

Written and customary provisions relating to the conduct of hostilities and treatment of victims of armed conflicts in ancient India

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INTRODUCTION

Two thousand years before Grotius, Rachel, or Ayala recalled Europe to humanitarianism, ancient Indians had a body of rules for governing the relations between the States of the sub-continent in the event of armed conflicts. According to Professor A. L. Basham:

“...in no other part of the ancient world were the relations of man and man, and of man and the state, so fair and humane... No other ancient law-giver proclaimed such noble ideals of fair play in battle as did Manu. In all her history of warfare Hindu India has few tales to tell of cities put to the sword or of the massacre of non-combatants. The ghastly sadism of the Kings of Assyria, who flayed their captives alive, is completely without parallel in ancient India. There was sporadic cruelty and oppression no doubt, but in comparison with conditions in other cultures, it was mild. To us the most striking feature of ancient Indian civilization is its humanity.”¹

The Hindus gave no special name to humanitarian law. In Sanskrit there is no term equivalent to *strictissimi juris* for dissociating positive

¹ A. L. Basham, *The Wonder That Was India* (1981), p. 8.

law from ethical and religious ideals. Ancient Hindu law was founded on the social and sociological concepts of a pastoral people, and was necessarily influenced by the theological tenets and philosophical theories of the Vedic Aryans. Ancient Hindu law is therefore an admixture of religion and ethics with legal precepts.

The Hindus preferred to base the rules relating to interstate relationships on *dharma*, as the sheet anchor of common humanity. *Dharma* pervades Hindu philosophical thought and social structure. It is an expression of wide import and refers to the aggregate of religious, moral, social, and legal duties and obligations. Law is a branch of *dharma*, called *dharmashastra*.

SOURCES OF HINDU HUMANITARIAN LAW

1. Srutis

Sruti literally means “which is heard”. For the ancient Hindu, law was a Revelation, immutable and eternal. Hindu sages are believed to have attained such great spiritual prowess that they could communicate directly with God, and God had revealed the sacred law to them. That revelation is contained in *Srutis*: the four *Vedas* — *Rig*, *Yajur*, *Sama*, and *Atharva* — and their respective appendices, the *Brahmanas*. The approximate Vedic period is 4000 to 1000 BC.

2. Smritis

Smriti literally means “what has been remembered”. *Smritis* are based on the recollections of sages, who were the repositories of the sacred Revelation. They are divided into *Dharmasutras* and *Dharmashastras*, or earlier and later *smritis*.

- a. *Dharmasutras* expound on the *Vedas* and deal with the duties of men in their various relations. They refer to many previously existing, unrecorded customs making up the rules of law and set forth jurisprudential concepts. They bear the names of their authors, known as *Dharmasutrakars*; of greatest significance are Gautama, Baudhayana, Apastamba, Harita, Vasistha, and Vishnu.
- b. *Dharmashastras* consist of *Acharya* and *Prayashchitta* (rules for religious observance and expiation), and *Vyavahara* (civil law).

- c. *Manu Smriti*² has always been considered the supreme authority. Compiled around 200 BC, it is divided into twelve chapters and has 2,694 verses. A number of commentaries have been written on Manu Code.
- d. *Yajnavalkya Smriti* is based on Manu Smriti, but is more logical and synthesized.
- e. *Narada Smriti* emphasizes that custom overrides any text of law.
- f. *Puranas*, a compendium of legends and religious instructions, are, according to Professor Derett, “unquestionable *dharmashastra* material”.³ There are 18 chief *Puranas*, of which the better known are the *Vayu, Vishnu, Aqni, Bhavisya, Bhaqwatta, Marsya, Kurwa, and Markendeya Puranas*.
- g. *Upanishads*, 112 speculative and mystical scriptures of Hinduism, are best known for their doctrine of *brahman*, the ultimate and universal reality of pure being and consciousness, and the identification of *brahman* with *atman* (the inner self, or soul), by whose realization man transcends joy, sorrow, life, and death, and is wholly freed from transmigration.

3. Digests and commentaries

They cover the period from 700 AD to 1700 AD

² *Manu* in Sanskrit means “man”, and in Hindu legend refers to 14 progenitors, each ruling the world for one *manavantara*, or 4,320,000 years. The first *Manu* was called *Swayambhuva*, son of the self-existent. According to the *Mahabharat*, this *Manu* wrote the renowned *Manu Smriti*. It is said originally to have consisted of 100,000 verses. Modern scholars have dated *Manu Smriti* between 600 BC and 300 AD. It contains rules on the observance of ceremonies and rituals, and on moral and social instruction.

