Syeda Mehar Ejaz

INTRODUCTION

In today's world, where millennial are talking about World War III and Gandhi's Non- Violence has merely become a text in law books it is imperative to know about the laws of war. Until 20th century there were insufficient laws dealing with predicaments of armed Conflicts. Albeit, the continuing wars, to be specific the two World Wars, were enough to show the inhumane callous and desolation that have the capability to render the whole mankind into dust. Thereby, global leaders pressurized the United Nation to formulate laws to tackle such situation and make rules in order to prevent the society from suffering consequences which the world was going through after the World Wars. As a result International humanitarian law came into force.

International humanitarian law deals with state of affairs that arise from the event of Armed Conflicts both International as well Non-International. Besides, these it also deals with the consequential harm and potential violence pertaining to humanitarian affairs which not merely envisions activities of armed forces and control but likewise stipulates measures of safeguards to hors de combats, combatants, civilians, medical personnel and to all those who are in any way interlinked to catastrophes of war. In situations of armed conflicts civilians and prisoners of war are the most vulnerable groups. The laws to protect civilians from such conflicts were pre-existing in ancient period too but there were no such laws for prisoners of war. They were treated as per the mercy of the enemy power. Thus, for this reason International Humanitarian Law works as a significant tool in order to protect and safeguard the Prisoner of Power.

Oxford Dictionary defines Prisoners of war as a person who has been caught by the armed forces in the time of war due to his association with the enemy forces. It is a known fact, that most of the times, the combatants and all those who directly or indirectly in any way are associated with the war are an easy target for torture and violence by the enemy power, in case they surrender or are captured. But, now they are accorded the tag of *hors de combat* (P.O.W) and are authorized with the safeguards by the enemy power or detaining authority. Hors de Combat status is granted to the prisoners of war with a purpose to differentiate them from criminals or convicted and to

provide security to them. The status is granted to all the combatant of enemy armed forces and whether the government is recognized representatives of state or not is irrelevant

HISTORY

Basically, Prisoner of war (POW) is a combatant of enemy power who has been captured at the time of armed conflict. P.O.W. not only includes members of regularly organized armed forces, but also guerrillas or non-combatants linked with a military force.

These are recent development in the field of International Humanitarian Law. Such status is not recognized during the early war fares and captured soldiers were either subjugated or put to death. Ancient rulers considered killing of captives as a dignified act.¹ The treatment afforded to captives and members of defeated nations consequently changed with the warfare.

European philosophers were the one who articulated the opinion to ameliorate the treatment of prisoners of wars during 16th and 17th Century. Hugo Grotius in his book 'De jure belli ac pacis', stated, exchanging the captives for ransom as the best substitute, rather than enslaving them. Later, The Treaty of Westphalia of 1648 which releases prisoners sans conditions marked the end of an era where captives were considered as a slave of the conqueror.

The 18th century marked the development of International law and the problem of prisoners of war was interlinked with the law of human rights. The French political philosopher Montesquieu in his L'Esprit des lois (1748) wrote that the only right in war that the captor had over a prisoner was to prevent him from doing harm.

By the mid-19th century, the western world started recognizing treatment of prisoners of war by a definite body of principles. Rules of conduct during armed conflict, embodied in the law of Hague, and were then recognized as an international law. There were millions of POWs during WW I and it was clear that the rules were not being observed as such. In addition to that,

¹ [Kathleen Sheetz, Prisoner of War](https://www.britannica.com/topic/prisoner-of-war), Encyclopaedia Britannica (Feb. 27th, 2020, 3:13 PM), <https://www.britannica.com/topic/prisoner-of-war>.

there was different kind of difficulties which arose as a consequence of the war which were not foreseen. The major shortcoming was the absence of concretizations of the problems arose and lack of enforcement mechanism. Due to these, the nations realized the brutal effects of war and congregated the formulation of Geneva Convention, 1929. Before World War II a significant number of nations ratified the Convention. Among these were France, US, etc. to name a few.

