

## INTERROGATION OF ART 11 OF UNCRPD ON ARMED CONFLICTS AND RIGHTS OF PERSON WITH DISABILITIES

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Received: 10 May 2020

Accepted: 15 May 2020

Published: 27 May 2020

### ABSTRACT

Armed Conflicts are inevitable now days. The international community wants to establish their power, domain and dominance over the weaker section with the aid of armed conflicts, either it may be internal or international. The risk factors in armed conflicts usually reflected on the vulnerable and disadvantaged group. In such group, the disabled persons stand first. The challenges faced by the disabled persons include access to medication, sanitation, food, water, shelter etc. The risk from the hands of combatants also threatens the person with disability. The Universal Declaration of Human Rights and the International Conventions on Civil and Political Rights, International Convention on Human Rights reaffirms the protection of human rights of the international community. The rights which are being protected through the international instruments are classified into International Human Rights Law (herein after referred to as the 'IHRL') and International Humanitarian Law (herein after referred to as the 'IHL'). United Nations Convention on the Rights of Persons with Disability (herein after referred to as the 'UNCRPD') is one kind of instrument protected under the IHL. Both the IHL and the IHRL complements each other in protecting the rights and dignity of the disabled during the armed conflicts. The international instruments which exclusively speaks on the rights of the disabled the UNCRPD, in the Art.11<sup>3</sup> imposes obligation on the State parties to protect the rights. The approaches may differ between the IHL and the IHRL. The IHRL has no discrimination regarding armed conflict or at the time of peace. But the IHL will apply only during the time of warfare. The IHL also imposes the obligation on the combatants to spare the disabled persons during the attack and to ensure their safety with proper medical assistance. In contrast, the UNCRPD imposes the obligation only on the signatories of the Convention and has no binding effect on the opposite group. The objective of both the laws is to protect and promote the dignity, safety, integrity of the persons with disabilities and to ensure the easy access to rights.

**KEYWORDS:** Art 11 OF UNCRPD, Persons with Disabilities

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<sup>3</sup>Article 11 Situations of risk and humanitarian emergencies: States Parties shall take, in accordance with their obligations under international law, including international humanitarian law and international human rights law, all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.

## INTRODUCTION

The IHL and the UNCRPD interrogates into the inhumane acts which are prohibited against the disabled persons. The protection under these two instruments is without any adverse distinction<sup>4</sup> between the civilians and the hors de combat (surrendered soldiers). The IHL and the UNCRPD imposes the obligation to treat the individuals with human dignity. The term human dignity depends upon other than the individual status inter alia age, cultural factor, religion, political background etc. From the inclusionary factor, disability falls under the form of human diversity. The laws speak about the above protections are Common Art 3 of the Four Geneva Conventions 12 August 1949, Art. 75 of the 1977 Additional Protocol I to the 1949 Geneva Convention, Art 4 of the 1977 Additional Protocol II to the 1949 Four Geneva Convention.

The international humanitarian law has no distinction between adverse and non-adverse group. It controls both the armed group and government and disability will not fall under any discrimination of the IHL. The obligations to protect the disabled group during armed conflict and make necessary measures to provide relief are enumerated under several Articles of the Four Geneva Convention 1949 and its Additional Protocols (Additional Protocol I relate with the protection of victims of international armed conflict and Additional Protocol II relates with the protection of victims of non-international armed conflict).<sup>5</sup> In this regard the IHL and the UNCRPD raises concern about the accessibility of relief materials to the persons with disability. The 1<sup>st</sup> and the 2<sup>nd</sup> Geneva Convention is precise to state that that the wounded and sick persons, whether it is civilians, or the armed personnel should get the relief. The care in this perspective does not depend upon the severity of the health condition which is caused due to the consequences of war. This protection includes the rehabilitation of disabled person either caused as pre dated armed conflict or the result of armed conflict. In this regard, the disabled persons are considered as ‘wounded and sick’. Persons with disability are treated with much priority in providing medical and other necessary relief due to their inability to reach the service.

