

Just War

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Abstract

The Just War Doctrine has been elaborated a sufficient number of times to exercise this right to defence. International legitimacy for the use of armed force, on the basis of rigorous assessment and with well-founded motivations, can only be given by the decision of a competent body that identifies specific situations as threats to peace and authorizes an intrusion into the sphere of autonomy usually reserved to a State. This philosophy is an ethical deed, referred to as a tradition of military ethics propounded by thinkers and military leaders in India since the Epic age and in the West since 2nd c AD. The criteria are broadly split into three groups: the right to go to the war, the right conduct in war and the right conduct after war. There is need to sensitize the Armed Force by including Law of War in the syllabus of training, according to the capability of trainees, to protect the lives and dignity of Prisoners of War and internal violence and to provide assistance.

KEYWORDS: Proportionality, Just Means, Just Cause, Jus ad Bellum, Jus post Bellum, Jus in Bello, Belligerent, War Crime, Prisoners of War, *Military Mines*.

Introduction: The Just War Doctrine has been elaborated a sufficient number of times to exercise this right to defence. States/Nations have the obligation to do everything possible to ensure that the conditions of peace exist, not only within their own territory but throughout the world for peaceful coexistence and overall development. It is important to remember that “The possession of war potential does not justify the use of Armed Forces for political or military objectives and in case of armed conflict, all is fair between the warring parties. The Charter of the United Nations, lesson learnt from the tragedy of the Second World War with the intention of preserving future generations from the menace of war, is based on a generalized prohibition of a recourse to force to resolve disputes between States, with the exception of two cases: legitimate defence and measures taken by the Security Council within the area of its responsibilities for maintaining peace in the World. In every case, exercising the right to self-defence must respect “*the traditional limits of necessity and proportionality*” as taught by thinkers and military leaders in the past. International legitimacy for the use of armed force, on the basis of rigorous assessment and with well-founded motivations, can only be given by the decision of a competent body that identifies specific situations as threats to peace and authorizes an intrusion into the sphere of autonomy usually reserved to a State.

Just War philosophy is an ethical deed, referred to as a tradition of military ethics propounded by thinkers and military leaders in India since the Epic age and in the West since 2nd c AD. The purpose of the doctrine is to ensure that war is morally justifiable

through a series of the law of war, all of which must be met for a war to be considered just. The criteria are broadly split into three groups: the right to go to the war, the right conduct in war and the right conduct after war.

Origin: The Mahabharata, offers one of the first discussions of a legitimate war. The Pandavas, five brothers discussed if the sufferings caused by war can ever be justified, and then a long discussion follows between them, establishing criteria like proportionality (chariots cannot attack cavalry, only other chariots, no attacking people in distress), just means (no poisoned or barbed arrows), just cause (no attacking out of rage), and fair treatment of captives (Prisoners of War in modern terminology) and the wounded. The war in Mahabharata is preceded by context that develops the "just cause" for the war including last minute efforts to reconcile differences to avoid war. Same doctrine, as per *Ramayana*, was adopted by Rama before declaring war against Ravana. Just war theory thus as per ritual/traditions, in India/West, where the just war is declared by the royal priest. The customary moral obligations, conventions of war and treaty-making, regarded as essential and universal to human beings.

Western theory of the just war started with the teachings of Augustine of Hippo and Thomas Aquinas where Augustine of Hippo, considered as one of the first and greatest thinkers, was one of the first to assert with a personal, philosophical explanation that *"a Christian could be a soldier and serve God and country honorably. He claimed that, while individuals should not resort immediately to violence, God has given the sword to government for good reason."* He forcefully argued, peacefulness in the face of a grave wrong (sinfully imposed war) that could only be stopped by violence especially when authorized by a legitimate authority: *"They who have waged war in obedience to the divine command, or in conformity with His laws, have represented in their persons the public justice or the wisdom of government, and in this capacity have put to death wicked men; such persons have by no means violated the commandment, "Thou shalt not kill."*

