

Legal protection of women in time of War

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Abstract

During war women are entitled to the same general protection as men, as combatants or as civilians or persons hors de combat without discrimination. At present the impact of war upon women can be severe. Regardless of their capacity as noncombatants or soldiers, women face difficulties that are the product of gender difference, which usually excavate during conflict. International humanitarian law targets to protect and decline suffering in war without discernment based on femininity. But the women are facing problems in armed conflict time, in specifically as sexual violence and risks on their health. The aim of this topic is to know the ways of protect and prevent for women in time of war. Thus, the research is conducted by applying analytical methods and qualitative method.

Keyword: Conventions, women, protection, ICRC, IHL, in Time of War.

Introduction

Women who suffered by the cause of war were insignificant before the outbreak of World War I. Before the progress of international humanitarian law the legal protection and legal effect of women was not covered. But countries and governments are trying to protect on women. At present time Four Geneva Conventions and International Customary Law are given the same legal protection as men to women. The general protection of Conventions provides the states parties shall be made to be improved on expectant not only mothers, women, but of the wounded and sick. Any indecent assault, rape and violence, respect and any attack on their honor are the matters of mitigation for women. In relating to the international and Internal Conflict, there were considered that all women are the chief importance when they are arrested and detained.

In relating to the treatment of prisoners of war and civilian persons in time of peace or war contain some principle of general legal protection for women. The conflict parties and the states parties need to respect women's prisoner. They shall support to women by treatment as favorable as granted to other. And also the ICRC plays vital organization to help the sufferers of war, prisoners of war and citizens especially women.

Aims and Objectives

IHL is the vital in the Law of Nations. It aims to protect, prevent and alleviate human suffering in the war in respecting their human being and the students should study and understand IHL relating to the Laws. Nevertheless it identifies that women

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suffer many difficulties in Conflict time, such as violence, rape, mental violence and healthy risks.

The evolution of Four Geneva Conventions

International Humanitarian Law is branch of the International law, also known as the Law of armed conflict. This Law orders the conduct of war. Until the epidemic of First World War women participated in time of war are widespread. In that time the protections upon women are not enough and the special protection are needed for them. After the evolution of international humanitarian law, the same general legal protection had given to women by this Law. This does not imply however those women any protection.

IHL includes both humanitarian principles and international treaties that aim to save lives and alleviate suffering of combatants and non-combatants during armed conflict. Four Geneva Conventions of 1949 are the legal treaties of IHL and are signed by almost nation in the world. The Conventions state fundamental rights for soldiers and remove from the fighting due to wound, illness, or capture and for civilians. International Humanitarian Law tries to protect the wounded, sick, prisoners of war and civilians in the enemy country. Though IHL, they do not cover the full range of human suffering caused by war. Human seek their own advantage by cause of war. But war is not a business. The effect of war on women can be protected. The fundamental principle of the equality of men and women includes in the International Humanitarian Law and in clause forbidding discrimination.

The Amelioration of the Circumstance of the Wounded and the Sick in Armed Forces in the Field of the First Geneva Convention and the Second Convention for the Amelioration of the Circumstance of Wounded, Sick and Shipwreck Members of Armed Force at Sea 1949 provides that women shall be preserved with all respect due to their sex.

The Convention to the Treatment of Prisoners of war was also adopted in 1929. In 1934, the 15th International Conference of the Red Cross held in Tokyo and approved the text of an international Convention draft by the ICRC on protection for civilians of enemy people on territory occupied by a belligerent. After Second World War, States adopted the four Geneva Convention. Though the first three Geneva Conventions of 1949 raised the existing treaties on the same subjects, the fourth Geneva Convention was completely new, being the first IHL treaty to deal with the protection of civilians during armed conflict. The 1977 Additional Protocols, which supplement the Geneva Conventions, expands those rights. ¹

¹ Khin Maung Sein, U, Public International Law, a Practical Approach, 2011, 3rd edition, p-444

