

WAR CRIMES IN AFGHANISTAN

War crimes are identified with violations of the law of war at the time of armed conflict. It is an extensive concept and if any harm is caused to mankind during peacetime, it is regarded as a war crime. Any kind of infringement of human rights falls under war crimes. The suffering of Afghans was ignored by the world for a couple of decades but what is not acceptable is that Afghanistan's government is doing the same. Afghanistan does not have any substantial law on genocide. War crimes in Afghanistan include acts such as abuse of civilians or prisoners of war. It is important to deal with the problem of genocide and related violence. Hence, war crimes in Afghanistan are violations of international humanitarian laws incurring individual criminal responsibility and must be adequately investigated.

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INTRODUCTION

A war crime is a demonstration that comprises a serious infringement of the laws of war that leads to individual criminal responsibility. (*Cassese Antonio (2013), Cassese's International Criminal Law (3rd ed.), Oxford University Press. pp63–66. ISBN 978-0-19-969492-1. accessed on April 29, 2021*) Instances of crimes incorporate purposefully killing prisoners or civilians, destroying civilian property, torturing, taking hostages, performing perfidy, raping, assaulting, using child soldiers, and abusing the principles of differentiation, proportionality, and military necessity.

The war crime concept arose at the beginning of the twentieth century when the body of applicable international law to warfare between sovereign states was classified. At the national level, this classification was done considering

the publication of the Lieber Code in the United States. During the Hague Conventions of 1899 and 1907, the codification was done at the international level. The law was clarified through trials that happened during this period in national courts.

Significant advancements in the law happened by the end of World War II as trials of Axis war criminals helped in setting up the Nuremberg principles. In addition, new war crimes were defined and it was stated that the universal jurisdiction could be exercised over such crimes under the Geneva Conventions in 1949. After establishing various international courts in the late twentieth and early twenty-first centuries, the definition of added categories of war crimes appropriate to armed conflicts in civil wars was provided.

Infringements of International Humanitarian Law that entail criminal liability under international law are considered war crimes. Even if a superior officer orders a war crime during the war, an individual cannot commit a war crime in any case. (*Shaw, M.N (2008), International Law, Cambridge University Press, pp433–434. ISBN 978-0-521-89929-1*) In this case, the individual cannot take the defence that the same was committed because of the order of the seniors. It is heinous to commit these crimes as they include rape, torture annihilating

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property, the purposeful killing of prisoners of war and innocent civilians, not providing fundamental necessities to hostages, prisoners, etc.

On 1 May 2003, Afghanistan acceded to the Rome Statute. Afghanistan established the jurisdiction of the court over crimes against humanity and war crimes which should be investigated when occurred. Under the Statute, there is no exemption; the perpetrators must be arraigned by the International Criminal Court (ICC) or an Afghan national court. (*International Criminal Court (2017), Report on Preliminary Examination Activities 2017, December 4, 2017*) The ICC has complementary jurisdiction over these crimes. This means the country's judiciary is authorised to address these crimes first. However, if it is unable or unwilling to do so, then the ICC can claim jurisdiction. A member state can transfer its jurisdiction to the ICC by requesting its intervention; alternatively, the ICC can initiate,

by *proprio motu* (Latin for “own initiative”), jurisdiction if a member state is unable or unwilling to prosecute the alleged crime (Article 13, Rome Statute). The Office of the Prosecutor must establish the unwillingness or inability of the Afghan government to prosecute these crimes before the ICC can launch an investigation. (https://www.iccpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE_ENG.pdf)

Under the Rome Statute of the International Criminal Court, Article 8(2) defines war crime as a gross infringement of international humanitarian laws. Article 8(2) of the Rome Statute of the International Criminal Court states: For the purpose of this Statute, “war crimes” means:

- a. Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
 - i. Wilful killing;
 - ii. Torture or inhuman treatment, including biological experiments;
 - iii. Wilfully causing great suffering, or serious injury to body or health;
 - iv. Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
 - v. Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
 - vi. Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
 - vii. Unlawful deportation or transfer or unlawful confinement;
 - viii. Taking of hostages

