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Revisiting the Ancient Indian Laws of Warfare and Humanitarian Laws

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By Radhika R.V.



Image Attribute: An episode in the Mahabharata where Lord Krishna speaks Bhagavad Gita to His friend and devotee Arjuna at the Kurukshetra war. Lord Krishna first enlightens Arjun about the Dharma (righteous, in accordance with God and nature) by making the war to be standstill so that he can see both Kuru and Pandavas' armies.

The ethics of war and the humane principles, related to the treatment of the vanquished, of the *Vedic* period, is buried under the debris of time. With the constant building up of war-oriented ideologies and power play pervading the minds of many in the current international system, it becomes a necessity to regress a little and understand if war was an unsaid norm or regarded as a ruler's last option during the ancient period. In this context, it is also primal to analyze the extent to which the concepts in Hinduism have helped in the development of international humanitarian laws, the focus being to limit the suffering caused by war.

The Bhagavad Gita links *chaturvarnya*, or the four-class system in the society, to *svadharma* (an individual's duty), *svabhaava* (inborn nature), and *guna* (a natural tendency). The Kshatriya or the warrior class, based on the *Kshatram Dharmam*, was in charge of the protection of the society by fighting in wartime and governing in peacetime. The *svadharma* of this warrior community was to serve the country by participating in war. Nevertheless, the elite warrior class followed the path of *dharma* (righteousness) and was fully aware of the qualities of chivalry and nobility without inflicting an iota of damage to the principles of humanity.

The rules that governed a Kshatriya's conduct were broadly divided into *saadharana svadharma* (general rules) and *svadharma* (special rules). The primary and significant code of a warrior was *pragyanam rakshanam* i.e., to defend one's country and be detached to the worldly pleasures that might be detrimental in defending the state. The laws of war that existed then were based on the dictums mentioned in the sacred texts, primarily the *Dharmasutras* and the *Dharmashastras*. These texts codified the

laws that govern the waging of wars and the moral precepts, thus paving a way for the inception of the international humanitarian laws.

The modern humanitarian laws date back to middle nineteenth century but in reality, they root in the tradition of Sindhu valley, particularly the issue of *Dharmayuddha* and *Adharmayuddha*, declaration of war, special privileges to Hanuman as doot (messenger) in the *Ramayana*, etc.[1] The concept of *Dharmayuddha* is one of the strong pieces of thread that connects *Sanathana Dharma* and the ethical aspects of war evident from the epics Mahabharata and Ramayana. The connection can also be found in the *Rig Veda*, *Manusmriti*, and *Kautilya's Arthashastra*, although it was considered initially that "the source of the 'Hindu law of armed forces' was only *Upanishads*." [2]

Kautilya, being a shrewd pragmatist, emphatically stressed the need for kind treatment of the vanquished people and their princes. He promised them security of their cattle and reinstatement of those who were "possessed of good treasury and army." [3]. An efficient propounder of policies for the king, *Sukra* went a step ahead and laid down salaries and allowances for the defeated princes and their dependents.[4] He recommended leaving them free by fixing the quantum of tribute.[5]

These notions or ideals followed by the ancient political scholars can be traced to the Geneva Conventions of August 12, 1949. As for the kind treatment of the vanquished people and their princes, Part II of the Geneva Convention Relative to the Treatment of Prisoners of War can be associated. Part II of the same deals with the General Protection of Prisoners of War and specifically, Article 13 regarding the humane treatment of prisoners.

The ancient literature annotates that "where submission was proffered, a quarter was readily given; the people of the country were permitted the exercise of their own creeds and laws, and natives were sometimes placed in responsible situations of the government." [6] If the term 'quarter' used here is interpreted in terms of money, it can be linked with Part III, Section IV dealing with the Financial Resources of Prisoners of War and specifically, Article 58 regarding ready money. If the term 'quarter' is interpreted in terms of conditions of stay, it can be linked with Part III, Section II, Chapter II dealing with the Quarters, Food and Clothing of Prisoners of War and specifically, Article 25 regarding quarter.

The rule of international humanitarian law not to attack civilians during warfare is similar to that purported in the *Manusmriti*. *Manu* lays down that "one who surrenders or is without arms or is sleeping or is naked, or with hair united (i.e. unprepared) or an onlooker (non-combatant) must never be killed," irrespective of whether the opponent was a believer or an *arya* or a *yavana* (alien non-believer) or whether he was fighting a just war or not.[7] It can be well understood from this rule that the civilians, prisoners of war, and the warriors who are unprepared can be covered under this rule and cannot be killed.

According to *Manu*, "persons walking on the road, not participating in the conflict, or mere travelers, or those who are engaged in eating and drinking or pursuing their special avocations or activities or diplomatic errands and of course the Brahmins, unless they are engaged in war" were not to be killed. This can be traced to the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949, Part I dealing with the General Provisions and specifically, Article 4 regarding the definition of protected persons.

The practice of taking prisoners of war dates back to the *Aitareya Brahmana* which records, once ten thousand women prisoners belonging to wealthy homes were brought from other countries and bestowed upon *Brahmanas* in token of the conquest of the quarters. The practice was universal and was known to the Hittites and the Assyrians. A large number of prisoners used to be put to the sword even during the Vedic age. If maidens were among the prisoners of war, they were courteously treated and were induced to marry persons of the conqueror's choice. If they declined the offer, they were sent back to their homes under proper escort. Hospitality, the sacredness of the refugee, the law not to forget a kindness or a hurt, and not to refuse to fight when challenged, are some features of fair fighting according to the epic code.[8] This is much similar to the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949, Part II dealing with the General Protection of Prisoners of War and specifically, Article 14 regarding respect for the person of prisoners.

