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HUMAN RIGHTS PROTECTION IN ARMED CONFLICTS : EMERGING LEGAL FRAMEWORKS

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I. ABSTRACT

Humankind is the most necessitated embodiment that is perceived to be of utmost importance in the world however the very premise of Armed Conflicts carves a conflictual niche towards people working for the preservation of the basic tenet of the existence of humans i.e. Human Rights. The very constructive presupposition entails that every single human being is entitled to the protection of their well-being however, the contrary becomes an aspect of normalcy during times of war. Humans themselves brazenly curtail the liberties of others thereby creating a situation of havoc. One country tends to overpower the other country by the very factum of politicization and other components. The presence of International Humanitarian Law instills the presence of regulations that countries engaged in armed conflicts need to necessarily abide by that would ubiquitously be there in force and all the state and non-state actors need to abide by it. The rules are designated to protect civilians and humanitarian and medical workers during armed conflicts in any part of the world. Without them, there would be no international standards at all for this. Many violations of human rights constitute genocide, war crimes, or crimes against humanity. The very presence of International Human Rights Law is variedly the topic of discussion on a global platform. The United Nations strives to strike a balance between the enactment of peace and the preservation of the Human Rights of the people that substantially become a subject of wars and hence the prominence of Legality seeps in and regulations that require the preservation of Human Rights are of paramount importance to be put forth. In this manuscript, We would first talk about Humanitarian Law and International Human Rights. Then, we would emphasize on the functioning of Red Cross and pose the practicality and if it is complying by the image presented, Talk about the history of well-known armed conflicts and know about the history of Israel & Palestine and Ukraine & Russia. We would also talk about the functioning of The International Court of Justice for the preservation of the tenets of the Human Rights and then also question its credibility, Then,

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We would observe India's front upon the global violation of Human Rights variedly. At last, We would conclusively sum up the profuse implications of the violation of Human Rights and its effect on the global platform.

II. KEYWORDS

Politicization, Human Rights Violation, First-Fire-Policy, Industrialized, Archetype

"To deny people their human rights is to challenge their very humanity."

-Nelson Mandela

III. INTRODUCTION

The very advent of Emergency may as well suspend certain rights of the Humans however there are laws which no matter what cannot be suspended in any case namely International Human Rights and Humanitarian Law, Both are intertwined and complement each other. The core protection includes the prohibition of slavery, the prohibition of torture and inhumane treatment, and the prohibition of any retroactive application of the law. Unlike other rights (such as freedom of speech, of movement, and of association) that may be abrogated in times of national emergencies, the core protections afforded by IHL can never be suspended. The core human rights are protected by the advent of International Human Rights which can never be suspended, It is a set of rules especially adapted to armed conflict that serves to protect the victims of war (civilians, wounded and sick, prisoners, displaced, etc.) and to regulate the conduct of hostilities. ² The manuscript would address Human Rights Violations and its severity, The pros and cons of the Red Cross, The atrocities inflicted upon the women and the requisite case laws which address the subject matter. The Human Rights treaties include the signing up for 'jus cogens' which purports the compelling laws which irrespective of being signed by the countries have to be followed for instance, laws prohibiting genocide, slavery, and acts of aggression.

² *International Humanitarian Law and Human Rights* American Red Cross (1-3) 2011
https://www.redcross.org/content/dam/redcross/atg/PDF_s/Family_Holocaust_Tracing/IHL_HumanRights.pdf

A. Geneva Convention and The International Covenant on Civil and Political Rights

The Geneva Convention articulates the core principles of preservation of the tenets of humanity such as Article 3 of the **Geneva Convention** offering international minimum protection to person not being part of hostilities. The **Articles 4,7 and 15** of the **International Covenant on Civil and Political Rights** purports how state parties in due course of threat to life can escape the obligations under present covenant under Article 4. Article 7 that “ No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation” and Article 15 of the **International Covenant on Civil and Political Rights** purports that “ No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed”.

