

ANGLIA RUSKIN UNIVERSITY
FACULTY OF ARTS, LAW, AND SOCIAL SCIENCES

**HUMANITARIAN LAW IN AN ISLAMIC CONTEXT:
INTERNALLY DISPLACED PERSONS IN PAKISTAN**

FAIZ BAKHSH

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ANGLIA RUSKIN UNIVERSITY

ABSTRACT

FACULTY OF ARTS, LAW, AND SOCIAL SCIENCES

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HUMANITARIAN LAW IN AN ISLAMIC CONTEXT

FAIZ BAKHSH

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The headcount of IDPs in the world is currently 40 million, and armed conflict in Pakistan has resulted in repeated displacements for a decade, with an estimated 1.4 million IDPs needing protection from the national government, within an Islamic social and cultural context. This research explores the protection of internally displaced persons (IDPs) under International Humanitarian Law (IHL) in an Islamic context, with a case study of IDPs in Pakistan.

This research applies a mixed method approach combining legal interpretation and application of the international legal framework applicable to IDPs and the relevance of Islamic Law in the context of the domestic legal structure of Pakistan. An empirical/socio-legal case study of IDPs in Pakistan uses qualitative field interviews to investigate the implementation of the legal framework applicable to IDPs.

This research analyses the applicability of IHL in the presence of Sharia Laws in the domestic legal structure of Pakistan, especially on IDPs affected by non-international armed conflict. It has found a poor domestic legal framework, and poor implementation of IHL, leading to inadequate protection to IDPs. Sharia Law in the legal structure of Pakistan does not hinder IHL from providing protection to IDPs.

The government of Pakistan should do more to ensure the applicability of IDPs legal framework, especially the implementation of the rules of IHL, but this is hindered by continuing armed conflict and a lack of review mechanism for the current status and number of IDPs.

Key Words: International Humanitarian Law (IHL), Internally Displaced Persons (IDPs), Islamic Context, Pakistan

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CHAPTER ONE: INTRODUCTION

1.1 Introduction

This chapter presents the research background of this study, to provide an understanding and significance of the issue of internally displaced persons (IDPs) and justifies the selection of the protection of Pakistani IDPs in an Islamic context. It introduces the issue of IDPs in Pakistan, especially the protection of IDPs under International Humanitarian Law (IHL). Furthermore, this chapter identifies and explains the aim and objectives of this study, the research approach for this study and research questions, review of the relevant literature, contribution to knowledge, and structure of this thesis.

1.2 Research Background

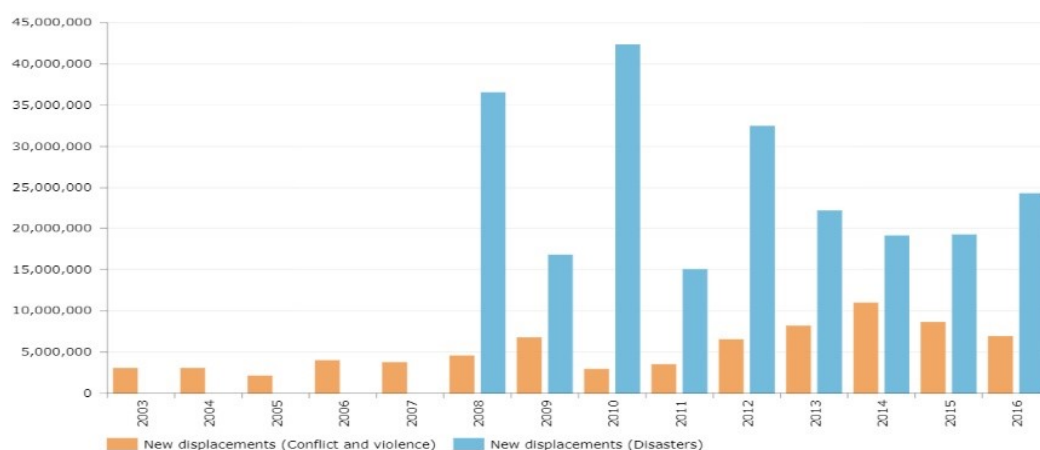
In 2015 the number of registered IDPs have exceeded 40 Million worldwide, within their own countries by conflicts and human rights violations, and this number is increasing for several years during which some IDP situations have ended while others have begun or continued. Meanwhile, a huge number remain unregistered, as it is difficult to get an accurate count when they remain on the move.¹ Particularly alarming is that IDPs include 70-80%, women, and children.² It is relatively easy to assess IDPs where they are in large IDP camps, as in the case of Darfur (western Sudan), but difficult to assess IDPs fleeing to larger towns and cities. The pattern of their displacement keeps occurring, due to ongoing conflicts, during their return, as well as

¹ Internal Displacement Centre, 'Global Report on Internal Displacement' (May 2016) <http://www.internal-displacement.org/globalreport2016/> accessed 16 December 2016

² Internal Displacement Monitoring Centre, 'Internal Displacement Global Overview of Trends and Developments in 2006' (April 2007) <http://www.internal-displacement.org/assets/publications/2007/2007-global-overview2006-global-en.pdf> accessed 16 June 2006

repeated displacements keep taking place. It is necessary to get appropriate data and figure of IDPs to decide for providing them humanitarian assistance, otherwise figure is treated as estimates.