The UN Secretary-General is keen on highlighting the need to restore peace in an integrated manner by committing to the UN human rights system. (*An agenda for peace, preventive diplomacy, peacemaking and peace-keeping, report by the Secretary-General of 31 January 1992, UN Doc. A/47/277-S/241 I 1, paras. 16 and 18*) The states party to Geneva treaties should respect the Conventions in all circumstances. (*Article 1*) This also places an obligation on the states to act in cooperation and compliance with the UN and its charter during events of the genocide and related violence. (*International Conference for the Protection of War Victims (Geneva 1993), Final Declaration, para. I. 6., supra note 8, p378*)

The role of the International Committee of the Red Cross (ICRC) is recognised under the International Red Cross and Red Crescent Movement and those states who are party to Geneva Conventions and states that ICRC should undertake the tasks which ensure faithful application of international

humanitarian law with respect to armed conflicts. (Article 5 of the Statutes states that the role of the ICRC is “to undertake the tasks incumbent upon it under the Geneva Conventions, to work for the faithful application of international humanitarian law applicable in armed conflicts and to take cognisance of any complaints based on alleged breaches of that law”, (Article 5.2c) and also “to work for the understanding and dissemination of knowledge of international humanitarian law applicable in armed conflicts and to prepare any development thereof”. (Article 5.2g) These Statutes are reproduced in the Handbook of the International Red Cross and Red Crescent Movement, 13th ed., ICRC/International Federation, Geneva, 1994, (pp 415-432) Hence, necessary legislation should be enacted by states to avoid any breach of the law and maintain peace. (Art. 49, Geneva Convention I; Art. 50, Geneva Convention II; Art. 129, Geneva Convention III; Art. 146, Geneva Convention IV; and Art. 85(1), Additional Protocol I)

BACKGROUND OF THE WAR CRIME LAW

Peter von Hagenbach’s trial in 1474 by an ad hoc tribunal of the Holy Roman Empire was reportedly the first “international” war crimes trial. (Edoardo Greppi (1999), *The Evolution of Individual Criminal Responsibility under International Law*, Associate Professor of International Law at the University of Turin, Italy, *International Committee of the Red Cross No. 835*, p. 531–553, October 30, 1999), Linda Grant (2006), *Harvard Law Bulletin*, highlights the first international war crimes tribunal, <http://www.law.harvard.edu/alumni/bulletin/2006/spring/gallery.phpExhibit>) He argued that he “just followed orders”. However, for his crimes, he was convicted and beheaded, the judgement stating that “he possessed a duty to prevent as he was a deemed knight”. A Confederate States Army officer, Henry Wirz, was held responsible in 1865 by a military tribunal and hanged at Andersonville Prison, where many Union detainees of war died during the American Civil War. (United States (1867-1868), 40th Congress, 2nd Session, *Trial of Henry Wirz, A Congressionally Mandated Report Summarising the Military Commission’s Proceedings*, House Executive Document No. 23, December 7, 1867, <https://www.loc>

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gov/rr/frd/Military_Law/pdf/Wirz-trial.pdf)

At the end of the nineteenth century, the concept of war crimes further grew and at the beginning of the twentieth century, the law of armed conflict or international humanitarian law was codified. The Hague Conventions embraced in 1899 and 1907 aim on the proscription of parties to war to utilise certain methods and strategies of warfare. (*James Brown Scott (1915) The Hague Conventions and declarations of 1899 and 1907 contain the texts of all conventions and the ratifying countries as of 1915. (Hudson, Manley O. (1931), "Present Status of the Hague Conventions of 1899 and 1907". The American Journal of International Law, 25 (1): 114–117, doi:10.2307/2189634. JSTOR 2189634)* Many related treaties have been embraced from that point forward. Conversely, the Geneva Convention of 1864 and subsequent Geneva Conventions, notably the four 1949 Geneva Conventions and the two 1977 Additional Protocols, aim at the protection of persons who are not taking any part in hostilities. Various violations of its norms have been identified by the Hague's Law and Geneva Law but not all can be classified as war crimes. It is imperative that international law does not codify all war crimes in one single document. Treaties of international humanitarian law, international customary law and international criminal law possess lists of war crimes. (*https://www.un.org/en/genocideprevention/war-crimes.shtml accessed on August 17 2021)*)

