

Traditional Rules of Warfare in Armed Conflict Situation in NE State of Manipur

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Abstract

No human being on this earth is interested in war and armed conflict; however, men-made war and armed conflict continue to exist. The article focuses on international humanitarian laws inter alia the traditional humanitarian principles and rules applied and followed by warring combatants during the war and armed conflict in the ancient times in Manipur. It also discusses the customary combat rules and practices which were strictly complied with more particularly by the ancestors of the region. One of the objectives for revisiting the old customary humanitarian rules is to reveal the relative significance of the aged-old traditional combatant rules and also to find out the ways to overcome the issue and challenges being faced in application of international humanitarian law in such a trouble-torn region of India. The author dwells upon the implications of international humanitarian law with special reference to application of traditional customary rules of warfare in the armed conflict situation in the region.

Key words: Combatant, hors de combat, jus cogens, non-state actors, chainarol, chainaba, thangbee yainakol

INTRODUCTION

International humanitarian law is a branch of public international law. It is a set of rules which is primarily known as the law of war or law of armed conflict and it also lays down the standard rules and principles which, in times of armed conflict or war, seeks to protect and safeguard civilians including certain categories of people who are not or are no longer taking part in the hostilities including members of warring combatants who have laid down their arms and those placed *hors de combat* as the result of sickness, wound or detention. Humanitarian law applies once war or armed conflict occurs; however, it does not call into question the legitimacy of war or armed conflict. Its main objective is to protect and safeguard human rights during the war and armed conflict.

Men-made war and armed conflict are normally characterized by the outbursts of human anger, greedy, jealousy and hatred. When the parties to the conflict can't settle their differences by peaceful means, weapons are often made to speak out. In the ancient period, such human conflict was regarded as a serious business, that ought to be guided by moral and ethical principles rather than being pursued recklessly and brutally. In a way, history also reveals that such conflict is an inevitable part of every human civilization. The deep-rooted customary practices of humanitarian law are largely found in every human civilization elsewhere in the world, and that is why the international humanitarian law *per se* is the common heritage of mankind. In a similar way, Manipur has a rich traditional warfare code and the same has been reflected in its ancient manuscripts and also adequately evidenced both in the hill and valley of the region. As such, the traditional combatant codes of warfare were followed strictly by the ancestors from generation to generation and those who breached the codes had to face the wrath of divine penalty, and even the rules authorized to kill the combatants for cheating.

International humanitarian law

Actual codification of international customary rules of warfare began to roll out in the 19th century. The adoption of the First Geneva Convention for the Amelioration of the Condition of Wounded in Armies in the Field in 1864 and Hague Conventions of 1899 and 1907 were the glaring instances for such codification. The Martens Clause, which has also been widely accepted as the basis of customary international law, sets forth to protect the victims of war under the rules and principles of international law derived from the established custom, principles of humanity and dictates of public conscience. The 1899 Hague Convention was of its first kind that was adopted to respect and honour the customary rules of warfare on land, later, the adoption of the 1907 Hague Convention was not only to regulate the conduct of hostilities but also provide for protection of war victims. Technological advancement coupled with the emerging complexities of human relations have, eventually paved the inroad for the global community to undertake adequate measures so as to meet the ever-growing military engagement situations elsewhere in the world. Rigorous attempts have also been made by the international community to

outlaw the war and armed conflict by adopting the League Covenant in 1919, the Pact of Paris in 1928 and the Charter of U.N. in 1945, among others. The traditional term of war is literally prohibited under Article 2(4) of the Charter of UN; however, a new dimension of war in the form of armed engagement in the name of national liberation, insurgency, guerrilla warfare or separatist movement has become a universal phenomenon. In such situation of military engagement, using of different methods of warfare, weapon and equipment etc. need to be regulated as it can procure immeasurable human sufferings with terrible effect on defenseless persons and civilians. The relative impact of armed conflict, particularly on the defenseless civilian population is found to be more rigorous than the impact of the traditional regular war.

