

Domestic Implementation of IHL

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Scheme of Discussion

- ▶ Relation between IL, IHL and Municipal Law
- ▶ Why and How Domestic Implementation?
- ▶ Domestic Implementation of IL in Indian
- ▶ Indian Constitution and IL and IHL
- ▶ Indian Judiciary IL and IHL
- ▶ Indian's Ratification of IHL Treaties
- ▶ the Geneva Conventions Act, 1960
- ▶ Indian Judiciary and IHL Cases

Why implementation of I.L.?

- ▶ Changing Notions of State Sovereignty
- ▶ Globalization and its Impact on Society
- ▶ Independent States to Interdependent states
- ▶ Law Makers to Law Takers
- ▶ Role of States as Regulator to Facilitator
- ▶ Status of IL is changing from a weak (unenforceable) to strong (enforceable) Law
- ▶ Implementation not by coercion or compulsion but by consensus or cooperation

How States Implement IL

Is IL and ML are same are different?

Difference of opinion among the scholars

1. Monist School
2. Dualist School
3. Transformation or Specific Adoption Theory
4. Delegation Theory
5. Harmonization Theory

Monistic Theory

- ✓ This theory initially was forwarded by Moser and Martens. It was later developed by jurists like Kelsen, Westlake and Lauterpacht.
- ✓ What is a "State"?
- ✓ Municipal law as well as International law are parts of one universal legal system.
- ✓ Municipal law is binding on individuals directly and International law is binding on them through States.
- ✓ Individuals are the root of all legal systems.

Dualistic Theory

- ✓ This theory was developed by German scholar Triepel in 1899. It was later followed by Italian jurist Anzilotti
- ✓ International law and Municipal law are two distinct, separate and self-contained legal systems.
- ✓ The two systems are distinct when it comes to sources, subjects, substance of law, principles and dynamism of subject matter.

Other Theories

Specific Adoption or Transformation
Theory:

- Supported by dualist.

4. Delegation Theory:

- Supported by monists.

5. Harmonisation Theory- Fitzmauric.

Compromise Formula:

National Law before Int. Courts and Tribunals.

Sources:

- Art 38(1)(c) General Principles of Law Recognized by Civilized States
- *Resjudicata*, Estoppel, Principal of Natural Justice, etc.,
- Ex. Barcelona Traction Case 1970,
(Concept of limited liability)

National Law & Int. Obligations

States cannot plead the provisions of National law as a valid reason for violating Int.obligations.

Ex. 1. Alabama Claims Arbitration, 1872.

2. Exchange of Greek & Turkish population case

3. Lockerbie case.

4. Art 13 Draft Declaration on Rights and Duties of States, 1949.

5. Art 27 of Vienna Convention on Law of Treaties, 1969.

Domestic Implementation of IL in USA

- ▶ Customary Law: American practice regarding customary rules of international law is more or less same as the British practice as the American law has its roots in the English legal system so customary rules or international law are treated as a part of American law
- ▶ **In the Paquete Habana** - Justice Gray remarked that - International law is a part of our law, 175 U.S. 677 (1900). In the event of conflict between alleged international law and municipal legislation, the domestic courts will uphold the municipal provisions.
- ▶ **(B). American practice** regarding rules laid down by treaties is different from British practice. American Constitution Art. VI provides that constitution of United States, all laws made in pursuance thereof and international treaties entered into under the authority of the United States shall be the supreme law of the land.
- ▶ Thus international treaties have been placed in the same categories as state law of the land. American legislatures participate in the treaty making process. The president has power to make a treaty, but he may only ratify a treaty after the senate has given its advice and approval.
- ▶ In the event of conflict between a treaty and a subsequent statute, the latter prevails in *Edye v. Roberson* the court held that a treaty was a law of the land. As an act of congress was and there was nothing which made a treaty irreparable or unchangeable and that the constitution gave it no superiority over an act of congress in this respect, which may repeated or modified by an act of later date.

Self-executing Treaties and Non-self-executing Treaties

- **self-executing treaties:** directly incorporated into domestic law; can be directly applied in domestic system.
- **non-self-executing treaties:** directly incorporated, but need for additional implementing legislation before application in domestic system.
- **Self executing treaties:** Self executing treaties are those treaties which become applicable in America without any act or consent of the congress they become automatically part of American domestic law.
- **Non-self executing treaties:** Non-Self executing treaties are those treaties which can become applicable in America only after consent of congress or through its adoption by specific statute.