Vaivasvata, son of the Sun, the *Manu* of the present age, is the 7th *Manu*. Hindu legend, whose different versions are to be found in *Mahabharat*, depicts him as the hero, the Noah of the Hindu story of the flood.

Of the many English translations, “The Laws of *Manu*”, vol. XXV of the *Sacred Books of the East*, ed. F. M. Muller (1886), is quite significant. Chapters and verses are referred to in the traditional way.

³ J. D. M. Derett, *Religion, Law, and State in India* (1968), p. 99.

In *Ganga Sahai v Lekhraj Singh*, [1866] 9 I L R (All) 253, the Allahabad High Court “reckoned” that the *Puranas* are “a supplementary to the scriptures, and as such, constitute a fifth Veda”.

See M. N. D. Shastri, *Agni Purana: A Prose English Translation* (1967), and *Ancient Indian Tradition, Mythology Series* (1970), several volumes, for texts of the *Puranas*.

4. Custom

The essential attributes of custom are that it must be ancient, reasonable, must have been observed continuously, and must be indisputable.

5. The epics

The epic literature of the *Mahabharat* and *Ramayan* are of considerable importance for humanitarian law because the references to the precepts of war, the means of warfare, and the treatment of combatants and non-combatants bear a startling resemblance to the modern concepts enunciated in the Geneva Conventions and their Additional Protocols.

The *Mahabharat*,⁴ written by the ancient sage Vyasa (c. 200 BC), is the account of a dynastic struggle between two cousins, the Pandavas and Kauravas, which culminated in the battle of Kurukshetra (c. 900 BC). On the battlefield, Arjuna, the third of the five Pandava brothers, is overcome with anguish when he sees in the opposing army many of his kinsmen, teachers, and friends. Krishna, the charioteer, reveals himself as the incarnation of the God Vishnu, and in the exalted *Bhaqvd Gita* persuades Arjuna to fight by instructing him in spiritual wisdom and the means of attaining union with God. The twelfth book of the *Mahabharat*, known as *Shanti Parva*, is a collection of many disparate passages on statecraft and human conduct.

The *Ramayan*,⁵ by the sage Valmiki (c. 300 BC), also contains passages on statecraft and warfare. Like the *Mahabharat*, it incorporates material from Vedas, and it narrates the adventures of Ram, the seventh incarnation of Vishnu. Ram was deprived by guile of the throne of Ajodhya and forced into long exile with his wife Sita and brother Lakshman. Ravan, the demon king of Lanka, infatuated with Sita, abducts her. Ram makes an alliance with the monkey king Sugriv and his general Hanuman (monkeys are to be rationalized as aborigines)

⁴ For an English translation, see P. C. Roy, *The Mahabharata*, 11 vols. (1919-1935). Citations are from the *parvas* (parts), chapter and verse.

A new English translation in several volumes is by J. A. B. van Buitenen, *Mahabharata*, University of Chicago Press. Vols. 1 (1973), 2 (1975), 3 (1978), cover only up to the 4th book of *Mahabharat*.

⁵ For an English translation, see N. Raghunathan, *Srimad Valmiki Ramayanam*, 3 vols. (1981-1982). References are to *kanda* (part), chapter and verse.

A new English translation in several volumes is being published by the Princeton Library of Asian Translations under the general editorship of Robert P. Goldman and with the title *The Ramayana of Valmiki — An Epic of Ancient India*. Vols. 1 (1984) and 2 (1986) cover only up to the 2nd part of *Ramayan*.

and fights a mighty battle in Lanka to recover Sita. Eventually he is restored to his rightful throne.

6. Arthashastra and other political texts

No general survey of the sources of Hindu law can omit the Arthashastra of Kautilya, also known as Chanukya or Vishnugupta. This masterly treatise on ancient Indian polity deals, *inter alia*, with rules relating to the conduct of war.