The adoption of the four Geneva Conventions of 1949 and the Protocol Additional I, II & III have almost replaced the unwritten humanitarian rules and principles but the major part of the humanitarian rules and practices have still been remained as uncoded rules in every human civilization. However, both the written and unwritten humanitarian rules are the two sides of the same coin, especially for the enforcement of International Humanitarian law in the conflict situations. Article 1 (2) of the Protocol Additional I to the Geneva Conventions of 1949 endorses the same implication of mandatory nature that makes no different even if the state party has not signed or ratified the Protocol. The International Court of Justice has also re-affirmed the status of the customary international law in Nicaragua Vs U.S.A in 1986. Therefore, some of the customary rules and principles are even accepted as the *Jus Cogens*. It is evidenced that both the treaty law and customary law, in the context of international humanitarian law, are found to be quite significance and also to be supplementary and complementary each other with equal values. The contemporary international humanitarian treaty laws provide the legal basis for protection of civilians as well as victims of war and armed conflict. The unwritten customary rules also play an important role in protecting the human rights of those defenseless persons in such situation from the time immemorial. Therefore, it is equally important for all the stakeholders to understand and uphold the legacy of old traditional humanitarian codes which were put in place by the ancestors from the time immemorial. Nevertheless, this idea would obviously help to mitigate the human sufferings caused by the armed conflict and would also help to overcome the issue and challenges being faced in enforcement of international humanitarian law in the region.

UN initiatives

International humanitarian law deals with both the international and non-international armed conflict; however, in the case of non-international armed conflict, Article 3 common to the four Geneva Conventions of 1949 and the Protocol Additional II of 1977 have, specifically dealt with the armed conflict not of an international character occurring in the territory of one of the high contracting states parties to the conventions, each party to the conflict shall be bound to treat humanely all persons taking no part in the hostilities including the members of armed forces who have laid down their arms and those placed as *hors de combat* by sickness, wound, detention or any other cause without any distinction founded on race, colour, religions or faith, sex, health or wealth or any other factor. Such non-international or internal armed conflict was not the subject of the domestic government on whose territory it occurred until the adoption of the 1949 Conventions and the Protocol Additional II of 1977. Further, it is also worth mentioning that Article 3 common to the four Geneva Conventions not only enumerates the means and modes of using forces and weapons by the combatants during the armed conflict but also provides the mandate for the humanitarian organizations like ICRC to render humanitarian services to the needy people. The provision refers to all the parties to the conflict whether state or non-state, therefore, every armed dissident group involving in the internal armed conflict are expected to follow the common Article 3 which is itself described as a mini convention within the Conventions of 1949. The point is that humanitarian laws are inviolable and also binding on states, armed forces, head of states, ministers, officials and individuals whoever participate and involved in the armed conflict.

The international humanitarian law has been progressively evolved by the United Nations within the parameter of the UN Charter. The Security Council acts as a supreme guardian of humanitarian law under the Charter of UN, and the Charter does not limit its application only in the peace time but it will also be applied even during the war and armed conflict situation. The Security Council has adopted number of resolutions under the chapter VI and VII of the UN Charter in several humanitarian disasters occurred in elsewhere in the world. It is worth mentioning the Resolution No. 237 of 1967 of the Security Council which stressed that all parties to the armed conflict should respect human rights and they should also fulfill all obligations as laid down in the four Geneva Conventions of 1949. The UN General Assembly also stated in its Resolution No. 2444 (XXIII) of 1970 that the

states parties do not have unlimited means to injure the enemy and they are also prohibited to launch attack on the civilian population and further, it has also adopted in a series of its resolutions since 1970 that all participants in resistance movements and freedom fighters should, if arrested, be treated as prisoners of war. However, the meaningful enforcement of international humanitarian law is still remained in limbo because of the inadequate global enforcement agencies and also because of the non-application of deep-rooted customary rules of warfare. In this regard, the only available option for effective application of humanitarian law is to obligate the legitimate governments, conflicting parties, state actors or non-state actors whoever involved in the conflict under a uniform global regime. In addition, all the parties to the armed conflict need to come forward and oblige themselves to be bound by the both unwritten and written humanitarian law.

Armed conflict in Manipur

The state of Manipur has become the theatre of armed conflict for over six decades and as such, the people of this region have been witnessing horror and terror on an unimaginable scale. In the midst of military engagement between state actors and non-state actors, ethnic conflicts are also not new in NE state of Manipur. The scale of ethnic violence is equally unparalleled in terms of violation of human rights of citizens, and the same casualties has also been found unprecedented due to the perennial issue of the armed conflict in the region. Such a peculiar situation in Manipur has brought so much of misery and violence. Historically, it is a fact that Manipur has plunged into armed violence and armed conflict situation as a result of forced takeover of the independent kingdom by the Union of India in 1949. Whereas the Naga people movement began its excursion since early 19th century with the creation of Naga Club. Since Manipur is inhabited by various ethnic groups. The armed opposition groups belonging to different ethnic communities have been formed in the name of self-determination and restoration of their lost sovereignty. As such, the perennial armed conflict and internal armed violence have erupted in the state of Manipur that have further exacerbated the ongoing humanitarian catastrophe.

