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IMPLEMENTATION OF INTERNATIONAL HUMANITARIAN LAWS IN INDIA

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Abstract:

India, an original voice within the post-war international order and a committed upholder of humanitarian values, is a case study in the domestic implementation of International Humanitarian Law (IHL). With a robust architecture on paper, including enabling legislation and military doctrine, the alignment of IHL principles into coherent practice, particularly in non-international armed conflicts (NIACs) on its territory, reflects strong challenges. This paper, from the perspective of a law student struggling with theoretical inclinations and ground realities, critically examines India's experience with IHL. It examines the legislative architecture, institutional arrangements, judicial interventions, and persistent gaps in terms of basic principles like distinction, proportionality, and humane treatment. The analysis highlights the tension between security imperatives and humanitarian commitments, the impact of colonial legacies in counter-insurgency doctrine, and the need for judicial oversight. The paper argues that India possesses the foundational instruments for IHL compliance. Still, enhanced political will, doctrinal clarity, institutional strengthening, and a deeper integration of humanitarian principles into security operations are necessary in bridging the implementation gap and solidifying its commitment to the laws of armed conflict.

Keywords: International Humanitarian Law, IHL Implementation, India, Geneva Conventions, Non-International Armed Conflict, Distinction, Proportionality, Human Rights, Counter-Insurgency, Armed Forces (Special Powers) Act.

I. Introduction: A Legacy of Advocacy Meets Domestic Complexities

India came onto the world stage in the mid-20th century not only as a newly independent state but as a vocal advocate of peace, decolonization, and the humanitarian principles embodied in the newly codified laws of war. Its leaders, sensitive to the atrocities of war, played a key role in determining the discourse that led to the adoption of the four Geneva Conventionsⁱ of 1949. India signed these foundation treaties in 1949 and ratified them in 1950, marking its early adherence to the international humanitarian endeavour. Subsequently, it acceded to the Additional Protocols in September 2008 (AP I) and September 2008 (AP II)ⁱⁱ, further extending its treaty obligations, especially in relation to non-international armed conflicts.

This is a history that brings an expectation: a country so heavily engaged in the origin and development of IHL should, by default, excel in its implementation at home. Reality, however, is far more complex. India's modern security environment is not controlled by extensive international conflict, but by long-standing non-international armed conflicts (NIACs) – mainly in Jammu and Kashmir and some of the Northeastern states. These internal conflicts, often marked by asymmetric warfare, insurgency, cross-border terrorism, and high levels of civilian presence in combat areas, pose the most challenging test of IHL implementation. The fundamental principles of IHL – distinction between combatants and civilians, proportionality in attack, precautions to avoid or limit civilian casualties, and humane treatment of all persons hors de combat – are subject to extreme pressure in such contexts.

The key question this paper tries to respond to is: How effectively has India translated its traditional international commitments and accommodative domestic legislation into consistent IHL compliance in armed conflicts, in particular the NIACs it faces? From the perspective of a student of law struggling with the abstractions of IHL in comparison with the prosaic realities of application, this question is critical. It involves an examination of the interplay between international commitments, domestic law, military culture, operational circumstances, judicial checks, and the ever-present pressures of internal security compulsions.

II. The Legislative Framework: Foundations and Gaps

India's main legislative instrument for giving effect to the Geneva Conventions and their Additional Protocols is the Geneva Conventions Act, 1960 (GCA)ⁱⁱⁱ. The Act performs several important functions:

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- **Penal Sanction for Grave Breaches:** Section 3 of the GCA criminalizes "grave breaches" of the Geneva Conventions as specified in the Conventions themselves (e.g., wilful killing, torture, extensive destruction of property that is not justified by the imperative of military necessity). They are an offence under Indian law.
- **Protection of the Red Cross Emblem:** Section 6 forbids the unauthorized use of the Red Cross emblem and similar signs.
- **Rule-Making Power:** Section 4 gives the Central Government the authority to formulate rules for the implementation of the purposes of the Act, although the power has been sparingly exercised in the main IHL implementation.