WAR CRIMES IN AFGHANISTAN—BACKGROUND OF AFGHAN WAR

The Afghanistan war is a conflict that began in 2001 triggered by the September 11 attacks. It is comprised of three phases. The primary stage—overturning the Taliban (the traditionalist political and religious group that controlled Afghanistan and provided a safe haven for *Al-Qaeda*, the culprits of the attacks of 11 September) lasted for only two months. From 2002 until 2008, the subsequent stage began and was marked by the US strategy to defeat the Taliban using military power and reconstructing infrastructure in the country. In 2008, the third stage which was a turn to counter-insurgency began and accelerated in 2009 with the decision of the then US President Barack Obama to augment the presence of US troops in Afghanistan temporarily. (*Clayton Thomas (2021), Afghanistan: Background and U.S. Policy: In Brief, Congressional Research Service, https://crsreports.congress.gov*) To implement this strategy, a larger force was deployed with an aim to protect and safeguard the citizens from Taliban attacks and support endeavours to pacify

the country by defeating the Taliban rebels. The strategy, beginning in 2011, came combined with a schedule for the withdrawal of the foreign forces from Afghanistan where the responsibilities pertaining to security would be gradually surrendered to the Afghan police and military. The new methodology largely failed to accomplish its target. Extremist attacks and civilian casualties remained tenaciously high, while a significant number of the Afghan military and police units assuming control over security duties were not well prepared to hold off the Taliban. In December 2014, when the combat mission of the US and NATO formally ended, this became one of the longest wars ever fought by the United States lasting for 13 long years. *(Anthony H. Cordesman, Burke Chair in Strategy with the Assistance of Bryan Gold and Sean T. Mann (2012), The Afghan War: Creating the Economic Conditions and Civil-Military Aid Efforts Needed for Transition, Center for Strategic and International Studies, Burke Chair in Strategy, Third Working Draft: (18.09. 2012, https://csis-website-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/publication/120918_Afghan_Failing_Econ.pdf)*

Since 2001 when the war began in Afghanistan, the civilian toll was terrible which was recorded on a regular basis by the country itself and international human rights organisations. The UN annually documented the number of deaths after 2009. A large portion of the casualties credited to the Afghan government and its partners have been regarded as accidental “collateral damage”, especially because of US airstrikes. Claims have arisen, notwithstanding, of killings and abuse by powers on the government side that may be accounted as war crimes. Fundamental investigations began by the International Criminal Court in 2006 and one of the parties involved formally confirmed the claims for the first time: The recently delivered report by the Australian military found “credible information” that its Special Forces in Afghanistan have unlawfully killed 39 civilians and detainees and cruelly treated two persons. *(Council on Foreign Relations (2021), The U.S. War in Afghanistan (1999-2021), Available at <https://>*

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www.cfr.org/timeline/us-war-afghanistan., Knaus, Christopher (2020), "Australian special forces involved in murder of 39 Afghan civilians, war crimes report alleges", The Guardian, ISSN 0261-3077, Retrieved 2021-05-21)

WAR CRIMES IN AFGHANISTAN CAUSED BY CIVIL WAR

Armed Conflict			Perpetrator
Incident	Date	Type of Crime	Persons Responsible
Bagram torment and prisoner mistreatment	December 2002	War crimes (Death of prisoners)	The United States Armed Forces
Kandahar massacre	11 March 2012	Murder and wounding of civilians	The United States Armed Forces
Maywand District murders	June 2009- June 2010	Murder of at least 3 Afghans	The United States Armed Forces
Brereton Report crimes	2007-2013	Murder of multiple prisoners of war	Australian Special Air Service Regiment
2011 Helmand Province incident	15 September 2011	Murder of an injured prisoner	British Royal Marines

Source: *BBC News, Compiled by the Researcher*

INVESTIGATION OF AUSTRALIAN SPECIAL FORCES FOR WAR CRIMES IN AFGHANISTAN

The report which is the aftereffect of a four-year examination by the Inspector-General of the Australian Defence Force (IGADF) is important as it shows an interest in serving justice. The possible dangers of Special Forces functioning in the counter-terrorism and counter-insurgency context are well portrayed. The report highlights the fact that military authorities should be committed to considering its members accountable if a serious investigation has to occur. (*Brereton Report (2020), Inspector General of the Australian Defence Force Afghanistan Inquiry Report, <https://afghanistandinquiry.defence.gov.au/sites/default/files/2020-11/IGADF-Afghanistan-Inquiry-Public-Release-Version.pdf>*)