Soviet Practice

- ▶ In U.S.S.R, municipal law and international law were treated as two separate legal systems not subordinate to each other. Article 29 of the Soviet constitution, the relations of the U.S.S.R with other states were based on the following principles.
- ▶ Sovereign equality
- ▶ Mutual renunciation of threat or use of force
- ▶ Territorial integrity of states
- ▶ Peaceful settlement of disputes
- ▶ Non-intervention in internal affairs.
- ▶ Respect to human rights and fundamental freedoms
- ▶ Co-operations among states, and
- ▶ Fulfilment in good faith of obligations arising from generally recognised principles and rules of international law and from treaties signed by U.S.S.R.
- ▶ In U.S.S.R international treaties and internal statutes were given equal status.

Domestic Enforcement of I.L. in India

- ▶ India followed the Dualism and Transformation and adoption
- ▶ Constitutional provisions relating to I.L.
- ▶ Pre-constitution: British practice
- ▶ Constitutional provisions (a) General art. 51
(b) Executive Provisions art. 53, 73, & 77
and Legislative Provisions art. 245, 253, etc.

Pre-Constitutional Period:

- ▶ In this period Indian practice of international law is as if British practice. The British practice of implementation of international law with regard to their own domestic or municipal laws can be dealt in two heads.
- ▶ **With regard to the customary rules of international law and the other:** British used to treat customary rules of international law as a part of their own laws. But subject to the conditions that The customary rules of International law should not be inconsistent with the British statutes.
- ▶ **In connection to the rules laid down by the treaties:** Regarding the practice as to the treaties it can be specifically mentioned that in Britain there are some exclusive treaties which require the consent of the British Parliament for its enforcement. Such consent can be given directly or those treaties can be adopted in the state laws with the help of the statutes by the parliament.

General Provisions

- ▶ To know the provisions of international law it is necessary to examine the relevant provisions of Constitution of India. The most relevant provision is contained in article 51 which runs as: "The state shall endeavour to
 - ▶ (a) promote international peace and security
 - ▶ (b) maintain just and honourable relations between nations
 - ▶ (c) foster respect for international law & treaty obligations in dealings of organised people with one another.
 - ▶ (d) Encourage settlement of international disputes by arbitration.
- ▶ In *Keshavanand Bharati v State of Kerala*, Chief Justice Sikri observed;
- ▶ "In view of Article 51 of the constitution this court must interpret language of the Constitution, if not intractable, which is after all a municipal law, in the light of United Nations Charter and the solemn declaration subscribed to by India" AIR 1973 SC 1461

Executive powers of the union

- ▶ In India the executive was given the power to make laws through article 53, 73, 77. These Articles say that the executive power is vested in the president and it shall be exercised by him in accordance with the constitution either directly or through officers subordinate to him.
- ▶ And all the executive functions are executed in the name of the president. But subject to the provision that he should not encroach into the spheres of Legislature and Judiciary.
- ▶ **Article 53:** Executive Power of the Union:“(1) The Executive Power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.”
- ▶ **Article 73:** Extent of executive power of the Union;“Subject to the provisions of this Constitution, the executive power of the Union shall extend-
 - ▶ a) to the matters with respect to which Parliament has power to make laws, and
 - ▶ b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement

Legislative Provisions

- ▶ **Article 246:** Parliament's exclusive power to make law on the matters enumerated in Schedule VII, List I
- ▶ **Article 245 (2):** extra territorial jurisdiction to the laws made by the Parliament of India
- ▶ **Article 253,** read with entry 14 of the Union List in Schedule VII, Parliament's exclusive power to make any law for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or body.
- ▶ ***Entry 41, List I, Schedule VII, Parliament's exclusive jurisdiction with respect to trade and commerce with foreign Countries, import and export.***

Legislative Provisions Cont..