CONDUCT OF HOSTILITIES

1. Jus in bello

Humanitarianism raised the laws of warfare in ancient India to such a high level that the distance of centuries vanishes in the mist of time. While humanitarianism contributed to the high order of interstate relations and international custom, chivalry ennobled the ideal of warfare and its practice in general conformed to that lofty ideal. Humanitarianism of the laws regulating wars in ancient India has been succinctly explained by Prof. Basham:

For (the more orthodox texts), the major motive of war is glory, not gain. War is not merely a means to an end, but part of the warrior's dharma and good for its own sake... Rules of fair fighting are laid down. For the later sources, such as Manu, a battle was ideally a gigantic tournament with many rules... Homage and not annexation was the right fruit of victory...

... the chivalrous rules of war, probably based on very old tradition, and codified in their present form among the martial people of Western India in post-Mauryan times, must have had some effect of mitigating the harshness of war for combatants and non-combatants alike. It is doubtful if any other civilization set such humane ideals of warfare.⁶

The underlying rationale of international humanitarian law, by which the rigours of wars have been to a large extent mitigated, is also reflected in the *Mahabhart*. In words reminiscent of the Martens Clause, Bihsma counsels abstention from fruitless acts of hostility, insolence,

⁶ *Supra* no. 1, p. 127.

and haughty speech, and he recommends humane treatment of the conquered.⁷

The idea that men are the work of one Creator and that they are all His children was propounded in the *Upanishads* and gradually led to better treatment of the conquered by the conqueror.

In the *Ramayan* one notices that the laws of war were humanized. War was a game to be fought fairly. The rule of the game was chivalry and not chicanery. Soldiers fought with arms and not by resorting to stratagems. Hanuman had sought Sita's permission to slay the female slaves who had tormented her during her captivity by Ravan. Sita advised Hanuman to forgive those guilty of iniquitous acts. It was proper to show compassion, even to those who deserved chastisement and extirpation.⁸

The *Puranas* reiterate the laws enunciated in the *Dharmasutras* and epics. Laws of war humanized conflict, and people were advised to show kindness to their enemies. In a style typical of Rousseau, they stated that the aim of an armed conflict was not unnecessary slaughter but to attain success in the war with as little oppression as possible. The *Siva*, *Brihadharma*, and *Padma Puranas* enumerated the protected persons who could not be killed.

2. Military Objects

The ancient Indians made a distinction between military objects that could be the target of attack and non-military objects that could not be attacked. Places of religious worship, houses belonging to persons who were not participating in the war, or property that was not in the possession of armed forces could not be attacked or destroyed, in accordance with recognized custom and spiritual texts. Warfare was, as a rule, confined to combatants. Consequently, the objects of attacks were the armed forces wherever they existed, and neither cities nor towns were allowed to be ravaged during the war or even while the armed forces were marching through.⁹

Dharmayudha, the Hindu conceptualization of "just war", was, according to the *Agni Purana*, to leave the fruit and flower gardens, temples, and other places of worship unmolested.

Megasthenes, the Greek ambassador of Seleucus Nicator at the Court of Chandragupt Maurya at Pataliputra, chronicled:

⁷ *Santi Parva*, 102.34-38.

⁸ *Yuddhakanda*, p. 116.

⁹ N. Singh, *India and International Law*, vol. 1 (1973), pp. 72 ff.

*Whereas among other nations it is usual, in the contests of war, to ravage the soil, and thus reduce it to an uncultivated waste, among Indians on the contrary, by whom husbandmen are regarded as a class that is sacred and inviolable, the tillers of the soil, even when the battle is raging in their neighbourhood, are undisturbed by any sense of danger, for the combatants of either side in waging the conflict make carnage of each other but allow those engaged in husbandry to remain quite unmolested. Besides, they neither ravage an enemy's land with fire, nor cut down its trees.*¹⁰

A millennium later, Hiuen Tsang recorded: “Petty rivalries and wars were not infrequent, but they did little harm to the country at large”.¹¹

The distinction made between civilians and belligerents bears a surprising similarity to Articles 48, 51 (1), and 52 (1 and 3) of Additional Protocol I.

3. Instruments of Warfare

The military literature of ancient India is full of detailed descriptions of the weapons used in ancient warfare. The weapons consisted of *Astra* and *Sastra*. The former were thrown by means of charms, machines, or fire. They were charmed or tubular. The latter were weapons which could inflict cuts.