The vast majority of the war crimes occurred between 2009 and 2011, towards the start of the US “surge” approved by President Barack Obama. Casualties were maximum along with severe violence. Under US General David Petraeus, the global forces under the International Security Assistance Force (ISAF) order embraced an “enemy-centric” approach named the “kill-or-capture” strategy. (*Ibid*) These were the years of incessant night assaults, generating protests from

President Hamid Karzai and various cases from Afghans and human rights organisations that unarmed citizens and vulnerable people, of any age group and gender, were being killed. (<https://www.bbc.com/news/world-australia-55088230>, accessed on 18 August 2021)

The increasing civilian casualties were partly because of faulty intelligence and the Australian report also concedes that some operations lacked “actionable intelligence”. The difficulties and dangers of battling a counter-insurgency war in a foreign country led some Australian commentators to presume that the country should not have participated militarily in this period of the contention. (*Paul Brereton inquiry uncovers list of alleged Australian war crimes in Afghanistan*, 7 NEWS.com.au. 2020-11-19. Retrieved 2021-05-23)

The Australian report makes a scratch to the hefty reinforcement of impunity that has surrounded the pursuit of the Afghanistan war. Along with the US and UK, the Afghanistan Independent Human Rights Commission has approached other countries to follow the Australian example and interrogate conceivable unlawful killings by their forces in Afghanistan. (*Hitch, Georgia (2020), “What war crimes did Australian soldiers commit in Afghanistan and will anyone go to jail?”*, ABC News. Retrieved 2021-05-23)

PROSECUTION AND RIGHTS OF FAIR TRIAL

International commitments of Afghanistan on the obligation to indict do not leave any ambiguity. All the relevant treaties and covenants have been ratified, most significantly the Rome Statute. However, the end of the war provides a chance for the authorities to grant amnesty in its highest capacity for those who participated in the armed conflict. Article 6(5) of the 1977 Additional Protocol II provides that “At the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict”.

It should be clear that international crimes as defined in the Rome Statute

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are not excluded in this context. Severe crimes against humanity and branches of international humanitarian law are not eligible to be granted amnesty under international law. War crimes are not restricted to acts carried out in international armed conflicts because these armed conflicts lead to the unbearable loss of property, (Ahmed Al-Dawoody (2017), *International Humanitarian Law and Islam: An Overview*) life and freedom. Those victimised by hostilities due to war crimes have the right to exercise their criminal jurisdiction so that the culprits are prosecuted and appropriate action is taken towards them. The preamble of the Rome Statute states that “it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes”. (Jan Wouters (2005), *The Obligation to Prosecute International Law Crimes*, (International Institute of Law, Catholic University of Leuven, p603, <https://www.law.kuleuven.be/iir/nl/onderzoek/opinies/obligationtoprosecute.pdf>)

According to Islamic Military Jurisprudence, during a war that should be conducted in a disciplined way, injuring non-combatants should be avoided. There should be a minimum force, persisting no anger and humane treatment towards prisoners of war. (<https://www.bbc.co.uk/religion/religions/islam/islamethics/war.shtml>, accessed on August 19 2021). Patricia Crone, *Encyclopedia of the Qur'an*, “War”. Brill Publishers, p456) Those arrested during the war should be given maximum protection along with ensuring their rights and obligations. The Third Geneva Convention (1949) relative to the Treatment of Prisoners of War protects members of the armed forces who have been taken prisoner and sets forth the detaining power’s rights and obligations, including how prisoners are to be treated. (<http://brl.library.umn.edu/instreet/y3gctpw.htm>)

The study found that during the war in Afghanistan, people of all age groups, women, and children have been severely victimised due to the atrocities by the insurgents. (Ali, Shabeen Sardar; Rehman, Javaid. (Winter, 2005) “The Concept of Jihad in Islamic International Law”. *Journal of Conflict & Security Law*. 10 (3) pp321–43)

