2.1 Introduction

Human rights and humanitarian laws are such concepts that neither derived from social order nor conferred upon individual by the society. Human rights are very fundamental rights of human being which are inherent in them and logically independent of any legal system for their existence. While humanitarian laws complement human rights during an armed conflict situation by imposing certain obligations on the parties to the conflict that should be respected. Such norms aim at minimizing the suffering of war. Despite the fact that such rights are inherent in human being, there has been a long struggle by human civilization to have these rights recognized and safeguarded. This chapter gives an overview of concept and development of human rights and humanitarian laws till date.

2.2 Concept of human rights and humanitarian laws

Every human being acquires certain basic and inalienable rights by virtue of his/her being birth as a human being, which are generally termed as human right. Thus, the term ‘human rights’ depicts the very nature of the right. All those rights, which are essential for the maintenance of human dignity, may be called as human rights. They are necessary, as they are conductive to physical, moral, social, and spiritual welfare of human being. Every human being possesses these rights irrespective of his or her nationality, race, religion, sex etc. simply because he or she
is a human being. These rights are inherent in our nature and without them nobody can live as a human being.

Human rights are also termed as natural rights as they are not enacted rights conferred by the government to its people. In modern times, scope of human rights has been extended day by day with the mankind’s increasing demand for a life in which the inherent dignity & worth of each human being will receive respect & protection. Such rights must be preserved, cherished and defended if peace and prosperity are to be achieved.

It is said that rights and duties are necessarily co-relative. Every right has a corresponding duty. As human rights are acquired by each and every person as a consequence of his/her being birth as a human being, every state as a guardian of its people has a basic duty to protect the human rights of its people. Thus, human rights are exemptions from the operation of arbitrary power. The need for the protection has arisen because of inevitable increase in the control over men’s action by the governments which by no means can be regarded as desirable. The consciousness on the part of the human being as to their rights has also necessitated the protection of human rights by the States. The human rights law put an obligation on the State to refrain from causing any harm to its own nationals and other persons within its territorial jurisdiction. Under the defence of sovereignty, States cannot treat its nationals as it pleases.

Humanitarian laws on the other hand, mean those rules which intend to protect rights of the people when an armed conflict is going on in an area. In other words, humanitarian laws complement human rights laws during an armed conflict. As, during an armed conflict, rate of violation of human rights increased to a high level,
the international humanitarian law lays down certain norms to be followed during an armed conflict so that sufferings of war can be minimized. Such laws mandate firstly, for humanitarian treatment to the people affected by armed conflict and secondly, for imposing restrictions on the use of weapons indiscriminately to limit the sufferings of war.

Thus, international humanitarian law attempts to limit the right of parties to a conflict to use the method and means of warfare of their choice and protect persons and property that are, or may be, affected by conflicts. In short, IHL is the *jus in bello*, or the law that regulates the conduct of armed conflict. It provides the maximum possible protection of people in armed conflict through a balance between "military necessity", on one hand, and "humanity" on the other. The essential purpose of rules is not to provide a ‘code’ governing game of war, but to reduce or limit the sufferings of individuals.

### 2.3 Development of Human Rights –An International Perspective

The concept of human rights dates back to the days of antiquity. The concepts of universal brotherhood and fellow feeling have their origin in various religious orders. Christ never recognized any distinction between Jew and Gentile. Buddhism preached the doctrine of non-violence in deed and thought. Hinduism preached the doctrine of kinship.

The Code of Hammurabi, a well preserved Babylonian Law Code, dating back to about 1772 BC, recognized some basic rights of man such as fair wages, protection of property and requirement of proof of charge at trial. The Code is one of the earliest

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examples of the idea of presumption of innocence, and suggests that both the accused and accuser should have the opportunity to provide evidence. Human rights are also rooted in ancient thought and in philosophical concepts of ‘natural law’ and ‘natural rights’. A few Greek & Roman philosophers recognized the idea of natural rights. Plato was one of the earliest writers to advocate a universal standard of ethical conduct. The city state of Greece gave equal freedom of speech, equality before law, right to vote, right to be elected to public office, right to trade & right of access to justice to their citizens. Similar rights were secured to the Romans by the *jus civile* of the Roman law[^3].