Strengths of the Framework:

- **Availability of Core Legislation:** The Geneva Conventions Act fills an essential legal gap by including principal IHL prohibitions in the domestic penal code.
- **Universal Jurisdiction (Limited):** Section 4(1) enables Indian courts to prosecute individuals, irrespective of nationality, for serious breaches outside India, following the Conventions' intent. Yet, practical implementation is practically non-existent.
- **Foundation for Military Law:** The GCA is the foundation on which military manuals and rules relating to IHL are established. The Indian Army Act, 1950^{iv}, and other service acts constitute the disciplinary framework for implementing IHL compliance in the services.

Major Gaps and Criticisms:

- **Limited Scope:** The GCA addresses only grave breaches relevant to International Armed Conflicts (IACs). It does not criminalise directly the breaches of common Article 3 of the Geneva Conventions or AP II, relevant to Non-International Armed Conflicts – exactly the conflicts that India typically faces. Even though Common Article 3 constitutes customary international law binding on all states and violations can be prosecuted under other sections of the Indian Penal Code (IPC)^v like murder or torture (Sections 302, 326, 330, 331), the lack of direct criminalisation of NIAC violations under the Geneva Convention Act is a serious legislative deficiency. It leaves scope for doubt and arguably diminishes the apparent gravity of such violations.
- **Lack of Additional Protocols I & II Integration:** The GCA has not been meaningfully revised to include the commitments under Additional Protocols I and II, ratified in 2008. Although the government claims that current laws are adequate, this leaves open the

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question of newer provisions, such as those on environmental protection or certain precautions in attack, enshrined in API.

- **Underuse of Rule-Making Power:** The legislative potential of Section 4 to create detailed implementing rules governing different aspects of the Conventions and Protocols is as yet mostly unrealised. This means that considerable operational details remain unaddressed in special legislation.
- **No Specialised International Humanitarian Law Court:** India does not have specialist courts or tribunals to hear IHL violations and instead relies on regular criminal courts or military courts-martial. This can affect specialisation and prioritisation.

III. Institutional Mechanisms: The National IHL Committee and Beyond

Recognizing that there was a need for a unified national effort, the Government of India established the National International Humanitarian Law Committee (NCT) in 2003. Its mandate is broad, including advising the government on action to adopt IHL, promoting the dissemination of IHL, facilitating cooperation with the ICRC, and reviewing domestic law to ensure conformity with IHL treaties.

Evolution and Activities:

The NCT was completely overhauled in 2020, shifting its administrative powers from the Ministry of Defence to the Ministry of Law and Justice, and expanding its membership to include members from various ministries (Home, External Affairs, Health, Education), the judiciary, military personnel, the National Human Rights Commission (NHRC), and academia. The initiative was aimed at making it a more holistic, whole-of-government process.

The NCT has played a central role in conducting seminars, workshops, and training sessions for different stakeholders, ranging from judges to the armed forces, police, and government officials. It has facilitated the translation of IHL texts into Hindi and other regional languages.

It serves as the official point of contact of the ICRC in India, facilitating dialogue and ICRC visits to prisons and dissemination sessions with security personnel.

Challenges Facing the NCT:

- **Limited Visibility and Transparency:** Much of the NCT's work goes below the public radar. Its agendas, meeting minutes, detailed recommendations to the government, and

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analysis of implementation problems are not regularly made public. This lack of transparency makes it difficult for academic scrutiny and public accountability.

- **Resource Constraints:** The extent of committed secretarial resources, finance, and human resources allocated to the NCT is not specified and could influence its capacity to undertake proactive, large-scale activities.
- **Effectiveness in Enforcement Gap:** While effective in promotion and coordination, the NCT lacks a specific mandate or powers to investigate alleged IHL violations or ensure compliance. Its role remains predominantly advisory and promotional. Bridging the gap between dissemination and effective battlefield compliance requires mechanisms beyond the NCT's current mandate.
- **Operational Impact:** There is little public evidence that demonstrates a direct causal link between NCT guidance and measurable changes in operational practice or law, particularly in the challenging NIAC environments.