This is a gross violation of International Human Rights and the Islamic Law of War. Similar provisions in International Human Rights and the Islamic Law of War significantly direct the conduct of hostilities during contemporary situations of conflict. (*Supra Note 26*)

The domestic legal obligation of Afghanistan to arraign serious crimes is unambiguous. In 2017, the national legislation for crimes under the Rome Statute became part of Afghanistan’s Penal Code. (*Afghanistan Penal Code (2017)*, <https://aceproject.org/ero-en/regions/asia/AF/Penal%20Code%20Eng.pdf/view>, accessed on August 19 2021) The revised Penal Code defines and determines punishments for war crimes and crimes against humanity for the first time, including acts that the government has accused the Taliban of carrying out. These crimes were not defined at the time of the 2009 Amnesty Law

or the 2016 Hezb-i-Islami agreement. (Pike, John (1998), "Hezb-i-Islami (Islamic Party)", *Intelligence Resource Program, Federation of American Scientists*) However, like many countries, Afghanistan may meet its obligations under the Rome Statute selectively or unevenly, or disregard them altogether. There has been little implementation of the Penal Code's provisions with respect to serious crimes.

Afghanistan's 2009 Amnesty Law is more a political statement than a legal text. There are ambiguities in its definition of those covered (individuals versus factions) and of the potential crimes (unspecified). For a peace agreement with the Taliban, as for the agreement with Hezb-i-Islami, the 2009 Amnesty Law already provides immunity from prosecution for those who agree to lay down their arms and recognise Afghanistan's Constitution. While the political will to prosecute is clearly lacking, the problem of how to craft an appropriate amnesty in a peace deal with the Taliban is complicated. Aside from a very few cases prosecuted

internationally and domestically, the worst crimes of the 1978-80 period, the crimes under the Soviet occupation, and the crimes of the 1990s have gone unpunished. A selective process of accountability also entails the risk of perpetuating injustice.

The delegation of ICRC was established in Kabul in 1987 with a focus on preventing violations of international humanitarian law. Since the war in Afghanistan began, the international humanitarian law has been violated time and again. The violators have not been punished under international humanitarian law for war crimes comprising torture, wilful killing and inhuman treatment. (*Rule 158 in the ICRC's study on customary IHL: Jean-Marie Henckaerts and Louise Doswald-Beck, Customary International Humanitarian Law, Volume I: Rules, ICRC, Geneva / Cambridge University Press, Cambridge, 2005. <http://www.icrc.org/customary-ihl/eng/docs/home>.)* Afghanistan's international law obligations conflict with any blanket amnesty that would cover the most serious crimes as identified by the ICC. According to the ICC's preliminary report on Afghanistan, the Taliban's war crimes include murder; deliberately planning and executing attacks against the citizens; deliberately directing execution against humanitarian personnel; and recruiting child soldiers below 15 years of age or utilising them to contribute

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aggressively to hostilities. For members of the Afghan national security forces, war crimes include torture, sexual violence, and forced disappearances. (*Supra Note 5*) Children are often among the most vulnerable groups during the war because, by definition, they lack peer advocates. (*Simmons, B.A. (2009), Mobilising for Human Rights: International Law In Domestic Politics, Cambridge University Press, 2009, p451*) This is true for children's rights in general and is perhaps more problematic during conflict conditions. Children are more compliant and easier to manipulate than adults. It's easier to abduct children or force them into becoming soldiers. Children under the age of 18 have been found to be recruited by the Taliban. (*Cohn, I., Southwick, M., Vandergrift, K. (2004), International Law Barring Child Soldiers in Combat: Problems in Enforcement and Accountability, Cornell Int'l L.J. 2004 p531*)

The study found that the children recruited into the armed forces are denied the right to life, education, development, and the protection recognised by the international community. (*Pearn, J. (2003), Children and War, Journal of paediatrics and child health, 2003 - Wiley Online Library, p141*) Article 49 of the Afghanistan Constitution mandates that "Forced labour shall be forbidden. Active participation in times of war, disaster, and other situations that threaten public life and comfort shall be among the national duties of every Afghan. Forced labour on children shall not be allowed."

