APPLICABILITY OF INTERNATIONAL HUMANITARIAN LAW AND RIGHTS OF VICTIMS IN ARMED CONFLICTS WITH SPECIAL REFERENCE TO JAMMU AND KASHMIR.

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ABSTRACT: The term Humanitarian Law is of relatively recent origin. It was appeared for the first time in 1965 in resolution XXVIII of the XXII International Red Cross Conference held in Vienna. Humanitarian Law deals with those matters which have an impact of armed conflicts on the life, personal integrity and liberty of human beings. Humanitarian law may referred to that body of law which defined that principle and rules which limits the use of violence in times of war those rules of war which are based on humanitarian considerations or motivations are called humanitarian law. International Armed Conflicts refers to situations that involve two or more states engage in armed conflicts. The Law of Armed Conflict arises from a strong wish among civilized nations to prevent pointless suffering and damage while no impeding the effective waging of war. Jammu and Kashmir is a state in northern India, often denoted by its acronym, J&K. it is located mostly in the Himalayan Mountains, and shares borders with the states of Himachal Pradesh and Punjab to the south. The line of control separates it from the Pakistani-administered territories of Azad Kashmir and Gilgit-Baltistan in the west and north respectively, and a Line of Actual Control separate it from the Chinese-administered territory of Aksai Chin in the east. The state has special autonomy under Article 370 of the constitution of India.

Key Words: Humanitarian Law, Law of Armed Conflict, Jammu and Kashmir, Constitution of India.

Introduction:-

The real evils in war are love of violence, revengeful cruelty, fierce and implacable enmity, wild resistance, and the lust of power, and such like; and it is generally to punish these things...that, in obedience to God or some lawful authority, good men undertake wars.

-St Augustine

The branch of law of nations or international law is International Humanitarian Law. The fundamental rules of International law are binding on all states. The law of armed conflict was previously known as law of war now it is called International Humanitarian Law. The International Humanitarian Law can be defined as “the human rights component of the law of war” in other words, it is the branch of human rights law which applies in international armed conflict and in certain circumstances it applies even to international armed conflicts. The international humanitarian law is much older than international human right law. The humanitarian law is that considerable portion of international law which is inspired by the feeling for humanity and is centered on the protection of the individual in time of war. The term ‘humanitarian law’ combines two ideas of different natures, one legal and the other moral, and more specifically, of humanitarian concern.

International armed conflicts defines as “a political conflict in which armed combat involves the armed forces of at least one state (or one or more armed factions seeking to gain control of all or part of the state), and in which at least 1,000 people have been killed by the fighting during the course of the conflict. A state-based armed conflict is a contested incompatibility that concerns government and/or territory where the use of armed force between two parties, of which at least one is the government of a state, results in at least

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1 Augustine, contra fastum in political writings, p.164
25 battle-related deaths in one calendar year. The Law of Armed Conflict arises from a desire among civilized nations to prevent unnecessary suffering and destruction while not impeding the effective waging of war. It also aims to protect civilians, prisoners of war, the wounded, sick, and shipwrecked. Law of Armed Conflict applies to international armed conflicts and in the conduct of military operations and related activities in armed conflict.

Jammu and Kashmir is a state in northern India subcontinent in the vicinity of the Karakoram and western most Himalayan mountain ranges. The state is part of the larger region of Kashmir which has been the subject of dispute between India, Pakistan and China since the partition of the subcontinent in 1947. As per census 2011, Jammu and Kashmir has population of 1.25 crores, an increase from figure of 1.01 crore in 2001 census. Total population of Jammu and Kashmir as per 2011 census is 12,541,302 of which male and female are 6,640,662 and 5,900,640 respectively. In 2001, total population was 10,143,700 in which males were 5,360,926 females were 4,782,774. The population of Jammu and Kashmir forms 1.04 percent of India in 2011. In 2001, the figure was 0.99 percent. Since 1947 the Kashmir issue has caused tension and conflict in the Indian subcontinent, independence from Britain two sovereign states created as India and Pakistan. Jammu and Kashmir the full name of the princely Himalayan state, then ruled by Maharaja Hari Singh-acceded to India in 1947, seeking military support after tribal raids from Pakistan into the state’s territory. The two countries have fought three wars over the region. The first, which started in 1947, ended with the partition of Jammu and Kashmir between India and Pakistan under a 1949 United Nations-brokered ceasefire. Wars in 1965 and 1999 ended in stalemate. But between India and Pakistan Kashmir is not simply a bilateral dispute. Kashmir is a multi-ethnic region with several internal subregions whose inhabitants have distinct political goals. Pakistani Kashmir consists of Azad Kashmir and Gilgit-Baltistan whereas Indian Kashmir includes Jammu, Ladakh and the Kashmir Valley.