Thomas Aquinas, institutionalized the authority of Augustine's arguments and formed the School of Salamanca as he laid out the conditions to understand 'nature of war' and 'just war': *Just war must be waged by a properly instituted authority such as the state, war must occur for a good and just purpose rather than for self-gain, and peace must be a central motive even in the midst of violence.* A diplomatic agreement is preferable, even for the more powerful party, before a war is started to avoid the war. Examples of "just war" are: *In self-defense, as long as there is a reasonable possibility of success, preventive war against a despot who is about to attack, and War to punish a guilty enemy.* Hence, a war is not legitimate or illegitimate simply based on its original motivation: it must comply with a series of additional requirement like *"once war has begun, there remain moral limits to action. For example, one may not attack innocents or kill hostages."*

Just War Doctrine: The Roman Catholic Church established the strict conditions for "legitimate defense by Armed Force" which are as follows:

- i. the damage inflicted by the aggressor on the nation or community of nations must be lasting, grave, and certain;
- ii. all other means of putting an end to it must have been shown to be impractical or ineffective;
- iii. there must be serious prospects of success;
- iv. the use of arms must not produce evils and disorders graver than the evil to be eliminated (the power of modern means of destruction weighs very heavily in evaluating this condition).

Criteria of Just War theory: Just War Theory has three sets of criteria, the first- establishing the right to go to war (*Jus ad Bellum*); the second- establishing the right conduct within war (*Jus in Bello*); and the third- establishing the right conduct after war (*Jus post Bellum*).

A] The right to go to war (*Jus ad Bellum*): The rules of the right to go to war aim to confine the destructiveness of war, to rule out certain kinds of weapons, to protect civilians, and to limit the area and range of fighting. The Nuclear War in particular, are unavoidably in violation of the principles of proportionality and non-combatant immunity, it must be rejected and discouraged by the neutral states and or international community as a moral possibility on just war grounds. The just war theory and the Law of War, on the other hand, sets forth a moral framework for warfare and rejects the notion that "anything goes" and or morality does not exist during times of war.

i. Just cause: The reason for going to war needs to be just and cannot therefore be solely for recapturing things taken or punishing people who have done wrong; innocent life must be in imminent danger and intervention must be to protect life. A contemporary view of just cause was expressed in 1993 in the US Catholic Conference: "*Force may be used only to correct a grave, public evil, i.e., aggression or massive violation of the basic human rights of whole populations.*" A just cause may be to intervene on behalf of an innocent third party, to *punish* an aggressor nation, or to defend one's own nation against external aggression or internal disturbance by intruders. The modern, secular version of the just war tradition has effectively reduced just cause to self-defense against an unjust aggressor.

ii. Comparative justice: While there may be rights and wrongs on all sides of a conflict, to overcome the presumption against the use of force, the injustice suffered by one party must significantly outweigh that suffered by the other.

iii. Competent/Legitimate authority: This category is designed to ensure that the proper authorities are calling for the war. Authority over matters of life and death belongs to God, who has shared this authority with the governing powers. Thus, governing authorities may wage war after consulting wise advisers. "A just war must be initiated by a political authority within a legitimate political system that allows distinctions of justice. Dictatorships or deceptive military actions (the USA in other world) are typically considered as violations of this criterion. A just war must be initiated by a political authority within a political system that allows distinctions of justice".

iv. Right intention: Force may be used only in a truly just cause and this criterion requires that just wars be fought with the final, realizable goal of peace in mind. Not only should there be a strategy to win; there should be a peace that can be achieved; negation of revenge and a desire for peace. First, right intent is a matter of a "just peace." According to Augustine, everyone desires peace; wars are always fought for peace - for a peace that better suits the aggressor. Secondly, right intent entails that even in warfare we love our enemy. Anger is permitted, but not hatred. Indeed, in waging war, the right intent is not to destroy the enemy but to bring the benefits of a just peace to the enemy. Thirdly, right intent entails what can be called "complete justice."