Figure 1.1: IDPs Figure 2003-2016, both conflict and disasters affected³



The growing number of IDPs in the world shows that efforts to accommodate the IDPs are not keeping pace with the incidents causing their displacement. The protection of IDPs has remained a serious issue in the context of domestic and international legal protection.⁴

³ Source: Internal Displacement Centre, 'Global Report on Internal Displacement' (May 2016)
<http://www.internal-displacement.org/globalreport2016/> accessed 16 December 2016

⁴ Brookings-Bern Project on Internal Displacement, 'Addressing Internal Displacement: Framework for National Responsibility' (April 2005)
http://www.globalprotectioncluster.org/_assets/files/tools_and_guidance/protection_of_idps/20050401_nr_framework-EN.pdf accessed 16 June 2016

Figure 1.2: IDPs Affected by Conflict and Violence, as of December 2015⁵



Primarily, it is the responsibility of the concerned state to provide protection to IDPs, as they are nationals of that state and remain within its borders. The domestic legal structures of the concerned states aim to provide them protection and assistance in their safe return to original places of residence once that area is safe and cleared.⁶

The international legal framework provides IDPs protection under various bodies of international law, mainly under IHL, and states are urged to apply the UN Guiding Principles of Internal Displacement to protect IDPs.⁷ To protect IDPs in situations of armed conflicts of non-international character, IHL is extended to non-international armed conflicts. Common article 3 of the Geneva Conventions of 1949 and Additional Protocol II to the Geneva Conventions specify the criteria of non-international armed conflicts.

⁵ Source: Internal Displacement Centre, 'Global Report on Internal Displacement' (May 2016) <http://www.internal-displacement.org/globalreport2016/> accessed 16 December 2016

⁶ UN Guiding Principles on Internal Displacement 1998, Principle. 28

⁷ Rainer Hofmann, 'Internally Displaced Persons as Refugees' (1993) 35 (3) Acta Juridica Hungarica 179

The protection, ideally speaking, involves both the legal and a social issue, that challenges the states and individuals to fulfill their humanitarian responsibilities in protecting IDPs from the effects of conflicts and looking for alternative arrangements if they fail or are unable to meet these responsibilities.⁸ It covers all the rights of IDPs under IHRL, including civil, political, social, economic, and cultural rights.⁹ This protection becomes challenging in situations of internal displacement in the presence of a functioning legal system, supposed to protect IDPs.

The humanitarian community has taken steps for securing the protection of IDPs, but there exists no single legal framework that covers the protection needs of IDPs. The national laws of the concerned state along with IHRL, IHL and other internal displacement legal and institutional provisions constitute the framework for the protection of IDPs; however, their application is complicated.¹⁰ To simplify the application of these different bodies of law related to IDPs, the Guiding Principles on Internal Displacement have been developed to create an easily accessible normative framework of the protection of IDPs, that bring together important norms relating IDPs.¹¹

The UN Guiding Principles are not binding but are consistent with IHRL and IHL, which contain rules for the protection of IDPs during all the phases of displacement.¹²

Some countries (including Angola, Burundi, Sudan, Uganda, and Colombia) have

⁸ Hugo Slim and Luis Enrique Eguren, 'Humanitarian Protection' (ALNAP Guidance Booklet 2004) <<http://www.terzomondo.org/library/essentials/protectionbooklet3.pdf>> accessed 11 July 2015

⁹ United Nations, *No Refuge: The Challenge of Internal Displacements* (UN, New York, and Geneva 2003)

¹⁰ John Borton *et al*, *Support to Internally Displaced Persons. Learning from Experience* (Sida Publications 2005)

¹¹ Erin Mooney, 'Towards a protection regime for internally displaced persons' in Edward Newman and Joanne van Selm (eds.), *Refugees and Forced Displacement. International Security, Human Vulnerability, and the State* (United Nations University Press, Tokyo 2003) 159

¹² Walter Kalin, *Guiding Principles on Internal Displacement. Annotations* (The American Society of International Law and the Brookings Institution Washington 2000)

translated, disseminated, and incorporated UN Guiding Principles into their domestic law, but still, remain lacking their implementation.¹³ These Guiding Principles serve as morally binding statements and are hoped to attain the status of customary international law.¹⁴

Legally, IDPs have both domestic and international legal frameworks available for their protection, but face enormous problems in availing these legal protections for various reasons.¹⁵ Firstly, states normally refrain from acknowledging armed conflicts. Secondly, where states acknowledge the armed conflicts, they provide limited access to international organizations and humanitarian agencies. Thirdly, states remain busy in fighting the armed groups and their focus remains on fighting with them, while internal displacements keep occurring. Fourthly, often states may be unable or unwilling to protect IDPs. The application of both the domestic and international legal framework remains weak, adding to the suffering of IDPs. These factors make IDPs the most vulnerable group of people in a situation of displacement.¹⁶

There are instances of forcible displacements without military necessity, long-term displacements in situations of military necessity, not planning for safe and voluntary return after clearing the areas of displacement, and many other situations where legally recognized rights of IDPs are violated. Despite, availability of UN Guiding principles, domestic legal structures, and international legal framework for IDPs, millions of IDPs in the world still face problems in protection of their rights. The lack of a proper

¹³ John Borton *et al*, Support to Internally Displaced Persons. Learning from Experience (Sida Publications 2005)

¹⁴ Paula Banerjee *et al* (eds.) *Internal Displacement in South Asia* (Sage Publications, New Delhi 2005)

¹⁵ UN Guiding Principles on Internal Displacement 1998, Principle. 25

¹⁶ Michelle Mack and Jelena Pejic, Increasing Respect for IHL in Non-International Armed Conflicts' (ICRC Geneva February 2008) https://www.icrc.org/sites/default/files/topic/file_plus_list/0923-increasing_respect_for_international_humanitarian_law_in_non-international_armed_conflicts.pdf accessed 16 June 2016

mechanism for the application of domestic and international legal framework for IDPs remains a serious problem.¹⁷

1.2.1 Difference between IDPs and Refugees

The difference between IDPs and refugees is often described as the crossing of a border, but otherwise, they have the same sufferings and difficulties.¹⁸ Both IDPs and refugees are forced to flee their homes for saving their lives. Those who enter another country by crossing an international border become refugees and receive legal protection under international law, the rest are called IDPs whose protection remains the responsibility of their concerned state.¹⁹

The states that accept refugees, provide guarantees under international law for ensuring their basic human rights and protecting them from a forced return to their home countries. UNHCR has the mandate to lead and coordinate the protection of refugees on the international level, assists in the process of acquiring asylum, and ensures the provision of necessities to refugees including shelter, food, water, and medical care. On the other hand, there is no legal regime under international law that provides protection to IDPs, who often remain stuck in non-ending internal conflicts.²⁰

The status of refugees clearly falls under the Refugee Convention, as the appropriate legal document for their protection.²¹ The status of IDPs remains ambiguous due to a flexible definition of IDPs under UN Guiding Principles of Internal Displacement.