Despite all these, the human civilization has suffered a struggle over, 4000 years to have their fundamental rights recognized and safeguarded. It has been a slow, long process. Centuries went by with little visible evidence of success, and indeed the realization of what man’s rights might be has only gradually become apparent[^4]. The need for protection has arisen because of inevitable increase in the control over man’s action by the governments which by no means can be regard as desirable. The consciousness on the part of the human beings as to their rights has also necessitated the protection by the states.[^5]

The first important instrument that recognized human rights is the Magna Carta of 1215 A. D. accepted by King John at Runnymede in Britain. It was the first document that forced onto a king of England by a group of its subject, the feudal barons, to limit his powers by law and protect their privileges. Though it was exacted

[^4]: Supra note 3
[^5]: Ibid, p.3
by his feudal barons in their own self interest, it lays down the symbol of liberty and rule of law in the words that-

“No free man shall be taken or imprisoned or outlawed or banished, or in any way destroyed, nor will go upon him, nor send upon him, except by the lawful judgement of his peers or by the law of the land.”

Thus, the Carta set forth the principle that the power of the king was not absolute. An absolute monarch, King John also acknowledged certain rights of the subjects which could not be violated even by the sovereign. In 1216-17, during the reign of John’s son Henry III, the Magna Carta was confirmed by the Parliament of England and in 1297 Edward I confirmed it in a modified form. The Carta was buttressed in 1628 by the Petition of Rights, and in 1689, by the Bill of Rights, to form the platform for parliamentary superiority over the Crown and to give documentary authority for the rule of laws in England.

Nearly a century later, the American Declaration of Independence (1776) has recognized fundamental right of human being by saying-

“We hold these truths to be self evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights Government are instituted among men deriving their just powers from the consent of the governed; that whenever any form of Government becomes destructive of these ends, it is the right of the people to alter or abolish it and institute new Government.”

The French Declaration of 1789, which is considered to be classical formulation of inviolable rights of the individual, under Article 1 Declares that, men

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7 Supra note 3, p. 5
8 Friedrich and Mc Closkey, *From the Declaration of Independence to the Constitution*, (1954),Liberal Arts Press, , p. 3
are born free and equal in respect of rights. Social distinctions shall be based solely upon public utility. Article 4 elucidates that liberty consists in the power of doing whatever does not injure another. Accordingly, the exercise of the natural rights of every man has no other limits than those which are necessary to secure to every other man the free exercise of the same rights; and these limits are determinable only by law. These ideas became the motivating force for peoples struggle for liberty and equality in different parts of the world and since the beginning of 19th century most of States recognized these principles in their own constitution.

During the 19th century, human rights became a central concern over the issue of slavery and labour regulations. Slave Trade Act of 1807 and Slavery Abolition Act 1833 were enacted by the British Parliament to abolish the institution of slavery in British Empire. The 13th Amendment to the American Constitution banned slavery, the 14th Amendment assured full citizenship and civil rights to all people born in the United States, the 15th Amendment granted the African American the right to vote. During the early part of 20th century, in Europe and North America, labour unions brought about laws granting workers right to strike, establishing minimum work conditions and for forbidding or regulating child labour.

This journey of development of human rights face a major set back during the 1st World War whereby huge losses of life and gross abuses of human rights took place. At the end of the World War I, the League of Nations was established in 1919 at the negotiation over the Treaty of Versailles with the object of disarmament, prevention of war through collective security, and to settle disputes between countries through negotiations and diplomacy and to improve global welfare. However, such attempt could not prevent World War II, where shocking crimes were committed against the humanity. There was a total suppression of the fundamental human rights
during the War. The Nazi leaders of Germany had barbarously negated human values and dignity within their territories under their occupation. It was realized that the restriction on the freedoms and rights to the people is one of the essential conditions for the establishment of international peace and security. So, an effort for the creation of an international organization, in order to establish peace was going on when the World War II was in progress. Finally, the Allied powers agreed to create a new body to supplant the object of League of Nations, and thereby, established the United Nations, the Charter of which was signed in San Francisco on 26th June, 1945 by 50 nations.

