Chapter –VIII

Conclusion

Violation of human rights is a global syndrome. Despite widespread attempts by the international community for the protection of the very basic rights of the people, violation of human rights cannot be prevented. In the present day context, such violations are increased day by day, due to increase in the number of non-international armed conflicts in different parts of the world whereby the government who is responsible to protect the rights of its people itself involves in the violation of human rights in the name of controlling the conflict situations. The scholar, in this thesis has discussed the nature prevailing armed conflicts in the North-east India and relevance of humanitarian laws in such situation and in this chapter the scholar discusses the findings, and suggests recommendations accordingly.

8.1 Findings

Chapter II analyses the development of the concepts of Human Rights and Humanitarian Laws. The scholar finds that despite tremendous development at the international level for protection of human rights, there is continuous violation of these basic rights at the hand of the governments of the countries, who are responsible for protection of the same. The countries contributed to the development of human rights and humanitarian laws by signing different documents, but violate the obligations mentioned in such documents with impunity while their turn come to follow. In many cases parties involved in a conflict are not aware of the norms to be followed in time of conflicts. So what is necessary is dissemination of information regarding human rights and humanitarian laws and due respect to the existing laws.
Under chapter III, the scholar while discussing the adumbration of humanitarian laws in India legal system finds that many principles of international human rights and humanitarian laws are found place in the Constitution of India. The Constitution of India also provides provisions for entering into international documents, treaties, conventions etc. by the Parliament and also to enact domestic laws for implementing the provisions of the documents in India. Accordingly, the Government of India signs and rectify many international documents, but with some reservations on her part. Sometimes, the government enacts laws to implement the provisions of international document does not reflect the object of the documents completely. And, further, the Government of India till date has not sign many international human rights documents, areas of which are even not covered under domestic laws. Every law in India provides immunity provisions to the security personnel for anything done during an army operation by requiring previous sanction from the central government to initiate any prosecution for alleged human rights violations.

Chapter IV covers a discussion on the nature of existing armed conflict in the North-east India. As most of the parts of North-east India under the insurgent movement and it is not possible to discuss about all the insurgent groups. So the scholar discussed about only some major insurgent group of the area and the nature of conflict of them with Government armed forces. The scholar finds that all the conflicts fulfill the requisites of non-international armed conflict as mentioned in the Common Article 3 to the Geneva Conventions and the Addition Protocol II to the Geneva Convention. Of course, presently, peace negotiation is going on with some of them and as such present intensity of the conflict is not to the level as mention in the Dasco Tadic case by ICTY. But the number of insurgent groups has been increased
day by day and the steps adopted by government of India to curb such problems by imposing some draconian laws on such areas, may again increase intensity of conflict to such level as that of non-international armed conflict. On the other hand, the Government of India always denied the existence of armed conflict of non-international nature in India and thereby has been denying applicability of humanitarian laws specifically the Common Article 3 on such areas. Judicial guarantee which is facet of Common Article 3 is not available to the people of these areas.

Rule of Judiciary in India in Protection of Human Rights in Armed Conflicts Situation is discussed under Chapter V. The scholar finds that the judiciary in India, which is very much active for interpreting the fundamental rights of the people of India, is somehow reluctant to adopt the same approach for protecting the human rights of the people of conflict prone areas. While interpreting the National Security Laws applicable in different parts of India, the Supreme court establishes its role as a mediator between competing claim of national security and fundamental rights, rather than a guardian of fundamental rights. The Court also, never engage itself in the debate on the extent of intrusion permissible into the protected realm of civil liberties. By engaging in statutory interpretation the court always tend to check for procedural safeguards and compliance rather than substantive review of provisions. And where the Court feels that provisions might be open to misuse or cause unwarranted hardship, instead of striking down such provisions, it made recommendations to the legislatures to look into the matter. Another interesting point is that, the Apex judiciary of the Country, which very frequently refer to international documents while interpreting the different Articles of the Constitution of India as well provisions under different laws, never ever examined the compatibility of security laws such as the
Armed Forces Special Power Act with the international human rights and humanitarian law documents.