¹⁷ Erin Mooney, 'The Concept of Internal Displacement and the Case for IDPs as a Category of Concern' (2005) 24 (3) Refugee Survey Quarterly 9

¹⁸ James Hathaway, *The Law of Refugee Status*, (Lexis Law Publishing 1991)

¹⁹ Roberta Cohen, 'Developing an International System for Internally Displaced Persons' (2006) 7 (2) International Studies Perspective 87

²⁰ Catherine Phuong, 'Internally Displaced Persons and Refugees: Conceptual Differences and Similarities' (2000) 18 (2) Netherlands Quarterly of Human Rights 215

²¹ Refugee convention 1951, Art. 1

There are defined criteria for the termination of refugee status, but not for internal displacement that often ends through ad hoc or arbitrary decisions of the concerned states. It creates confusion in statistics and disagreements over recognition of IDPs.²²

The similarities of the causes of displacements and sufferings have remained reasons of debate among legal scholars and researchers, about grouping the both refugees and IDPs as a single category, to handle their challenges by the same institution(s). The Forced Migration Review (FMR) has raised this argument in 1998, 1999 and 2000 editions. Barutciski,²³ Bennett,²⁴ Kingsley-Nyinah,²⁵ Rutinwa,²⁶ and Vincent²⁷ have been actively participating in this debate through these editions of FMR.

Barutciski pointed out the attempts of the human rights advocates for extending the protection of refugees to IDPs as counter-productive for being detrimental to the traditional asylum option and helpful in increasing containment.²⁸ Moreover, in 2001, the US Ambassador to the UN acknowledged the bureaucratic distinction between refugees and IDPs as negatively affecting the lives of millions of IDPs.²⁹

FMR, along with discussing the differences between refugees and IDPs, has also been addressing the usefulness and viability of the IDP category. There have emerged two

²² Erin Mooney, 'Towards a protection regime for internally displaced persons' in Edward Newman and Joanne van Selm (eds.), *Refugees and forced displacement* (Hong Kong: United Nations University Press 2003) 159

²³ Michael Barutciski, 'Tensions between the refugee concept and the IDP debate' (1998) 3 (1) Forced Migration Review 11; Michael Barutciski, 'Questioning the tensions between the 'refugee' and 'IDP' concepts: a rebuttal' (1999) 4 (1) Forced Migration Review 35

²⁴ Jon Bennett, 'Rights and Borders' (1999) 4 (1) Forced Migration Review 33

²⁵ Michael Kingsley-Nyinah, 'What may be borrowed; what is new?' (1999) 4 (1) Forced Migration Review 32

²⁶ Bonaventure Rutinwa, 'How tense is the tension between the refugee concept and the IDP Debate?' (1999) 4 (1) Forced Migration Review 29

²⁷ Marc Vincent, 'IDPs: rights and status' (2000) Forced Migration Review 29

²⁸ Michael Barutciski, 'Tensions between the refugee concept and the IDP debate' (1998) 3 (1) Forced Migration Review 11

²⁹ John Borton *et al*, *Support to Internally Displaced Persons. Learning from Experience* (Sida Publications 2005)

schools of thoughts in this debate. The first school of thought is comprised of the UN and the Brookings-Bern Project on Internal Displacement; comprised of Dr. Francis M. Deng, Roberta Cohen, Erin Mooney, and Professor Walter Kalin. This school of thought has been advocating a separate humanitarian category of IDPs. The second school of thought is represented by the International Committee of the Red Cross (ICRC). This school of thought favors a single category of both refugees and IDPs, without separating them, based on humanitarian principles and the realities of the field. According to Hickel:

‘In situations of armed conflict and internal disturbances, the ICRC will in fact always try to give priority to those with the most urgent needs. Because of their precarious situation, displaced persons are frequently, although not exclusively, among the main beneficiaries of its work. Moreover, the host populations, which are sometimes minority groups or resident populations that have been unable to move away, often have to face a situation that is just as difficult, if not worse. Instead of developing programmes tailored to the needs of the displaced persons, it will then be necessary to adopt an overall approach and define the appropriate operational modes according to the context’³⁰

The approach of the second school of thought represented by the ICRC, if seen in the context of the vulnerability of people on the ground, serves the purpose of humanitarian principles. Findings of a collaborative evaluation of donor support to IDPs also support this approach and make strong objections to the identification of IDPs as a separate category from among all actual and potential vulnerable groups, which IDPs confronts the need-based humanitarian principle of assistance.³¹

³⁰ Marguerite C Hickel, ‘Protection of internally displaced persons affected by armed conflict: concept and challenges’ (2001) 83(843) *International Review of the Red Cross* 699

³¹ John Borton *et al*, *Support to Internally Displaced Persons. Learning from Experience* (Sida Publications 2005)

1.2.1.1 Refugees

Article 1 of the 1951 Convention Relating to the Status of Refugees, as amended by the 1967 Protocol, defines a refugee as:

‘A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it’.³²

The 1951 Refugee Convention and its 1967 Additional Protocol are important instruments that regulate the refugee law. There are some other legal instruments relating refugee law, but they have been signed separately by different contracting states and various regional bodies. International Refugee Law applies only to the people that enter into another state by crossing the international border. The United Nations High Commissioner for Refugees has powers to deal with the matters of the displaced persons, but they are not in the same condition as refugees, having not crossed the international border in extreme circumstances.³³

The 1951 Refugee Convention recognized the international scope of the refugee crisis and the duties of the states regarding cooperation between the states to resolve it. The convention was initially binding on the European states; later the 1967 protocol made it a universal document applying to the whole world, dealing with human rights, violations and political or armed conflicts in the home countries of the refugees as well.

