LAW PUNDITS

INTERNATIONAL HUMAN RIGHTS LAW V. INTERNATIONAL HUMANITARIAN LAW

Course Material

International Human Rights Law v. International Humanitarian Law

Though both sound similar, international human rights law and international humanitarian law differ a great deal. They are two separate wings of law; the former dealing with the protection of persons from abusive power; especially from the state and the latter with the conduct of parties to an armed conflict; giving it the name "the law of war".

Yet, what draw these different disciplines closer are the common humanist ideals on which they are based on and the substantial overlap in areas of practice. Most debate encircles around internal armed conflict scenarios as to which is to be given precedence and which regime governs the situation. Both, international human rights law and humanitarian law aim to protect human lives, even though from different angles.

Earlier, debates existed on the conflict of application of human rights law in times of armed conflicts. The major cause for the debate rested on the maxim: *Lex specialis derogat legi generali,* which means, that specific/special law overrides general law. International Humanitarian Law, dealing with specific situations of armed conflict, was regarded as special law and according to scholars was to be given precedence over human rights law during situations of armed conflict and others argued contrary to it claiming human rights law regime to be distinct from humanitarian law and applies to all situations.

The fact of the matter is that human rights law and humanitarian law apply to different circumstances and act in different ways since they differ in theoretical basis, motivation and origin. Apart from the common humanist ideal both areas of law differ substantially.

Human rights law in its modern sense can be traced from thinkers of the Enlightenment movement in Europe. The concept was used to apply to internal affairs seeking to draw in a just relationship between the state and its citizens. The concept of Human Rights became part of international law only after the 2nd World War with the adoption of the Universal Declaration of Human Rights in 1948.

Humanitarian law on the other hand was conceived to reduce the severity of war by calling for chivalrous and civilised behaviour during armed conflict. The primary motivation was for the principle of humanity rather than the recognition and enforcement of rights of citizens over the state or acting parties in an armed conflict. The adoption of the Geneva Conventions in 1949 and the codification of Article 3 common to the four conventions brought humanitarian law into the domestic plane making it look more similar to human rights law; recognising the rights of citizens of state.

The important fact to be noted while studying the history of human rights law and international humanitarian law is that both were intended for separate scenarios; human rights was intended for peace and humanitarian law was intended for war. But, by the beginning of the 50s the states began to recognise the relevancy of human rights during periods of war. The Korean conflict, the Soviet Union's invasion of Hungary made states call for the recognition and respect of human rights during periods of armed conflict. It was during the Tehran Conference in 1968 did the United Nations recognise the application of Human Rights during periods of armed conflict.

After the Tehran Conference, a long history shows the growth in attitude of the United Nations and scholars worldwide in accruing the arguments for the applicability of human

rights principles during periods of armed conflict. United Nations since then has inspected the probable human rights violations in the conflicts in Liberia, Sierra Leone, Israel's military occupation of the Palestinian territories, Iraq's military occupation of Kuwait etc.

The debate whether human right norms apply to armed conflict period over humanitarian law is archaic and not in vogue. Yet, dissimilarities exist between the two branches of law.

Of such dissimilarities, the major dimension is to whom international human rights law and international humanitarian law is binding. International Human Rights Law primarily binds governments in their relationship with their citizens. Another debate exists as to whether human rights law must bind non-state actors particularly the ones exercising government like functions. International humanitarian law, on the other hand, is binding on all parties to an armed conflict: in international conflicts it must be observed by the states involved, whereas in conflict of a non-international nature, it binds the government, as well the groups fighting against it or among themselves. Thus, International Humanitarian Law lays down rules that are applicable to both state and non-state actors.

Both International Human Right Law and International Humanitarian Law imposes obligations on individuals. Though international human rights law does not impose any specific duty on individuals, it provides for individual criminal responsibility of crimes and offences of grave nature defined under international law. International Humanitarian Law imposes obligations on individuals and also provides that persons may be held individually criminally responsible for "grave breaches" of the Geneva Conventions and of Additional Protocol I, and for other serious violations of the laws and customs of war.

Human Rights law protects every human being at all times because of human dignity possessed by every person inherently. It applies during both war and peacetime. But, International Humanitarian Law aims to protect persons who do not, or are no longer taking part in hostilities during situations of armed conflict. Each of the four Geneva Conventions protect different class of persons present in scenarios of armed conflicts including prisoners of war (Convention III) and civilian persons (Convention IV) and civilian persons include internally displaced persons, women, children, refugees, stateless persons, journalists and other categories of individuals.