The *Rig Veda* refers to *Prajanya*, the celestial arrow with an iron head dipped in poison. *Mahabharat* refers to clubs, iron balls, rocks, *sataqhnis*, darts, maces, spiked bludgeons, scimitars, lances, mallets, axes, *kampanas*, swords, nails, short clubs, battle axes, razors, arrows with bone tips, discs, snake-headed shafts, and spears. Reference is also made to *Bharqava*, weapons which shot millions of sharp blazing arrows resembling snakes, probably venom-tipped. There are also references to *aqnibana*, arrows whose heads were wrapped in a combustible substance and set on fire, *Asani* and *Vajra*, meaning “lightning” (apparently some electric energy was generated from them), and *Sam-mohan bann* which rendered those it struck unconscious.

The *Atharva Veda* refers to enchantment as a means of winning battles. *Mantra Yudha*, viz. imprecations directed against a hostile enemy, a charm to ensure victory in war, a talisman to check the

¹⁰ See J. W. McCrindle, *Ancient India as described by Megasthenes* (1926), p. 33.

¹¹ Quoted in S. V. Viswanatha, *International Law in Ancient India* (1925), p. 18.

advance of a hostile enemy, a hymn of war drums for victory, an incantation to render poisoned arrows innocuous, or a spell for the destruction of the enemy, had its place in ancient warfare too.

According to *Manusmriti*: “When he (the king) fights with his foes in battle, let him not strike with weapons concealed (in wood), nor with (such as are) barbed, poisoned, or the points of which are blazing with fire”.¹² In a similar way, Yajnavalkya proclaims that he who kills his opponents in war with weapons, carried openly, not covered or disguised, goes to heaven like ascetics.¹³ In prohibiting the use of concealed weapons the *Dharmashastras* apparently enjoin the carrying of weapons openly and not surreptitiously, a requirement of Article 13 (2) (c) of the First and Second Geneva Conventions, and Article 4A (2) of the Third.

This principle is also found in *Mahabharat*.¹⁴

The *Puranas* refer to certain hyper-destructive weapons such as *Brahmastra* and *Pasupatastra*. Lakshman in *Ramayan* and Arjun in *Mahabharat* were prevented from using them because they could cause indiscriminate loss of life.

4. Combatants and non-combatants

The distinction made between combatants and non-combatants in modern humanitarian law was recognized by the ancient Hindus.

Killing a foe in war was holy, righteous, and lawful. Gautama's *Dharmasutra* provides: “No sin (is committed) by injuring or slaying (foes) in battle”.¹⁵ Dying a hero's death was the highest honour for a Kshatriya (a member of the Hindu royal and warrior caste). Manu stated: “Those kings who, seeking to slayeth other in battle, fight with the utmost exertion and do not turn back, go to heaven”.¹⁶

Immunity from killing was given to some protected persons on grounds of humanity and justice. As the idea of fair fighting existed, enemies in war were to be defeated in open conflict.

Those who were incapable of protecting themselves or who were incapacitated were to be spared. In prohibiting killing in the following cases, Manu recognized the contemporary concept of *hors de combat*:

¹² *Manu Smriti*, 7.90.

¹³ *Yajnavalkya Rajadharma Prakaranam*, pp. 322-3.

¹⁴ *Shanti Parva*, 11.3.

¹⁵ *Sacred Books of the East*, vol. II (1876), 10.17.

¹⁶ *Ibid.*, 7.89.

Let him not strike one who (in flight) has climbed on an eminence, nor a eunuch, nor one who joins the palms of his hands (in supplication), nor one who (flees) with flying hair, nor one who sits down, nor one who says 'I am thine';

Nor one who sleeps, nor one who has lost his coat of mail, nor one who is naked, nor one who is disarmed, nor one who looks on without taking part in the fight, nor one who is fighting with another (foe);

Nor one whose weapons are broken, nor one afflicted with (sorrow), nor one who has been grievously wounded, nor one who is in fear, nor one who has turned to flight.¹⁷

According to Gautama it was sinful to kill:

... those who have lost their horses, charioteers, or arms, those who join their hands in (supplication), those who flee with flying hair, those who sit down with averted faces, those who have climbed (in flight) on eminences or trees, messengers, and those who declare themselves to be cows or Brahmanas.¹⁸

Vridha-Harita exempted spectators from killing.¹⁹

Sankha, Yajnavalkya's commentator, states that one soldier should not kill another while the latter is drinking water, eating his meals, or taking off his shoes; nor should one kill a woman, a female elephant, a charioteer, a bard, or a Brahman; nor should one who is not a king kill one who is a king.²⁰

Baudhayana added:

those who are in fear, are intoxicated, insane or out of their minds, (nor with those) who have lost their armour, (nor with) women, infants, aged men, and Brahmanas.²¹

For Apastamba:

The Aryas forbid the slaughter of those who have laid down their arms, of those who (beg for mercy) with flying hair or joined hands, and of fugitives.²²

¹⁷ *Ibid.*, 7.91-93.