v. Probability of Reasonable chance of success: As per this criterion, the goals of a war must be reasonably attainable. A just war is a limited war to address a particular, declared injustice. It is not a war to wipe out an ideology or to rid the world of evil. Such wars tend toward the unlimited and thus resemble crusades/*jihad*. The tradition is clear in maintaining that if the costs of warfare exceed those of enduring the injustice, one may be obliged to refrain from waging war. Arms may not be used in a futile cause or in a case where disproportionate measures are required to achieve success;

vi. War as the Last resort: Non-violent means of persuasion should always be attempted for a reasonable amount of time before resorting to war. In the today's modern political environment, there are many ways that can serve to achieve the desired end of peace: diplomacy, economic boycotts, and other tactics have all worked to achieve just ends. If diplomacy fails, the "last resort" implies that "*the use of force may be legitimate*". Force may be used only after all peaceful and viable alternatives have been seriously tried and exhausted or are clearly not practical.

vii Proportionality: The final criterion holds that the means used in a war's prosecution must be proportional to the ends. One notion cannot destroy Armed Forces of enemy by thinking about a post war advantage in future weakening the enemy. To distinguish it from the *jus in bello* principle of proportionality, this principle is also known as the principle of macro-proportionality. Are the potential gains worth the possible costs and sacrifice - both with regard to finances and human lives? Clearly, this category requires foresight; the difficulties involved do not absolve a country from this responsibility. There is more risk involved in advancing ground troops than the air strikes. You cannot destroy an enemy battalion or over kill simply because you have the capability to do so or because you see a postwar advantage in further weakening the enemy. In modern terms, just war is waged in terms of self-defense, or in defense of another (with sufficient evidence).

[B] Right conduct within war (*Jus in Bello*) as per law of war: Belligerent armies are entitled to try to win a war, but they are not allowed to do 'anything' to achieve victory. There are restraints on the extent of harm, if any, that can be done to noncombatants, and restraints on the use of weapons of war. These restraints aim to limit war once it has begun.

The principles of law of war/humanitarian law are applied in conflict, and to regulate the conduct of military forces. The rules of warfare aim to safeguard human life and some other fundamental human rights, and to ensure that war is limited in its scope and level of violence; the agents of war be held responsible for their actions. Law of war suggests that every individual, regardless of rank is personally responsible for any war crime (acts of murder) that he might commit.

Once war has begun, the right conduct within war also directs how soldiers are to act or should act:

i. Distinction: Just war conduct should be governed by the principle of distinction. The acts of war should be directed towards enemy combatants, and not towards civilians caught in circumstances they did not create. The prohibited acts include bombing civilian residential areas that include no military objects/military persons and committing acts of terrorism or punishment against civilians. Similarly, combatants are not permitted to attack enemy combatants who have surrendered or who have been captured or who are injured and not presenting an immediate lethal threat. One cannot target enemy civilians for the sake of reducing one's own combatant deaths. This is particularly the case in the era of fourth-generation warfare/CI Operations insofar as such warfare is increasingly conducted in the midst of civilian populations. Just as the right to go to war, principle of right intention suggests that war must be fought for limited objectives, the notion of limited war suggests that there must be restraint with regard to the quantity and quality of weaponry used during warfare. First, weapons that do not discriminate between combatants and non-combatants cannot be used. The use of poisonous gases, and the destruction of objects that are indispensable to the civilian population are prohibited. In addition, weapons that cause long-term environmental damage are prohibited. This includes destruction or contamination of foodstuffs, crops, livestock, and source drinking water.

Non-combatant objects, houses, places of worship, hospitals and schools should be immune from attack as well. Thus, the principle of non-combatant immunity suggests that 'war is a fight between combatants, and that only military objectives are legitimate targets of attack'. However, "collateral damage" are sometimes unavoidable. Many believe that targeting a military establishment in the middle of a city is permissible, even if there is collateral damage, because the target is legitimate.