The Charter which is a positivist document came into force on October 24, 1945. Its main objective was to established a new world order based on human rights banishing war as an instrument for resolution of disputes between states except in extreme case of self defence. The preamble of the Charter says-

“We the people of United Nations determined to reaffirm our faith in fundamental human rights, in the dignity and worth of human persons, in the equal rights of men and women and of nations large and small”.

The provisions of the Charter emphasizes on the promotion, protection and respect for fundamental freedoms and human rights for all without distinction as to race, sex, language or religion as well as the maintenance of international peace and security. The Charter, thus, made human rights an international concerns rather than a strictly domestic one. But, it is to be noted that that the Charter neither defined the human rights nor they were enumerated therein. The guarantee for the protection of human rights and fundamental freedoms was also not provided therein. It was done by

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9 UN Charter, Article 2(4).
10 Ibid, Article 2(10).
adopting the Universal Declaration of Human Rights (UDHR) by the UN General Assembly on 10\textsuperscript{th} December, 1948. This is the first comprehensive human rights instruments, agreed amongst all nations setting out the specific rights and freedoms of all.

The Preamble to the Declaration proclaims the UDHR as a common standard of achievement for all peoples and for all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect of these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction\textsuperscript{11}. The words ‘common standard of achievement for all peoples and for all nations’ was inserted in the Preamble because majority of the people at that time were deprived of their human rights as they lived under colonial rule and the authorizing regimes continued to oppress them\textsuperscript{12}.

There are 30 Articles in UDHR which cover various civil, political, economic, social and cultural rights. Articles 2 to 21 incorporate the basic civil and political rights which have been generally recognized by almost all of the Countries. Articles 22 to 27 of the Declaration deal with economic and social rights such as social security, right to work and free choice of employment, right to rest and leisure, right to standard of living adequate for the health of himself and his family, right to education, right to participate in cultural life and right to good social and international order. The States cannot derogate from these obligations even in the time of

\textsuperscript{11} Dr. H. O. Agarwal, International Law and Human Rights, Allahabad: Central Law Publication, 16\textsuperscript{th} Ed., (2009), p. 760
\textsuperscript{12} Ibid
emergency. However, under Article 29 everybody in the exercise of his rights and freedom, shall be subject to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

The UDHR is merely a statement of principles and it has no legal force. So, to secure adherence of the Member States to the principles set out in the Declaration, the United Nations evolved and adopted two convention in 1966 namely International Covenant on Civil and Political Rights (ICCPR) & International Covenant on Economic Social and Cultural Rights (ICESCR) with binding obligations and implementations mechanisms attached to them for those States which have signed and ratified the Covenants.

The International Covenant on Civil and Political Rights (ICCPR) consists of 53 Articles. Article 1 of the Covenant, refers the right of self-determination of the people and states that, all peoples have the right freely to determine their political status and freely pursue their economic, social and cultural development and may, for their own ends, freely dispose of their natural wealth and resource without prejudice to any obligations arising out of international economic co-operation, based upon the principles of mutual benefit and international law. The Article further states that in no case may a people be deprived of its own means of subsistence, and that the State Parties shall promote the realization of the right of self-determination and shall respect that right. Article 1 of the International Covenant on Economic, Social and Cultural Rights also stipulates the same principle in toto. The ICCPR under Article 6 to 27 provide certain rights of human being such as right to life (Article 6), freedom from inhumane or degrading treatment (Article 7), right to liberty and security
(Article 9), right of the detenue to be treated humanely (Article 10), right to fair trial (Article 14), equality before the law (Article 26) etc. Under Article 4 of the Covenant, State Parties to the Covenant may make measures derogating from their obligations under the Covenant to the extent strictly required by the exigencies of the situations. However, the restrictions must be provided by law and applied solely for the purpose for which they have been provided. Further, they should not give rise to any discrimination on the ground of race, sex, colour, language, religion, or social condition. The scope of judicial review and judicial independence must be ensured at all the times. Article 28(1) provides the implementation procedure under the Covenant on Civil and Political Rights which is carried on by the Human Rights Committee. The Committee carries out the implementation of the human rights stipulated in the Covenant in three different ways namely-the reporting procedure, inter-state communication system, conciliation procedure. Subsequently, the Additional Protocol I to the ICCPR has been adopted to give the individuals a right to make petitions before the Human Rights Committee against the State violating any of the rights provided in the Covenant itself.