¹⁸ *Ibid.*, 10.18.

¹⁹ 7.216, quoted by P. V. Kane, *History of Dharmashastra*, vol. III (1973), p. 208.

²⁰ *Ibid.*, p. 210.

²¹ *Sacred Books of the East*, vol. XIV (1882), I.10.18,11.

²² *Ibid.*, Vol. II, II.5.10,10-11.

The *Mahabharat* made it a sin to kill one not actively engaged in combat. The episode of Srutayudha makes it clear that one who killed a non-combatant would incur an eternal curse. Srutayudha had made a mace which, if used against a non-combatant, would kill the user. He had hurled it against Janardana, who was not engaged in the fighting, and so it boomeranged and killed Srutayudha.

War, according to the *Mahabharat*, was a manly sport in which people were eager to display their prowess. The *dharma* of the Kshatriya was to fight and maintain law and order. War was to be waged according to the rules, fairly and not deceitfully. Bhishma lays down the principle of the fair fight:

A Kshatriya must not put on armour for fighting a Kshatriya unclad in mail. One should fight one — and abandon the opponent when the latter becomes disabled and to fight an army clad in armour by putting on armour ... one should not on horseback proceed against a car warrior. A car warrior is to proceed against a car warrior. Neither poisoned nor barbed arrows should be used. These are instruments of the wicked. One should fight righteously without yielding to wrath or being fond of unnecessary slaughter. The righteous should always act righteously towards those who are righteous. Even he that is wicked should be subdued with fair means. It is better to lay down life itself in observance of righteousness than win victory by sinful means.²³

Fair fight was *Sanmukha Yudha*, that is, to fight openly face-to-face and not strike from behind.

War being an act of heroism, in the *Mahabharat* it is a sin to fight a fugitive or the unarmed. Karna exclaimed:

Brave warriors that are observant of the practice of the righteous never shoot their weapons at persons with dishevelled hair, or at those that have turned their faces from battle or at a Brahmana or at him who joins his palms, or at him who yields himself or beggeth for quarter or one who has put his weapons or whose arrows are exhausted or at one whose armour is displaced or at one whose weapon has fallen off or broken.²⁴

²³ *Shanti Parva*, 95.6-16.

²⁴ *Karna Parva*, 90.109-110.

Bhishma's attitude towards the rules of war was that:

*No one should slay those that are asleep, or thirsty, or fatigued or those whose accoutrements have fallen away or one that has set his heart on final emancipation or one that is flying away or one that is walking (unguarded) along a road or one engaged in drinking or eating or one that is mad, or one that is insane or one that has been wounded mortally or one that has been exceedingly weakened by his wounds or one that is staying trustfully or one that has begun any task without having been able to finish it, one skilled in special art or one that is in grief or one that goes out of the camp for gathering forage or fodder or men who set up camp or camp followers or those that wait at the gates of the king or his ministers, menials or army chief or chief of the servants.*²⁵

The *Siva, Padma, and Brihaddharma Puranas* reiterate the same categories of persons not to be killed, except that the last one adds to the list "one who is engaged in sexual intercourse".²⁶

In *Ramayan*, Lakshman is infuriated because the Indrajit fight incognito, and is about to massacre the Rakshasas. His brother Ram counsels him not to kill those who have retired from battle, hidden themselves, sought shelter, asked for mercy, become bewildered, and fled.

Again, when Vibhishan approached Ram seeking refuge, Sugriv, Ram's ally, advised against asylum, for Vibhishan could have been a fifth columnist of Ravan, or having left Ravan, could leave Ram also. Granting asylum, Ram exhorts:

O slayer of foes, even a wicked-minded enemy, if he, with folded palms, and a poor heart, craveth for thy shelter, should not be slain. If an enemy, proud or terrified seeketh shelter in fight, he should be saved by a great man even at the risk of his own life. One who from fear, ignorance, or wilfully doth not project him who seeketh his shelter perpetrateth a mighty iniquity, blamed by all. When a person is slain before him whose shelter he hath taken he taketh away all the virtues of his protector. So great is the sin in not affording shelter unto those who seek for it, it standeth in the way of heaven, bringeth in calumny and destroyeth the strength and prowess. I shall, therefore, follow the excellent

²⁵ *Shanti Parva*, 100.27-29.