The provisions of Geneva Convention of 1929 was reworked upon, after the WW II and set forth in the Geneva Convention of 1949 which contains four conventions and three subsequent additional protocols. The convention broadened the definition of the term prisoner of war (P.O.W). Even the volunteers, member of service team, both regular and irregular armed force personnel's, civilian supply contractors, the resistance group participants that are captivated by the enemy state and authorities are declared as P.O.Ws.² Their Rights and Protection is accorded in Geneva Convention relating to prisoners of war (GC III), Common Article 3; supplemented by Additional Protocol I and II. The most substantial facet to the Convention is that the measure of security and safeguard provided to the war prisoners perseveres with them throughout their period of internment and cannot be detached from them by the detaining authority; nor can be renounced by the prisoner himself. This is the reason as to why it is considered as the Bible for the P.O.Ws.

RIGHTS OF PRISONERS OF WAR

- Right to be informed - According to the Article 75 (3) of Additional protocol I, a person who has been arrested or detained by the enemy power shall be informed the reason of such measures and he shall be handed over to the enemy power as soon as the armed conflicts ceases to exist. Although the article doesn't provides the minimum time period for communicating the reason of arrest but as per the ICRC Commentary to the Additional Protocol, "detaining a person for longer than, say, ten days, without informing the detainee of the reasons for his detention would be contrary to the provision of this act." Right to be informed is the the most basic protection granted to the Hors de Combats under IHL and Human Rights Law.

² Add. Protocol, GC III, Article 4a (1977).

- Right of Equality - Detaining power has the obligation to treat all the prisoners of war equally without discriminating them on the basis of race, nationality, religious belief or political opinions etc.³
- Right to be treated humanely - P.O.W. shall be not be subject to inhumane treatment at any point of time. They need not to be humiliated or mutilated by the detaining power. If due to any act or omission by the detaining power a P.O.W. suffers seriously injury or death, it will be considered a serious breach by the detaining authority. They can't be counterattacked as a measure of reprisal.⁴
- Right of Quarters, Food, Clothing, Hygiene and Medical Assistance - The detaining power need to reside P.O.W. in such quarter which is suitable for their own forces.⁵ They have the right to get food which should be sufficient in quantity as well as quality along with safe drinking water,⁶ and also proper and clean clothing.⁷ That detaining power in all circumstances is bound to take all measures to ensure health and hygiene and to prevent epidemics.⁸ If a P.O.W. becomes ill or is suffers from serious disease and needs special treatment he must be admitted to hospital.⁹
- Right of Religion - P.O.W. has the right to perform their religious obligations and the detaining authority must provide them adequate premises to carry out those affairs.¹⁰
- Right to communicate with family and protecting power - P.O.Ws has the right to communicate with their family and protecting country in the form of letters and cards. However the detaining power can put restriction by limiting the number of letter which can be sent in a month.¹¹

³ Article 16.

⁴ Article 13.

⁵ Article 25.

⁶ Article 26.

⁷ Article 27.

⁸ Article 29.

⁹ Article 30.

¹⁰ Articles 34.

¹¹ Article 70-73.

- Right to Complaint regarding the conditions of captivity - The detaining power shall establish a procedure to register complaints against the administration of the detention camp so that the P.O.Ws can make complaints about the condition of captivity.¹²
- Right of Fair Trial - GC III provides that any prisoner of war who is subject to judicial proceedings is entitled to a fair trial.¹³ Failure to providing it shall result in serious breach, which state parties are obliged to prosecute.¹⁴ It is to be noted that P.O.Ws shall not be prosecuted for the acts of war prior to his detention.
- Right of Access to Counsel - P.O.Ws has the right to get assistance of defense counsel. This is a primary means to ensure the Fundamental Rights of people accused or suspected of criminal offenses which is protected under both IHL and Human Rights Law. Article 99 of GCIII explicitly provides for access to counsel for P.O.W. suspected of committing a criminal offense. Article 75(4) of Additional Protocol I set the minimum standard for an accused which provides: “...to be informed without delay of the particulars of the offense alleged against him and shall afford the accused before and during his trial all necessary rights and means of defense”. The ICRC Commentary on AP I states that ‘all necessary means of defense’ must be interpreted to include the right to get access of a qualified defense lawyer before and during trial, which is one of the core protections against abuse and arbitrariness.
- Right of repatriation - After the cessation of hostility, detaining power shall without any delay release and repatriate prisoners of war unless any other agreements have been made between the parties regarding repatriation.¹⁵ All articles including arms, equipments, cash, personal belonging if any, have been seized at the time of capturing P.O.W shall be returned to them at the time to repatriation.¹⁶ However if any criminal proceedings is pending against any P.O.W. may be detained till the completion of such proceedings. In case of those P.O.W. who are

¹² GC III, Article 78 – 80 (1949).