Other Institutions:

- **Armed Forces:** The onus for the application of IHL in operations lies primarily with the military. All the services have manuals that include IHL principles. The Indian Army's "Law of Armed Conflict – India" (LOAC-India) handbook, though not publicly available in full, is reputed to be a comprehensive manual. IHL instruction is integrated into military education at various levels. How effective this training is in complex NIAC operations and how widespread it extends down to junior leaders and soldier levels on the ground remains difficult to judge from the outside.
- **Central Armed Police Forces (CAPFs):** The CRPF, BSF, and Assam Rifles are widely deployed in internal security operations, including counter-insurgency operations in J&K and the Northeast. While they receive some IHL and human rights training, the extent, continuity, and operational weaving of IHL principles into their operational doctrines and rules of engagement are areas that require significant strengthening. Their core governing statutes (e.g., CRPF Act, BSF Act) lack the thoroughgoing IHL framework that accompanies military law.
- **Judiciary:** The High Courts and the Supreme Court have a vital, though reactive, function through Habeas Corpus petitions and Public Interest Litigation (PIL) cases. They have interpreted constitutional fundamental rights (Articles 14, 19, 21) ^{vi}under IHL provisions, establishing significant precedents (explained below).

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- National Human Rights Commission (NHRC): Although it is primarily concerned with human rights, the mandate of the NHRC overlaps to a large extent with IHL in situations of armed conflict, especially regarding the right to life, torture, and disappearances. It examines complaints, makes recommendations, and undertakes inquiries, although it has no enforcement powers.

IV. The Crucible: Application of IHL in Non-International Armed Conflicts

India's most persistent IHL challenges arise in the context of NIACs in the Northeast and Jammu & Kashmir. These are situations in which state armed forces and CAPFs are confronted by organized Non-State Armed Groups (NSAGs). The principal areas of concern and practice are:

1. Principle of Distinction
 - Challenge: NSAGs tend to be secretive, inserting themselves among civilian populations, making it difficult to distinguish combatants from civilians. This puts enormous pressure and risk on security forces.
 - Practice: There is still the accusation that security forces fail to discriminate adequately, leading to civilian casualties in cordon-and-search, search operations, or in encounters. Incidents where individuals not directly participating in hostilities are killed, sometimes called "terrorists" retroactively, are of serious concern. The use of phrases like "overground workers" creates confusion regarding targeting status.
 - NSAG Violations: NSAGs regularly infringe on this principle in the most basic way by intentionally attacking civilians (e.g., attacks on buses, pilgrim convoys, migrant workers, political workers) and employing civilians as human shields, which are clear war crimes.
2. Principle of Proportionality and Precautions in Attack:
 - Challenge: Military operations in urban areas require utmost caution to prevent disproportionate harm to civilians in comparison to the expected military benefit.
 - Practice: Complaints are made regarding proportionality in the use of force, especially in operations with suspected militants in civilian homes or neighbourhoods. The deployment of heavy weapons such as mortars or grenades in populated areas has been criticized. Doubts are raised about whether all reasonable precautions (e.g., warnings, weapon selection, timing of attacks) are always taken to reduce civilian casualties.

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Operations such as "Operation All Out"^{viii} in Kashmir, which were successful in military terms, have been questioned for humanitarian effects.