³² Refugee Convention 1951, Art. 1 (A) (2)

³³ Vanessa Mattar and Paul White, ‘Consistent and predictable responses to IDPs: A review of UNHCR’s decision-making processes’ (UNHCR Evaluation and Policy Analysis Unit, March 2005) <http://www.unhcr.org/423551522.pdf> accessed 16 June 2016

It was framed to offer international legal protection and other assistance to help refugees begin a new life.

Articles 12-30 of the 1951 Refugee Convention contain the rights of refugees. Although it is very difficult to enforce these rights fully in practice, still they establish criteria for the hosting states, which can be divided into four categories. The first category guarantees refugee the same privileges as nationals in a host country. The second category requires host states to treat refugees as they treat the nationals of other states. The third category grants refugees the best possible treatment, not less favorable than the host country's treatment of non-citizens, and the fourth category contains rights.³⁴

The state parties to the 1951 Refugee Convention acknowledge and oblige the rights conferred by refugee convention. The state parties agree to allow refugees free exercise of religion and religious education, access to elementary education as well as public relief and assistance, free access to the courts and legal assistance, equal treatment by taxing authorities, and protection of literary, artistic, and scientific work including protection of intellectual property.

The refugees are agreed by state parties under the 1951 Refugee Convention to grant favorable treatment as given to the nationals of foreign countries, mentioned above as the second category of rights.³⁵ In this category, it is agreed to grant refugees the right to belong to trade unions, the right to belong to other non-political, non-profit organizations and the right to engage in wage-earning employment.

The state parties to the 1951 Refugee Convention, according to the third category of refugee rights, should accord a refugee treatment as favorable as possible, not less

³⁴ David Weissbrodt, *The Human Rights of Non-citizens* (Oxford University Press 2008) 115

³⁵ Refugee Convention 1951, Art. 15 and 17

favorable than that accorded to aliens in the matters of the right to own property, right to practice a profession, the right to self-employment, access to housing and access to higher education.³⁶ The last category of refugee rights includes the right to choose their place of residence, move freely within the country and exemption from reciprocity.³⁷

The refugee convention requires state parties to bring disputes before the International Court of Justice but does not appoint any implementing or supervisory body to implement the refugee convention.³⁸ Normally, the state parties adapt their domestic asylum and refugee laws, and the political will of the state parties plays a critical role in obliging and implementing the rules of the refugee convention, with discretion to oblige or neglect the rules.³⁹ The state parties are directed to comply with the provisions of the refugee convention in accordance with the suggestions of the UNHCR. The Executive Committee of the High Commissioner's Programme (EXCOM) makes recommendations for the protection of refugees in general and particular situations.⁴⁰

The UN General Assembly has given UNHCR the responsibility to act as the principal institution for the protection and assistance of refugees and asylum seekers. The mandate, mission, and purpose of UNHCR have been established by the UN General Assembly by passing a resolution known as the UNHCR Statute.⁴¹ The UN High Commissioner for Refugees works under the authority of the UN General Assembly and assists the concerned governments and private organizations with their approval by

³⁶ Refugee Convention 1951, Art. 13, 18, 19, 21, and 22

³⁷ Refugee Convention 1951, Art. 7 (1)

³⁸ Refugee Convention 1951, Art. 38

³⁹ Joan Fitzpatrick, 'Revitalizing the 1951 Convention' (1996) 9 HHRJ 229

⁴⁰ Refugee Convention 1951, Art. 35, 36

⁴¹ UNHCR Statute 1950

facilitating them in voluntary repatriation and assimilation with the new national communities.⁴²

The UNHCR performs its duties with the cooperation of other UN agencies including United Nations Children's Fund (UNICEF), the United Nations Development Programme (UNDP), the International Bank for Reconstruction and Development (IBRD), the World Food Programme (WFP), and the World Health Organization (WHO). It also works with numerous other private and public organizations on both national and international levels. Since the UNHCR's founding in the early 1950s, the role and operations of the organisation have evolved considerably.⁴³

The refugee regime is at risk due to some major threats. The temporary protection provided to refugees puts their future at stake. The states use temporary refugee protection as substitute for the traditional refugee protection provided by Refugee Convention and Protocol, leading towards the exclusion of traditional protection from the sphere of human rights.⁴⁴ The states are more likely to offer temporary protection to refugees as to decrease their financial burden and refraining refugees from gaining economic and social benefits. Another threat to refugee regime is the non-acceptance of refugees by the developed states that control most of the world's wealth. Most of the refugees are held in the developing countries that are not able to meet their needs.

It is a collective responsibility of all states to share the burden of refugees, but the number of states that accept refugees is decreasing. Although UNHCR has gained some success in convincing more states to accept the responsibility of refugees, still the

⁴² UNHCR Statute 1950

⁴³ UNHCR, 'An Operations Management Handbook for UNHCR's Partners' (February 2003) <http://gametlibrary.worldbank.org/FILES/474_Operations%20management%20handbook%20UNHCR.pdf> accessed 14 July 2016

⁴⁴ David Weissbrodt, *The Human Rights of Non-citizens* (Oxford University Press 2008) 110

tendency to associate refugees with crime and terrorism makes their future insecure, a blame based on assumptions and adding to the sufferings of refugees whose life and safety are already in danger.

