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International Humanitarian Law in India: A Critical Case Study

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Prior to 1949, a consensual regime on internal armed conflict was nonexistent. The urgency to regulate the conducts of parties in an internal armed conflict was realized in the wake of World War II. The evolving war patterns direly necessitated regulation of massive violations of both humanitarian law and human right norms that are corollary to each other. This article attempts to sketch the application of international humanitarian law governing internal armed conflict in the context of India with reference various approaches at national and international level. It also highlights the fact that India is yet to recognize protocol II of the Geneva Convention and the concerns such has attracted. Further, the article also attempts to venture into the grey area of determining the threshold of internal armed conflict.

Introduction

International Humanitarian Law (hereinafter IHL) also known as 'law of armed conflict' or 'law of war' is a branch of international law. Generally, IHL deals with the situation of the armed conflict, which is either at international or non-international level. The object of IHL is to regulate the conducts and effects of armed conflict[3] and provide protection to combatants and non-combatants by prescribing substantive principle and objective rules to determine what amounts to lawful conduct, for instance, how the sick and wounded combatants should be treated. It is basically encapsulated in the international treaties such

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as the 1949 Geneva Conventions[4], the 1907 Hague Conventions[5] and customary international law.

Significance of IHL

Prior to inception of the UN Mechanism, there was no international rule illegitimating use of force neither had the standards of human rights evolved considerably. On the other hand, IHL was already relatively well-established limb of international law, traceable in the Hague Conventions and older versions of Geneva Conventions[6], although its circumference was not as extensive. The point of departure was global wakening triggered by the devastating effect of World War II, exemplified by the bombings of Hiroshima and Nagasaki. International community realized that something must be done to preserve humanity. It was realized that while it was important to prohibit use of force, it was equally important to make sure any use of force is reasonable when it is imperatively called for. The realisations culminated into UN Charter[7] and Universal Declaration on Human Rights[8] (followed by core human rights treaties).

Promulgation of 1949 Geneva Conventions and its additional protocols on international and non-international armed conflict[9] enhanced the role IHL. At present, a majority of armed conflicts are purely internal in character that makes Additional Protocol II (hereinafter AP II) a consequential document. Together, IHL and international human rights law serve as normative framework to

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4 See Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (adopted 12 August 1949) 75 UNTS 31 (First Geneva Convention); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (adopted 12 August 1949) 75 UNTS 85 (Second Geneva Convention); Geneva Convention Relative to the Treatment of Prisoners of War (adopted 12 August 1949) 75 UNTS 135 (Third Geneva Convention); Geneva Convention Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949) 75 UNTS 287 (Fourth Geneva Convention).

5 Hague Convention on Pacific Settlement of International Disputes (adopted 18 October 1907) 205 CTS 233 (Hague Convention I); Hague Convention Opening of Hostilities (adopted 18 October 1907) 205 CTS 233 (Hague Convention III); Hague Convention on Laws and Customs of War on Land (adopted 18 October 1907) 205 CTS 233 (Hague Convention IV).

6 In the second part of the nineteenth century, when the codification of international law started, most of these rules were included in international treaties, beginning with the 1864 Geneva Convention. The first 1864 Geneva Convention was revised in 1906 and again in 1929, when a new convention, related to the treatment of prisoners of war, was also adopted. Jiri Toman, 'Geneva Conventions on the Protection of Victims of War' (*enotes*, 2005) <http://www.enotes.com/geneva-conventions-protection-victims-war-reference/geneva-conventions-protection-victims-war> accessed 27 April 2013.

7 See Charter of the United Nations (signed 26 June 1945) 1 UNTS XVI (UN Charter) art. 2(4).

8 Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III) (UDHR).

9 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (adopted 8 June 1977) 1125 UNTS 3, (AP I); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (adopted 8 June 1977) 1125 UNTS 609 (AP II).

regulate situations of war and peace, although IHL is operationally limited to war situations while human rights is applicable to both.

In the 21st century, states have acquired advanced weaponries such as cluster munitions, chemical and biological weapons among several others. All these technologies have enlarged our abilities to change the world. The threat of nuclear warfare looms large. These facts compel us to ponder whether we would want to remain detached from the safeguards conferred by IHL and acknowledge its role in the rapidly changing world or confirm to it and modify our laws accordingly. The article considers it essential to thoroughly analyse norms related with internal armed conflict to access the real magnitude of the problem.