3. Humane Treatment and Detention:

- Challenge: Securing humane treatment of detained combatants, suspects, and civilians in detention amid unstable conflict.
- Practice: This is arguably the area with the most persistent and serious allegations. Reports by national and international human rights organisations, as well as findings by the NHRC and judicial inquiries, have documented instances of:
 - Enforced Disappearances: Most common in the Northeast and Kashmir in the earlier decades, while the magnitude may have declined, instances keep coming up.
 - Extrajudicial Killings/False Encounters: Accusations that people are arrested and murdered in fabricated encounters instead of facing trial. Examples such as the Pathribal encounter (2000) and the recent Hyderabad encounter (2021) show the controversy and judicial intervention necessitated in such cases.
 - Torture and Ill-Treatment: Torture in custody by security forces and police is still common, employed to extract information or confessions. Deaths in custody under suspicious conditions are a frequent occurrence.
 - Arbitrary Detention: Application of preventive detention legislation such as the Public Safety Act (PSA) in J&K and the National Security Act (NSA) in the rest of India, routinely short-circuiting normal criminal procedure, resulting in long-term detention without trial. Critics charge that they are used disproportionately against political dissidents and militants as well.
 - Legal Framework: While the IPC criminalises murder and torture and the Armed Forces Special Powers Act (AFSPA)^{viii} stipulates the surrender of arrested persons to the police "with the least possible delay" (Section 5), accounts of non-compliance, tardy handovers, and lack of mechanisms for accountability for IHL violations are rampant. AFSPA's legal protection for acts done "in good faith" (Section 6) is controversial, seen as a barrier to accountability.
 - Access for Humanitarian Organizations: The ICRC operates in India under a 1992 Memorandum of Understanding (MoU) with the government. It visits individuals who are detained in connection with the conflicts in J&K and the Northeast, having private talks with the authorities on humanitarian matters. Access is generally given, but the extent and the likelihood of visiting all detention centres regularly, particularly those

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operated by intelligence agencies or in remote areas, are not easy. Access to conflict zones for independent observation is also limited.

V. Judicial Scrutiny: Navigating Security and Rights

The Indian judiciary, especially the Supreme Court, has been instrumental, although in a complicated manner, in interpreting constitutional rights in the context of armed conflict, frequently relying on IHL principles either implicitly or explicitly.

Naga People's Movement of Human Rights vs. Union of India (1998)^{ix}: This famous case established the constitutionality of AFSPA but set down important guidelines to avoid its abuse.

The Court ordered that:

- i. Arrested persons must be handed over to the nearest police station within 24 hours.
- ii. There should be a list of detained individuals forwarded to the local magistrate in 24 hours.
- iii. Each death caused by security forces in AFSPA areas must be reported to the local magistrate immediately, who will inquire into the cause of death.
- iv. Victims of excessive force have the right to compensation. This judgment was a significant step towards injecting due process and accountability into operations under AFSPA, aligning with IHL's call for humane treatment and investigation of violations.
- v. *Extra-Judicial Execution Victim Families Association (EEVFAM) vs. Union of India (2016)*^x: Coming to a PIL that accused Manipur of 1,528 extra-judicial executions, the Supreme Court gave a strong judgment affirming the rule of law in conflict areas. Major holdings were:
 - vi. Use of "excessive force" or "retaliatory force" that causes death is not allowed under AFSPA or under any law.
 - vii. All allegations of using excessive force to cause death must be investigated in depth.
 - viii. The immunity under AFSPA Section 6 does not give blanket immunity from prosecution; it only calls for prior sanction, and this should not be unreasonably withheld. The Court directed investigations by a Special Investigation Team (SIT) in certain cases. This judgment squarely addresses the culture of impunity and upholds the applicability of IHL principles such as proportionality and the obligation to investigate violations.
- Challenges of Enforcement: Even with these firm assertions, the actual enforcement of these judicial instructions is uneven. Delays in investigations, unwillingness to issue

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prosecution sanctions, challenges in collecting evidence in war zones, and intimidation of witnesses impede effective accountability. The judiciary frequently has difficulty making its orders effective on the ground.

VI. Enduring Challenges and the Implementation Gap

In spite of the legislative structure, presence of the NCT, military manuals, and judicial rulings, a wide gap continues to exist between IHL norms and operationality in India's theatres of conflict. The major reasons for this gap are:

- **The Pre-eminence of National Security Doctrine:** The prevailing discourse interprets internal conflicts overwhelmingly in terms of a national security paradigm, frequently subordinating humanitarian concerns secondarily. Counter-insurgency doctrines, at times perpetuating colonial legacies, have traditionally prioritised coercion and domination, with IHL rules viewed as impediments rather than organic elements of successful and legitimate operations. Changing this deeply entrenched mentality is a central challenge.
- **Legal Ambiguity and Gaps:** As explained, the lack of clear criminalization of breaches of Common Article 3 and AP II in the GCA, and the absence of detailed rules of implementation generate legal ambiguities. The persistence of AFSPA, and the perceived shield of immunity (even if qualified by the judiciary), provides a confusing signal of the state's commitment to accountability.
- **Accountability Deficit:** This is perhaps the biggest single barrier to efficient IHL implementation. Systems for inquiry into reported violations by official actors (military, CAPFs, police) are generally viewed as being less than independent, complete, and prompt.
- **Internal Mechanisms:** Court-martial proceedings against military personnel are usually faulted for being opaque and non-independent. Police inquiry into allegations against CAPFs or police themselves is plagued by credibility.
- **Prosecution Obstacles:** The necessity of advance government approval for prosecuting security officials under legislation such as AFSPA or CrPC provisions is a major obstacle, frequently resulting in inaction even when there is evidence. Refusal and delays in sanctioning are routine.
- **Witness Protection:** Proper mechanisms to secure witnesses in conflict zones are not in place, discouraging victims and witnesses from testifying.

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- **Training and Dissemination Shortcomings:** Training does exist, but its effectiveness, particularly for CAPFs and state police officers heavily engaged in NIACs, must be strengthened and localized on an ongoing basis for complex, high-risk scenarios. Training must be changed from theoretical knowledge to hands-on practice and stress-evoking ethical choices. Dissemination to non-state actors, a state obligation under Common Article 3, is nearly non-existent.
- **Political Will:** At the end of it all, there is a need for continued political will at the top to ensure consistent implementation of IHL. Prioritizing accountability, guaranteeing open investigations, law reform to plug loopholes, and continually asserting that IHL observance is not up for negotiation, even against enemies that disregard the law, calls for firm political leadership, which tends to crumble under security imperatives and domestic political dynamics.

VII. Pathways Towards Strengthened Implementation

Closing the IHL implementation gap in India involves a multi-faceted, long-term effort:

1. Legislative Reform:

Amend the Geneva Conventions Act (1960): Make serious breaches of Common Article 3 and Additional Protocol II criminal in domestic law. This eliminates uncertainty and raises the seriousness of NIAC breaches.

Review and Revise AFSPA: Repeal or significantly modify Section 6 (immunity clause). At least ensure that it is in line with the Supreme Court's interpretation in *EEVFAM*, making the sanction dependent on a prima facie determination that the act was in the lawful exercise of duty. Improve provisions for obligatory, independent inquiries into fatalities and injuries inflicted by security forces.

Improve CAPF Frameworks: Formulate clear guidelines merging comprehensive IHL rules of engagement and accountability measures for CAPFs involved in internal security operations, similar to military handbooks.

Utilise Rule-Making Power: The government should proactively use Section 4 of the GCA to issue detailed rules on the implementation of various aspects of the Conventions and Protocols.

2. Strengthen the NCT:

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Mandate and Resources: Provide the NCT with a clearer mandate that includes monitoring IHL compliance trends (without investigating specific cases) and making public recommendations. Allocate sufficient resources and permanent secretariat support.

Transparency: Release annual reports summarizing activities, conclusions, recommendations addressed to the government, and government reaction.

Operational Emphasis: Further intensify the NCT's interaction with operational commanders and CAPF leadership to convert dissemination into effective doctrine and training modifications.

3. Accountability Mechanisms:

Independent Investigations: Set up credible, independent, and time-bound mechanisms for investigations into allegations of IHL violations, especially deaths in custody and torture, involving retired judges or senior police officers from outside the conflict area. The Armed Forces Tribunal should be strengthened for military cases.

Prosecution Policy: Develop and transparently apply clear guidelines for granting prosecution sanctions, ensuring decisions are timely, reasoned, and subject to judicial review. Expedite trials in cases of alleged violations.

Strong Witness Protection: Establish an effective and comprehensive witness protection program designed specifically for war zones.

Compensation: Ensure consistent and adequate compensation for victims of IHL violations as a matter of right, not discretion.

4. Training and Doctrine:

Increased Training: Incorporate hands-on, scenario-based IHL training extensively and persistently across all ranks of military, CAPF, and police training, with a focus on ethical decision-making and violating consequences. Training needs to be assessed for its effectiveness.