An important question is how to define who is a combatant and who is not. While combatants usually carry arms openly, guerillas disguise themselves as civilians. International law suggests that the inhabitants of non-occupied territory, who take up arms on the approach of the enemy and resist the invading troops, even if they have not had time to organize themselves, count as armed forces.

ii. Military necessity: Just war conduct should be governed by the principle of minimum force. An attack or action must be intended to help in the military defeat of the enemy; it must be an attack on a military objective, and the harm caused to civilians or civilian property must be proportional and not excessive in relation to the concrete and

direct military advantage anticipated. This principle is meant to limit excessive and unnecessary death of noncombatant and destruction of civilian objects.

iii. Fair treatment of PW (Prisoners of War): As per Law of War, enemy combatants who surrendered or who are captured no longer pose a threat. Therefore, it is wrong to torture them or otherwise mistreat them. Once a soldier has laid down his arms and surrendered, he assumes the status of a non-combatant and cannot be killed or attacked. His property must not be destroyed or seized, unless this is imperatively demanded by the necessities of war. In addition, it is forbidden to steal from prisoners of war or the sick and wounded, or to mutilate or steal from corpses. The wounded enemy are to be collected and cared for. PW are entitled to basic human respect and are to be protected against any acts of violence or intimidation.

iv. No atrocity: Combatants may not use weapons or other methods of warfare which are considered evil, such as mass rape, forcing enemy combatants to fight against their own side or using weapons whose effects cannot be controlled - enormous power of nuclear weapons are simply *too* destructive, *too* powerful to categorize in the traditional categories. Unfortunately, there has been a significant progress in nuclear weapons technology all over the World. “Miniaturized Fusion Bombs” (“Neutron Bombs”) can now be delivered to military targets with far less collateral damage and long-term radiation effects.

The epidemic of military mines is the crisis of poorer nations. The mutilating and killing of civilians — men, women, and children — is continuing at a horrific pace in Southeast Asia. Such atrocities fly in the face of the just war tradition. It is estimated that *millions of military* mines still found in Cambodia, on the other hand, are primarily designed to injure horribly whoever might stumble onto them. And since their destructive power can last for a century or more, hundreds and thousands of civilians will be maimed and killed long after the related conflicts are forgotten.

Even if a nation lacks just cause for war, it may fight justly once war has begun. Conversely, a nation with just cause may fight unjustly. Advancement in military technology toward greater accuracy and precision has given the U.S.A. during the Gulf War and war against terrorism in Afghanistan, an opportunity to shift its strategic emphasis from general targets with large civilian populations where accuracy wasn't needed to specific, detailed military targets where accuracy is at a premium.

[C] The Right conduct after war (*Jus post Bellum*): It concerns justice after a war, including peace treaties, Armistice, reconstruction, War Crime trials, and war compensation/indemnities are as follows:

i. Just cause for termination: A state may terminate a war if there has been a reasonable vindication of the rights that were violated in the first place, and if the aggressor is willing to negotiate the terms of surrender. These terms of surrender include a formal apology, compensations, war crimes trials and perhaps rehabilitation.

Alternatively, a state may end a war if it becomes clear that any just goals of the war cannot be reached at all or cannot be reached without using excessive force.

ii. Right intention: A state must only terminate a war under the conditions agreed upon in the above criteria. Revenge is not permitted. Ethically, if adopted, the victor state must also be willing to apply the same level of objectivity and investigation into any war crimes its armed forces may have committed.

iii. Public declaration and authority: The terms of peace must be made by a legitimate authority, and the terms must also be accepted by a legitimate authority.

iv. Discrimination: The victor state is to differentiate between political and military leaders, and combatants and civilians. Punitive measures are to be limited to those directly responsible for the conflict.

v. Proportionality: Any terms of surrender must be proportional to the rights that were initially violated.

Conclusion: “The thing that was very upsetting was the fact that we, as the first line of defence, were unable to protect our civilians. That was the hardest psychological moment, because we thought that we should be those who they should fight, they should shoot us, not at our children and wives.” (the Voice of T) Hence, there is need to sensitize the Armed Force by including Law of War in the syllabus of training, according to the capability of trainees, to protect the lives and dignity of Prisoners of War and internal violence and to provide assistance. In 21st century, in this modern world, there is need to take pledge to respect all civilians, and soldiers who can no longer fight, without any adverse distinction founded on race, colour, religion, sex, birth; prohibit torture, inhuman treatment to children and women, destruction of private (civilian) property; etc.

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