IHL in Internal Armed Conflict

Before 1949, internal armed conflict fell outside the ambit of IHL. This deficiency was finally resolved in 1949 with the adoption of Geneva Conventions 1949. Article 3 common to the four conventions obligates states to respect the basic standards of human rights in non-international armed conflict. However, common article 3 provides limited thresholds to observe during armed conflict. In 1977, two additional protocols to the Geneva Conventions were adopted, in which Protocol II relates to non-international or internal armed conflict.[10]

Scope of Common Article 3 in Conjunction with AP II

Common article 3 and Article 1 of AP II are the major sources to analyse the concept of non-international or internal armed conflict. Putting the provisions side to side, it appears that the definition enumerated in article 1 of AP II is rather restrictive in comparison to common article 3 in following aspects:

a) It introduces the requirement of territorial control.
b) It will be apply only to armed conflicts between state armed forces, dissident armed forces or other organized armed groups.
c) It will not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature.[11]

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10 David M. Miller, 'Non International armed conflicts' (1981) 31 American University Law Review 897, 900.

11 'Commentaty: Material Field of Application' (*ICRC*, 14 May 2012) <http://www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?viewComments=LookUpCOMART&articleUNID=93F022B3010AA404C12563CD0051E738> accessed 27 April 2013.

The paramount question to ponder over is what should be the scope of common article 3 in conjunction with article 1 of AP II? The explanation is enshrined in the lexis of article 1 of APII itself, which reads that

'this Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 ...without modifying its existing conditions of application'.[12]

A careful scrutiny of the lexis reveals that the development of APII is complementary to common article 3[13] which is validated if we put the spotlight on the phrase 'without modifying its existing conditions of application'. Hence, it could be concluded that both common article II and APII complement each other and should be applied simultaneously. Any concern that less intensive conflicts or circumstances that do not meet the threshold set by APII is consequently accommodated into common article 3. As a matter of fact, common article 3 retains an autonomous existence; its applicability is neither restricted nor subject to the scope of the Protocol II[14]. In precise words, AP II is complementary and not supplementary to common article 3.

Reasons behind India's Non-Recognition of AP II and its Effect

The rules of IHL have been evolved for the purpose of balancing military necessity and concern for humanity. These rules seek to protect person who are not or no longer, taking direct part in the hostilities such as civilian, prisoners of war, detainees, injured, sick etc[15]. However, some manifest ambiguities in its provisions lay initial hurdles in the application of the Geneva Conventions. Furthermore, AP II remains without universal acceptance due to its non-ratification by states such as USA, India, Iran, Myanmar, Pakistan, Afghanistan, Israel, Srilanka and Nepal to name a few. [16] While most of the armed conflicts around the world are internal in nature it is hard to fathom the reason for the wavering commitments. If India is to be treated as a particular case study, the reasons can be traced back to the contentions it made while discussing on whether it should go ahead with the ratification, which are as follows:

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12 AP II (n 8) art 1.

13 United Nation Office of the High Commissioner, *International Legal Protection of Human Right in Armed Conflict* (United Nations 2011) 23, 24.

14 Sylvie Junod, 'Additional Protocol: It History and Scope' (1983) 33 American University Law Review 29, 32.

15 U C Jha, *International Humanitarian law: The Laws of War* (Vij Books India Pvt. Ltd 2011).

16 'Status of Ratification of AP II' (*ICRC*, April 2013) <http://www.icrc.org/applic/ihl/ihl.nsf/States.xsp?xp_viewStates=XPages_NORMStatesParties&xp_treatySelected=AA0C5BCBAB5C4A85C12563CD002D6D09> accessed 27 April 2013.

a) It argued that in the face of equal suffering, victims have the right to the same protection in all armed conflicts, whether internal or international. Therefore, there is no need of protocol II.

b) The protocol has a high threshold of application[17].

The contentions demonstrate reluctance of India to not be tied up with the obvious responsibilities that ratification of AP II would place to domesticate its provisions.
This decision has had a limiting effect on one hand, while on the other the absence has not affected the centrality of human rights, strongly backed by the complementary lexis of common article 3.

The Threshold of Internal Armed Conflict

Many definitions have been proposed for internal armed conflict but none has been universally accepted. A widely referred definition comes from the Peace Research Institute in Oslo which has explained the term as a contested incompatibility between a state and internal opposition, regarding the government of the territory, where the use of the force between the parties results in at least 25 battle-related civilian or military deaths per year.[18] The definition exhibits quantitative evaluation of the term.