The principle of the sovereignty of states empowers states to exercise jurisdiction over their territory, with immigration matters regulated under sovereign competence and laws to allow non-citizens to enter their territory. A state has the power to allow entering, remaining, and expelling non-citizens, with some exceptions for non-citizens. International Law is the main source of these exceptions, arising from universal and regional treaties and conventions, rules of customary international law, and general principles of law. These exceptions are generated by ever-developing standards in the practice of states and international organizations, especially through the Office of the United Nations High Commissioner for.⁴⁵

1.2.1.2 Internally Displaced Persons (IDPs)

In general, the sufferings, experiences, needs, fears, and wants of the IDPs are like refugees, and sometimes they are called the internal refugees, the only difference being the crossing of an international border. The refugees cross a border and are granted legal status and have rights under refugee convention of 1951. The refugees are protected by UN General Assembly through UNHCR, but IDPs do not cross a border and remain the responsibility of the state.⁴⁶

In 1972, the matter of IDPs was entertained for the first time by the United Nations.⁴⁷

The definitions of IDPs were originally drawn from the concept of refugees

⁴⁵ Guy Goodwin-gill, 'International Law of Refugee Protection' in E Qasmiyeh G Loescher K Long and N Sigona (eds), *The Oxford Handbook of Refugee and Forced Migration Studies* (Oxford University Press 2014) 36

⁴⁶ Brid Ni Ghraíne, 'UNHCR's Involvement with IDPs — 'Protection of that Country' for the Purposes of Precluding Refugee Status' (2015) 26 (4) *International Journal of Refugee Law* 536

⁴⁷ UN ECOSOC Res 1655 (1 June 1972) UN Doc E/RES/1655

incorporated in the OAU Refugee Convention, 1969 and Cartagena Declaration, 1984.⁴⁸

The UN Guiding Principles provide a generally accepted definition of IDPs as:

‘Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular because of or to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border’.⁴⁹

There is still no universally agreed definition of IDPs. There is a descriptive identification of the category of persons as IDPs, but the global statistics on internal displacement provide a narrower concept of IDPs, considering conflict-affected IDPs only as the population of concern.⁵⁰

The IDPs are considered as more vulnerable than refugees because they are not provided with the proper protection and assistance under the responsibility of the state as compared to refugees under international protection. The refugees are protected by the 1951 Refugee Convention and its 1967 additional protocol, but IDPs are not provided with protection under International Human Rights Law, IHL and UN Guiding Principles of Internal Displacement, and their protection depends on the willingness of the concerned states.

The gap in the protection of IDPs has urged the international humanitarian agencies to take steps to protect them. These agencies mainly include the UNHCR, the United Nations Children’s Fund (UNICEF), the World Food Programme (WFP), the World Health Organization (WHO), the United Nations Development Programme (UNDP), the Office of the High Commissioner for Human Rights (‘OHCHR’) the International

⁴⁸ Cartagena Declaration on Refugees 1984

⁴⁹ UN Guiding Principles on Internal Displacement 1998

⁵⁰ Jean-Daniel Tauxe ‘We Should Have Humanitarian Access to Displaced Civilians’ (International Herald Tribune March 2000)

<http://dimaslanjaka.www.a.b.c.steelmonkeyhosting.com/proxy.cgi/en/00/https/web.archive.org/web/20061125150508/http://2fwww.iht.com/articles/2000/03/01/edtauxe.t.php> accessed 16 June 2016

Organization for Migration (IOM), and NGOs. Coordination has been the responsibility of the UN Emergency Relief Coordinator and the Humanitarian Coordinator in the country concerned.⁵¹

In 1992, the Representative of the Secretary-General on Internal Displacement was appointed, who directed a team of experts to examine the existing rules regarding IDPs. The team pointed out that IDPs were not explicitly covered by IHL and there were noted significant areas in which law failed to provide adequate protection to IDPs. The recommendations of the experts did not favor any need for an international instrument but suggested the improvements be made regarding more efficient protection of IDPs.⁵²

There have been made some efforts at international level for the protection of IDPs. UN Guiding principles are considered as the most appropriate international document which provides guidance to the concerned governments for the protection of IDPs. The figure below shows the efforts of the international community, since 1908s, in the development of international response for protecting IDPs.

⁵¹ The UN Office for the Coordination of Humanitarian Affairs Inter-Agency Internal Displacement Division, 'PROTECT OR NEGLECT? Toward a More Effective United Nations Approach to the Protection of IDPs AN EVALUATIO' (UNHCR November 2004)

<http://www.brookings.edu/fp/projects/idp/protection_survey.pdf> accessed 14 July 2016

⁵² UNCHR Res. 1993/95 (11 March 1993) UN E/CN.4/RES/1993/95

Figure 1.3: The Development of the International Response to the Protection of IDPs⁵³

The late 1980s	Internal displacement emerges as an issue on the international agenda
1991	End of the Gulf War and flight of Iraqi Kurds up to Turkish border prompts 'Operation Provide Comfort' which creates a 'safe zone' for IDPs in Iraq.
1992	On request from the UN Commission on Human Rights, the UN Secretary General appoints Francis Deng as Representative Secretary General (RSG) of Internally Displaced Persons. Interagency Standing Committee (IASC) is established. Sets up an internal displacement task force and designates Emergency Relief Coordinator (ERC) as UN reference point for protection and assistance to IDPs. The UNHCR adopts a working definition of internal displacement enabling it to work directly with IDPs who fall within its original mandate.
1993	RSG issues first annual report and recommends the creation of a new UN agency or modification of the mandate of an existing one (such as the UNHCR) to cater more specifically to the needs of IDPs.
1996	Faced with resistance to the idea of a dedicated/lead UN agency for IDPs, the RSG alters his position and supports the IASC's collaborative approach among UN agencies. Global IDP project established in Geneva by the Norwegian Refugee Council.
1997	UN Secretary General appoints Emergency Relief Coordinator as a focal point for IDPs in the UN system.
1998	Guiding Principles on Internal Displacement presented to the UN Commission on Human Rights.
1999	Global IDP project launches IDP database at the request of the UN.
2000	Interagency Standing Committee adopts IDP policy. ERC establishes Senior Inter-Agency Network on Internal Displacement.
2001	The global number of IDPs reaches 25 million and remains largely unchanged for the following years.
2002	Internal Displacement Unit (since 2004 division) created within OCHA.
2004	UN Secretary General appoints Walter Kälin as Representative on the Human Rights of Internally Displaced Persons. IASC adopts revised IDP Policy Package to strengthen the 'Collaborative Response'.