¹³GC III, Article 82-88 and 99- 107 (1949).

¹⁴ GC IV, Article 130 (1949).

¹⁵ Articles 118.

¹⁶ Article 18.

already convicted for any indictable offense, their repatriation may take place after the completion of such proceedings.¹⁷

PENAL AND DISCIPLINARY SANCTIONS AGAINST P.O.Ws

The P.O.W is not immune to penal and disciplinary sanctions. He can be prosecuted by the detaining power, but this power of the detaining authority can be used if the prisoner has done an act which is a criminal offense. The capability of the detaining power to prosecute the P.O.W. will only be in accordance to the laws or legislations to which the armed forces abide by and which are in the force at the time taking the legal action.¹⁸ While deciding whether proceedings shall be judicial or disciplinary, the competent authority would cater to maximum forbearance and leniency; this is to be done as far as feasible, by adopting the measures that are instead of being judicial are mostly disciplinary.¹⁹ The captive P.O.W. has to be tried mandatorily only in a military court²⁰ and only for the acts committed post-detention by the detaining power.²¹ Regarding the punishment, it is mandated that the war captive while being subjected to prosecution and persevered with the punishment (disciplinary/judicial), would not be given a punishment that is in greater extent vis-à-vis an armed force member of the detaining country.²² To undergo disciplinary punishment, war prisoner needs not to be taken to or redeployed to other prisons or penitentiaries, etc. ²³ The P.O.W. would not be prosecuted merely for the actions which are legally allowed by the legal provisions of the Detaining country.²⁴ He shall not be coerced to admit the guilt of which he has accused. He would have a claim or entitlement to have the assistance according to this choice, of a competent advocate or a counsel.²⁵ The P.O.W

¹⁷ Article 119.

¹⁸ Article 82.

¹⁹ GC III, Article 83 (1949).

²⁰ Article 84.

²¹ Article 86.

²² Articles 88.

²³ Articles 97.

²⁴ Article 99.

²⁵ Article 105.

would have an identical claim as that of any of the armed forces member for a right to appeal against the punishment given to him against any sentence.²⁶

The Convention by contemplating the appointment of intermediary Protecting Power by a mutual agreement by the parties (Countries) ascertains that its provisions are being ensued properly. At times, there is a possibility that the belligerent is against the appointment of such intermediary power then, at such times, it is the sole duty of the detaining power/authority to oversee the alternative. It can verily make a request to a neutral party (country), an organization which is impartial or humanitarian to act as a substitute for the protecting power. It is the obligation of the contracting parties to look over that the provisions and norms are not violated and in case, if they are being violated by any person, they are obliged to look for that person and, they are bound to give him appropriate penal sanctions for violation.²⁷

RESPONSIBILITY OF DETAINING POWER

The Geneva Convention related to Prisoner of War (GC III) gives various responsibilities to the authority where a person is held as prisoner of war. After P.O.W. is arrested they must be send to the detaining authorities. It is the responsibility of the authorities to see that the sick or wounded P.O.W is not being relocated or moved to any location that could further have an adverse effect on his condition due to the process of relocation.²⁸ During the time of transfer the climatic condition from which P.O.W are accustomed need to be taken in consideration; the process of transfer should not be hostile to the existing health conditions of the prisoner.²⁹ The responsibility that the P.O.W. is not subjected to violence, mob curiosity, threat, etc., falls entirely on the detaining power and if any such intimidation is there, the detaining authority is responsible.³⁰ Furthermore, the detaining power has to ensure that the P.O.W. has been kept safely in the camps situated in the locations away from the areas of threat or violence.³¹ They

²⁶ Article 106.