In Chapter VI, the scholar discusses about the role played by the independent agencies in an armed conflict situation for providing humanitarian services to the victims of such conflict. The scholar finds that as per mandate of the Common Article 3 to the Geneva Convention, the ICRC has been playing a very important role both in the context of providing humanitarian services to the victims of a non-international armed conflict as well as in promoting and strengthening humanitarian laws through dissemination of information and by that raising awareness on humanitarian laws. But, in India, despite being a country beset with non-international armed conflict on different parts of her, the Government of India has not permitted the ICRC to render their services except in some parts of Jammu and Kashmir. During any army operation, ICRC is not permitted to render humanitarian services to the victims of the conflict and thereby the Government of India has been violating the Common Article 3 to the Geneva Convention to which India has been a party since 1950.

In Chapter VII, the Scholar discusses about the International Criminal Court and its decisional impact. The International Criminal Court which was established by the Rome Statute, 1998 as a court of last resort, having complementary jurisdiction with national courts has started its functioning from March 2003. During its 11 years of functioning the Court has completed proceedings against eight persons of which no one is convicted. Presently, 24 proceedings are going on in the Court. The scholar while analyzing the functioning of the Court finds many factors that hinder the smooth functioning of the Court. Among such factors, lack of universal jurisdiction of the Court and its dependence on the co-operation of the State parties at different stages of prosecution mainly affect the efficiency of the Court. Absence of own police
or military force of the Court to execute its order, judgement of the Court also affect
the credibility of the Court. Another major flaw of ICC is lack of participation by
three permanent members of UN Security Council namely United States, China and
Russia. This lack of participation certainly hinders the ability to enforce the law
instituted by the Court. However, despite all these defects, the approach of the ICC to
put an end to impunity has lots of positive impact. It is said that peace negotiation
between the Lord Resistance Army of Uganda and Government of Uganda started
only after intervention of ICC. It indicates the deterrent effect on the crime causation
after prosecution started by the Court. The scholar finds that in the context of India,
ICC is very much relevant. Impunity for committing crimes becomes a culture in
India. There are number of instances which indicates Government’s unwillingness to
execute the perpetrators of crimes. Immunity from prosecution is provided to the
Government armed personnel for whatever they have done during an army operation.
Even, at no point of time, a surrendered militancy has been sentenced for the crimes
committed by him. Crimes mentioned in the Rome Statute have not found place in the
domestic laws of the country. But, the Government of India by not being a member to
the Rome Statute of 1998, makes it irrelevant to her people which is otherwise very
much relevant to the people of armed conflict situations that are taking place found in
India.

8.2 Suggestions and Recommendations

The scholar likes to suggest the following recommendations-

1. The Government of India should improve the criminal justice system of the
country making it compatible to the international standard of human rights
and humanitarian laws and to that end the following steps may be taken-
a. Appropriate laws should be enacted to implement the provisions of Genocide Conventions to which India has been a party since 1959. The law should be such that all perpetrators of genocide, be they individual, groups or constitutional rulers, can without exception be readily punished.

b. The Government should ratify the United Nations Convention Against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment, to which the Government of India has been a signatory since 1997 and also enact relevant domestic laws to criminalize the act of torture.

c. Comprehensive law should be enacted on protection of rights and interest of witness and victims which incorporates three key issue namely- protection of victims and witness, victims participation in the proceedings and right to reparation.

d. Provisions ensuring responsibility and accountability on the part of armed forces must be incorporated in provisions of appropriate security laws.

2. The Government of India should urgently acts on the recommendations of Jeevan Reddy Committee appointed by her, to review the Armed Forces Special Power Act, and enact a more humane Act that fulfils the international human rights and humanitarian law standard.

3. The Government of India should take steps to submit the report due on her part to the UN treaty bodies, adhering to the international law obligation.

4. ICRC and other neutral humanitarian agencies should be permitted to render
their services all over India as per mandate of Common Article 3 of the Geneva Convention to which the India has been a party since 1950.

5. Training on Human Rights and Humanitarian Laws should be made mandatory to the members of Indian Army and State Police by enacting appropriate legislation, which will help them to improve their self image.

6. Section 19 of the Protection of Human Rights Act should be amended to make the NHRC more powerful to investigate human rights violations by the armed personnel.

7. The Government of India should amend criminal law of the land in order to fix individual criminal responsibility of person of India-be he an ordinary citizen or the Prime Minister or, the chief of the army staff for the commission of heinous crime.

8. The Government of India should sign and ratify the Rome Statute 1998, by which the International Criminal Court has been established.

9. Last but not the least, the Government of India should adopt necessary and proper steps for all round economic development the entire North-east area which the investigator believes to contain increasing tendency of taking arms and creating any kind of armed conflict situation.