The experts did not suggest the development of an international instrument, however, UN Guiding Principles of Internal Displacement were developed for three main reasons. The first was that the governments were hesitant to support any treaty, IDPs being

⁵³ Sources: John Borton *et al*, *Support to Internally Displaced Persons. Learning from Experience* (Sida Publications 2005) 48

sensitive that any treaty on this matter was feared to infringe their sovereignty. The second reason was the shortage of time as treaty-making could have taken decades, but an urgent document was needed to address emergency needs. The third reason was the availability of sufficient international law applicable to IDPs, with provisions needing to be combined in a simple document.⁵⁴

Although these principles are not binding, they provide an international standard for governments, international organisations and the other relevant actors training and protection to IDPs. They provide protection to IDPs from forcible displacement; offer a basis for protection and help and guarantees for safe return, resettlement, and reintegration throughout their journey of displacement.

1.2.2 IDPs under IHL

IHL protects the displaced persons in the situations of armed conflicts by their status as civilians, but this rule does not apply to those who take part in hostilities. The civilians are the primary population of concern when it comes to armed conflict situations, and IHL extends its applicability to non-international armed conflicts relying upon the four Geneva Conventions of 1949, their Additional Protocols and Hague Conventions of 1970. The Hague Law deals with the methods and means of warfare while Geneva Law is concerned with the protection of people in times of armed conflicts. The principle of sovereignty restricts other states to interfere in the internal matters of a state.

The Geneva Law is concerned with the protection of people in times of armed conflicts and applies to both international and non-international armed conflicts. The changing dynamics and nature of non-international armed conflicts make it difficult to differentiate between internal disturbance and armed conflict. In peace situations, states

⁵⁴ UNCHR Res. 1996/52 (19 April 1996) UN E/CN.4/RES/1996/52

are responsible for taking adequate measures to ensure respect for and understanding of IHL and are advised to spread the knowledge and understanding of IHL through the population, both armed forces and general masses. The states have the responsibility of including the relevant treaties of IHL into their domestic legislation and ensuring the implementation of those rules.

IDPs are protected by IHL as well as customary international law during armed conflicts.⁵⁵ IHL has limited applicability in situations of non-international armed conflicts. Common Article 3 to the Geneva Convention and Additional Protocol II provide more specific protection to IDPs in times of the conflicts of non-international nature. The fundamental guarantees, treatment of the wounded and sick and protection to civilians are provided under IHL. IDPs, based on their status as the civilian population, are protected by IHL in times of non-international armed conflicts, under Geneva Convention IV, Additional Protocols I, Additional Protocol II and customary international law.

IHL has a wide range of scope and applicability in times of armed conflicts. Common article 3 of the Geneva Conventions provides a broader scope of IHL and extends its applicability to non-international armed conflicts. IHL aims to protect the victims of armed conflicts, mainly civilians, in both international and non-international armed conflicts, so IDPs are treated as civilians protected by IHL. It aims to protect persons, mainly civilians, not directly involved in fighting during the armed conflicts; from attacks, destruction of property and ill-treatment. Displacement of civilians without a justified reason is prohibited under International Law, and there are situations where IHL protects IDPs, especially in situations of armed conflicts of non-international

⁵⁵ Geneva Convention IV; Additional Protocol I

character. These groups of people struggle to meet their essential needs and face threats including tensions with host communities, unsafe settlement, and unassisted return to unsafe areas.

In situations of such armed conflicts, IHL aims to minimise hardships of civilians, including IDPs during their displacement and prohibits forced displacement except for necessary circumstances or imperative military necessity. IDPs are considered as civilians if not taking part in armed conflicts and have all the rights under both domestic and international laws for their protection. IHL provides some ground rules of treatment to IDPs in armed conflicts, on the rules of Customary International Humanitarian Law, specific provisions of International Humanitarian Law treaties and existing soft law human rights standards. These rules are not absolute criteria and should be read in conjunction with common article 3 to the Geneva Conventions of 1949.

So, the disparity between the IDPs and refugees, in terms of receiving protection from domestic governments and international organizations, makes IDPs more vulnerable than Refugees. Refugees receive protection from UN organizations and host countries, while IDPs remain dependant on their domestic governments. The agreements and principles at the international level; including the UN human rights declaration (1948), Refugee convention (1951), Geneva Convention (1965) and the Refugee protocols (1967 & 1972); do not provide enough legal protection to IDPs as compared to refugees.

The role of international community and humanitarian organizations becomes critical in situations where concerned governments fail or show their non-willingness to provide protection to IDPs. At present, there are millions of IDPs around the world that are not being provided proper protection and assistance by their respective states and need

international community and humanitarian organizations to play their role in providing them protection.

The UN Security Council and UN General Assembly are very keen to call upon the parties to a conflict on the matter of the voluntary and safe return of internally displaced persons. The world community respects the sovereignty of the states and refrains from interfering with the internal matters of other states. In the situations of the unwillingness of the state to accommodate internally displaced persons or forcible uprooting of civilians by the state itself, the international community reinforces the concerned state towards its national responsibility.

1.3 Internally Displaced Persons in Pakistan

The government authorities often rely on international organizations, local NGOs, and researchers to contribute to the efforts of data collection. The Danish Refugee Council (DRC), the International Office for Migration, Internal Displacement Monitoring Centre (IDMC), UN Office for the Coordination of Humanitarian Affairs (OCHA), UN Population Fund (UNFPA) and the Office of the United Nations High Commissioner for Refugees (UNHCR) help governments in collecting data on IDP situations. Despite, the involvement of the national governments, NGOs, and international organizations often the target of accurate data collection on IDP remains unachieved; due to various factors involved in their displacement, complexities in settling their status, and remaining constantly on the move.