Another definition comes from study of the questions of aid to the victims of internal conflict prepared by ICRC Commission of Experts, which reads, 'The existence of an armed conflict cannot be denied if the hostile action, directed against the legal government is of a collective character and consists of minimum amount of organization.'[19]

International Criminal Tribunal for Former Yugoslavia (ICTY) in the *Tadic* case explained the term stressing on the parties to the conflict. According to the tribunal, 'an armed conflict exists whenever there is a resort to armed forces between states or protracted armed violence between governmental authorities and organized armed groups within a state.'[20] The tribunal also succinctly observed that IHL applies from the initiation of such conflict and extends beyond the

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17 Anthony Cullen, 'Key Developments Affecting the Scope of Internal Armed Conflict in International Humanitarian Law' (2005) 183 Military Law Review 66, 88-92.

18 Oskar N.T. Thomas & James Ron, 'Do Human Rights Violation cause internal conflict?' (2007) 29 Human Rights Quarterly 674, 676.

19 R. Pinto, 'Report of the Commission of experts for the study of the question of aid to the victims of internal conflicts' (1963), 82-83 cited in Sylvain Vite, 'Typology of armed conflicts in international humanitarian law: legal concepts and actual situations' (2009) 91 International Review of the Red Cross 69, 76.

20 *Prosecutor v Tadic* (Jurisdiction) (1996) 3 International Human Rights Report 578 (Tadic) para 70.

cessation of hostilities until a general conclusion of peace is reached, that is, a peaceful settlement of internal conflict is achieved.[21]

Dissecting the lexis of the tribunal in *Tadic,* the two aspect of internal armed conflict revealed are: a) armed violence and b) organization of parties to the conflict.

Similarly a commentary of elements of war Crimes under the Rome Statute of the International Criminal Court indicates that the parties should be 'organized to a greater or lesser extent' in order to qualify as an armed conflict. [22]

In a recent case popularly referred as *Tablada*, the Inter-American Commission on Human Right was seized of the question whether 30 hour long armed confrontation between the attacker and Argentine armed forces was merely an example of internal disturbances/tensions or did it constituted internal armed conflict within the scope of the common article 3. The commission held that the stipulations of common article 3 'do not require the existence of large scale and generalized hostilities or a situation comparable to a civil war in which dissident armed groups exercise control over parts of national territory.'[23] The commission further observed that direct involvement of the governmental armed force, the nature and level of violation associated with the event are the determinant in internal armed conflict. [24]

The definition and cases cited above have certainly attempted to conceptualise internal armed conflict, albeit a clear demarcation is largely missing it. Nevertheless, it can be concluded that the minimum threshold for internal armed conflict would be 'the use of armed force within the boundary of one state between one or more armed groups and the acting government, or between such groups exists.'[25]

Protection Framework of IHRL relevant to internal armed conflict

As discussed initially in the paper on the binding character of common article 3 with relation to respect of human rights, state cannot submit non-ratification of the IHL conventions to shy away from the commitment to protect the people

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21 Ibid.

22 Knut Dörmann, *Elements of War Crimes under the Rome Statute of the International Criminal Cour*t (Cambridge University Press 2003) 442.

23 Inter-American Commission on Human Rights Report 55/97, Case No. 11.137, Argentina, OEA/Ser/L/V/II.97, Doc. 38 (October 30 1997) (*Tablada Case*/IACHR Report) cited in Ibid 13.

24 Ibid.

25 Eve La Haye, *War Crimes in Internal armed Conflicts* (Cambridge University press 2008) cited in Eve La Haye, 'War Crimes in Internal Armed Conflicts, excerpts' (*Cambridge Catalogue*, July 2010) <http://www.cambridge.org/aus/catalogue/catalogue.asp?isbn=9780521132275&ss=exc> accessed 27 April 2013.

present within its territory during internal armed conflict. IHRL is an indispensible companion to IHL. UDHR opens with an emphatic declaration that 'all human being are born free and equal in dignity and rights. They are endowed with the reason and conscience and should act towards one another in a spirit of brotherhood.'[26] Following the footsteps of UDHR, ICCPR and ICESCR laid down the obligations of state to refrain from violating the civil, political, economic, social and cultural right of the people.