Article 8 of the Afghanistan Constitution highlights the idea of good neighbourhood, the principle of non-interference, and preserving external and internal sovereignty. However, the study shows that due to a weak foreign policy and the non-cooperation of neighbours, the terrorists and their allies found their sanctuaries in neighbouring states. It leads to proxy war, violation of human rights, and deaths of innocent civilians. Due to the interference of other states, Afghanistan does not have internal sovereignty to punish the culprits who wage wars and does not file litigation to international criminal courts to conduct investigation and prosecute the terrorists and those who patronise the terrorists to kill civilians. Article 8 of the Afghanistan Constitution highlights "The state shall regulate the foreign policy of the country on the basis of preserving the independence, national interests, and territorial integrity as well as non-interference, good neighbourliness, mutual respect and equality of rights."

Article 23 of the Afghanistan Constitution protects life as a natural and inalienable right. The researcher remarks the right to life is fundamentally essential as no human shall be deprived of this right. Article 24 protects human dignity with liberty. The Constitution of Afghanistan provides that no person shall be deprived of his liberty except the violation of the law and imposes duties to protect human dignity.

Article 7 directs the state to prevent all kinds of terrorist activities which leads to violation of human rights. Article 28 states that those citizens accused of a crime shall not be extradited to a foreign state without reciprocal arrangements as well as international treaties to which Afghanistan has joined. No Afghan shall be deprived of citizenship or sentenced to domestic or foreign exile. The provision of Article 28 is not adhered to as it highlights the extradition procedure. If a situation of captivity arises, the prisoners shall be guarded and not be ill-treated (Nigosian, S. A. (2004). *Islam. Its History, Teaching, and Practices*. Bloomington: Indiana University Press.

p115) owing to attacks perpetrated in Afghanistan by Taliban and foreign forces, there has been no investigation, trial and conviction against the culprits who were the main cause of loss of life and property. This violation of law is subjected to a penalty greater than that which was inflicted under the law. As far as the principle of natural justice is concerned, no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he

be denied the right to consult, and to be defended by, a legal practitioner of his choice. The researcher remarks that there is no fair trial system for those who have been arrested by NATO if they are alleged to be terrorists or associated with the terrorist nexus. Article 29 of the Afghanistan Constitution states that "Persecution of human beings shall be forbidden. No one shall be allowed to or order torture, even for discovering the truth from another individual who is under investigation, arrest, detention, or has been convicted to be punished. Punishment contrary to human dignity shall be prohibited." Every person who was arrested and detained by the international troops in Afghanistan was not produced before the criminal court.

Article 30 of the Afghanistan Constitution states that "A statement, confession or testimony obtained from an accused or of another individual by means of compulsion shall be invalid. Confession to a crime is a voluntary admission before an authorised court by an accused in a sound state of mind."

Also, there have been restrictions on media including threats to journalists and harassment to report news in its actual form. Journalists who exercised the right of Freedom of the Press have been detained. Article 34 of the Afghanistan

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Constitution states that “Freedom of expression shall be inviolable. Every Afghan shall have the right to express thoughts through speech, writing, illustrations as well as other means in accordance with provisions of this constitution. Every Afghan shall have the right, according to provisions of law, to print and publish on subjects without prior submission to state authorities. Directives related to the press, radio and television as well as publications and other mass media shall be regulated by law.”

