



INTERNATIONAL LAW  
JOURNAL

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**WHITE BLACK  
LEGAL LAW  
JOURNAL  
ISSN: 2581-  
8503**

*Peer - Reviewed & Refereed Journal*

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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# **THE PLIGHT OF THE DETAINED DURING ARMED CONFLICT: A HUMAN RIGHTS PERSPECTIVE**

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## **INTRODUCTION**

Prisoners of War are the captivated being by the alien enemy also called hostiles, at a wartime till the cease-fire or peace treaty or may be kept in prison immediate after the wartime. It encompasses both combatants and civilians who are directly involved in the act of war and may assert their right to prisoner of war status along with the corresponding protections. This harsh scenario is expressively stated in International Humanitarian Law which grants status of the prisoner of war and remedies to get out of it along with several measures of protections specifically mentioned here to be rendered compulsory. It's a growing concern about violence and human rights violations across borders. Objective behind codification of International Humanitarian Law is appropriate monitoring and control on armed conflicts, maintenance of dignity of war and warring personnel, availing safeguards to the POWs, militants and combatants and civilians, ensuring no violation of their human rights while detention, regulation of conduct of hostilities, promotes accountability to the hostile towards every war sufferer and victims and justify humanity over conflicts. Parties to an armed conflict carry out their operation on three principles first one is *Distinction* between civilians and combatants which led the rules of prohibition of direct attack to civilians or indiscriminate attacks; *Proportionality* of injury shouldn't be excessive than anticipated loss by conflicts and the last one, *Precautions* must be taken during wartime processing, all of three are for effective implementation of warfare action to the field with minimal loss or injury. A notable instance involves the German prisoners of war following the Battle of Stalingrad, where the Soviet forces took into the custody 91,000 German soldiers many of whom were utterly exhausted, starving, and ill. Out of these, a mere 5,000 survived in their imprisonment. Even after the war ended, German soldiers were detained and compelled to perform forced labor for several years. In contemporary times, prisoners of war continue to be held in various global conflicts. Although the overall prisoners of war have decreased as a result of technological progress and changes in warfare, cases of individuals captured during current hostilities still occur in some

part. In ancient times, prisoners of war were being treated gruesome like forced to work as a slave, or sacrificed to the God (suicidal path), and so many horrendous practices were used to be performed. They are the horrifying mirror of the war. Hostile forces detain prisoners of war for a variety of legitimate and illegitimate purposes, such as “solitary confinement” restricting POWs to communicate or interrogate with others enemy or to stave off to fight or rejoining the arms; “repatriation” of the soldiers without delaying with lag or obstructions after the ceasefire of armed conflicts to their original territory subject to the credible fear of persecution and despotism; “exploitation” of captivated troops with intent to revenge from the hostiles by creating terror of fear with brutal exercise lacking tolerance to breathe in such hazardous surroundings; “interrogating” or “investigating” the prisoners of war about war strategies or relatable propagandas of the adversary troops without involving exploitation and tormented attitude and brutal practices; using prisoners of war (POWs) in “propaganda efforts” involve disseminating fabricated confessions or declarations, highlighting supposed abuses against POWs, or incorporating their images into propaganda materials with intent to dehumanize the enemy, thereby bolstering support for the war and it can also be employed to sway public sentiment in neutral nations or reinforce alliances with countries already engaged in the conflict.

### **INOLERABLE TRUTH OF POWs**

History evidencing the truth of cruel handling of prisoners of war or combatants or non-combatants since the ancient time that how the distinction was in practice behind warfare like in *Roman Empire* history, sometimes the purpose of the battle not about to fight against nation but to put women behind the bars by abducting or kidnapping them and this practice is known as “*raptio*” typically called “Rape of Sabine women” where women possessed no rights to step in against or no any legal remedies they had. Bishop Acacius of Amida, moved by the suffering of Persian prisoners taken during a recent conflict with the Roman Empire, who were confined in his town in terrible conditions and faced a future of enslavement, decided to take action by selling the valuable gold and silver items from his church to gain their freedom and allow them to return home. As a result of this act, he was later canonized. In *Renaissance*, when French was taking back to the militants after raiding the English camp however Henry killed all the prisoners because of misapprehension of rejoining of prisoners with English to fight against it. The Aztecs with his border friend tribes group collected prisoners to sacrifice their life, around 10,000 to 80,400 prisoners were sacrificed at Great Pyramid of Tenochtitlan in 1487. During