There are many reasons for the displacement of IDPs including conflicts, disaster, or other causes. They seek shelter in camps or non-camp settings and keep looking for better places for staying or crossing the borders. It becomes even harder to collect accurate data in situations of conflict or situations where IDPs

are dispersed within a community, instead of being accommodated in camps or temporary shelter. The conflict situations do not allow accessing considerable sources and technical expertise to displaced persons. At times, IDPs are not willing to show their identities due to security concerns. So, the assessment of the number of IDPs living in non-camp settings, including urban areas, remains daunting and complex.

The situation and needs of IDPs keep changing from time to time. Sometimes, they move from one place to other in search of better living conditions, they keep going back to their community for a short period and return to the places of displacements, and keep checking various locations before making the decision for staying in each area. Although counting IDPs is easier in the government set up temporary camps, but often IDPs residing in such camps are dynamic as they keep moving in and out for various reasons including security, livelihood possibilities, and government policies.

The accurate assessment of the number of conflict-affected IDPs in Pakistan remains a challenge due to the multiplicity of the factors of their displacement and presence of Afghan Refugees at a large number in Pakistan. The situation becomes harder due to the similarity of causes of the displacement of IDPs and Afghan refugees, as well as the social, cultural, and religious ties of both the categories of displaced persons. Moreover, geographic conditions of the border between Pakistan and Afghanistan make it impossible to stop unchecked entry of refugees into Pakistan. The people of both the sides of the borders have historically been tied to each other from ages and tend to help and protect each other in all sorts of situations when they need each other. Along with the conflict-

affected IDPs, Pakistan hosts a large population of IDPs affected by natural disasters such as floods and earthquakes.

The conflict-affected IDP population in Pakistan is mainly concentrated in Khyber Pakhtunkhwa (KP) province and Federally Administered Tribal Areas (FATA), with a small portion in Baluchistan province and other parts of Pakistan. The estimates and numbers of the collected data of IDPs, often based on the registered IDPs, exclude a large portion of unregistered IDPs living in KP and FATA and Urban areas of Pakistan. The estimates are also made on the data of registered displaced families, provided by government authorities in KP and FATA, by using estimated average family size. There is no regular monitoring process of IDPs in Baluchistan and estimates are made on information available from media sources. The criteria of the registration of IDPs is the production of computerised national identity card (CNIC) and having home address of the area that is declared to be calamity-hit by the government. IDPs having two addresses or their CNICs containing faulty information are not considered as eligible for registration.

Pakistan comprises of five distinct regions; Punjab the north-east, Gilgit-Baltistan and Azad Kashmir in the north, Sindh in the south-east, Baluchistan in the south-west and the Pashtun dominated north-west.⁵⁶ The north-west region is divided into Khyber-Pakhtunkhwa (KPK) and the Federally Administered Tribal Areas (FATA); inhabited by semi-autonomous tribes under seven tribal agencies and six frontier agencies, divided into Subdivisions and Tehsils. According to the Election Commission of Pakistan, the Federally Administered Tribal Areas consist of the following divisions: FATA borders Pakistan's Khyber Pakhtunkhwa and

⁵⁶ Hassan Abbas, 'Profiles of Pakistan's Seven Tribal Agencies' (2006) 4 (20) Terrorism Monitor 1

Baluchistan provinces and Afghanistan's Nangarhar, Kunar, Paktia, Khost and Paktika provinces.

The legal status of the conflict zone in Pakistan, including FATA and tribal areas bordering Afghanistan, has remained a subject of confusion. FATA is administered by the federal government under the special jurisdiction of the 1901 Frontier Crimes Regulation (FCR).⁵⁷ In FATA councils and jirgas are mainly responsible for the maintenance of peace and law. In case of their failure, the federal government undertakes justice through Political Agent (PA), representing the president of Pakistan.⁵⁸ The conflict zone is mainly comprised of seven agencies and Swat, an adjacent region of the tribal areas, and domestic laws of Pakistan properly apply to these regions under the direct supervision of the president or his agents and the provincial governments. The constitution of Pakistan together with other laws applies to the tribal areas.⁵⁹

The federal government of Pakistan directly control FATA through a special law, the Frontier Crimes Regulations (FCR). In 1996, the FATA has been granted the right to vote to their own representatives in the parliament of Pakistan.⁶⁰ The people of FATA are represented in the parliament of Pakistan, in both the National Assembly⁶¹ and the Senate⁶², 12 seats in the National Assembly of Pakistan and 8 seats in the Senate of Pakistan.⁶³

⁵⁷ Frontier Crimes Regulation 1901

⁵⁸ The Constitution of the Islamic Republic of Pakistan 1973, Art. 246

⁵⁹ Al-Jehad Trust v. Federation of Pakistan [1999] SCMR 1379

⁶⁰ Stephen Tierney, *Accommodating national identity: new approaches in international and domestic law* (21st edition Martinus Nijhoff Publishers 2000)

⁶¹ The Constitution of the Islamic Republic of Pakistan 1973, Art. 51

⁶² The Constitution of the Islamic Republic of Pakistan 1973, Art. 59

⁶³ The Constitution of the Islamic Republic of Pakistan 1973, Art. 257

FATA is controlled by the government of Pakistan through the federal authority of the Governor of Khyber Pakhtunkhwa, on behalf of the President of Pakistan. Laws framed by the parliament apply to FATA with the approval of the president of Pakistan. The president has the power to issue regulations for the peace and good governance of the tribal areas.⁶⁴ The president is also empowered to cancel the status of the tribal areas in consultation with the tribal people through their council of elders (Jirga). The government of Pakistan is working on the merger of FATA with Khyber Pakhtunkhwa by repealing the Frontier Crime Regulations.⁶⁵