B. The Red Cross : Duties and Actuality

The red cross ensures the preservation of the basic premise of humanity and ensures that human dignity is carried forward carries certain regulations that need to be abided by on the battlefield. It propagates the idea of peace, love, friendship, and cooperation. Irrespective of religion, color, race, gender, creed, nationality, or other facets, The cases of distress are paid heed to during times of war. Any particularity of discrimination is avoided and the organization identifies to be impartial alongside numerous volunteers working for it. Most countries are signatories to this organization, The organization of the Red Cross is also known for unity and peace-mongering. The doctors of the Red Cross are identified as doctors beyond borders and as per the Geneva Convention no enemy can kill a tack medic if done is a violation of the Geneva Convention under Article 18 and is considered war crime i.e. the infliction of unnecessary suffering upon an enemy. The tack medics take the oath to treat the injured from other countries as well. *“The compassion that the Red Cross has shown for us as a family – I’ve never had anybody just drop everything to help us.” –Mary, a wildfire*

survivor".³ The Indian Red Cross Society also lays down norms and procedures to be adopted by the tack medics during times of war in the form of a booklet of regulations. The very premise of the advent and existence of the Red Cross may as well look flawless from a distance but certain accounts have proved the contrary and have purported a paradigm shift to the picture presented to the world since it has faced backlash in the juncture of globalisation. Irrespective of its good deeds there are some accounts that showcase a negative picture for instance, Some children have been accounted to be paired and kept in shelters with sex offenders while some children were found to be showering with unrelated adults. Some accounts of emergency vehicles being taken away from aid works and were kept as props at press events. Large amounts of food undelivered because the Red Cross failed to cater to the delivery and the disabled victims being kept in wheelchairs for days are one of the many examples of the failure of the Red Cross in catering to what they are in existence for proves a contrast viewpoint.⁴

More accounts of the Red Cross adopting a hateful attitude towards African Americans and purporting the money garnered from charity to cater to its own needs are also administered. There are accounts of representatives of Red Cross making inflammatory statements too and there persist accounts of the organization mismanaging things and getting bribes.⁵

Practically and notionally, Emerging countries have a lack of representation on the global front as they lack the resources to represent themselves on the uniform pedestal where other developed countries showcase an industrialized upfront and hence gain an advantageous position in terms of differential subject matters. Human Rights concerning certain countries like Afghanistan, Ukraine, and Palestine have been periodically suppressed and ignored. The enforcement mechanism with regard to

³ American Red Cross <https://www.redcross.org/about-us/who-we-are/mission-and-values.html#:~:text=The%20Red%20Cross%2C%20born%20of,respect%20for%20the%20human%20being>. (12-02-24)

⁴ Pro Publica <https://www.propublica.org/article/disturbing-things-about-the-red-crosss-sandy-relief-efforts> (12-02-24)

⁵ The American Red Cross faces Organizational Integrity Challenges <https://harbert.auburn.edu/binaries/documents/center-for-ethical-organizational-cultures/cases/american-red-cross.pdf>, 10-05-2024

International Law is also weak which encapsulates that there are no repercussions with regard to the violation of International Law. Most of the countries don't want their sovereign bubble to be inflicted by any outside disturbance and disregard or external influence. In cases about the blame game with regards to the first fire policy during the war, Countries tend to put forth their politicized notions on the global front rather than finding a solution with regard to frequent violence and conflicts between the countries. There is a lack of universal participation and generous & and common agenda for the states to come together and build a better world front. The common pursuit with regard to the protection of Human Rights gets intertwined and muddled up in the fabric of disregard, hate, and politicization which further accentuates and adds to the pre-existing turmoil and does not provide a platform for problem solving.

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C. India's Outlook and response

Variedly, Countries respond to the hate inflicted on developing countries in the course of war and armed conflicts in accordance with their own whims and caprices keeping in mind their own set of rules about the profitability gained out of a particular situation. For instance. A particular country would not reasonably disregard the actions done by the country which it fairly has good terms within the International Front. In the context of International Relations, Words, Actions, and even silence have differential inferences drawn out of them. The very premise of customs entails the historical relations the country has had with another country and carries it on and further propagates it as a source of International Law. Countries fail to be neutral on the global perspective and tend to discreetly carry forward their own biases.