This is evident that there has been an armed conflict situation in the state for the last many years and the same has also been indicated in the government reports, parliamentary reports, court rulings, and also in the reports submitted by the international, national and regional human rights organizations like the Human Rights Watch, the Amnesty International, and other NGOs working in the field of human rights. It is also a fact that the central and state governments holding a series of peace talks, ceasefire agreements, or SoO with the armed organizations operating in the region have clearly revealed that there is, undoubtedly an armed conflict situation in the region. In addition, the Rajya Sabha report No. 213, the Justice Reddy Commission Report on AFSPA in 2005, the judgement of the Supreme Court of India in NPMHR case (AIR 1998 SC 431), and EEVFAM case (WP (Cri): 2012) cases, the Justice J.S. Verma Committee Report (2013), the Justice N. Santosh Hedge Commission appointed by the Supreme Court in 2013, and among others have also directly and indirectly pointed out the existence of armed conflict in Manipur.

The various reports published both by the government and non-governmental organizations have clearly shown that the ongoing armed confrontation between state and non-state actors on one hand and on other hand the armed engagement between and among the non-state actors operating in the region have, virtually caused maximum civilian casualties and also affected adversely the progress of development in the region. There have been adequate number of cases of arbitrary arrest, illegal detention, torture, fake encounter killings, enforced disappearance and extrajudicial killings of innocent citizens both by state actors and non-state actors in the name of counter-insurgency. The South Asian Terrorism Portal (SATP) documented that from 1992 to 2013, it is estimated 5842 deaths which includes 2193 civilians who are not taking direct part in hostilities (As reported in South Asian Terrorism Portal Data Sheet and Fatalities). It is also reported that around 8000 civilians and 12000 army troops and insurgents have been killed in the conflict from 1979 to 2005 (Ploughshares, Armed Conflict Report, 2012). Annual report of the MHA, Government of India reveals the facts and figures of civilian casualties of 661 (MHA, GOI Annual report 2003-2008). The Department-Related Parliamentary Standing Committee on Home Affairs detailed the violent incidents in Manipur that accounted for staggering 54 per cent of the total number of violent incidents in the entire North Eastern region (Rajya Sabha 2017, Report No.213). All these facts and figures clearly show that how disposable innocent civilians' lives and properties are being protected in such an unprecedented situation. Though the humanitarian law does not question the legality of war and armed conflict, it always aims to humanize the conflict by regulating the conduct of warfare and also by mitigating the human suffering. War and armed conflict are inevitable in human society, therefore, one of the core objectives of

humanitarian law is to mitigate the human casualties and to protect human rights of individuals during the conflict situation. Henceforth, the unique features of traditional customary rules of warfare are still found to be the relevant basis and guidelines for making a meaningful realization of humanitarian standards in this insurgency-prone region. Literal implications of such traditional practices followed by the ancestors needs to be understood and the same values be put into practice by every warring party in this part of the region. It is also equally important to note the relative values of safeguarding the rights and freedoms of innocent civilians and other protected persons during the war as given in their cultural and religion scripts.

Traditional combat rules in Manipur

The traditional combat rules were well regulated, as evidenced by numerous incidents throughout the ancient history of Manipur. According to the *Chainarol* (combat rules) is one such highly revered Manipuri scripts from its ancient civilization that dictates how war is waged. It narrates stories of legendary warrior fights involving deadly weaponry. The warrior's code enjoins that all the warrior should die in the battle field with the dignity that a true warrior should have. It prioritizes moral values along with bravery. It is also found that such traditional warfare is an organized, well-managed open or daylight battle. There were no deceptions, artifices, or crafty elements used in secret. It was unaffected by charm or spell. It was carried out to resolve conflicts involving land and other financial matters. The such conduct warfare rule states that a warrior in armor may not fight the one who is not so clad, an elderly man, or surrendered warrior.

The *Chainaba*, or personal combat between two warriors, who conduct their battles in accordance with a sacred code of ethics, is the fundamental element of the *Chainarol*. The warriors value the morality of this ancient code. The warriors upheld their honor during battle because they were convinced that betraying their opponent is unethical. The idea of personal rivalry is unimportant and they never try to unfairly advantage themselves over their opponent. The protection of non-combatants is one of the key principles that adorned the *Chainarol*. Like modern humanitarian law, it made a clear distinction between civilians and combatants. Its goal was to reduce the unnecessary suffering that civilians endure. The combat zones were chosen to be remote from populated areas in order to prevent civilians from becoming involved in the fighting. For instance, the foothills of *Thangbee Yainakol* served as one such battleground. The dispute was settled by a duel between the two most accomplished fighters on the opposing sides.