The term 'absolute and non-derogable rights' connotes those rights which cannot be suspended at any time, not even during emergency.[27] Article 4(2) of the ICCPR provides that no derogation is permitted from: freedom from torture or cruel, inhuman and degrading treatment or punishment; and freedom from medical or scientific experimentation without consent (article 7); freedom from slavery and servitude (article 8(1) and (2)), freedom from imprisonment for inability to fulfill a contractual obligation (article 11); prohibition against the retrospective operation of criminal laws (article 15); right to recognition before the law (art 16); and freedom of thought, conscience and religion (article 18).[28]

Geneva Conventions Act of India

Government of India passed the Geneva Conventions Act, 1960 under article 253 of the Indian Constitution, read with entries 13 and 14 of the Union List in the Seventh Schedule, based on Geneva Convention.[29] The act provides for punishment for grave breaches of the Geneva Conventions 1949 and regulates legal proceedings with respect to protected persons (prisoners of war and internees).Apart from that, the act also prohibits misuse of the protected emblems such as the Red Cross. However, the implementation of the act is questionable such as in Jammu and Kashmir, which shall be discussed in length in this paper.

Non-Derogable rights under the Indian Constitution

Under the Indian Constitution, 1950, fundamental right are incorporated under part III of the Constitution from article 12 to 35, among them some rights are absolute

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26 UDHR (n 6) art 1.

27 'Derogation from human rights treaties in situations of emergency' (*Rule of Law in Armed Conflicts Project,* 2011) <http://www.genevaacademy.ch/RULAC/derogation_from_human_rights_treaties_in_situations_of_emergency.php> accessed 27 April 2013.

28 International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 4(2).

29 V.S. Mani, 'International Humanitarian Law: an Indo-Asian Perspective' (2001) 83 International Review of the Red Cross 59, 65.

and non-derogable. Article 20 and 21 of the constitution cannot be suspended even in emergency[30].

Humanitarian Law in India and the need for intervention

Immanuel Kant has preached that perpetual peace is no empty idea, but a practical thing which, through its gradual solution, is coming always nearer its final realisation. At the present, India is coping with two major conflict in Jammu and Kashmir and the Naxal-affected areas. *According to the estimates of Asian Centre for Human Rights (ACHR)*, the highest number of killings has been reported from Chhattisgarh (208) which constitutes 54% of the total killings, followed by Andhra Pradesh (59), Jharkhand (44) and Bihar (28). [31] There have also been allegations of fake encounter killings[32]. Therefore, it is really matter of the serious concern that, in spite of being signatory to Geneva Convention and key human right treaties, India is struggling to protect the life of its people in conflict-stricken stretches.

International Court of Justice (ICJ) has consistently observed that observation of common article 3 is essential in case of military and paramilitary activities. *Nicaragua v. US* is one of the case where the court necessitate observation of common article 3 during military operation.[33] In this milieu, the government of India has been unsuccessful to uphold its obligations.

Violation of IHL in War between India and Pakistan

The long-standing border and Kashmir dispute resulted in full-scale wars between India and Pakistan in September 1965, December 1971 and 1999. Many prisoners of war (POWs) were detained by both the countries.[34] Only recently, *The Daily Mail* reported that 18 Pakistan Army personnel who were made POW in 1965 and 1971 Indo-Pak wars are still being held in Indian custody contrary to all the norms of humanity and in direct contravention to the Geneva Convention. The government has failed to respond to repeated requests about the status of those POWs.[35] Both India and Pakistan are signatories to the Geneva Convention III regarding POWs and are bound by its prescription.

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30 Constitution of India (adopted 26 November 1949, came into force 26 January 1950) art 359.

31 'Naxal Conflict Monitor, A Quarterly New Shelter of ACHR Vol. II' (*Asian Center for Human Rights*, June 2006) < www.achrweb.org/reports/india/AR08/chhattisgarh.html> *(*accessed on 6 November, 2011).

32 'Naxal Conflict Monitor' (2007) Asian Center for Human Rights Briefing Paper 2007, 2.

33 *Case Concerning Military and Paramilitary Activities In and Against Nicaragua* (Jurisdiction and Admissibility) [1984] ICJ Reports 437 (*Nicaragua v. US*) para 218.

34 'Top 10 Armies in the World' (*DirectoryJournal,* March 11 2013) <http://www.dirjournal.com/info/top-ten-armies-in-the-world/> accessed 27 April 2013.