the early Muslim conquest, countless prisoners were enslaved or ransomed. In *Modern* time period, status of the prisoners of war modeled from private property to the property of State. In 1648, a Treaty of Peace of Westphalia formed regarding repatriation of POWs without demanding any ransom to their homeland after the armistice. During the *Leipzig Battle*, POWs life was as hell, they were used to eat cats, dogs, horses or even human flesh due to scarcity of food, used to live in grave vaults and used the coffins for firewood. During the *American Revolutionary War* and *Napoleonic War*, cartel system was introduced for exchange of prisoners of war. POWs were used to be treated inhumanely like us of weapons to harm or to injure to make them incapacitated being so that they couldn't participate in war against the hostiles, not providing even basic meals or providing poisonous meals or scarce meals, no medical facility, commanded by work of exceeded capacity, separation of males and female which leads to separation of families and child, child labor and child abuse, ill and harsh practice with women, slavery for longer period or for lifetime, killing of POWs, greater brutal punishments were imposed on them and irrelevance conditional exchanges. During the conflict of "Russia-Ukraine", HRMMU report revealed the inhumane scenario of war to captive militants that Ukrainian forces were used to be mistreated, abused and tortured badly, their personal items were stolen during entry time of POWs camps, there were transported in overcrowded buses had no access to waters and toiletries, many of prisoners were injured or wounded during travelling due to duct tape and blindfolding way. Resembling situation was with Russian POWs. Additionally, many of the Russian POWs were stabbed and got electric torture and sexual violence threat by Ukrainian soldier and on camera, militant prisoners were threatened with castration. " Hamas " has used hostages as bargaining chips for prisoner exchanges during "War of Israel-Gaza". Hence, it's revealing the hazardous and horrific view and sufferings of war impacting militants captivated by hostiles. These are the reality of POWs behind bars which is greater illustration of violation of Human Rights and it is still questionable somehow.

## **HUMAN RIGHTS IN HUMANITARIAN LAW**

International Human Rights Law and International Humanitarian Law both laws relating to humanity dealing with remedies, measures and protection against violation of rights but the distinction is IHL specifically for parties to an armed conflicts or civilians or non-combatants sufferer of warfare. International Humanitarian Law provide sets of rules and standards to regulate conduct of hostilities just for the sake for good living of the prisoners of war during

wartime detention. Both are complementary to each other aiming towards right to live with dignity must be respected and protected either the person is detained at cross-border, must be facilitated with basic foods, clothing, medical care and special care in needs, not be tormented or harassed unnecessarily. Both laws prohibit the brutal or inhumane treatment and criminal intended behavior and misuse of armaments against human beings. Occurrence of common violations such as restricting communication with others prisoners or individuals, unwanted harassment and killing of prisoners, separation of families and child, women and child abuse, forcible indulgence in hazardous or incapacitated work, providing no proper meals or no meals even, no proper care and treatment to needy detainee and so on; all of these reasons are concerning matter against human rights. The principle of "humanity" prohibits the conflicting parties from inflicting any pain or devastation that is unnecessary to fulfill the rightful aims of a conflict.

### **LEGAL SAFEGUARDS TO ARMED CONFLICTS' SUFFERER**

Fortunately, the progressive cum protective moves had been stepped in first on 22<sup>nd</sup> August, 1864 in Geneva known by the name of First Geneva Convention, played vital role in codification of an International Humanitarian Law and on 12<sup>th</sup> August, 1949 (devastating era of World War II) four other new conventions were adopted and ratified by the 196 Nations including all United Nation's members, aiming towards the protection of civilians, other vulnerable groups and prisoners directly or indirectly captivated by the hostiles. The essence of this evolution was to address the transforming view of warfare. It provides an improved structure of safeguarding and shielding of the POWs ensuring the humane treatment and recognized rights. In the year of 1977, two additional conventions were added to the 1949 Geneva Conventions for the same to expand its jurisdiction of safeguards. Every country in the world is a party to the Third Geneva Convention, which mandates the protection of POWs and gives the International Committee of the Red Cross (ICRC) a central role in their protection.

**Law of Geneva:** Law of Geneva generally codified for the protection and prevention of the sufferer from the warfare or armed conflict and prisoner of war includes soldier-at-arms who are hors de combat means incapacitated soldiers, unable to fight because of wounds or injury.

#### **Expansion or establishment of different stages of Geneva Conventions:**

- The "First Geneva Convention" Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field" (first adopted in 1864, revised in

1906, 1929 and finally 1949) laid the foundation for safeguards and improvement of hors de combat and those POWs affected by the state of war cum hostilities. This was the greater evolution and breakthrough time in International Humanitarian Law for introduction of the policies regarding humane treatment with wounded soldiers captivated during the war.