- ▶ **Art. 260** recognizes the Central Government's competence to act in legislative, executive, judicial capacity for any territory which is not part of India by agreement with the government of that territory, subject to any law relating to foreign jurisdiction for the time being in force

Observation: Delegated legislation as an Important means of domestic implementation of International Trade Law

- ▶ **Art. 363**, bars the jurisdiction of Indian Courts except the Advisory jurisdiction (Art. 143) in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar agreement entered into before commencement of constitution of India
- ▶ **Art.372**, pre- constitution laws to be continued in force unless repealed, altered or amended by a legislature or competent authority

Indian Judiciary and IL

- ▶ The Indian Supreme Court has decided numerous cases in which it has invoked international law in support of a constitutional holding and then “legislated from the bench” to remedy the constitutional violation.
- ▶ For example, in *Basu v. State of West Bengal*,¹⁵⁶ a case involving deaths in police custody, the Court invoked the ICCPR in support of its constitutional holding.
- ▶ It also issued a set of “eleven requirements to be followed in all cases of arrest or detention,” and ordered those requirements to be disseminated to every police station throughout the country.
- ▶ The Indian Supreme Court has also adopted procedural innovations so that public interest litigation “can now be initiated not only by filing formal petitions in Court but also by writing letters and telegrams or through the Court taking notice of articles in newspapers.”
- ▶ The Court has “evolved the practice of appointing commissioners for the purpose of gathering facts and data in regard to a complaint of breach of a fundamental right made on behalf of the weaker sections of society.”

Indian Judiciary and IL

- ▶ Indian Judiciary, though not empowered to make legislations, is free to interpret India's obligations under international law into the municipal laws of the country in pronouncing its decision in a case concerning issues of international law.
- ▶ In this respect, the Indian judiciary has played a proactive role in implementing India's international obligations under International treaties, especially in the field of human rights and environmental law.
- ▶ In plethora of cases beginning with **In re Berubari , Magan Bhai v. U.O.I, Keshavanada Bharati v. State of Kerala, Vishakha v. State of Rajasthan**, the Supreme court re-iterated that various international covenants, particularly to which India is a signatory or party, becomes part of national law, in so far as there is no conflict between the two.
- ▶ Supreme Court in **Bishambhar v. State of Uttar Pradesh** held that in the exercise of the inherent sovereign powers of the state, the parliament can even enact laws for extra territorial operation AIR 1982 SC32

Indian Judiciary and IL

- ▶ The Supreme Court reflect the dualist approach of the Indian legal system. In the words of justice Krishna Iyer in Jolly George Vergese v. Bank of Cochin, “until the [m]unicipal Law is changed to accommodate the [treaty], what binds the courts is the former not the latter”. Further, Supreme Court in State of West Bengal v. Kesoram Industries reiterated that India follows the “doctrine of dualism” and that “a treaty entered into by India cannot become law of the land...unless Parliament passes a law as required under Article 253”.
- ▶ Vishaka v. State of Rajasthan, 1997, a landmark judgment on sexual harassment of women at workplaces, it was noted that “regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law”

Int. Law and Indian Judiciary

- ▶ *National Legal Services Authority v. Union of India*, 2014 – The case that recognised transgender as a third category of gender. The Supreme court said: 'If parliament has made any legislation which is in conflict with the international law, then Indian courts are bound to give effect to the Indian law, rather than international law. However, in the absence of a contrary legislation, municipal courts in India would respect the rules of international law.
- ▶ In *Vellore Citizens' Welfare Forum v. Union of India*, 1996, the court said that there is no difficulty in accepting Customary International Law, not contrary to domestic law, as part of the Indian legal system
- ▶ the Supreme Court in **Peoples' Union for Civil Rights v. Union of India**, held that it is an accepted proposition of law that the rules of customary international law which are not contrary to the municipal law shall be deemed to be incorporated in the domestic law.

Indian Judiciary and IL

- ▶ The Supreme Court's recent judgment in *Jeeja Ghosh v. Union of India* needs to be celebrated for reaffirming the rights of persons with disabilities to live with dignity.
- ▶ This case arose from a public interest litigation that was filed when Spice Jet forcibly de-boarded Jeeja Ghosh because of her disability.
- ▶ The court held the airline's action illegal and ordered it to pay Rs. 10 lakh to the petitioner.
- ▶ In reaching this conclusion, the court also referred to international law to underline the rights of persons with disabilities.
- ▶ For instance, para 13 of the judgment says: "The Vienna Convention on the Law of Treaties, requires India's internal legislation to comply with international commitments.
- ▶ Article 27 states that a "State party... may not invoke the provisions of its internal law as justification for its failure to perform a treaty