It is very relevant that India has reacted in a very sympathised manner with regards to the Palestinian Conflict with regards to the Gaza Strip and there have been conclusive protests and voices raised in this context by Indians. India has and always will strive to showcase a neutral and opinionated forefront in various International

⁶ Priyanshu Singh, *Insufficiency of International Law*, Times of India, 27-01-24, 23 : 16, <https://timesofindia.indiatimes.com/readersblog/opinionsofpriyanshu/insufficiency-of-international-law-55615/>

matters especially with regards to the violation of Human Rights in any part of the country. Also, there have been numerous instances of people of India raising their voices against the moral turpitude being su by the Palestinians on the on the Digital Front however, India can only strive to pose its stance in a representative and third party pretext and in no case can appropriate an action in a representative capacity. However, The very attribute of India and its reaction against the atrocities being committed at Palestine strive to be of utmost importance since India carries a powerful position in the global aspect and even mere voicing of opinions have significantly brought affinity for the plinth of the survivors of the Israeli-Palestinian conflict.⁷

It is integral to conclusively add all the neutral and bias aspects relating to a topic since there are variable viewpoints intertwined with the veracity of differing notions of different countries and their sources that sum up a different picture altogether. The global forefront has also mentioned as to how India never with respect to the Ukraine-Russia Conflict posed a maximized support aspect because of its historic relations with the particular country however, keeping all the aspects of politicization aside, being humanitarians and people working in consonance and for propagation of Human Rights, We shall irrespective of the differences sympathise with the aggrieved countries.

D. International Court of Justice and International Criminal Court's purview & Global Accounts of atrocities

Russia with respect to Ukraine's people has adapted to stringent methods to diplomatically suppress the population and there are even reports of genocide being committed by the Russian army. However, The International Court of Justice has vitiated the decision of hearing the false accusations by Ukraine towards Russia on the allegations of genocide and dismissed large parts of the accusations by Ukraine in the case of **Ukraine-Russia genocide case**, "In the present case, even if the Russian Federation had, in bad faith, alleged that Ukraine committed genocide and taken

⁷ Anadolu Ajansi <https://www.aa.com.tr/en/asia-pacific/indias-controlled-response-to-conflict-in-gaza-linked-to-government-s-nuanced-stance-political-analyst/3036537#> (13-02-24)

certain measures against it under such a pretext, which the respondent [Ukraine] contends, this would not in itself constitute a violation of obligations” under the genocide convention, the ICJ said in the ruling read out by its president, Joan Donoghue. The implication of the ICC’s decisions also urges Russia to let go of its hierarchial and aggressive nature ad casts an embargo and in support of the victimised nation i.e. Ukraine.⁸

With respect to the arbitrary government in North Korea acting upon its whims and caprices, Very little information is led out to the general public due to the lack of information being set out to other countries, Countries are reduced to overlook the atrocities being committed on the people of North Korea since North Korea maintains to keep out of the global diasphora and does it own governance and rule making. But, According to the slightest information available, This country accounts for the most number of unhappy citizenry paying heed to the monarch/dictator irrespective. The very facet of the International Law not being binding and suggestive in nature disregards the credibility of the International Court of Justice .

E. Human Rights & Dire need of the hour

Human Rights is the universal right omnipresent with people across the globe and have no factum of border intervention. Irrespective of the archetype of the government, Every human with the advent of humankind is subject to the subjection of human rights and the protection under it. Every human being warrants dignity and it casts an embargo upon the state to protect this right of humans. The State and its people have responsibilities against each other and vice versa and the very presence of humans under the ambit of Human Rights is universal. Humans may be different in terms of caste, creed, sexuality, gender, color, race, ethnicity, or religion but there is no such provision of voluntary or involuntary giving up of Human Rights, It can neither be taken away nor consented to be given up. No one can take away the quintessential veracity of being from one another. However, As prepossessing the definition may sound, there’s no escape from the fact that there persists a constant