The international humanitarian law treated the wounded prisoner of war (herein after referred to as the ‘PoW’) as disabled and extended the specific health care which includes mental care also. The Third Geneva Convention on the treatment of prisoners of war dealt with the measures to be taken in rehabilitating the wounded prisoners with extra facilities. The IHL in this aspect states that proper medical attention shall be provided for the PoW with adequate infirmity, appropriate diet, isolated treatment for contagious disease and mental disease, special care shall be afforded for the disabled and specifically for the visually disabled.<sup>6</sup> The UNCRPD also insists on the personal mobility and the

<sup>4</sup>The interpretation of the term ‘adverse distinction’ has been made in the commentary of the Common Article 3 of the Four Geneva Convention by the ICRC.

<sup>5</sup>Art. 23 of the Fourth Geneva Convention 12 August 1949 which relates to the protection of civilian persons in the time of war speaks about the parties to the armed conflict should allow the civilians to access the humanitarian relief. Art. 70 of the Additional Protocol I 1977 to the Four Geneva Convention 1949 speaks about the relief in favour of the civilian population as relief actions. With the same provision, the Additional Protocol also deals with the supply of food and medical stuffs for the civilian population, collective relief, responsibilities of the occupying countries in supplying the relief materials and its distributions, regulations and exemptions regarding relief shipments and transport are covered under Arts. 59,60,61,62,108,109,110 and 111 of the IV Geneva Convention 1949.

<sup>6</sup>Art. 30 (2) and (5) of the III Geneva Convention on the treatment of prisoners of war states about the medical attention. The document prepared by the ICRC on the 11<sup>th</sup> Anniversary of the adoption of the Convention on the Rights of Persons with Disability on 13<sup>th</sup> December, 2017 further explained that the camps in which the wounded prisoners and the disabled persons admitted should be provided with extra infrastructure such as stools or walking aid for the amputees; providing of braille assistance for the blind, and purchase of any apparatus for the maintenance of the wounded and disabled should be

habilitation and rehabilitation of the disabled.<sup>7</sup> The UNCRPD and the IHL are very conscious about the measures to be taken towards the disabled with specific reference to humanitarian relief. These laws impose the obligation on the armed conflict party to meet out the essential needs of the disabled without any discrimination with highest priority, as mentioned in Art 70 of the Additional Protocol I 1977 to the Four Geneva Convention. The priority is based on the accessibility of the relief measures which include food, shelter, sanitation etc suitable to their physical impairment. In this regard, the IHL and the UNCRPD involved in identifying the disabled and this agenda was included in the Charter on the Inclusion of Persons with Disabilities in Humanitarian Action.<sup>8</sup> Art. 31 of the UNCRPD discuss about the statistic and data collection of the persons with disability in order to implement the objectives of the Convention. Art. 4 (3) of the UNCRPD (general obligations) and other IHL treaties enlightened the measures to prevent usage of certain weapons in armed conflicts. The IHL treaties and Art 3133 of the UNCRPD enshrines that it is the obligation of the armed conflict party to aid the persons with disabilities which was caused due to the usage of weapons. The assistance includes medical, rehabilitation process, psychological counselling, economical support etc.<sup>9</sup> the protection under the treaties of the IHL are in par with the provisions of the UNCRPD.

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borne by the detained country. The detailed report is available at

[https://reliefweb.int/sites/reliefweb.int/resources/how\\_law\\_Protects\\_persons\\_with\\_disabilities\\_in\\_war.pdf](https://reliefweb.int/sites/reliefweb.int/resources/how_law_Protects_persons_with_disabilities_in_war.pdf) accessed on 15.12.19.

<sup>7</sup>Art. 20 of the UNCRPD reads as, "Personal mobility: States Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities, including by: ( a) Facilitating the personal mobility of persons with disabilities in the manner and at the time of their choice, and at affordable cost; ( b) Facilitating access by persons with disabilities to quality mobility aids, devices, assistive technologies and forms of live assistance and intermediaries, including by making them available at affordable cost; ( c) Providing training in mobility skills to persons with disabilities and to specialist staff working with persons with disabilities; ( d) Encouraging entities that produce mobility aids, devices and assistive technologies to take into account all aspects of mobility for persons with disabilities. Art. 26 of the UNCRPD states that, "Habilitation and rehabilitation: 1. States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes: ( a) Begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths; ( b) Support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities, including in rural areas. 2. States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services. 3. States Parties shall promote the availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation. The full text of the Convention is available at <https://www.un.org/disabilities/documents/convnetion/convopprot-e.pdf> accessed on 1.12.2019.