Indian Judiciary & IL: Conclusion

- ▶ Indian constitution embodies the basic framework for the implementation of international treaty obligations undertaken by India under its domestic legal system
- ▶ International treaties do not automatically become part of national law in India. They must be incorporated into the legal system by an act of Parliament, which has the legislative powers to enact laws to implement India's obligations under the international treaty.
- ▶ Thus, in absence of specific domestic legislation enacted by the Parliament, the India's international obligations are not justiciable in Indian Courts.
- ▶ However, a perusal of the jurisprudence shows that a pro-active role is being played by Indian judiciary in implementing India's international obligations under International treaties, especially in the field of human rights and environmental law.
- ▶ Thus, Indian judiciary through „judicial activism“ fills up of the gaps in the municipal law of India and International law, thereby playing an important role in the implementation of international law in India.

Indian and IHL

- ▶ India has ratified the following international human rights and humanitarian law treatiesa.
- ▶ a. Geneva Conventions of 1949 (9th November, 1950)
- ▶ b. Genocide Convention of 1948 (27th August 1959)
- ▶ c. International Convention on the Elimination of Racial Discrimination, (3rd December, 1968)
- ▶ d. International Covenant on Civil and Political Rights (10th April 1979)
- ▶ e. International Covenant on Economic, Social and Cultural Rights (10 April,1979)
- ▶ f. Convention on Rights of Children (December 11,1992)
- ▶ g. Convention on Elimination of Discrimination Against Women (9th July 1993)

Indian and IHL

- ▶ The Government of India has passed the Geneva Convention Act, 1960 to implement the provisions of Geneva Conventions of 1949 in India.
- ▶ The Act confer jurisdiction on judiciary to try offences under these Conventions, even when committed by foreigner outside India.
- ▶ It also provide punishment for “grave breaches” referred to in Article 50 of the First Geneva Convention and equivalent Articles of the succeeding Conventions, committed by any person within or outside India.
- ▶ The punishment encompasses death or life imprisonment for willful killing of a protected person and imprisonment for 14 years for other offences.
- ▶ But, Section 17 of the Act forbids the courts to take cognizance of any offence under the Act except on a complaint by the Government or of an officer duly authorized.
- ▶ The Act, thereby prevents the application of the Act against the Government or its agencies.

Domestic Implementation IHL

- ▶ The Convention requires that each State party shall, in accordance with its constitutional processes, take any necessary measures to prohibit and prevent the development, production, stockpiling, acquisition or retention of agents, toxins, weapons, equipment and means of delivery within its territory, under its jurisdiction or under its control anywhere (Art. IV).
- ▶ In order to fulfill all its obligations under the Convention, each State should therefore:
 - ▶ take legislative, administrative and other measures
 - ▶ to guarantee compliance with the provisions of the Convention.
 - ▶ States should also consider the following:
 - ▶ enacting legislation providing for physical protection of laboratories and other facilities to prevent unauthorized access to and removal of pathogenic or toxic material;
 - ▶ ensuring that textbooks and medical, scientific and military educational programmes include the prohibitions contained in the Convention and the 1925 Protocol.

Domestic Implementation Cont.

- ▶ In particular, States should consider enacting penal legislation to prohibit and prevent any activity in breach of the Convention.
- ▶ As well as those acts expressly referred to in the Convention, States may consider adding import, export, re-export, transport, transit, trans-ship and transfer to the list, in order to ensure the complete prohibition of the actions contemplated in Article I.
- ▶ States should also consider reference to ancillary offences such as assisting, encouraging or inducing the commission of these acts.
- ▶ In terms of jurisdiction, these measures must be undertaken for acts conducted anywhere within the State's territory, under its jurisdiction or under its control. In addition, each State should apply such measures to acts committed by its nationals outside its territory. Penalties need to be created for these offences.
- ▶ States should consider allowing for the seizure and forfeiture of items related to the prohibited acts.