Also, taking the war casualties into account, the evidence available in the ancient Indian literature proves that it was the duty of the sovereign to look after the welfare of families of those who had laid down their lives at the altar of the state.

With respect to the principle of distinction, the laws of war in ancient India drew a clear distinction between the civilians and the belligerents. This same principle is found in Article 48 of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, while Article 51 thereof protects civilians from military operations.

Furthermore, *Manu* laid down certain principles that should be followed by both warring parties such as combat between equals, prohibition of collective attacks against a single soldier, and the forbiddance of slaying a warrior who was temporarily at a disadvantage during battle. According to the *Manusmriti*, a conqueror must grant remissions on taxes and not loot the conquered territory. He must also not be vengeful but should offer an amnesty to those who surrender.

The rules laid down in the *Rig Veda* maintain that it is unjust to strike someone from behind, cowardly to poison the tip of the arrow, and heinous to attack the sick or old, children, and women. This can be related with the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949, Part II dealing with the General Protection of Populations against Certain Consequences of War and specifically, Article 24 regarding measures relating to child welfare.

In the *Ramayana*, a classic example of the observance of humanitarian principles can be found when *Lakshmana*, in the war against *Ravana*, was forbidden by *Rama* to use a weapon of war which had the potential to destroy the entire race of enemy including those who did not bear arms, though *Ravana* was fighting an unjust war, *Adharmayuddha*. Another example can be found in the *Mahabharata* when *Arjuna*, observing the laws of war, refrained from using an ultra-destructive weapon *Pasupathastra* in a conventional war, for when fighting was restricted to ordinary conventional weapons, the use of extraordinary or unconventional types was immoral, besides contravening religious tenets or the recognized laws of warfare.[9] This is very much akin to the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949, Part III, Section II, Chapter VI dealing with Discipline and specifically, Article 42 regarding the use of weapons.

It is true that the *Rig Veda* refers to *Dasas* (slaves) and the epics *Ramayana* and *Mahabharata* refer to enslavement of war prisoners but it is also equally true that *Smriti* (remembered texts that are a codified component of Hindu customary law, different from *Shruti* which encapsulate *Dharma* through listening or hearing), condemn slavery and the *Agni Purana* clearly forbids the enslavement of prisoners which again is similar to the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949, Part II dealing with the General Protection of Prisoners of War and specifically, Article 14 regarding respect for the person of prisoners.

Also, some of the humanitarian aspects of the warfare rules put forth in the *Shanti Parva* of the *Mahabharata* have a striking similarity with the laws in the present international system notably, Chapter II dealing with the Quarters, Food and Clothing of Prisoners of War and specifically, Article 26 regarding food; Chapter III dealing with the Hygiene and Medical Attention and specifically, Article 30 regarding medical attention; and Article 31 regarding medical inspections. The prisoners of war were generally to be accorded generous treatment. In the epoch of the *Brahmanas*, the fettered prisoner was sent out of the kingdom and was permitted to remain on the outskirts. Sometimes the captive agreed to become a slave of the captor for a period of one year after which he became a free man. According to the *Mudraarakshasa*, *Kautilya* set free the prisoners who were captured in war by the king Chandragupta.

It was the policy of the ancient Hindus that once in the field of action, the enemy could be subjected to rigor. But after the cessation of hostilities, the victor should behave in such a way as to secure the advancement of all, including the subjects of the enemy's kingdom.[10] The *Arthashastra* also has a policy which states that the subjects of the vanquished monarch were allowed to retain their own laws and customs, as any violation of these would result in a mass rebellion. In a way, the laws of war in ancient India with regard to occupied territory were more humane and broader than those of today.

As far as envoys were concerned, a discussion between *Ravana* and his brother *Vibhishana* in the *Ramayana* elucidates the inviolability of an ambassador. *Ravana* planned to kill ambassador *Hanuman*, who appeared at his court on behalf of *Rama*. His brother *Vibhishana* reminded him that if he did kill the ambassador, he would be acting against *Rajadharma* (the duty of kings). [11] This can be traced as a root to the present day conventions and practices with regard to the sanguine principles and privileges of an ambassador especially, with respect to the Vienna convention on Diplomatic Relations 1961 regulating diplomatic immunities and privileges. Though a diplomat's vision was only of a short duration in the ancient period and would end on completion of the agenda, it still holds relevance to the present day practices.

The ancient Indian literature has the potential for extraordinary development albeit at times, being considered as mythological by the Western scholars. As far as the international humanitarian laws are concerned, The Hague Conventions of 1899 and 1907, Geneva Conventions of August 12, 1949 and the Vienna Convention on Diplomatic Relations, 1961 can be traced to the laws given in *Manusmriti*, epic codes and the war rules of *Mahabharata*, and the codes on diplomatic relations in *Ramayana*, respectively.

Sanathana Dharma recognizes the concept of humanitarian law in an indirect manner but with clarity. It restricts the means and the methods of warfare without causing harm to civilians or the protected persons. It indicates towards the forever demand of such regulation for the control of the armed race. The best example is the concept of *Dharmayuddha* which gives a humanitarian touch to warfare. It equally and sufficiently clears that, in terms of the ideals of humanitarianism of ancient India, the laws of war were more progressive.

In compliance with the *Vedic* literature, the crux regarding war is that it cannot be eradicated but ennobled. And this can be done only if men of good will foregather, if men forget the pride of race and birth which history, unfortunately, tries indirectly to preach, if men apply their minds honestly to the task of regeneration of mankind and if humanity adheres to the fundamentals of all religions and strives to foster the spirit of brotherhood.

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