Militancy in Jammu and Kashmir has claimed a total of 41,000 lives in the past 27 years which means an average of 4 deaths per day in the state or 1519 casualties every year, according to the latest available government data. The casualties include 14,000 civilians, 5,000 security personnel and 22,000 militants between 1990 and 2017. In all, there have been 69,820 militancy-related incidents during the period; that’s like the state witnessing 2586 militancy incidents every year, for which India blames cross border terror from Pakistan. Although not on the same scale as in the 1990s or early 2000s, militancy-related incidents having been increasing after 2014. From 2014 there have been 795 militancy-related incidents in which 397 militants were killed while 64 civilians and 178 security personnel lost their lives. Compared to 222 incidents in 2014, there were 322 incidents in 2016. In 2014, 28 civilians and 47 security personnel and 110 militants were killed in these incidents. In terms of civilians casualties in 2002 has been the worst with 1008 deaths, 1707 militants and 453 security personnel were also killed that year. Militancy had reached its peak during the BJP government when Atal Bihari Vajpayee was the Prime Minister. From 1999 to 2003, 7820 deaths, 1707 militants and 453 security personnel were killed in Jammu and Kashmir. Post 1990, the most stormy phase in the state was between 1993 and 1997 when 6522 militants were eliminated while 4910 civilians and 1012 security personnel lost their lives. In 2013, there were only 170 militancy-related incidents in the strife-torn state in which 67 militants, 15 civilians and 53 security personnel were killed.

The Pulwama Attack, 2019:
The Pulwama attack on Thursday (February 14, 2019) is the deadliest terror attack that has occurred in the valley in the past three decades of militant activity in Kashmir. The attack which killed at least 40 Central Reverse Police Force (CRPF) jawans was carried out by 20-years-old Adil Ahmed Dar, who was due to appear for his class 12 exams before he went missing, according to his parents. While the reports claimed that the attack was triggered by an IED explosion, it was later reported that Dar had rammed the explosive-laden SUV into one of the buses. Pakistan-based terror outfit Jaish-e-Mohammed claimed responsibility for

http://www.pcr.uu.se/research/ucdp/definitions/ (Visited on 26 March, 2019).
the attack and released a video of Dar, a resident of Kakapora who joined the group a year ago.\textsuperscript{11} A security official, speaking on condition of anonymity, said that at 3:15 p.m., a sports utility vehicle laden with 300 to 350 kg of explosives rammed into the CRPF convoy of 70 vehicles on the way to Srinagar from Jammu, as the highway had opened after a week-long closure due to snowfall. CRPF Inspector-General said that “One of the vehicles of the convoy was targeted.”\textsuperscript{12}

The Balakot Airstrike:
Twelve days after the Pulwama attack, the Indian Air Force bombed the Jaish-e-Mohammad’s “biggest” terror-training camp in Pakistan’s Balakot early on Tuesday. The operation was carried out by 12 mirage-2000 fighter jets, which unleashed five one-tonne bombs on the camp, based 70 km inside the LoC, in the Pakistan province of Khyber Pakthunkhwa. Senior officials citing intelligence inputs said the JeM facility was particularly crowded with 200-325 militants as many had abandoned launch pads and training camps closer to the LoC after the Pulwama attack in the expectation that India would not target Balakot.\textsuperscript{13} Around 3 am, the prime minister was informed that a fleet of Indian Air Force (IAF) fighter jets had taken off and was shortly expected to cross into Pakistani territory. Half an hour later, he was told the jets had hit their target in Pakistan and flown safely back to their respective houses. He kept getting subsequent updates on the damage the jets had caused. He himself was surfing social media to see if there was any reaction to the mission, particularly from Pakistan. It was only when Prime Minister Narendra Modi called for an urgent meeting at 9:40 am to brief his cabinet committee on security, which includes the finance, external affairs, home and defence ministers, that his team realized what had kept him awake all night.\textsuperscript{14}

Rights of victims in armed conflict:
International Human Rights Law prohibits the arbitrary deprivation of life under any circumstances. The government of India is a party to the International Covenant on Civil and Political Rights (ICCPR). Article 6 of the ICCPR expressly prohibits derogation from the right to life. Thus even during time of emergency, “no one shall be arbitrarily deprived of his life”.\textsuperscript{15} The ICCPR also prohibits torture and other forms of cruel, inhuman and degrading treatment. Article 4 and 6 of the ICCPR explicitly ban torture, even in times of national emergency or when the security of the state is threatened.\textsuperscript{16}