<sup>8</sup>The Charter on Inclusion of Persons with Disabilities in Humanitarian Action was launched at 2016 World Humanitarian Summit 2016 by the multi stakeholders like Coalition of Member States, UN Agencies, Organisation of Persons with Disability, International Organisation, Civil Society Organisation etc. The five-core principle which are identified by the members are (i) non-discrimination; (ii) participation; (iii) inclusive policy; (iv) inclusive response and services; and (v) cooperation and coordination. The Charter was endorsed on 31<sup>st</sup> May 2017. To view the full text of the agenda visit [https://www.agendaforhumanity.org/sites/default/files/resources/2017/Aug/AP-DisabilityCharter\\_2.pdf](https://www.agendaforhumanity.org/sites/default/files/resources/2017/Aug/AP-DisabilityCharter_2.pdf) accessed on 14.12.2019. The Charter reaffirms to take all measures to meet their essential needs, safety and respect for the dignity of the persons with disability in situation of risk, ensures that persons with disability will have access to humanitarian response without any discrimination, includes that those who have long term physical, psychological, intellectual/sensory impairment as disabled. The full text of the Charter is available at <https://humanitariananddisabilitycharter.org/wp-content/themes/humanitarian-disability-charter.org/pdf/charter-on-inclusion-of-persons-with-disabilities-in-humanitarian-action-pdf> accessed on 14.12.2019

<sup>9</sup>The IHL treaties that prohibits usage of certain weapons are Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1977; Convention on the Prohibition or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be excessively Injurious or to have Incriminate Effects and its Additional Protocols I,II, and III, 1980; Convention of Cluster of Munitions.

## CONCLUSIONS

The UNCRPD eventually imposes the obligation on the State Parties to ensure the safety and protection of the persons with disabilities during the risk situations like armed conflicts, humanitarian emergencies etc. The rights and obligation entrusted under Art. 11 of the UNCRPD shall not be suspended even by the human rights emergencies like ICCPR. But, it stresses the importance of maintenance of rights of the persons with disabilities. In addition, the CRPD is unusual among the core human rights treaties in explicitly invoking humanitarian law alongside human rights law in armed conflicts.<sup>10</sup> Ivan K. Mugabi in his work interpreted that Art. 11 of the UNCRPD regarding the obligations of the State parties during armed conflicts arose from the IHL and IHRL.<sup>11</sup> Though the IHL and the UNCRPD is different from the threshold, the primary object of the both is to protect the rights of the persons with disabilities in armed conflict. Any inhumane treatment of the persons with disabilities will result in serious violations of the IHL and amounts to international crimes as Crimes against Humanity. To check out such violations, the IHL and the UNCRPD has taken effective measures to serve the needy. By complementing each other in protecting the rights of the persons with disabilities during armed conflicts, the IHL and the UNCRPD are taking efforts to include their participation in humanitarian actions. The ICRC is committed to this aim in its own humanitarian activities and it stands ready to constructively engage with other stakeholders in this regard.<sup>12</sup>

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<sup>10</sup>Naomi Hart, Mary Crock, Ron Mccallum and Ben Saul 2014, "Making Every Life Count: Ensuring Equality and Protection for Persons with Disabilities in Armed Conflicts", *Monash University Law Review*, Vol.40, No.1, pp.148-174. The full volume of the article is available at [https://www.onash.edu/ data/assets/pdf\\_files/0011/139835/mccallum.pdf](https://www.onash.edu/ data/assets/pdf_files/0011/139835/mccallum.pdf) accessed on 23.11.2019.

<sup>11</sup>Ivan K. Mugabi 2018, "An Analysis of the Adequacy of Protection Afforded by the Convention on the Rights of Persons with Disabilities (CRPD) in Situations of Armed Conflict", *Societies* Vol.8, No.28, doi:10.3390/soc8020028, pp. 2-43. The full text of the article is available at [www.mdpi.com/journal/societies](http://www.mdpi.com/journal/societies) accessed on 20.11.2019.

<sup>12</sup>Report of the International Committee of the Red Cross on the theme, "How Law Protects the Persons with Disabilities in Armed Conflicts" the full report is available at <https://www.icrc.org/en/document/how-law-protects-persons-disabilities-armed-conflicts> accessed on 23.11.2019.