Another Covenant i.e. the International Covenant on Economic, Social and Cultural Rights is consisted of 31 Articles. Article 6 to 13 provide the basic human rights such as right to work, right to just and favourable condition of work, right to form and join trade union, right to social security, right relating to motherhood and childhood, marriage and the family, right to adequate food, clothing, housing and standard of living and freedom from hunger, right to physical and mental health, right to education including a plan for implementing compulsory primary education, right relating to science and culture. This Covenant does permit the State parties to
derogate from their obligation even in public emergency which threaten the life of the nation.

Later, the General Assembly also adopted two Optional Protocols to the International Covenant to the International Covenant on Civil & Political Rights; one in 1966 which came into force on March 23, 1976 providing individual communication system to the Human Rights Committee as mentioned above, and another, on the Abolition of Death Penalty in 1989 which came into force on July 11, 1991. As of May 2013, the ICCPR has 74 signatories and 167 parties and the ICESCR has 160 parties. A further seven countries, including the United States of America, had signed but not yet ratified the ICESCR. These Covenants, together with the UDHR, constitute the International Bill of Human Rights.

At different point of time, several conventions/treaties have also been adopted by international community under the initiative of the United Nations to complement the International Bill of Human Rights, such as the Convention on the Prevention and Punishment of Genocide, 1948; the International Convention on Elimination of All Forms of Racial Discrimination, 1965 (ICERD); the Convention on the Elimination of all Forms of Discrimination Against Women, 1979 (CEDAW); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (CAT); the Convention on Rights of Child, 1989; and International Covenant on Protection of the Rights of All Migrant Workers and Members of their Families, 1990 (ICMRW). Further, the United Nations Standard Minimum Rules for treatment of Prisoners lays down 95 provisions covering fundamental requirements for the proper treatment of prisoners. They cover such issues as the availability of medical services, regulations for disciplines and punishments, complaints procedure etc. States are bound by the standards found in the instruments it has ratified. Some
international human rights instruments, however, have become part of customary international law and as such are binding on all States, whether they have ratified the instruments or not.

The UN Office of the High Commissioner for Human Rights (UNHCHR) is the main United Nations body responsible for the promotion of human rights. Its mandate derives from the Charter of United Nations and Vienna Declaration and is defined as follow:

“to ensure the universal enjoyment of all human rights by giving practical effect to the will and resolve of the world community as expressed by the United Nations”.

The UNHCHR coordinates human rights activities throughout the UN system, responds to serious violations of human rights and undertakes field activities and operations, as well as education and technical assistance programmes in the field of human rights. Its representatives may often be present in post-conflict areas. Any individual of a member state of the United Nations, who is victim of the violation of human rights can file petition to the UNHCHR through the Secretary-General of the UN for redressal of his grievance.

Besides that, mechanisms have also been established to monitor the implementation of the main human rights treaties. Presently, there are two UN Charter based bodies namely Human Rights Council and Special Procedure and ten human rights treaty based bodies to monitor State Parties compliance with their treaty obligations. The Human Rights Council, created in 2005, is an inter-governmental body within the UN system that works closely with the office of UNHCHR. The Special Procedures are either an individual—a Special Rapporteur or representative, or independent expert—or a working group. They are prominent, independent experts
working on a voluntary basis, appointed by the Human Rights Council. Special Rapporteur often conducts fact finding mission to countries to investigate allegations of human rights violations. They also assess and verify complaints from alleged victims of human rights violations. Once a complaint is verified as legitimate, an urgent letter or appeal is sent to the government that has allegedly committed the violation.

The treaty based bodies are Human Rights Committee (HRC), Committee on Economic, Social and Cultural Rights (CESCR), Committee on the Elimination of Racial Discrimination (CERD), Committee on the Elimination of Discrimination against Women (CEDAW), Committee against Torture (CAT), Subcommittee on Prevention of Torture (SPT), Committee on the Rights of the Child (CRC), Committee on Migrant Workers (CMW), Committee on the Rights of Persons with Disabilities (CRPD) and Committee on Enforced Disappearance (CED). In addition to overseeing implementation, three of these monitoring bodies namely, HRC, CAT and CERD also handle individual complaint mechanism. However, in order for individuals from a particular state to be able to use these mechanisms, their State must have specially accepted the jurisdiction of the monitoring bodies- this is not the case for all State Parties.