²⁷ [IHL, ICRC \(Feb. 29, 2020, 8:20 PM\),https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=1BA7CE908060F31EC1257F7D0035D639.](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=1BA7CE908060F31EC1257F7D0035D639)

²⁸ Article 47.

²⁹ Articles 46.

³⁰ Articles 12.

³¹ Article 19.

should be provided proper food, water and medical assistance.³² The camps where P.O.Ws are kept must be in accordance to the conditions of standard referred to in the Convention.³³ It is not mandatory for the P.O.W. to answer to all the questions being asked by the authorities. He is bound to the basic details like name, regimental number, date of birth, etc.,. Nonetheless, it is crucial that the P.O.W is not subjected to physical or mental torture by the detaining power to get the answers.³⁴ Restriction of movement can be imposed on P.O.W. by the detaining authority.³⁵ They can be asked to do work by the detaining authority. The P.O.W should be assigned only those work which doesn't include humiliation, threat or violence.³⁶ The detaining authority is bound to give them the status of P.O.W. from the time they fall into their power till their final release and repatriation.³⁷

THE INTERNATIONAL COMMITTEE FOR RED CROSS

One of the distinguishable and prominent organizations in the world which deals with the humanitarian situations is The International Committee for Red Cross(ICRC). Henry Dunant, a Swiss Philosopher, along with five other members played a key role in the foundation of ICRC.

He brought forth some notable proposals to deal with the situations of war crisis, potential relief work and humanitarian purposes. On February 1863, a committee incorporating representatives from discrete governments met at Geneva and acceded to the proposals detailed by Henry Dunant. The first Geneva Convention was then adopted by the countries in August 1864. It obligated the parties to work for humanitarian grounds and examine that the condition of the belligerents and wounded are taken care of without taking into account their nationality.³⁸

The cardinal intent of establishing the ICRC was to peruse the co-ordinating procedure. But, in due course it took over the task of acting as a potential neutral intervening peacemaker between

³² Article 20.

³³ Article 22 and 23.

³⁴ Article 17.

³⁵ Article 21.

³⁶ Articles 51,52 and 56.

³⁷ Article 5.

³⁸ History of the ICRC, ICRC (Mar. 10, 2020, 3:53 PM), <https://www.icrc.org/en/document/history-icrc>.

the belligerents. Thereafter, in the forthcoming 50 years, it expanded and reinforced its area of concern and field of work to embody the warfare at sea to the existing Convention of 1949.³⁹

ICRC has a mandate to fortify the safeguarding of each person, be it a soldier or a war prisoner affected by atrocities of National/International armed rebellion and other situations of violence. The mandate was directed to the Red Cross Committee altogether by the states party to the four Conventions of 1949, additional protocols, and the Statute of the 1986 International Red Cross and Red Crescent Movement. It is due to the unique mandate that the ICRC has a legal stand and recognition distinguishable from other non-governmental and intergovernmental organizations. This status is the main reason of the ICRC carrying its functions independently and with complete impartiality so that it can provide assistance and protection to those in need.⁴⁰

INDIA'S TAKE ON INTERNATIONAL HUMANITARIAN LAW

Since the attainment of the freedom, a self-reliant policy pertaining to application of foreign laws and policy was opted by India. This was clear by Jawaharlal Nehru's proclamation before attaining the final independence. He cautioned against the dangers of world wars and the necessity of peace and freedom to avoid war like disasters.⁴¹

Not only this, the relevance of international peace and security, the international relations and respect for international policies has remained a significant concern for India and therefore, the Indian Constitution emphasizes on with notability.⁴² The stature of importance attached to the foreign laws and policy can be manifested through the power given to the Parliament to put into effect the International treaties or decisions by the law of the land.⁴³

June 8, 1977, marked the adoption of the two significant treaties categorized as the Additional Protocols (I&II) by discrete number of nations. These protocols were substantially significant in as much as they supplemented the four Geneva Conventions of 1949. The two additional

³⁹ Id.

⁴⁰ The ICRC, its mission and work, ICRC (Mar. 7, 2020, 4:08 PM), https://www.icrc.org/en/doc/assets/files/other/icrc_002_0963.pdf.