Definition of civilians

Any Person not participated in the armed forces is considered as a civilian. The civilian population covers all persons who are civilians. Any person who is not a member of armed forces is measured to be a civilian and the civilian population comprises all persons who are civilians. The civilian population involves all persons who are civilians.²

The Protocol forbids starving civilian populations. The survival objects of civilian populations must not be attacked, destroyed and removed. The survival objects are foodstuffs, agriculture, livestock, drinking water, supplies and irrigation works. The Armed Conflict must not be widespread, long-term and severe harm to the natural environment. Idyllically, the conflict parties shall not be applied the methods and means of warfare likely to cause such destruction. And also they shall not be made thereby endanger the health and survival of the population is not forbidden.³

Protection of Women

After the outbreak of conflict, to protect from the disadvantages of war, treatment centers and security sectors and areas may be established by the State Parties in their own territory and in occupied territories for the wounded, the sick and aged persons, children under fifteen, pregnant women and mothers of children under seven if the need arises. The wounded, sick and expectant mothers shall be the purpose of special protection and respect.⁴

And Conventions insert in the articles to be disappeared against violence, rape, assault and any attack on women's integrity.⁵

By the reason related to the Armed Conflict, women whose freedom has been restricted. Although they shall be detained in quarters parted from men's quarters and they shall be detained under the control of women.

In addition, Addition Protocol of Geneva Convention supplements that women enjoy the general protection. They shall have the rights to benefit as men on the same basic and shall enjoy special protection. The special protections are the principles previously stated.⁶

² Article 50 Additional Protocol of Geneva Convention relating to the Protection of Victims of International Armed Conflict, 1949

³ Article 54,55 of the Additional Protocol of Geneva Convention Relative to the Protection of the Victim Persons of International Armed Conflict, 1949

⁴ Article 14, 16 of Geneva Convention the Relative to the Protection of the Civilian Persons in Time of war, 1949

⁵ Article 27 Ibid

⁶ Article 76(1) of Additional Protocol to the Geneva Convention of 1949, and Relating to the Protection of Victims of International Armed Conflict

Pregnant Women and Maternity Cases

In the conflicting from state to state, this kind of pregnant women and childbearing need to certainly protect. And any act of hostility must be refrain from the near of maternity cases and pregnant women. This principle is the same general protection for women, pregnant women. If pregnant women need of medical care rapidly in their condition, they are transport by land, sea or air as possible as.⁷

If the pregnant women are arrested or detained for the causes on the conflict, their cases are considered by the chief priority. To the maximum extent feasible, pregnant women or mothers of young children shall not be declared the death penalty. They shall not be sentenced to them for an offence with regard to the armed conflict. The protection of Victim of International Armed Conflict means that the death penalty shall not be executed on such women.⁸

In proportion to the physical needs, expectant mothers and mothers of young children shall be given nutritious food.⁹ The Fourth Geneva Convention express that if maternity cases and detainees are suffering from serious injuries, they must be sent to any institution where suitable cure can be get and shall be received care in accordance with provision for the general protection. Unless their safety imperatively for demands, wounded internees and maternity cases shall not be moved. This means that maternity cases and women shall not be transferred to their territories when their passage would be very detrimental to them.¹⁰

Women Prisoners of War

The Detaining State may not confine the exercise of the rights such capacity confers either within or without its own land. Women have the right to peace, right to live, right to freedom of passage in all situations in their human being and their reputation. This means that women shall be benefited in equitable with men.¹¹

Alike men, women are protected by international humanitarian Law when they fall in the hand of the enemy. They must be women who involves in conflicts. Specifically, a prisoner whose woman in war it shall not punishment the sentence not extend for more severe than a woman member of the armed forces of the detaining State related to the similar offence.¹² And they shall not be treated at the same time as suffering punishment more severely than a woman member of the armed forces.