2.4 Development of International Humanitarian Laws (IHL)

The root of IHL dates back to the rules of ancient civilization and religion, and premised on the simple idea that some things are not permitted even in wartime. The Chinese Scholar Sun Tzu, in the 5th century BC, asserted that in war it is important to “treat captive well, and care for them”. One of India’s epic poems, Ramayana, reveals that it was expressly forbidden to use of mythical weapon that could obliterate an
entire enemy nation even though (the enemy) was fighting an unjust war with an unrighteous objective. In ancient Greece, awareness existed that certain acts were contrary to traditional usages and principles spontaneously enforced by human conscience, thus establishing the applicability of customary law to armed conflict. In Homer’s epic Odyssey, the use of poisoned weapons was considered to be a grave violation to the way of the Gods. Roman law has developed the terms *jus ad bellum* (the law governing the legality of the use of force) and *jus in bello* (the law governing the conduct of hostilities), terms that continue to be used in contemporary international law. Roman *jus belli*, or the law of war, served as a function for legal developments until 1800s.

The process of codifying international humanitarian law started in the middle of the 19th century, and developed tremendously throughout the 20th century. Today, numerous conventions exist and large parts of international humanitarian law are codified. The first attempt to bring together existing laws and customs of war in a document, and to impose them on an army in battle, was the “Lieber Code” (1863). This was intended solely for Union Soldiers fighting in the American Civil War, and as such did not have the status of a treaty.

In the year of 1859, when French and Austrian armies fought the battle of Solferino in northern Italy, the idea of international action to limit the suffering of the sick and wounded in wars was born in the mind of Henri Dunant, a young Swiss citizen. He published a book in 1862, in which he suggested that national societies should be created to care for the sick & wounded irrespective of their race, nationality or religion. He also proposed that States should make a treaty recognizing the work of these organizations and guaranteeing better treatment for the wounded. With his four friends he set up the International Committee for Aid to the Wounded (latter on
renamed as International Committee of the Red Cross). His idea met a wide response and several countries had established national societies.

In 1864, a diplomatic conference was held in Geneva whereby the delegates of 16 European nations adopted the Geneva Convention, a set of ten articles. The full name of the Convention was the Convention for the Amelioration of the Wounded in Time of War and the purpose of the Convention is to limit the suffering caused by war by protecting and assisting as far as possible the wounded and sick military personnel. More precisely, this Convention laid the three fundamental principles of contemporary IHL namely the principle of humane treatment (i.e. the victims of war who are in the situation of hors de combat must be collected and care for), the principle of care without discrimination to the wounded and sick, and the principle of respect for and marking of medical personnel, transports and equipments using an emblem (red Cross on a white background)\(^\text{13}\). In Islamic countries the emblem is a red crescent on a white field was introduced in the 1870. The Convention formally laid the foundation of international humanitarian law.

Another milestone in the development of the IHL was the Hague Conferences of 1899 and 1907. Many Conventions were adopted at these Conferences which provided for the regulation of conduct of hostilities. Convention IV together with the Regulations in annex, was of particular importance because it contained the law and customs of war on land. This Convention was in particular declaratory of customary law of warfare. The purpose of this Convention was not only to regulate the conduct of hostilities and thus to limit the means of causing injury to enemy, but also to

\(^{13}\) Prasit Aekaputra, International Humanitarian Law and State Responsibility in 21\(^{\text{th}}\) Century, ISIL Year Book of International Humanitarian and Refugee Law, Year Book 2003, p. 96
provide better protection to the combatants and war victims\textsuperscript{14}. The preamble of this Convention says that,-

"Until a more complete code of the laws of war has been issued,...the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of conscience"\textsuperscript{15}.

This Preamble was supplemented by two principles of humanity namely,

1. The right of belligerents to adopt means of injuring the enemy is not unlimited (Article 22 of the Hague Regulations).
2. Belligerents are forbidden to employ arms, projectiles, or material calculated to cause unnecessary sufferings. (Article 23(e) of the Hague Regulations).