- The “**Second Geneva Convention**” Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea” (first adopted in 1949, successor of the Hague Convention (X) 1907) primarily focusing on care and protection to the persons who is injured, sick or has been separated by the shipwreck without taking into account discrimination on the basis of their race, religion or faith, nationality or any other criteria.
- The “**Third Geneva Convention**” relative to the Treatment of Prisoners of War” (first adopted in 1929, last revision in 1949) emphasize more on the treatment of POWs during the armed conflicts ensuring that they should be treated humanely and respectfully in the detention period and prevent unwanted delay in repatriation of the prisoners of war after the ceasefire and detained civilians during the warfare are also treated fairly. Appropriate implementation and monitoring of this convention was empowered to International Committee of the Red Cross.
- The “**Fourth Geneva Convention**” relative to the Protection of Civilian Persons in Time of War” (first adopted in 1949, based on parts of the Hague Convention (II) of 1899 and Hague Convention (IV) of 1907. This convention was agreed for the protection of the civilians from ill-mannered or brutal treatment and their property occupied in the hostile extraterrestrial, from destruction or compulsory acquisition or for other illegal purposes.

**Law of Hague:** A branch of International Humanitarian Law complementary to Geneva Conventions deals with the protocols that rules the conduct of the hostilities and its operation and establishing rights and responsibilities of warring parties, along with outlining the constraints and regulatory measures of combat. The Hague Conventions of 1899 and 1907 were the first International Conventions negotiated at two International Peace Conferences to address warfare conduct and protection of POWs and civilians and their property. **The Hague Convention, 1899** primarily for setting framework for conduct of war and safeguards from brutal practices applied with civilians and POWs and promoting pacific means of international disputes settlement by limiting armaments. **The Hague Convention, 1907** brought the concept of “Neutrality” refers to equal and humane behavior in both States and also aiming prohibition

and limiting the use of arms and hazardous practices of torturing the prisoners of war during the armed conflicts. This was mainly based on Lieber Code, a codified set of rules for regulating behavior of POWs like assassination of combatants or non-combatants, brutal treatment in prison and harsh punishment imposition on POWs. It established the Law and Custom of War in strict sense.

### **CUSTOMARY LAW ROLE IN IHL**

Both the aforementioned conventions aiming to emphasize the Human Rights which must be pertained to the POWs finding equilibrium between military needs and humanitarian considerations. According to the principle of “Military necessity”, disputant or combatants will be availed only required and necessary means to fulfill the valid military objective of a confrontation subject to the prohibited means under International Humanitarian Law. The extent and type of force that the parties may employ are thus restricted to what is necessary to defeat the adversary swiftly while minimizing the loss of lives and resources.

### **INTERNATIONAL ORGANIZATIONS AND IHL**

The participation of other international organizations has exercised a notable influence to grow the Humanitarian Law to the peak in lieu of justice to the captive armed conflicts such as United Nation, ICRC, International Federation of Human Rights (FIDH), International Criminal Courts and so on. UN plays its significant role to upholding, implementing and maintaining the IHL to meet the standard of Human Rights and Warfare. ICRC is kindred to the IHL where the IHL is a body of framework and regulations other side ICRC is an independent body who provide safeguards to the life and dignity of captive warring personnel or to those who is no longer participated in hostilities and control violence and contradiction of IHL norms for its effective implementation and application. Where the FIDH outline the boundary of defense of Universal Human Rights in times of disputes, emergency and other cause at broader level. The ICC is essential to upholding IHL and prosecuting those responsible for grave transgressions like genocide, war crimes, crimes against humanity, and the crime of aggression are all grave violations of international humanitarian law that fall under the ICC's purview.

### **HUMANELY REMEDIES TO POWs**

Multitudinous protective measures has been taken via introducing safeguard guidelines and rules and regulations and restrictions with the contribution of Human Rights, Geneva

Conventions, Hague Convention, ICC, ICRC and other international organizations relating treatment of prisoner of wars that prisoner of wars must be treated humanely, their life must be protected against brutal physical treatment and mental trauma by providing basic necessities and effective medical facilities and any violent act must be prohibited while detention and their dignity must be maintained wherever they are regardless of discrimination on the basis of caste, sex, religion, nationality, fair trial must be entitled to the prosecuted one, protection of human rights, prohibition of coercive interrogation, and others like followings:

- Men and Women shall be provided separate accommodation in the prison/custody and isolated cell for contagious or mentally ill person.
- Quantitative cum qualitative basic food items must be availed to prevent nutritional deficiencies and maintaining good health.
- Avail canteens to buy daily basic necessities.
- Hygiene and medical assistance shall be rendered periodically or on requirements to every prisoner.
- Captivated being during armed conflicts shall have freedom to enjoy their own religious activities subject to the disciplinary military guidelines.
- Authority responsible for detention shall promote intellectual, educational, and leisure activities, including sports and games, among prisoners, by providing suitable facilities and necessary equipment.
- There must be a suitable workplace environment for the working prisoners.
- Prohibiting brutal treatment in the prison or misuse of armaments.
- After ceasefire, captives shall communicate to others persons and shall be repatriated as soon as possible without unwanted demands and unfavorable conditions subject to consideration of adequate conditions of safety and risks.

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