²⁶ *Ibid.*, 62.56-59.

*words of Kundu — leading to piety, fame, and heaven. I always declare ‘no fear’ unto all creatures, whenever any person approaching me says, ‘I am thine’ and seeketh my shelter. O Sugriva, do thou soon bring him here — whether he be Ravana or Vibhishana.*²⁷

Ancient treatises on political science have the same mandates. The *Sukraniti* in addition enjoins that:

the old and the youngsters should not be slain and so also it is not proper to kill the woman or only the king.²⁸ Even the down-to-earth pragmatist Kautilya pleads that “when attacking the enemy’s camp, they should show safety to those fallen down, those turning back, those surrendering, those with loose hair, those without weapons, those disfigured by terror and to those not fighting.”²⁹

From the above discussion, it is thus clear that the parties to the armed conflict were not entirely free to choose the means and methods of warfare. In terms identical to the requirements of Article 22 of the 1899/1907 Hague Convention, Article 12 of the First and Second Geneva Conventions, and Articles 35 and 41 of Additional Protocol I, the right to kill an enemy was conditioned by various restraints and many categories of persons could not be killed. Even the distinction between civilians and belligerents made in Article 23 of the 1899/1907 Hague Convention and Article 51 of Additional Protocol I was in practice in ancient India. The immunity of the Brahmins is identical to the protection afforded to religious personnel under Articles 24 of the First and 36 of the Second Geneva Conventions.

TREATMENT OF THE VICTIMS

1. Treatment of the sick and wounded

Persons who were spared from being killed were either to be taken as prisoners or set free. In the *Puranas*, there are instances of humane

²⁷ *Yuddhakanda*, 18.27-34.

²⁸ *Ibid.*, 4.1177-1179.

²⁹ R. P. Kangle, *The Kautilya Arthashastra*, Part II (1972), 132.4.52.

treatment of enemies. Kalki entreated the widows of Mlechchas to desist from fighting. When they finally agreed, they were set free and proper arrangements were made for the funeral of their husbands.³⁰ Many men who surrendered their arms were reprieved and their lives spared.³¹

One of the duties of the infantry soldiers, according to *Agni Purana*, is to carry the dead and wounded from the battlefield to a place of safety. Warriors in chariots helped to carry the wounded.

In this publication, which commemorates the 125th anniversary of the 1864 Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field, it is significant to note that the ancient Indians had provided for the prompt treatment of the wounded and sick on the battlefield. There is evidence that a medical corps was present. In the *Mahabharat*, it is stated that physicians, markets, conveyances, oxen, machines, arms, and prostitutes accompanied the army. The *Bhishma Parva* states that doctors well versed in extracting splinters of arrow-heads from the body approached with their instruments to extract darts from the Bhishma's body.

In formulating the marching lines of the army, Kautilya proposed: "Physicians with surgical instruments, blunt instruments like (tweezers), medicines, curative oils and bandages in their hands and women (nurses) looking after the food and drink of the army should stand behind the soldiers uttering encouraging words."³²

The requirement that the auxiliary corps "should stand behind the soldiers" suggests that they, including the medical corps, were positioned in a place of comparative safety and not exposed to the dangers of war. "Women ... uttering encouraging words" implies that female nurses alleviated the suffering of the sick and wounded. The Red Cross spirit thus hovered over the battlefield.

In the spirit of Article 6 of the 1864 Convention requiring protection for and care of the sick and wounded, the *Mahabharat* enjoined compassion towards a wounded enemy. This was prompted by humane motives. A wounded foe was either to be sent home or, if he was taken prisoner, his wounds were to be carefully tended by skilful surgeons. Bhishma in this context commanded: "When in consequence of a quarrel between righteous kings, a righteous warrior falls into distress, his wounds should be attended to and when cured he should be set at liberty. This

³⁰ *Kalki Purana*, pt. 3, ch. 1.

³¹ *Matsya Purana*, 59.113.