⁸ ALJazeera <https://www.aljazeera.com/news/2024/2/2/icj-rules-that-it-will-hear-part-of-ukraine-russia-genocide-case> (13-02-24)

escape and violation of the Human Rights of the people hailing from variable states and the accountability of the government is none. In the real scenario, No state stands and takes the burden of being the wrongdoer and taking probable actions.⁹ Additionally, There persists a particular politicization which leads to some countries adducing out of it and it acting as scapegoat for them to commit atrocities and able to defend themselves. For this, A strong stature of Human Rights protection globally is seriously in need to be implicated.

Palestine has lately been subjected to cruelty by Israeli forces and there persists a gross violation of Human Rights in this context. Palestinians have been continuously denied their basic human rights and the amount of cruelty perpetrated towards Palestinians living in Israel-occupied lands is alarming. The world at this point notes down the plinth of the people being denied their human rights everyday and becoming a victim of war between Israel and Palestine. Israel has constantly adopted a severe and stringent method of attack and retaliation with numerous Palestinians being detained and imprisoned and Israel avoiding the advent of the Red Cross. Since the world witnessed the mass violations and it has become an integral matter in the course of history, Some reports showcase the advent of Palestinians being denied to meet their lawyers and families engrossing a stature of torture and inhumane advent.¹⁰ The **Amnesty International** addresses the plinth of Palestinians as apartheid by Israeli forces and how the system is cruel violating the basic tenets of the living of the Palestinians.¹¹

F. Sexual Violence & Rape : CONTENT WARNING - Description of Rape & Violence

⁹ UNICEF <https://www.unicef.org/child-rights-convention/what-are-human-rights#:~:text=Human%20rights%20are%20standards%20that,the%20State%20have%20towards%20them.> 28-01-24

¹⁰ Alarming increase of human rights violations against Palestinians in the occupied territory and against Palestinian citizens of Israel <https://www.fidh.org/en/region/north-africa-middle-east/israel-palestine/alarming-increase-of-human-rights-violations-against-palestinians-in#:~:text=In%20addition%20to%20these%20illegal,arbitrarily%20arrested%20and%20detained%20incommunicado.>, 28-01-24

I. ¹¹ **Israel's Apartheid against Palestinians: Cruel System of Domination and Crime against Humanity** <https://www.amnesty.org/en/latest/research/2022/02/qa-israels-apartheid-against-palestinians-cruel-system-of-domination-and-crime-against-humanity/> (10-05-2024)

Moreover, Sexual violence and the commission of rape upon women during military conflicts are events of common parlance however when interrogated, Palestinian women deny the very occurrence of rape committed by Israeli soldiers. However, Women's testimonies denying the occurrence of sexual violence upon them cannot be conclusive proof that denies the occurrence of the same. Infliction of hate can be purported as intertwined with vengeance and the advent of undue influence which is practical in the scenario of Palestine and Israel where Israel enjoys a hierarchical position. However, the discourse about sexual violences cannot be relied upon by interrogating limited sources. There is a need to accumulate more insights into these factums. Some of the sources state that the infliction of sexual violence by Israel towards Palestinian women is not the case, It might as well carve a differential arena of the accruing conflict that persists. The foremost fear among Palestinian women is the fear of them being victims of rape by Israeli soldiers. There have been numerous instances of Palestinian women being subject to rape during the advent of legal formalities and also getting unwarranted touch by Israeli people.

The discourse of women has been historically ignored and their lore is silenced and not made the hub of sensibility. Morality has always been a subjective matter and in certain cases, the world restricts itself to watching the actual picture and dismisses its existence. Women have always been treated as a commodity and in the case of Palestine, Israel has reduced the presence of Palestine to the extent of controlled censorship and Israel enjoys a sense of privilege and advantageous position. Cases of Rape reduce the woman to helplessness even in a democratized setup, The very advent of a havoc-like situation further aggravates the plinth of the women.¹² Madar in her article addresses the the fear by Palestinian women of Israeli forces raping them at the foremost juncture, however when interrogated upon the women answer in negation, The questionability accrues of whether this is fear of something else, It can be due to the "overcompensation for the years of ignoring women's place in humanitarian law."