35 Asian Human Rights Commission, 'India/Pakistan Missing prisoners of war-a letter to the Presidents and Chiefs of army staff of both the countries' (7 November 2011) 1-2.

India, as a detaining power incurs the obligation to properly treat its POW at national and international level under the Geneva Convention Act and Geneva Convention II respectively.

The Humanitarian Law Dimension of the War of Kashmir

It is aptly said that 'the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.'[36] The first through to strike the mind while talking about human rights and humanitarian law in the context of India is Kashmir. The central question is whether the event of Kashmir invoke the concept of internal armed conflict.

After considering the aforementioned thresholds of internal armed conflict, the conclusion arrived at is that the war in Kashmir between the Indian armed forces and Kashmiri resistance fighters automatically invokes Humanitarian Law. A long lasting demand of revocation of Armed Forces (Special Powers) Act of 1958 (AFSPA) has still not been fulfilled. For the above cause, the proclaimed Iron Lady, Sharmila has been on the longest hunger strike ever, since November 2000.[37] The reason behind the outcry for withdrawal of this act is the violation of humanitarian law in the guise of the provisions of this act which clearly violate the norm of human rights, as well.

The Act permit all security forces unrestricted and unaccounted power to carry out their operations, once an area is declared disturbed. Even a non-commissioned officer is granted the right to shoot, to kill on mere suspicion in the name of 'aiding civil power'.[38]

The Act was first applied to the north eastern states of Assam and Manipur and was amended in 1972 to extend to all seven states in the north-eastern region of India, which are Assam, Manipur, Tripura, Meghalaya, Arunachal Pradesh, Mizoram and Nagaland, also known as the 'seven sisters'. The enforcement of the AFSPA has allegedly resulted in innumerable incidents of arbitrary detention, torture, rape, and looting by security personnel. This legislation is sought to be justified by the government of India.[39]

In the case of *Apparel Export Promotion Council* v. *A K Chopra*, the Supreme Court of India held that that in all the cases of human rights violation, courts

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36 South Asia Human Rights Documentation, *Human Rights and Humanitarian Law: Developments in Indian and International Law* (Oxford University Press, 2007) 17.

37 'Figures Back Case for Army Rollback in Kashmir' *The Hindu* (Bangalore, 28 October, 2011) 14.

38 The Armed Forces (Special Power) Act 1958, s 3.

39 Ibid.

are under an obligation to see that the message of the international instruments is not drowned. Court and counsel must never forget the core principles embodied in the international conventions and instruments and as far as possible give effect to the principles contained in those international instruments. Further, the courts are under an obligation to give due regard to international conventions and norms for construing domestic laws. [40] It is disheartening to note that Indian government failed to observe the guidelines of apex court.

International judicial bodies such as European court of Human Rights in *Plattform Arzte fur das Leben* case[41] and the Inter- American court of Human Rights in *Velasquez Rodriguez case* [42]have observed that the state is duty bound to safeguard human rights from the infringement not only by the government, but also by the private individuals. Thus states have a positive obligation to protect individuals from other individuals including collective of individuals, such as armed group.

In *Prosecutor* v. *Anto Furundzija*[43]*,* it was stipulated that the prohibition of torture laid down in human rights treaties enshrines an absolute right, which can never be derogated, not even in time of emergency (on this ground the prohibition also applies to situations of armed conflicts). Therefore, the prohibition on torture is a peremptory norm or *jus cogens*, which is irrevocable.

The people of Kashmir are in dire need of an intervention against rape and constant and continuing armed attacks against the civilian population. Indian Government is liable for putting the life in peril of Kashmiris, moreover, liable for large scale deaths and torture. Although India has not signed the Torture Convention[44] it is liable for the torture it commits because torture is a customary law and *jus cogens*, which is also upheld in *Sierra Leone* case in which the court clarified that even though the country had not ratify the Torture Convention, it is still binding as torture is enshrined in international customary law as a *jus cogens*

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40 *Apparel Export Promotion Council v. A K Chopra,* AIR 1999 Supreme Court (India) 625, para 27.

41 *Plattform Arzte Fur Das Leben v. Austria* App no 10126/82 (European Court of Human Rights, 21 June 1988) < http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57558#{"itemid":["001-57558"]}> accessed 27 April 2013.

42 Chris Jochnick, 'Confronting the Immunity of Non –State actors: New fields for the Promotion of the Human Rights' (1999) 21 Human Rights Quarterly Feb 56, 66.