⁷ Article 8, 21, 22 Ibid

⁸ Article 76 Ibid

⁹ Article 89 of the Geneva Convention for the protection of Civilian Persons In Time of War, 1949

¹⁰ Article 91(2), 127 of the Geneva Convention for the protection of Civilian Persons In Time of War, 1949

¹¹ Article 14 of Geneva Convention Relative To The Treatment of Prisoners Of War, 1949

¹² Article 88 Ibid

The third Geneva Convention provides that if women prisoners are punished, they shall be limited in distinct residences from men prisoners. They shall be placed under the immediate supervision of women.¹³ The families shall be held in the same place and housed as home.¹⁴ This means that women prisoners of war shall be protected from the violence of male prisoners of war.

To get the information from them or from third parties, physical or moral of them shall not be forced.¹⁵

Therefore, women prisoners of war like civilian women should be humanly treated without any discrimination. Then they should not be punished severely under the women supervision designated.

Status and Treatment of Protected Women

The treatment of Prisoners of War of third Geneva Convention 1949 provides women be preserved due to their gender and in all manner of their benefit by conduct as auspicious as that permissible to men. This means that third Geneva Convention and customary Law had given to them the rights to benefits equality to men.

In the Protection of the Civilian Persons in of War, personnel, integrity, family rights, religious opinions and practices, and behaviors and custom of protected people are entitled to respect in all situations. Every time and everywhere protected persons be kindly treated and protected against doings violence, threats and against abuses the public interest. In accordance with the provisions, the Party to the conflict shall treat, in their health of physical and mental, all protected women with the feminism. In the suitable protection of the Conflict Party, they shall serve by respecting their being gender. Therefore, the every state may make the security with regard to protected persons if necessary.¹⁶

Protecting States, ICRC, NRC Society of the State strength help them.

At the start of, or during a war, if all protected women want to move from their native, they shall be entitled to do so. Only their moving is not opposing to the national interests of the State they may transfer to the other place. The requests of protected people to passage from the protecting areas shall be decided according to the principles, rules, declaration. The decision of the right to transfer shall be decided rapidly. When

¹³ Article 97, 108 of the Geneva Convention of the relative to the Treatment of Prisoners Of War, 1949

¹⁴ Article 75(5) of Additional Protocol of Geneva Convention 1949

¹⁵ Article 30 of the Geneva Convention of the relative to the Protection of the Civilian Persons in of War, 1949

¹⁶ Article 27 of the Geneva Convention of the relative to the Protection of the Civilian Persons in of War, 1949

those persons are allowed for transfer, the detaining states may supply with the required expense for their passage and a necessary objects of personal use.

When those persons allowed for transfer is denied by the government, the competent court of protecting states or administrative board should be reconsidered as soon as possible for their passage.

Above the request if there are unreasonable of security prevent it, or the persons concerned object, representatives of the Protecting State should be supplied with the explanations for negation of any request for approval to dispensation the territory and be given, as expeditiously as conceivable, the names of all persons whose have been deprived of authorization to leave, the protected persons and their property are prohibited.¹⁷

The parties to the conflict must protect to women against abuses treatment and against the effect of hostilities in accordance with the provision of the fourth Geneva Convention.¹⁸

Responsibilities of the Contracting Parties

In terms of International Humanitarian Law, Common Article 1 to the fourth Geneva Conventions demands that every state, if the party involves in the war, need to obey for the principles of IHL. Whether the states involve in war or not, therefore countries in the world should enact the declarations, principles and rules to respect for IHL. In the Contracting Parties involved in armed conflict, a State abides responsibility for obeying with IHL. But in situation of the internal armed conflict victims are often national of the state concerned. According to IHL principles the reprisals in contradiction of the civilian and protected persons are prohibited.¹⁹