⁴¹ Surjit Mansingh, Nehru's Foreign Policy Fifty Years On, 24 (1998).

⁴² The Constitution of India, art. 51.

⁴³ *Ibid*, art. 253.

protocols (AP-I & AP-II) expanded on the first convention of 1949. The overall principles of International Humanitarian Law emanated from the four Geneva Conventions of 1949 and two Additional Protocols.⁴⁴ India has an unequivocal stance on the adoption of essential foreign treaties and laws, which can also be articulated by the signing of the 1949 Geneva Conventions for the protection of war victims in the year 1950. The enactment of the Geneva Conventions Act, 1960⁴⁵ also highlights the stance of India in this regard. In spite of this, it is surprising that India has not yet signed the additional protocols which are deemed crucial part of modern International Humanitarian Law.⁴⁶

It would not be wrong to mention that the Geneva Conventions Act doesn't give the notion to be an adequately satisfactory legislation regarding India's stance on Humanitarian Law. This can be proved with the decision of the Supreme Court of India Act in *Rev. Mons. Sebastiao Francisco Xavier dos Remedios Monteiro v. The State of Goa*.⁴⁷

The court observed that the act imposed certain restrictions in as much as it doesn't specifically give the right to appeal. The act also doesn't specify the remedy; neither any special remedy has been enunciated to indemnify the aggrieved. However, in case of any breach of Convention, a sort indirect safeguard in the form of penalties is bestowed. This gives the view that the act does not talk about the enforcement procedure of the Convention in any way nor does it bestow a right upon the aggrieved to take any action against the defaulting power or party. It is clear that the Government of India by formulating the act has shown its respect for the Convention. The major criticism of the act can be verily seen by lack of any provisions regarding the power of courts. Overall, the stance of India on acting towards the convention is ambiguous but India verily fosters respect for the treaty and humanitarian cause by such an enactment, although it has miles to go to achieve a Humanitarian stance.⁴⁸

One of the key aspects of the 1949 Geneva Conventions is that, it doesn't just lay down the provisions but ensures that they are being followed as a necessary obligation by the states as and

⁴⁴ Protocol I and II additional to the Geneva Conventions, ICRC, (Feb. 28, 2020, 2:46 PM), <https://www.icrc.org/en/doc/resources/documents/misc/additional-protocols-1977.htm>.

⁴⁵ Geneva Conventions Act, Act no. 6 of 1960, (1960).

⁴⁶ Srinivas Burra, Why India should consider signing the Additional Protocols of the Geneva Conventions, The Wire, (Mar. 15, 2020, 4:26 PM), <https://thewire.in/diplomacy/india-humanitarian-law-additional-protocols>.

⁴⁷ AIR 1970 SC 329 (India).

⁴⁸ *Ibid.*

when required. When there is a situation of an armed conflict, both the parties have the obligation to proceed in conformity with the provisions of the Conventions.⁴⁹ All the states that are signatory to the convention hence, undertake the duty to see that the provisions of the treaty are being complied upon to their maximum dissemination. In case of compliance, if the possibility is there, then there should be a programme for the militants regarding the same. Also, the civilian population should be made aware about the treaty and its provisions.⁵⁰ It's noteworthy that India to prove its due diligence and obligation has made consequential implementation regards, the armed forces who have acted according to the provisions to ascertain somber international undertakings.

India's rich heritage and culture incorporates the respect for the basic humanitarian principles and this can be clearly predicated by glancing at its legal framework that demonstrates respect for basic rights. Further, the legal framework of India authorizes and is open to execution of Humanitarian principles as evidenced by the Geneva Conventions Act, 1960. However, the proper execution and implementation of the principles of humanitarian law could be achieved by the advancement of cultural and legislative policies that overlook the provisions of the treaty.⁵¹

Albeit, the prime step that would make India's perspective apparent, would be the approval to sign the Additional Protocols and implement the provisions of the Convention.

CASE LAWS REGARDING POWs

Rasul v. Bush,⁵² was a landmark decision. The main contention in this case was in regard to the legal position of detention of certain non-citizens who were captivated in Guantanamo Bay. The U.S Supreme Court held that they could verily approach the courts for issuance of writ of *habeas corpus*.