43 *Prosecutor v. Anto Furundzija* (Trial Judgement), International Criminal Tribunal for former Yugoslavia (ICTY)-IT-95-17/1-T (21 July 2000) < http://www.icty.org/sid/7609> accessed 27 April 2013.

44 OHCHR, 'Fact Sheet No.17, The Committee against Torture' (*OHCHR*, 1992) < http://www.ohchr.org/Documents/Publications/FactSheet17en.pdf> accessed 27 April 2013.

norm.[45] In the case of *US* v. *Matta-Ballesteros* it was noted that *jus cogens* norms, which are non derogable and peremptory, enjoy the highest status within customary international law, are binding on all nations and cannot be preempted by the treaty[46]

The events in Kashmir sufficiently meet the threshold of internal armed conflict, which are:

a) Existence of internal armed conflict: After considering various definition and cases on internal armed conflict, it can be clearly traced that direct involvement of governmental armed forces and level of the violation in Kashmir i.e. killing, rape, torture etc. Invoke the norms of internal armed conflict.

b) Effective control: The governmental armed force demonstrates effective control over Kashmir, an element essential to constitute internal armed conflict.

c) High contracting party to the Geneva Conventions: The provision of common Article 3 applies to armed conflicts occurring in the territory of the one of the High Contracting Parties'. The meaning of this element is very controversial. It can be argued that, this specific point was included in order to make it clear that common Article 3 may only applied in relation to the territory of states that have ratified the Geneva Conventions.[47]

d) Protracted violence: The problem of Kashmir is not a current problem. However, since December 1989, the strength of the insurgency in Jammu and Kashmir has escalated.[48]

After analyzing all the above factors, it can be clearly documented, that conflict of J& K is internal armed conflict.

Concluding Thoughts and Suggestions

Geneva Convention Act has not adequately incorporated India's obligations under IHL that can be understood in the wording of its apex court in *Rev. Mons Sebastiao Fransisco Xavier Dos Remedios Monterio v. The State of Goa* in which the court's scrutiny of the Geneva Convention Act revealed that it does not confer

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45 Chandra Lekha Sriram, Olga Martin-Ortega & Johanna Herman, *War, conflict and Human Rights* (Routledge Taylor & Francis Group 2009) 95.

46 *US v. Matta-Ballesteros* 896 F 2d 255 (1988) cited in Malcolm N. Shaw, *International Law* (5th edn Cambridge University Press 2005) 117.

47 Vite (n 20).

48 Sumit Ganguly, 'Explaining the Kashmir Insurgency: Political Mobilization and Institutional Decay' International Security' (1996) 21(2) International Security < www.mtholyoke.edu/acad/ *intrel/sumit.htm> accessed 1 December 2011).*

any special remedy but merely indirect protection by providing for the breaches of the Convention. The Conventions are not made enforceable by the government against itself, nor does the Act give a cause of action to any party of the Conventions. India is obligated to respect the Convention regarding the treatment of the civilian population, but there is no right recognized in respect of the protected person that can be enforced in court. Therefore, there is need for a thorough revision of the Geneva Convention Act, 1960.[49]

The Indian Penal Code, 1860 does not contain any specific provision on war crimes and does not provide for universal jurisdiction over certain crimes like the German Penal Code which provides a universal jurisdiction over genocide or other offences if they are made punishable by the terms of international treaty binding on Germany.[50] India may want to refer to the progressive provisions enshrined in this Penal Code.

The time has arrived to break the endless cycle of violence and counter violence. There is a need to underscore the complexity of the human situation and our limitation in understanding, which unite us. The disturbing and recurrent instances of violation of the humanitarian law and human rights by security forces are blots on the any democratic country' credibility and are global concerns. The following measures must be taken by the government of India in the prospective days:

1. Establishment of an implementation mechanism at international level;
2. Demand to the government of India to immediately cease violations of humanitarian law and human rights in Kashmir;
3. Inception of mandatory periodical inspection in disturbed area by independent authority like ICRC;
4. Amendment of the draconian provisions of AFSPA;
5. Acceptance and ratification of the Torture Convention;
6. Endorsement of a universal jurisdiction over war crimes;

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[49] *Rev. Mons Sebastiao Fransisco Xavier Dos Remedios Monterio v. The State of Goa* AIR 1970 Supreme Court (India) 329 (1969).

[50] German Penal Code 1871, s.6(9)