India and IHL

- ▶ India is a party to the Geneva Conventions, 1949 and it has implementing legislation named Geneva Convention Act 1960. This legislation also provides for protection of emblem.
- ▶ Along the 1949 Geneva Conventions, India is party to The Hague Cultural Property Convention and its I Additional Protocol, Biological Weapons Convention and it has enabling legislation in 2000 and 2005
- ▶ India is not a party to the Additional Protocols of the Geneva Conventions.
- ▶ There is no specific legislation with regard to standard principles of IHL, such as command responsibility and others, but broadly these areas are covered under the Army, Air Force and Navy Acts.
- ▶ ICRC through its programs also spread awareness of IHL and Human Rights in Indian armed and Police forces.

Indian perspective on IHL

- ▶ India became party to the 1949 Geneva Conventions for the protection of war victims in 1950 and incorporated them into its statute book through the Geneva Conventions Act, 1960.
- ▶ The Indian legal and institutional framework, based on respect for fundamental rights, is extremely conducive, sensitive and responsive to the implementation of the principles of international humanitarian law
- ▶ India's armed forces have by now established a record of compliance with the dictates of international humanitarian law, to which their Military Manual by and large conforms.
- ▶ The various engagements across India's borders, as well as those under the aegis of the United Nations in which India's peacekeeping forces participated, have largely demonstrated this compliance.
- ▶ India treated the issue of terrorism as an internal matter Argued that Common Article 3 of the Geneva Conventions would not apply because combating terrorism did not amount to a non international armed conflict Resorting to violence as part of a struggle for self determination did not automatically qualify the activity as an international armed conflict within the meaning of Additional Protocol I

Indian perspective on IHL

- ▶ The principle of self determination did not permit secession from an already established state that functions in accordance with that principle India is not a party to the Additional Protocols of 1977 India would not therefore allow ICRC access to detainees Subsequently,
- ▶ India decided to permit access to ICRC to terrorism affected areas, and also to detention centres
- ▶ Regarding the International Criminal Court, India's position has been that the ICC should be based on the principles of complementarity, state sovereignty, and non-intervention in the affairs of the states
- ▶ According to India, ICC can step in only when a national judicial system is non-existent or unable to deal with particular crimes covered by the Statute.
- ▶ Indian reservations – ICC Statute failed to mention international terrorism in the crimes covered India also wanted specific references to the use of nuclear weapons, land mines, and blinding lasers as war crimes – but no specific references were included.

IHL and India

- ▶ India signed The Geneva Conventions on 16th of December 1949 and it was ratified on 9th of November 1950.
- ▶ To give effect to the Geneva Convention at domestic level, The Geneva Conventions Act 6 of 1960 was passed by the Indian parliament, in accordance with Article 253 of the Indian Constitution read with entries 13 and 14 of the Union List as provided under seventh schedule.
- ▶ The act seeks to implement the convention “so far as it’s necessary so as to do”.
- ▶ The Geneva Conventions of 1949 form the schedule to the said act.
- ▶ Prior to the implementation of this act, two more acts with respect to Geneva Conventions were applicable in India, The Geneva Convention Act, 1911 and also The Geneva Convention Implementing Act, 1936, (14 of 1936).
- ▶ However, as per section 20 the former act ceased to have effect as part of law of India and the latter was repealed
- ▶ The Geneva Convention Act of 1960 is divided into five chapters which deal with Short title, extent and commencement, punishment of offenders against convention, legal proceeding in respect of protected persons, abuse of the Red Cross and other emblems, miscellaneous respectively.

Indian IHL Case

- ▶ The Supreme Court of India in *Rev. Mons. Sebastian Francisco Xavier Dos Remedios Monteiro vs. the State of Goa* noted the limitation on the Geneva Convention Act of 1960.
- ▶ The Court held that the Act though in force within the entire territory of India, has not been made enforceable against the Government of India neither does it provide for any specific mechanism to give a cause of action to any party for enforcement of the provisions of this Act or to its Schedules
- ▶ Section 17 of the Act clearly says that the courts can entertain a complain only if it is filed by the Government or an officer of the government specified by notification.
- ▶ So, the aggrieved party can approach the court only through Government.
- ▶ No explicit rights are available to the protected person under the Act and at the same time there is no obligation on the Government of India or the municipal courts for their enforcement. The only obligation undertaken by the Government of India to respect the Conventions is regarding the treatment of civilian population.
- ▶ The Act is also ambiguous and does not provide for an unambiguous method to move to the municipal court owing to the breach of various provisions of the Act.
- ▶ Moreover, Section 7 of the Act says for predominance of certain domestic laws such as Army Act of 1950, the Air Force Act of 1950 or the Navy Act of 1957 over this Act in case of court martial in respect to certain civil offences.

the Geneva Conventions Act, 1960

An Act to enable effect to be given to certain international Conventions done at Geneva on the twelfth day of August, 1949, to which Indian is a party, and for purposes connected therewith.

