Capture of IAF Officer - Geneva Conventions on Prisoners of War

What is the issue?

- Indian Air Force pilot, Wing Commander Abhinandan Varthaman, was captured by Pakistan after a major aerial confrontation.
- It is imperative, in this context, to understand the provisions in Geneva Conventions on treatment of prisoners of war (PoWs).

What happened?

- The aerial confrontation began after Pakistan sent several aircrafts to the Line of Control (LoC) in retaliation for the Indian Air Force's Balakot strike on JeM camp.
- The Indian government said that IAF jets shot down an F-16 jet of the Pakistan Air Force.
- However, Pakistan's military denied the loss of any aircraft.
- Wing Commander Abhinandan had to eject over the LoC after his MiG-21 was shot by a Pakistani plane.
- He then eventually landed in Pakistan-occupied Kashmir and was taken into custody by the Pakistan Army.
- The Ministry of External Affairs works through diplomatic and official channels and demands the safe and immediate return of the Indian pilot.
- Meanwhile, various amateur videos were on circulation in which Wing Commander Abhinandan was seen being manhandled by a crowd in PoK.
- India strongly objected to Pakistan's vulgar display of an injured personnel, in violation of norms of International Humanitarian Law and the Geneva Conventions.

What are the Geneva Conventions?

- The 1949 Geneva Conventions are a set of international treaties - four conventions, with three protocols added on since 1949.
- The conventions ensure that warring parties conduct themselves in a humane way with -

i. non-combatants such as civilians and medical personnel
ii. combatants no longer actively engaged in fighting, such as prisoners of war,

and wounded or sick soldiers

- PoWs are usually members of the armed forces of one of the parties to a conflict who fall into the hands of the adverse party.
- Article 3 of the Geneva Convention on Treatment of PoWs deals with every kind of situation that may arise for a captive and captor.
- All countries are signatories to the Geneva Conventions.
- **Authority** - The Geneva Conventions have a system of "Protecting Powers" who ensure that the provisions are being followed by the parties.
- In theory, each side must designate states that are not party to the conflict as their "Protecting Powers".
- In practice, the International Committee of the Red Cross (ICRC) has been mandated under the conventions to ensure the application of the law.
- ICRC visits prisoners, both military and civilian.

Is the convention applicable in the present conflict?

- Both India and Pakistan have been careful not to term the confrontation a war.
- India has specifically said that its airstrikes were a "non-military" intelligence-led operation.
- Nevertheless, both sides are bound by the Geneva Conventions.
- As, the provisions of the conventions apply at the following times:

i. in peacetime situations
ii. in declared wars
iii. in conflicts that are not recognised as war by one or more of the parties

- This means the IAF officer is a prisoner of war, and his treatment has to be in accordance with the provisions for PoWs under the Geneva Conventions.

What is prohibited under the convention?

- According to the provisions, the nations should avoid the following acts:

i. Violence to life and person, in particular, murder of all kinds, mutilation, cruel treatment and torture
ii. taking of hostages
iii. outrages upon personal dignity, in particular, humiliating and degrading treatment
iv. the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court

- Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war is prohibited.

- It will be regarded as a serious breach of the present Convention.
- Particularly, physical mutilation or medical/scientific experiments which are not justified medically and not in PoW's interest are prohibited.
- Likewise, PoWs must at all times be protected, particularly against acts of violence or intimidation and against insults and public curiosity.
- Any acts of vengeance against prisoners of war are prohibited as per Article 13 of the Convention.
- The responsibility for the "humane" treatment of PoWs lies with the detaining power, and not just the individuals who captured the PoW.

What rights is a PoW entitled to?

- Article 14 of the Convention lays down that PoWs are entitled to, in all circumstances, respect for their persons and their honour.
- In captivity, a PoW must not be forced to provide information of any kind under physical or mental torture, or any other form of coercion.
- Refusal to answer questions should not invite punishment.
- A PoW must be protected from exposure to fighting.
- Use of PoWs as hostages or human shields is prohibited.
- A PoW has to be given the same access to safety and evacuation facilities as those affiliated to the detaining power.
- Access to health facilities, prayer, recreation and exercise are also written in the Convention.
- The detaining power has to facilitate correspondence between the PoW and his family, and must ensure that this is done without delays.
- A PoW is also entitled to receive books or care packages from the outside world.

What about the release of prisoners?

- Parties to the conflict “are bound to send back” or repatriate PoWs, regardless of rank, who are seriously wounded or sick, after having cared for them until they are fit to travel.
- The conflicting parties are expected to write into any agreement they may reach to end hostilities and for the expeditious return of PoWs.
- Parties to the conflict can also arrive at special arrangements for the improvement of the conditions of internment of PoWs, or for their release and repatriation.
- E.g. at the end of the 1971 war, India had more than 80,000 Pakistani troops who had surrendered to the Indian Army after the liberation of Dhaka
- India agreed to release them under the Shimla Agreement of 1972.
- During the Kargil War, after intense diplomatic efforts, Pakistan returned Flight Lieutenant Nachiketa, who was captured after ejecting from his

burning Mi27.

- In the present case, Pakistan can decide to send Wing Commander Abhinandan unilaterally, or negotiate his release with India.

Source: Indian Express, The Hindu