¹² Revital Madar, *Beyond Male Israeli Soldiers, Palestinian Women, Rape, and War Israeli State Sexual Violence against Palestinians*, Berghahn journals New York 72, 72-83 (2023)

G. Actualities of the Horror : Global instances

In the scenario of Ukraine and Russia, Numerous women of Ukraine have accounted the inhumane scenario of them and other female known persons of theirs being raped by Russian soldiers on the pretext of either threatening them at gunpoint or other persons she knew and keeping their lives in danger. The infliction of sexual aggression is also warranted and heated terminologies are exchanged that purport the very existence of prejudicial bias against women. In one case a woman was raped after being asked to take off her clothes at gunpoint and later killing her husband as well. The psychological trauma is raised to such a temerity that those women don't want male interaction anymore. Upon asking the authorities of Russia, They don't have an answer to give. Some women would not even resist after being raped twice or thrice so as for their sons to not get harmed. A woman was bled to death after being brutally raped and her throat slit making the aesthetic arrangement of her house to be reduced to a crime scene. There is also an account of the Russian soldiers getting high and staying at the victim's house and asking her for her deceased husband's belongings to be handed over to the soldiers at gunpoint. The very infliction of violence of this sort has resultantly made a mockery of the advent of Human Rights and transcends the message of lack of basic protection of the rights of the people.

Elongating the age-old psychological after-war trauma to thrive in the minds of the people even after the global showcase of the protection of rights of the persons. The people might as well be having trouble sustaining and carrying forward their livelihood is an understatement, Additionally, There is no answer as to the atrocities that have been inflicted. The very politicization and varied statements from different countries may as well portray different pictures however there are testimonies as to pain being inflicted upon certain countries more than the other countries with regards to their weak political stature concerning other countries. Countries with strong military forces tend to sway and get away however the countries that are the sufferers are adversely downgraded and suppressed.¹³ The very premise of rape has become a weapon by the so-called stronger countries to take advantage of the havoc and further

¹³ BBC, <https://www.bbc.com/news/world-europe-61071243> (12-02-24)

politically align their hatred and taking advantage of the plinth of the weak women of the subjugated country and further accounting for their attack.

H. Case Laws : International Court of Justice

1. We would now be emphasizing on the International Court of Justice's proposition of Human Rights, In the case of *Croatia v. Serbia* , The court exerted the presence of lack of 'genocidal intent' and lack of intention or violation of other conventions by later contesting lack of evidence. The rejection of counter claim purports the lack of factors fulfilling the requisites to be deemed 'genocide', The very facet of reasoning provided by the ICJ is detailed and significantly attacked on the very premise of the allegation posed. Here there can be two stances, One namely deeming the reasoning propagated by the court however the other could be an instance of International Court subdued of the facts so posed and the International position of the countries may as well be of a cardinal role for the court to reach such viewpoint.
2. In the case of *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, A person from Republic of Guinea namely Ahmadou Sadio Diallo was unjustly imprisoned and deprived of his liberties also invoking various tenets and articles of different charters and conventions, The ICJ said to make accurate reparation and provide compensation for the same. Personally, The factor of Human rights being curtailed imparts a sense of lack of belief and faith in the system which has to be readily be addressed in order for the atrocities to stop. The International Court of Justice's decision of granting compensation might as well or not be the testament to the losses accrued.
3. In the case of *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, Even if the states contest lack of jurisdiction they need to still fulfil the obligations under United Nations charters and other rules of International Law including International humanitarian and human rights law, This

reflects the emphasis of the ICJ upon how the states cannot contest the facet of lack of jurisdiction and how they are answerable to the rules laid out in the International forum. Also, ICJ was emphasizing that the states cannot evade their human rights obligations under International Law even if they challenge the court's jurisdiction.¹⁴