If protected persons were in the hands of contracting states, any measure to cause the physical injuries or termination of protected person are forbidden. Accordingly they may not exercise any measures such as cruelty, physical sentence, homicide, disfigurement and medical or scientific experiments not agreed by a protected person. Protected person may not be punished if he or she has not personally committed an offence. The protected persons shall not be made with combined punishments and all measures of intimidations or of violence. Any other measures of cruelty shall not be

¹⁷ Article 28,29,31,32,33 and 34 of the Geneva Convention of the relative to the Protection of the Civilian Persons in of War,1949

¹⁸ Article 50 Ibid

¹⁹ <http://casebook.icrc.org/glossary/state-responsibility>

applied whether civilian or military agents. Pillage is forbidden. The taking of hostages is banned.²⁰

The Parties involved in the Convention shall permit the right to carry the necessary of remedial tools and hospital supplies but also religious things. The relating states shall certificate the right to passage for carrying of nutritious foods, wears intended for young children, pregnant women and childbearing cases.

Therefore every state party to the Conventions has the duty to abide the terms of International Humanitarian Law and implement the provisions of this Law. So the state parties must protect the civilian, victims of the war and prisoners of war including women.

Activities of ICRC

ICRC, the institution, which it represents to freedom, impartial and neutral humanitarian organization. Its exclusive task is to protect the survival of victims due to armed conflict and other situations of viciousness.

The ICRC covers a range of humanitarian activities all of which aim to better protect and support those most affected. The non-governmental organization in other words International Committee of the Red Cross is the vital organization to help the victims of war, prisoners of war and civilians including women. The ICRC strives to ensure equality of access and partaking of women to its programme and activities, and to support women to identify ways to mitigate exposure to risks. Women are vital in the action of the ICRC and others in raising awareness of and preventing injury from, landmines, which continue to cause injury and death to children after the end of hostilities.²¹

The ICRC provides healthy aid to the wounded and sick in the portion of the Yemen in 1967. On January 5, 1967, many of them women and children were murdered by the cause of an air raid on the village. By such doing, the ICRC summited the following appeal on January 31 to the conflict parties. ICRC preserved in relating to the air-raids upon the civilian people and the alleged use of toxic smoke in the Yemen and near states. Finally, a second appeal made by the ICRC to the two belligerents to respect the fundamental principles of International humanitarian Law.²²

To sum up, ICRC play an important role in protecting the civilian, victims, women, prisoners of war and persons affected by war. Therefore, non-intergovernmental

²⁰ Article 32,33, 34 of the Geneva Convention of the relative to the Protection of the Civilian Persons in time of War,1949

²¹ <http://www.icrc.org/document>

²² <https://casebook.icrc.org/case-study/icrc-report-yemen-1967>

organizations should cooperate with ICRC in time of war and in time of peace to protect and prevent of the not only women rights but also their honor and justice on their personnel life without discrimination.

The Methodology

The Methodology of this paper necessitated a detail studying and undertaking the assessable the research ways, may also be conducted in ICRC in Yangon.

Findings

The finding have suggested that the need to certainly protect the protected women, pregnant women and childbearing. And the finding of this study has shown that the need for strong legal instrument for protection women in time of war.

Conclusion

Even International Humanitarian Law gives widely protection to women but it especially identifies that women are victim in armed conflict time with the specific problems of sexual violence and healthy risks. There are still discriminating against upon women as the civilian population, whatever Conventions and Protocols provide special protection for women. IHL and domestic Laws protect on women against any act to be damaged on their reputation and to be alleviated sexual violence, indecent assault in situations of armed conflict. The rape and sexual violence committed relative to armed conflict create war crimes. Contracting parties and non-contracting parties must prevent and prosecute these war crimes.

Women face detriments because of gender unfairness, which generally intensify during armed conflict. States have a responsibility to investigate and prosecute or, as relevant, to extradite. The States Parties responsible to apply the provisions giving special protection to women. The States Parties and non-States Parties Should effectively and actively adopt to form the institutions of investigation, to plan the program of sharing legal knowledge into the community.

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