However, the rules laid down in the Hague Conventions as to the conduct of war were frequently disregarded in practice by many warring parties. The process of disregard started during the First World War with the beginning of economic warfare directed against whole population. Distinction between the armed forces and the civilian population was not made. Other provisions of the convention relating to use of gases were also violated. The result is that, the rules made by the Hague Conventions which laid down the foundations of the law of war were sapped because of the instances of their non-observance\textsuperscript{16}.

In the middle part of 20\textsuperscript{th} century shocking crimes were committed against the humanity during the Second World War. The tragic experience gained by the international community during this conflict compelled to think for improvement of

\textsuperscript{14} Dr. U. Chandra, Human Rights, Allahabad: Allahabad Law Agency Publications, 7\textsuperscript{th} Ed,(2007), p.337
\textsuperscript{15} Supra note 11, at p. 337
\textsuperscript{16} Ibid
the legal protection of war victims, in particular of civilians in the power of the enemy. Thus, steps have been adopted for extension and codification of the existing provisions in an International Red Cross Conference in Stockholm held on August 23 to 30, 1948. The Conference developed four Conventions which were approved in Geneva on August 1949. The Conventions were:

1. Convention for the Amelioration of the wounded and sick members of armed forces in the field (Geneva Convention I).
2. Convention for Amelioration of the condition of the wounded, sick and shipwrecked members of armed forced at sea (Geneva Convention II).

The provisions of all these Conventions were inspired by respect for human personality and dignity. Together “they establish the principles of disinterested aid to all victims of war without discrimination-to all those who, whether through wounds, capture or shipwreck, are no longer enemies but merely suffering and defenceless human beings”. The Conventions provide a number of humanitarian rules to various classes of persons such as the wounded and sick in armed forces in the field as well as at sea, prisoners of war and civilian persons in time of war. They also imposed corresponding duties upon the protecting power, the ICRC and other humanitarian organizations.

With the exception of one article- Article 3 – common to all four conventions, the provisions of four Geneva Conventions are applied to international armed conflicts. Common Article 3 which is applicable in non-international armed conflict situations expressly prohibits certain acts at any time and at any place, namely:

(1) Violence to life and person,

(2) Taking of hostage,

(3) Outrages upon personal dignity, in particular humiliating and degrading treatment,

(4) The passing of sentences and carrying out of executions without previous judgements pronounced by a regularly constituted court.

These obligations are binding to all the parties to the conflict i.e. the State as well as the non-state actors. Further, this Article also mandates the ICRC and such other humanitarian agencies to provide service to the victims of war and also to take steps to strengthen respect for IHL.

However, in the subsequent years, with emergence of new forms of armed conflict, often sharp and violent, but localized and involving limited numbers of troops and other combatants, called for further action to control the horror of such conflicts. Thus, a Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable to armed conflict, was held in Geneva from 1974 to 1977, whereby two Additional Protocols to the 1949 Conventions were adopted. Protocol I deals with the protection of victims of international armed conflicts. Protocol II concerns the victims of internal armed conflicts, including those between the armed forces of a government and dissidents or other organized groups which control part of its territory, but does not deal with internal disturbances and tensions in the form of riots, or other isolated and sporadic acts of violence.
Diplomatic Conference also recommended that a special conference be called on the question of prohibiting on humanitarian grounds the use of specific conventional weapons.

Thus, in the event of a non-international conflict, Article 3 common to four Conventions and Protocol II are applicable. Article 1 of the Additional Protocol II *inter alia* says that this Protocol supplements Article 3 to the Geneva Conventions of 1949 without modifying its existing condition of application. Under the Protocol, humanitarian law is intended for the armed forces, whether regular or not, taking part in conflict, and protect every individual or category of individuals not or no longer actively involved in the hostilities. Its conditions of application are stricter than those provided for Article 3 and cover the following:

1. Fundamental guarantees for human treatment (similar to common Article 3 but more detailed.)
2. Special protection for children in the fields of education, recruitment, reunification, and safe areas.
4. Protection of the civilian population and civilian subjects.
5. Relief action subject to the consent of the state (similar to the Common Article 3)