IV. CONCLUSION

Based on the above-mentioned deciphered aspects, It can be deemed that Human Rights although well exhibited in the global forum is often induced to get away with a grave departure of it, In the cases of women facing atrocities for instance during the well known '**Tokyo Trial**', women as an estimated weaker gender were exposed to Sexual slavery which had left repercussions on their physical as well as mental health for ages to come. During armed conflicts, the very well-known factum of 'rights' often gets compromised upon. The plinth concerning reported accounts of violation of human rights is in such large numbers, Let alone the atrocities that didn't garner enough light to be exposed. The International Court of Justice has often come up with assertions and out-of-the-box interpretations and sometimes in accordance with the facts presented to it but the countries need to deeply inculcate the very facet of humanity first and then things can garner significant changes in the global forum. The International juncture comprises large accounts of countries propagating their respective politicized agendas. Although it is very normal for a country to first put in accordance their respective agendas across, But the very notion of humanity shall not be compromised upon.

Armed conflicts themselves pose to be heated and revengeful exhibition of force and are inherently bound to create differences and injustice. The forum of International system of justice is itself deemed to be biased and political in its approach and there are certain accounts of countries except the dominating ones to face bias and hierarchy but the fact remains constant that there are no particular alternatives to the current

¹⁴ Dakshinie Ruwanthika Gunaratne, *ICJ Cases Relating to Violations of Human Rights and International Humanitarian Law, including Genocide, War Crimes and Crimes against Humanity*, WordPress.com (03-04-2024, 21:03)

scenario. Sometimes, The very altruistic prospects of assistance and comfort to the victims of wars are deemed to be more aggressive and exploitative. Different countries tend to twirl and bend varying truths floating in and about to derive their own respective aspirations.

The probable solution to the entire havoc is simply for the countries to actually engage morally and peacefully and not minimize peace as a utopian concept and to actually preach it and put it to practice. It might approach uncanny to put forth the contention that Humans need to act humanly but it is the mere judicious way to go. Countries should like nubile representatives of their countries find solutions that are not inclusive of engaging themselves in war. A well-known saying postulates - **‘One man’s terrorist is another man’s freedom fighter’**, Countries do and will continue to pose their own intricate narratives of various events by negating the actions by the other countries and praising their own, However ‘Human Rights’ would prove to be the premise of the sustenance of humankind. Other facets are superfluous if Human Rights are compromised upon.

The **treaty of Non-Proliferation of Nuclear weapons** which is construed under the aegis of **Disarmament treaty** can be deemed to be the premise of casting a **‘deterrent effect’** in terms of challenging the nuclear capabilities of different countries and to command them to either limit their nuclear usage or to put their respective nuclear technologies to a constructive utilization. It is clear that there have been prerogative to limit the nuclear weapon usage across the globe since war leaves no constructive element of positivity or outcome however, there should be a pragmatic approach that should be construed in the factum of disarmament since complete disarmament cannot be done in real sense and that complete halt of usage of nuclear weapons neither war is going to be entertained in a stricter sense. The conclusive viewpoint remains that the scenario should not be such in the years to come that Human Rights are befitted to be an infrequent and rare factum. Upon culmination of various aspects, It can be conclusively regarded that irrespective of the conferences and ponderment, the only way out to actually propagate and promulgate the proposition of Human Rights and to preserve it during the tenets of wars is to unitedly break the shackles of

individuality of the states and work on the premise of mutual betterment and promulgate the ideas of same parentage and antecedents and not ruthlessly make fellow humans sufferers because mutual cooperation and not incapacitating the other countries is the key to a better and lesser barbaric world to live in. The importance of the International community working together to strengthen the protection and enforcement of human rights in armed conflicts is the dire need of the moment. Let us be better advocates of peace and not hate mongering because in the ultimate end what can decipher to be better for the entire human race as a whole will only be feasible through Humanity, Love and Kindness.