The *Chainarol* prophesizes that a warrior would sink into dead if he uses deception to kill his opponent or goes against the fallen warrior's custom. Respectful treatment of enemy's dead body was well-entrenched norm with religious origins. It is further stated that warrior was the exact recipient of this particular prognosis after he was allegedly punished unusually by God for killing his opponent. This account clearly stipulates the moral qualms and pangs of guilt, if deceased combatants were not respected and honoured. The prospect of heavenly punishments appeared to have acted as a deterrent and encouraged adherence to rules. However, it was not clear that divine sanctions were considered certain or predictable.

It can be inferred from the above sources that the philosophy of the *Chainarol* is akin to the modern international humanitarian law, especially in differentiating and treating the civilians and combatants. In a conflict situation, it shall be a meaningful and significant approach if all stakeholders comply with such deep-rooted traditional practices of humanitarian codes during the conflict situation on priority basis.

Application of traditional customary rules of warfare

In a way, treaty laws cover many aspects of war and armed conflict including the protection of civilian life and property; however, they apply only to the state party that has ratified them. The actual regulation of the conduct of hostilities and treatment of persons including civilians, especially in the internal armed conflict situation is found to be more detailed than that of the treaty laws. It is also evident from a thorough grasp of the *Chainarol* and the tribal customary combat rules that there is an invaluable element of humanitarian code of warfare which are akin to the modern warfare laws. The attempt is to facilitate the process of inculcating the deep-rooted traditional humanitarian rules in the mind set of people. In this regard, invocation of special legislation, such as the Armed Forces Special Powers Act, 1958 in the name of quelling down the insurgency movement in Manipur, has shown no positive change in the region. Indeed, it has annihilated more armed opposition groups in the region, and such counter-insurgency measures have, virtually failed to bring peace to the state, instead, it has been counter-productive almost in all respects. A case in point is the armed conflict that began from May 3, 2023

between Meitei community and Kuki tribes in which a large-scale unabated armed violence has been occurring and that has also, eventually turned the region into dead zone of India.

As a matter of fact, a few non-state actors from Manipur have come forward and declared unilaterally their commitments to uphold the Geneva Conventions of 1949 and Article 3 common to four Geneva Conventions. Such organizations made a declaration to abide by the principles of the Geneva Conventions. It would be a big leap forward, if other warring parties in the region also follow the same suit. When armed violence and conflict destroy homes, devastate lives, shatter families and make people displaced in their own home land, dissemination of humanitarian norm with its relative values of human rights, more particularly to the warring parties to the conflict is imperative, and they also need to have meaningful understanding of their own rich legacy of traditional humanitarian codes, which have been gifted by their ancestors. Therefore, such inherited gift needs to be revisited and re-materialized for the sake of humanity, peace, unity and integrity in the region.

The armed violence and conflict in the state of Manipur, as a perennial issue, have exacted a heavy humanitarian issue and problem. Breach of humanitarian law normally may take place not merely because of the inadequacy of its rules, and it may also occur because of unwillingness to respect the rules, or insufficient means to enforce the rules because of the peculiar situation and circumstances, or even due to the lack of awareness on the part of stakeholders including the public leaders and general public. Therefore, it is worth mentioning that invocation and enforcement of the repressive laws and policies in the name of counter-insurgency, maintenance of law and order and national security cannot even erase the conflict in the region. Instead, it is found to be counter-productive and also seemed to have adversely encouraged the warring parties to commit violence against the civilian population.

CONCLUSION

The universality of the customary rules and practices of warfare followed in the ancient times in NE state of Manipur is still found to be acceptable culturally and traditionally, and the same has also been required to be respected and honoured by all the parties to the armed conflict. Such norms of humanitarian codes applied and followed by the ancestors, undoubtedly bear a close resemblance to the contemporary international humanitarian law as well. It is also a fact that the principles of proportionality, distinction between civilian and combatant and act of showing mercy to the fallen enemy warrior, among others were some of the organic and sacrosanct norms which were considered to be a part of their life and culture. It shows that ancient laws of warfare have even exerted a much more natural pull than the contemporary international humanitarian law. As such, every warring party needs to follow and apply seriously their old traditional fighting norms so as to minimize the grave danger and devastation of human life and property. Realizing the significance of both old and new humanitarian standard norms, whoever involves in the conflict should not turn a blind eye to the indiscriminate torture and killing of persons and should not transgress the prescribed humanitarian limits. If the party to the conflict does not follow the standard norms, it goes against humanity, against peace and mankind.

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