- ▶ CHAPTER I: PRELIMINARY 1. Short title, extent and commencement.-This Act may be called the Geneva Conventions Act, 1960. It extends to the whole of India.
- ▶ 2. Definitions.-
- ▶ CHAPTER II PUNISHMENT OF OFFENDERS AGAINST CONVENTIONS
- ▶ 3. Punishment of grave breaches of Conventions.-
- ▶ 4. Liability of persons for offences committed outside India.- When an offence under this Chapter is committed by any person outside India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found.
- ▶ 5. Jurisdiction of court.- No court inferior to that of a chief presidency magistrate or a Court of Session shall try any offence punishable under this Chapter.
- ▶ 6. Proof of application of Convention.
- ▶ 7. Jurisdiction of courts- martial.- The Army Act, 1950 (46 of 1950), the Air Force Act, 1950 (45 of 1950), or the Navy Act, 1957 (62 of 1957), relating to trial by court-martial of persons who commit civil offences shall have effect for the purposes of the jurisdiction of courts

the Geneva Conventions Act, 1960

- ▶ CHAPTER III LEGAL PROCEEDINGS IN RESPECT OF PROTECTED PERSONS
- ▶ 8. Notice of trial of protected persons to be served on protecting power, etc.-
- ▶ 9. Legal representation of certain persons.- The court before which--
- ▶ (a) any person is brought up for trial for an offence under section 3 of this Act;
(b) a protected prisoner of war is brought up for trial for any offence, shall not proceed with the trial unless—
- ▶ 10. Appeals by protected prisoners of war and internees
- ▶ 11. Reduction of sentence and custody of protected prisoners of war and internees.-
- ▶ 12. Prohibition of use of Red Cross and other emblems.- No person shall, without the approval of the Central Government, use for any purpose whatsoever—
- ▶ 13. Penalty.- If any person contravenes any of the provisions of section 12, he shall be punishable with fine which may extend to five hundred rupees, and be liable to forfeit any goods upon or in connection with which the emblem, designation, design or wording was used by that person.

the Geneva Conventions Act, 1960

- ▶ 14. Offences by companies.-
- ▶ 15. Saving.- In the case of a trade mark registered before the coming into force of this Act, the foregoing provisions of this Chapter shall not apply
- ▶ 16. Use of Red Cross' and other emblems on Indian ship or aircraft.-
- ▶ CHAPTER V MISCELLANEOUS
- ▶ 17. Cognizance of offences.- No court shall take cognizance of any offence under this Act except on complaint by the Government or of such officer of the Government as the Central Government may, by notification in the Official Gazette, specify.
- ▶ 18. Power to make rules.- The Central Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the provisions of this Act.
- ▶ 19. Rules to be laid before Parliament.-
- ▶ 20. Repeal.-
- ▶ (1) The Geneva Convention Implementing Act, 1936 (14 of 1936), is hereby repealed.
- ▶ (2) The Geneva Convention Act, 1911 , 1 and 2 Geo. 5, C. 20 shall cease to have effect as part of the law of India.

IHL Cases in India

- ▶ With respect to IHL the role played by the parliament or the legal system of India cannot be over emphasized.
- ▶ In Ktaer Abbas Habib Al Qutaifiand Anr.Vs.Union of India (UOI) and Ors it was held that there is no law in India which specifically obliges the state to enforce or implement the international treaties and convention including the implementation of International Humanitarian law.
- ▶ The law that directly deals with the principles of IHL is The Geneva Convention Act, 1960. The act mainly focuses on the implementation of the provisions of the 1949 conventions.
- ▶ An opportunity visited the Supreme Court in Rev. Mons. Sebastian Francisco Xavier Dos Remedios Monteiro v.The State of Goa, Supreme Court of India, to examine the scope of the said act and observed about the efficacy of the Act, thus:

Punishments under the Act

- ▶ The main objective of the act is to implement the provisions of the convention relating to the punishment of the grave breaches and to prevent and punish the abuse of the Red Cross and other emblem.
- ▶ Under chapter II of the Geneva Convention Act 1960, punishments are provided for the grave breaches of conventions committed or attempted or abetted or procured within or outside the territory of India.
- ▶ The punishment includes death sentence, life imprisonment, and imprisonment for a term which may extend to fourteen years depending on the offence involved.
- ▶ If it's a wilful killing of the person protected by any of the conventions, he/she shall be punished with death or with imprisonment of life irrespective of Nationality and Citizenship.
- ▶ The said provision coincides and brings into effect Article 14 which is the most significant provision of the Indian Constitution which is a denial of power to the state and makes it incumbent on them not to deny any person equality before law or the equal protection of law within the territory of India.
- ▶ Article 14 applies to any person and is not limited to the citizens alone. An offence under this act falls within the jurisdiction of a Court of Session

Legal Proceedings under the Act

- ▶ Chapter III provides for legal proceedings in respect of protected persons. What is contended under the fore going provisions of the act is the manner in which trial has to proceed for an offence for which the court has power.
- ▶ The act makes it mandatory to notify certain particulars like the full name and description of the accused, his place of detention, offence with which he is charged, time and place appointed for the trial to the protecting power and if the accused is the prisoner of war then on the accused and the prisoner's representative.
- ▶ The same chapter under Section 9 provides a provision for the legal representation of certain persons.
- ▶ One of the important provisions of Chapter III is the deduction of the term of imprisonment for which the convicted person has been in custody in connection with that offence before the trial.
- ▶ Even in case of penalty the same shall be taken into account .
- ▶ Though this being the legitimate aim the same is not provided for other offences in India

India and IHL Cont..

- ▶ Implementation of the Geneva Conventions has almost been a serious failure in India. The crippling effect of the non-enforceability of the rights provided under the act has proved to be a major deterrence.
- ▶ Indian judiciary, the very guardian and protector of rights has also not shown up much concern. The status of implementation of the Geneva Convention has not increased much; however, it has been of some relevance in certain circumstances
- ▶ It has also been a constant practise of municipal courts of India to generally interpret statutes so that, as far as possible, they are consistent with the rules of international law binding on India.
- ▶ At the same time state is obliged "to endeavour to foster respect for international law and treaty obligations in dealings of organised people with one another

India and IHL Cont..

- ▶ Chapter V of the Geneva Convention Act 1960 talks about abuse of the use of Red Cross and other emblems. Section 479, 481, 482 and 483 of IPC also have analogous provisions which talk about using a false property mark and counterfeiting a property mark used by another.
- ▶ There is no denying that the parliament of India has also passed various legislations to fulfil the purpose of the Geneva Convention and IHL to mitigate the sufferings of war.
- ▶ The principles of IHL find fair mention in some of the acts like Chemical Weapons Convention Act, 2000 and Weapons Mass Destruction and Delivery Systems Act, 2005 which exhaustively deal with the kind of weapons to be used and also prohibition on use of various chemical and biological weapons.
- ▶ India is also a signatory to the Ottawa Treaty or the Mine Ban Treaty which is historic and unprecedented step towards the implementation of the principles of proportionality and distinction.
- ▶ The Army Act, 1950, the Navy Act 1957, the Air Forces Act, 1950 , the Armed Forces tribunal Act 2007, the Civil Defence Act 1968 etc. These acts together give an effect to the basic Human rights embodied in the IHL
- ▶ IHL has gained considerable implementation with the enactment of these legislations.

Conclusion

- ▶ Thus, the Government of India, though, has been becoming party to many international human rights and humanitarian law documents, to show its intention to promote and protect human rights of her people, such instruments are not implemented in India in true sense.
- ▶ Thereby, human rights are far from realization for the people of many parts of the country.
- ▶ India has also failed to submit periodic reports timely.
- ▶ This practice of the Government also indicates Government's failure to fulfill norms under international law.
- ▶ The Government of India, from time to time has been enacting many draconian laws to face insurgency like situations, which do not comply with international standard of human rights and humanitarian principles
- ▶ India being a country beset with insurgency problems of various degree national security laws are indispensable to maintain the sovereignty and integrity of the country