³² 10.3.47. See also Kane, *op. cit.*, p. 208.

is the eternal duty.”³³ Protection was afforded to a “righteous warrior”, i.e. one who was fighting according to the laws and not one who was engaged in *Kutayuddha*, i.e. a war fought disregarding the laws. This is similar to Article 13 of the First and Second Conventions, which qualifies as “protected persons” those who carry arms openly and conduct operations in accordance with the customs and laws of war. Likewise, the repatriation of the sick and wounded is similar to Article 6 of the 1864 Convention, and the carrying of wounded to safety like Article 15 of the First Convention.

2. Prisoners of War (POWs)

The practice of taking POWs existed in India, and the treatment granted them was generous and humane. According to the *Mahabharat*: “Enemies captured in war are not to be killed but are to be treated as one’s own children.”³⁴

During the Vedic times, the *Dasyus*, or aborigines, were made slaves if taken prisoner. In classical Sanskrit *dasa* means “bondsman”, while the feminine form, *dasi*, is used in the sense of “slave girl”. In the *Rig Veda* these words were used in this sense. Though many of the vanquished aborigines were enslaved, some seem to have come to terms with the conqueror and one *dasa* chief is mentioned as following Aryan ways and patronising the brahmanas.³⁵ According to the *Mahabharat*, a vanquished person should be the victor’s slave, and captives will serve the master until ransomed.

The Puranas also mention POWs being taken as slaves. Even women were captured and enslaved. In referring to slaves in ancient India, one should bear in mind that *dharma* did not recognize slavery. Indeed, Megasthenes wrote that there were no slaves in India. Their treatment as depicted in *Arthashastra* was not the same as in ancient Rome or Greece. Slaves in ancient India were not Aryans, yet had the protection of religion and law. Enslavement was more a type of captivity.

In the later days, POWs were taken as slaves to be released when the war ended. The *Agni Purana* enjoined the monarchs to abstain from taking captives and declared: “A king should treat a prisoner of war ransomed and liberated as his own begotten son. A defeated army should not be fought again ... The wives of the defeated king do not

³³ *Shanti Parva*, 95.13-14.

³⁴ *Ibid.*, 102.32.

³⁵ See S. Puggot, *Prehistoric India* (1950), p. 155.

pass to the victor. Of the five means of appeasing the wrath of a strong adversary by gifts, the fifth one is setting at liberty prisoners captured in war.”³⁶

According to the *Mahabharat*, female POWs were induced to marry someone of the victor’s choice. If they declined they were sent back to their homes under escort.

Kautilya advised that all POWs should be released.

3. Enemy occupation

The position of *Dharmashastras* on enemy occupation was made clear by Yajnavalkya: “Whatever is the king’s duty towards his own subjects in his ancestral realm, the same obligation in its entirety devolves on him when he makes himself master of another kingdom. After the conquest is completed, he must maintain intact the practices, contracts, and family traditions of that country.”³⁷

The *Mahabharat* enjoined: “The victor should protect the land newly conquered from acts of aggression. He should not cause his troops to pursue too much the routed foe.”³⁸

If the people did not submit and resisted the conqueror no consideration was to be shown. *Levée en masse*, however, was allowed only in exceptional circumstances.

For Manu, the purpose of war was not territorial expansion but to establish mutual assistance, goodwill, and to gain an ally. Therefore, he advised the conqueror to install a new king following the conquest, to respect the local laws, religions, and customs, and “to make authoritative their (conquered) laws as declared”.³⁹

Arthashastra is permeated with the international consciousness of that age, and exhorts the king not to “covet the land, property, sons, or wives of the slain one”.⁴⁰

Kautilya suggests consolidation through conciliation in administration of the conquered territory.

³⁶ 236.61-65.

³⁷ 1.342-343.

³⁸ *Shanti Parva*, 100.273.

³⁹ 7.203.

⁴⁰ 7.16.26-30.

CONCLUSION AND APPRAISAL

"The past can never be effaced since the recollection of it is an element in shaping the future," declared James Bryce. Without access to the grassroots of a civilization one remains only at the mercy of hope. An enquiry into the past gives an insight into the ethos of a society and the psychology of its people. International humanitarian law has been an ever-growing discipline. In applying existing humanitarian law and shaping and developing it, in making potential law viable, a study of the traditional values of any constituent society is necessary.

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