Under International humanitarian law (the laws of war), the conflict in Jammu and Kashmir is considered to be a non-International (internal) armed conflict. Applicable law, to which both state armed forces and opposition armed groups must abide, includes Article 3 common to the 1949 Geneva Conventions and customary international humanitarian law. This law prohibits attacks against civilians and civilian objects, and requires that civilians and captured combatants be treated humanely at all times. Serious violations of the laws of war are war crimes, which states have a duty to prosecute. Indian security forces are also bound by international human rights law, such as is found in the International Covenant on Civil and Political Rights, which India ratified in 1979. Human rights law prohibits extrajudicial executions, torture and other mistreatment, enforced disappearances and arbitrary arrest and detention. States have a duty under international law to investigate and prosecute serious violations of human rights. Throughout the conflict in Jammu and Kashmir, impunity from prosecution for serious crimes has been a common thread. Impunity occurs when the state consistently fails in its responsibility—because of a lack of capability or political will or laws shielding state abusers to hold perpetrators of human rights violations accountable. This creates an atmosphere in which violators believe that they can get away with the most serious crimes. As stated by the United Nations (U.N.) General Assembly in its march 2006 resolution on the right of victims of human rights abuses to a remedy, states must investigate violation effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law.\textsuperscript{17}

\textsuperscript{12} Peerraza Ashiq, “37 CRPF men killed in J&K Suicide attack”, the Hindu, February 15, 2019.
\textsuperscript{13} Suhasini Haidar and Dinakar Peri,” India bombs Jaish camp in Pakistan’s Balakot”, the Hindu, February 27, 2019
\textsuperscript{14} Aroon Purie, “ Balakot the inside story”, india today, March 25, 2019.
\textsuperscript{15} Article 4, Article 6, International Covenant on civil and political rights
Treatment of civilian persons in time of war:
It is necessary to provide protection to civilian persons in time of war from a long series of violence, brutality and terror. The Geneva Convention relative to the protection of civilian persons in time of war was adopted on August 12, 1949.

a) Firstly, deals with the treatment of alien enemies in territory;
b) Secondly, deals with the protection of sick and wounded civilians,
c) Thirdly, the treatment of internees,
d) Fourthly, the treatment of civilian population occupied territory.\(^\text{18}\)
e) Protection is provided to women especially against any attack on their honour and particularly against rape.

f) The right to respect and Honour;
g) The right to family rights;
h) The right to religious convictions and practices;
i) The right to be humanely treated;
j) The rights against insult or public curiosity;
k) The right to non-discrimination;
l) The right against physical or moral coercion;
m) The right not to subject to murder, torture, corporal punishment and medical or scientific experiment;

n) The right against pillage and reprisals;
o) The right to receive individual and collective relief;
p) The right to medical relief and hospital treatment;
q) The right to practice their religion and receive spiritual assistance;
r) The right to be removed from the areas exposed to dangers of war;
s) The right to preferential treatment to children under 15 years, pregnant women and mothers of children under 7 years.

Besides above the protected persons have:
a) The right not to be compelled to serve in the armed or auxiliary forces of the occupying power;
b) The right to food and clothing;
c) The right to hygiene and health;
d) The right to retain articles of personal use; and
e) The right to receive regular allowances, etc.\(^\text{19}\)

Conclusion:
It appears from the analysis of the various provisions of the laws that the legal framework of the rehabilitation of victims of conflict is inadequate. For effective reparation programs government should take strong and positive initiative at national and state level. The old and out dated administrative schemes and social welfare measures need to be reviewed and revised in the state of Jammu and Kashmir. Keeping in view the increasing numbers of victims because of conflict situation, the state should frame solid rehabilitation programs. The social welfare legislations and implementation of the existing laws are non-satisfactory and deficient. The special legislation must pass by the government on enforced disappearances. The Indian government has signed the International Convention for the protection of all persons from Enforced Disappearances must certify. Armed forces need to be including within the scope of protection of Human Rights Act. To the victims of conflict legal assistance should be provided. For a better and purposeful future the government and nongovernment organizations should organized an awareness program, adult education program, counseling program for the victims of conflict. The legislation need to be examined for removing their lacuna to accelerate the pace of welfare of victims. The employment training and related services should be provided for orphans and other helpless children who obtain legal working age.