⁴⁹ GC I, Article 45 (1949); GCII, Article 46 (1949).

⁵⁰ GC I, Article 47 (1949); GC II, Article 48 (1949), GC III, Article 127 (1949); GC IV, Article 144 (1949).

⁵¹ *Id.*

⁵² 542 U.S. 466 (2004).

In yet another case, *Hamdan v. Rumsfeld*,⁵³ the contention was regarding the petition filed by the persons detained. It was decided that the Courts had the power to consider those petitions of detainees which was submitted to them, before the enactment of Detainee Treatment Act, 2005. The tribunals that review the combatant status (CSRTs) were also criticized and held to be violative of the Geneva Convention standard.

In *Boumediene v. Bush*,⁵⁴ the court gave the judgment that those who are detained as P.O.W have got the right to file petition in the courts (mandated by the U.S Constitution) regarding the issuance of *habeas corpus*.

Noriega v. Pastrana,⁵⁵ was yet another landmark case. It was held that, no person, whatsoever, where, the U.S, or its agents (be it a member of Armed forces, former employee, etc.) is a party, may appeal for civil action or any proceeding against them, under the Geneva Conventions or any protocols.

Pakistan v. India,⁵⁶ is also a case related to repatriation of P.O.Ws. Before the P.O.Ws was repatriated, an agreement was signed between Pakistan and India, known as the Simla Agreement in 1972. It was not until 1974 when another such agreement, known as the Delhi Agreement was signed that marked the repatriation of the war prisoners. The Simla Agreement treaty basically mandated the return of Pakistani P.O.Ws, but it was at a certain cost. As a consideration for the return of detainees, the independent Bangladeshi status was to be accepted by Pakistan.⁵⁷The Simla Agreement of 1972 envisaged a significant step towards establishing good association and linkage between India and Pakistan relations; howbeit about 93,000 prisoners of war were captivated by India in view of the consideration that they could act as a bargain with the Pakistan. However, India was in staunch view of sending the P.O.Ws back, nonetheless, it was barred due to lack of consensus of Bangladesh. The repatriation was however, rendered impossible at that time. The sole reason was that the joint command between

⁵³548 U.S. 557 (2006).

⁵⁴553 U.S. 723 (2008).

⁵⁵ 130 S. Ct. 1002, 1004 (2010).

⁵⁶ 1973 I.C.J. 328.

⁵⁷ What is 1972 Shimla Agreement, India TV (Mar. 10, 2020, 11:40 PM), <https://www.indiatvnews.com/fyi/shimla-agreement-1972-pakistan-usa-bilateral-kashmir-dispute-537741>.

India and Pakistan could not be implemented surrendering of India to Bangladesh for a joint command rendered the repatriation of P.O.Ws impossible. Dhaka put forth the condition that P.O.Ws would not be returned unless the status of Bangladesh would be acknowledged by Pakistan (Islamabad). This deferred their return.⁵⁸

Delhi Agreement: This agreement permitted the repatriation of P.O.Ws and the other captives detained after the 1971, Bangladeshi Liberation War. According to UN, 121,695 Bengali detainees incorporative of militants and civil servants were returned to Bangladesh by Pakistan. About, 108,744 Bengali non-citizens and civil servant officers, were duly relocated Pakistan. This was followed by the liberation of about 6,500 P.O.Ws of Pakistan by India and they were by means of railways were sent back to Pakistan. The name of General Niazi is written in golden words as the last Pakistani Officer to be deported back to Pakistan in 1974.⁵⁹

The most recent case of return of a P.O.W was the case pertaining to the release of Wing Commander of Indian Air Force, Captain Varthaman. After according the status of P.O.W to him, Pakistan duly concerted to treat him in compliance with the provisions of the Geneva Convention. Eventually, he was deported back to his native country (India).