Public Doctrine: Consider releasing a public version of the core principles within the military's LOAC-India manual to enhance transparency and public understanding.

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Doctrinal Integration: Secure full incorporation of IHL principles into counter-insurgency and internal security doctrines, going beyond tactical restraint to a strategic appreciation of IHL as a force multiplier to increase legitimacy and long-term stability.

Judicial Vigilance: The higher judiciary needs to keep playing its active role in enforcing fundamental rights and IHL norms through PILs, insisting upon strict adherence to its guidelines (e.g., Naga People's Movement, EEVFAM), and keeping the authorities on their toes regarding failures in investigations and prosecutions.

VIII. Conclusion:

Between Commitment and Compliance, India's engagement with International Humanitarian Law is characterized by a deep duality. Internationally, it is a regular champion, a signatory to treaties, and a country that contributed to the contemporary IHL structure. Internally, it has the basic legislative framework and institutional arrangements, at least in theory, to enforce the laws. The creation of the NCT and the liberal jurisprudence of the Supreme Court further attest to an appreciation for the significance of humanitarian norms. However, the lived reality in the conflict areas of Jammu & Kashmir and the Northeast indicates a pervasive and disconcerting disconnect between these assurances and the ground realities. The complexities of non-international armed conflict, the burden of national security compulsions, legal uncertainties (particularly regarding NIACs), and most importantly, a lack of genuine responsibility for violations create a situation where IHL norms are stretched, if not violated. Charges of indiscriminate violence, torture, extrajudicial executions, and arbitrary detention remain endemic, accompanied by investigations that are often substandard or inconclusive. The looming presence of legislation such as AFSPA, though judicially trimmed, still perpetuates an existence of impunity.

For a student of law who is surveying this scene, the verdict is clear: India possesses the tools and intellectual resources required to implement IHL effectively. The NCT, military manuals, and functioning judiciary provide a foundation. But tools alone are insufficient. What is required is a fundamental shift in the operational culture of security forces engaged in NIACs, from perceiving IHL as a constraint to embracing it as a vital component of successful, lawful, and ultimately winning operations. This entails unflinching political will to prioritize accountability over expediency, to close legislative loopholes, to provide the NCT with real teeth, and to ensure investigations into allegations of violations are swift, independent, and

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transparent. Training must break free of theory to in still humanitarian principles into the reflexes of every soldier and policeman.

The path forward lies not in abandoning security imperatives, but in recognising that sustainable security and lasting peace are inextricably linked to the rule of law and respect for human dignity, even – especially – amidst the fog of war. India's credibility as a global voice for humanitarian principles hinges on its ability to demonstrate that these principles are not merely professed abroad but are conscientiously, consistently, and accountably implemented within its borders. Bridging the implementation gap is not just a legal obligation; it is a moral imperative and a strategic necessity for a nation aspiring to global leadership founded on the very values IHL seeks to uphold. The tangled web can be unravelled, but it demands concerted effort, courage, and an unwavering commitment to the core humanitarian ideal: even wars have limits.

ⁱ The Geneva Conventions of 12 August 1949 (GC I, II, III, IV).

ⁱⁱ Geneva Conventions Act, 1960 (Act 6 of 1960), India

ⁱⁱⁱ 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.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977

^{iv} The Army Act, 1950 (Act 46 of 1950), India

^v The Indian Penal Code, 1860 (Act 45 of 1860), India.

^{vi} Bakshi, P.M. The Constitution of India. Universal Law Publishing Co., Latest Edition

^{vii} Kaul, Nitasha. India's Counterinsurgency Conundrum in Kashmir, *The Washington Quarterly*, 41:3, pp. 149–168, 2018

^{viii} Armed Forces (Special Powers) Act, 1958

^{ix} Naga People's Movement of Human Rights vs. Union of India, AIR 1998 SC 431.

^x Extra-Judicial Execution Victim Families Association (EEVFAM) vs. Bakshi, P.M. The Constitution of India. Universal Law Publishing Co., Latest Edition