The rules of customary international humanitarian laws, also fill some important gaps in the regulation of non-international armed conflicts. Many of the provisions of Additional Protocol II are now considered to be part of customary international law, and thus, binding on all parties to non-international armed conflicts. These rules include the prohibition of attacks on civilians, the obligation to respect and protect medical and religious personnel, medical units and transports, the
prohibition of starvation, the prohibition of attacks on objects indispensable to the survival of the civilian population, the obligation to respect the fundamental guarantees of persons who are not taking a direct part, or who have ceased to take a direct part, in hostilities, the obligation to search for and respect and protect the wounded, sick and shipwrecked, the obligation to search for and collect the dead, the obligation to protect persons deprived of their liberty, the prohibition of the forced movement of civilians, and specific protections for women and children\(^\text{18}\).

Customary IHL also goes beyond the rudimentary provisions of common Article 3 and Additional Protocol II. Practice has created a substantial number of additional customary rules relating to the conduct of hostilities (e.g. the distinction between civilian objects and military objectives, the prohibition of indiscriminate attacks and attacks in violation of the principle of proportionality); rules on specifically protected persons and objects (e.g. humanitarian relief personnel and objects, journalists, and protected zones) and rules on specific methods of warfare (e.g. prohibition of denial of quarter and perfidy)\(^\text{19}\). Such principles though do not take precedence over the law in force, nor do replace them, considered to be guiding principles and as they make the law easier to understand.

The establishment of the International Criminal Court, a permanent international court, by adopting Rome Statute of 1998 is one of the major achievement of the international community towards the development of humanitarian laws. The Court has been established with the objective of putting an end to impunity for the perpetrators of serious international crimes and vindicating state obligations to exercise its criminal jurisdiction over those responsible for


\(^{19}\) Supra note 18, p-10
international crimes. The Court is the first international court which has jurisdiction over war crimes, crimes against humanity, genocide and aggression. The Statute criminalizes violation of Common Article 3 to the Geneva Conventions as war crimes. It would not prosecute states as abstract entities, but individuals who have committed the alleged crimes. Immunity pleas based on official position will not be allowed in proceedings before the Court. Moreover, the Court besides prosecuting head of states or others with powerful political contacts, the ICC may also prosecute members of armed forces and paramilitary groups for acts committed by subordinates and individuals committing crimes in their private capacities pursuant to organizational policy. Another advancement of the Court is that it works on the principle of complementarities, i.e. the primary responsibility for prosecution lies with the States and the Court would act only in situations where the state is either unwilling or unable to prosecute the offender.

Establishment of ICC at Hague has fulfilled the gap of prosecution of the perpetrators of crimes under the international law. So long, norms are laid down for the protections of human rights have been violated, very often, with impunity. The ICC brings an end to this impunity concept by prosecuting and brings to justice individuals who commit the most serious violations of international humanitarian laws.

2.5 Concluding Remarks

Man’s struggle for the protection of their rights is a never ending process. As the nature of human rights violations cannot be circumscribed within any ambit, laws preventing such violations have also been developing day by day. Different international treaties, conventions, documents have been adopting by different
countries of the world to show their obligations to protect the rights of people and thereby contributing to the development of human rights and humanitarian laws. But, the obligations set out in such international conventions and multi-lateral treaties for the protection and promotion of human rights are flouted by the Governments with impunity. The right to life, protection from torture and inhumane treatment etc. are far from realization for the people of most of the countries.

Many countries of the world disagree to qualify the conflict going on in their area as armed conflict and thereby decline the applicability humanitarian laws in such situations. They claim such situations as a situation of “tension” or mere banditry and does not amount to non-international armed conflict. A States thereby very often attempt to hinder or block contact with an armed group or access to the geographical area under its control. Again, non-state armed groups also deny the applicability of humanitarian law by refusing to recognize a body of law created by States, or by claiming that they cannot be bound by obligations ratified by the Government against whom they are fighting. In such cases, the law will seldom be a relevant frame of reference, especially for groups whose actions are shaped by a strong ideology.

Thus, what is necessary is that proper respect to and implementation of the laws that are prevailing for the protection and promotion of human rights. Many parties involving in armed conflicts are not aware of the norms to be followed in such situations. So dissemination of information relating to humanitarian laws and also creating awareness among masses is demand of present time.