It is diligent on the detaining power to follow the provisions of the Convention and ensure proper return and repatriation of the enemy P.O.W.⁶⁰ Therefore, it can be verily enunciated that, the treatment given to the P.O.W from the time he is being captivated until his return to his country, is the sole responsibility of the detaining country and they should act in accordance to the provisions of the Convention. The provisions should be complied continuously. ⁶¹

CONCLUSION AND SUGGESTIONS

⁵⁸ Mohammed Ayyub, the Treaty that backfired, The Hindu (Feb. 26th, 2020, 10:45 PM), <https://www.thehindu.com/opinion/op-ed/treaty-that-backfired/article23295676.ece>.

⁵⁹ Agreement on Repatriation of prisoners, Ministry of External Affairs (Feb. 29th, 2020, 12:03 PM), <https://www.mea.gov.in/bilateral-documents.htm?dtl/5868/Agreement+on+Repatriation+of+Persons>.

⁶⁰ Geneva Convention relative to the treatment of Prisoners of War (Third Geneva Convention), art. 5, adopted August 12, 1949, 75 UNTS 135.

⁶¹ Pallavi Saluja, A case for Abhinandan Varthaman, Bar and bench (Mar. 2, 2020, 3:29 AM), <https://www.barandbench.com/news/abhinandan-varthaman-geneva-conventions-treatment-release-prisoner>.

A combatant during an armed conflict entails three important consequences. Firstly, he conducts hostilities. Secondly, he is the one who represents the opposing forces and the the potential target (enemy). And thirdly, in the case of apprehension, captivation, or surrender by the detaining power, such combatants are accorded the status of POW. During ancient times, POWs were treated subject to the discretion of Detaining power but as the area of warfare laws pertaining to the situation of armed conflict flourished and expanded, the status of prisoner of war was recognized by International Humanitarian Law and is now codified in the form of GC III which administered for the rights and safeguards to POWs. The condition of POWs ameliorated a great deal after its codification. It's provisions has been enumerated in various International treaties such as European Convention on Human Rights, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, International Covenant on Civil and Political Rights, UN Standard Minimum Rules for the Treatment of Prisoners, Body of Principles for the Protection of All persons under any form of Detention or Imprisonment, European Prison Rules etc., to name a few.

Although, POW status is acknowledged globally and the attitude of detaining power towards them has changed evidently but still the Super-powers intermittently violate the provisions of GC III. Not only does the provisions of GC III but International Humanitarian law as a whole are neglected by different nations on a regular basis. One of the reasons for such violation is the lack of compliance mechanisms. Although IHL has been codified but its implementation process is very vague. International fact finding which has been formed in order to contemplate the compliance process has been inoperative. Many Countries in spite of being a signatory to either the 1949 convention of Geneva or the additional protocols or both, lack resoluteness which is fundamentally political to implement the principals and provisions entailed in the conventions pertaining to Humanitarian Law. ICRC has undeniably played a key role in constituting and implementing the principles of IHL but it doesn't have the power to impose sanctions upon the parties who are violating the provisions relentlessly. It can at its best criticize such violations and request them to discontinuation of the violations. The principles of IHL are universally ratified still it has partial implementation. Countries like - Japan and Nuremberg has made tribunals in order for effective compliance of provisions of IHL whereas countries like - Syria, Afghanistan perpetually neglect these provisions and act as per their discretion which results in gross violation of the IHL. The last few decades has witnessed a vicious and animal like treatment to

the POWs who were left at the mercy of the authorities. One of the examples of such barbarous incidents was by the ruthless US army in the area of Guantanamo Bay, an incident typically referred to as “Gulag of our times” where prisoners didn’t get even basic protection. The brutal violence by the IS forces in Iraq & Syria or by the atrocious Boko Harams in Nigeria where often news regarding beheading of POWs surfaced and still continues to surface.

Co-operation of states is crucial for efficacious implementation of IHL. Recently, Pakistan released, wing commander Abhinandan Varthaman within 60 hours of his capture which shows Pakistan’s optimistic efforts towards the implementation of IHL provisions. Countries should include the provisions of IHL provisions in their Municipal Laws too. An efficacious compliance mechanism could be constituted which can put sanctions on the parties who are violating the laws. Developed countries need to follow the provisions of IHL in stringent sense which will work as guidance for under developed countries.