After the attacks of 11 September 2001, in the US, a war was waged with Afghanistan in the name of protection of fundamental rights of the citizens of the country along with promising the people to liberate them from the control of the Taliban. However, there were unexplained arrests and detention carried out in the name of intelligence and military operations which is against the human rights and humanitarian law. (*ibid*) During this period, residences of innocent people who fell prone to torture, assault and abuse were trespassed on in the disguise of collecting evidences based on suspicion. This is another example of war crime in Afghanistan. Article 38 of the Afghanistan Constitution states that, “Personal residences shall be immune from trespassing. No one, including the state, shall have the right to enter a personal residence or search it without the owner’s permission or by order of an authoritative court, except in situations and methods delineated by law. In case of an evident crime, the responsible official shall enter or search a personal residence without a prior court order. The aforementioned official, shall, after entrance or completion of the search, obtain a court order within the time limit set by law.” As the Taliban have committed a great number of such violations, specifically through targeted assassinations of civil servants and other political figures, and through mass casualty suicide attacks, conviction through strict prosecution should be carried out. These war crimes can be proven beyond reasonable doubt and escapism and ignorance of basic rights of citizens is against the law. Article 56 of Afghanistan Constitution inflicts that “Observance of the provisions of the constitution, obedience of laws and respect of public order and security shall be the duty of all citizens of Afghanistan. Ignorance of the laws shall not be considered an excuse.” The International Criminal Court must request permission from the court’s judges to initiate an examination into probable war crimes and crimes against humanity in Afghanistan. (*Supra Note 5*)

The study found that the Amnesty Law is an expedient legislation and is inconsistent with the principle of natural justice. The themes of enactment and Pit and Substance of Law are vague, not serving any purpose. Morally offensive

acts such as degradation of women in Afghanistan, (Veintmilla, Julian D. (2016) "Islamic Law and War Crimes Trials: The Possibility and Challenges of a War Crimes Tribunal against the Assad Regime and ISIL," Cornell International Law Journal: Vol. 49: No. 2, Article 6. <https://scholarship.law.cornell.edu/cilj/vol49/iss2/6>) torture and killing of civilians in attacks are not subjected to amnesty. (Farhad Malekian (2011), *Principles of Islamic International Criminal Law: A Comparative Search* 344–46 (Eugene Cotran, Mark Hoyle & Martin Lau eds., 2d ed. 2011)) Farhad Malekian's extensive analysis states: "It is a well-known fact that the spirit of both (international criminal law and Islamic international criminal law) is to release all human beings from all concepts of limitations,

restrictions and superficial differences and ignorance. Simultaneously, the system of international criminal law does not ignore Islamic law and puts a heavy weight, on its concepts, in terms of the coexistence of sovereignties." (Aboul-Enein, H. Yousuf and Zubur, Sherifa, *Islamic Rulings on Warfare*, p22, Strategic Studies Institute, US Army War College, Diane Publishing Co., Darby PA, ISBN 1-4289-1039-5)


During his life, Prophet Muhammad gave various injunctions to his forces and adopted practices toward the conduct of war. The most important of these were summarised by Muhammad's companion and first Caliph, Abu Bakr, in the form of ten rules for the Muslim army:

"O people! I charge you with ten rules; learn them well! Stop, O people, that I may give you ten rules for your guidance in the battlefield. Do not commit treachery or deviate from the right path. You must not mutilate dead bodies. Neither kill a child, nor a woman, nor an aged man. Bring no harm to the trees, nor burn them with fire, especially those which are fruitful. Slay not any of the enemy's flock, save for your food. You are likely to pass by people who have devoted their lives to monastic services; leave them alone".

The obligation of amnesty should not cover the heinous war crimes carried out in Afghanistan and strict punishment should be imposed.

CONCLUSION

War crimes are identified with wrongdoings perpetrated at the time of war or even during peacetime. It is an extensive concept and if any wilful

major harm is caused to mankind during peacetime, it is regarded as a war crime. Any kind of infringement to human rights falls under war crimes. The suffering of Afghans was ignored by the world for a couple of decades but what is not acceptable is that Afghanistan's government is doing the same. Afghanistan does not have any substantial law on war crimes. Atrocities in Afghanistan include abuse of detainees of war or civilians. However, these violations are all the more extensively covered under international humanitarian law and portrayed as crimes against humanity. Various states hold various codes about the conduct of war. A few signatories have regularly violated the Geneva Conventions taking advantage of the ambiguities of law or political will to avoid compliance with regulations and standards. It is about time that these issues of decimation and related violence be investigated in Afghanistan so that the guilty are prosecuted. This study found that war crimes in Afghanistan are an infringement of international humanitarian law causing singular criminal responsibility and must be adequately investigated although the return to power of the Taliban after the exit of the foreign forces makes such a judicial process impossible. Neither the former occupiers nor the present regime will accept to be investigated and punished for their respective crimes.  DI2622022WCSH@2438