In 2004, Pakistan's law enforcing agencies entered the FATA in search of militants and faced fierce resistance. A large area of the FATA was under control of the militants by 2004, and negotiations were held between Pakistani Taliban and military forces of Pakistan.⁶⁶ The military forces of Pakistan conducted eight operations in South Waziristan and North Waziristan areas of FATA from 2004 to 2006. In 2007, the government of Pakistan decided to eradicate the roots of militancy by taking political and administrative control over Waziristan.⁶⁷

The armed conflict between law enforcing agencies and militant groups remains the primary cause of the displacement of internal displacement in Pakistan. Apart from direct conflict, it has caused sufferings for the people by giving vent to sectarian violence and human rights abuse in the northwest of Pakistan. Approximately five

⁶⁴ The Constitution of the Islamic Republic of Pakistan 1973, Art. 247

⁶⁵ Sabina Khan, 'FATA's Political Status: What are the consequences and options for Pakistan' (2011) 10 (2) Strategic Insights 35

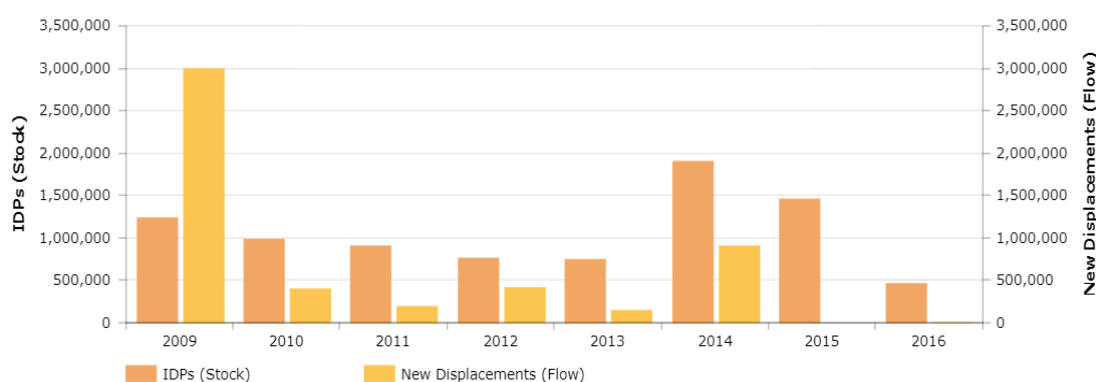
⁶⁶ Robert Crews and Amin Tarzi (Eds), *The Taliban and the Crisis of Afghanistan* (Cambridge: Harvard University Press 2008) 231

⁶⁷ Ismail Khan, 'Plan ready to curb militancy in Fata, settled areas' (Dawn June 2007) <https://www.dawn.com/news/253526/plan-ready-to-curb-militancy-in-fata-settled-areas> accessed 16 June 2016

million people have been displaced from these areas.⁶⁸ In 2009, a heavy fight has displaced more than 3 million people from Swat, Buner, and Dir districts in Khyber-Pakhtunkhwa, including most women and children.⁶⁹

In May 2011, two big displacements in FATA and Khyber Pakhtunkhwa occurred when local tribes were given warnings to vacate the areas for a military operation. Thousands of people, including women and children fled in fear of being attacked during the conflict.⁷⁰ There were heavy fights in the areas that were used for supplies for western troops in Afghanistan.⁷¹

Figure 1.4: Conflict and violence displacement figures, as of 2016⁷²



⁶⁸ OCHA, 'Pakistan: Humanitarian Bulletin Issue 37 | December 2015 - January 2016' (OCHA, Jan 2016) <https://reliefweb.int/report/pakistan/pakistan-humanitarian-bulletin-issue-37-december-2015-january-2016> accessed 16 June 2016

⁶⁹ OCHA, 'Pakistan: IDP's (N.W.F.P /F.A.T.A) Conflict-Induced Displacement 12 Jun, 2009' (OCHA June 2009) <https://reliefweb.int/map/pakistan/pakistan-idps-nwfp-fata-conflict-induced-displacement-12-jun-2009> accessed 16 June 2016

⁷⁰ Internal Displacement Monitoring Centre, 'PAKISTAN Returns continue in some areas but comprehensive IDP policy needed' (Norwegian Refugee Council, May 2011) <http://www.internal-displacement.org/assets/library/Asia/Pakistan/pdf/Pakistan-Overview-May2011.pdf> accessed 16 June 2016

⁷¹ Internal Displacement Monitoring Centre, 'Displacement caused by conflict and natural disasters, achievements and challenges' (Norwegian Refugee Council, Jan 2012) <https://reliefweb.int/report/pakistan/displacement-caused-conflict-and-natural-disasters-achievements-and-challenges> accessed 16 June 2016

⁷² Internal Displacement Monitoring Centre 2016

In 2013, two new displacements took place in parts of Tirah Vally and Khyber Agency. In March 2013 approximately 17,000 displaced families in Tirah Vally, and in May 2013 some 10,600 families in Khyber Agency were registered.

More than 1.5 million IDPs were reported by the end of 2015, in and off camps in the Khyber Pakhtunkhwa and the Federally Administered Tribal Areas (FATA) in Pakistan.⁷³ The Federally Administered Tribal Areas of Pakistan (FATA) and Khyber-Pakhtunkhwa have been suffering from the crises of IDPs at large scale, from last decade or so. The Pak-Afghan bordering areas (FATA) remained the centre of armed conflict between Pakistani military forces and militant groups. Many small and occasional large-scale fighting took place in these areas, resulting in the displacement of millions of people. From 2004 to 2016, there have been several waves of displacements from different areas of FATA and Khyber Pakhtunkhwa.

The armed conflict in Pakistan, the main reason of displacement, has not been studied from an IHL viewpoint, and applicability of UN Guiding Principles of Internal Displacement. The recent IDPs crisis in Federally Administered Tribal Areas (FATA) and Khyber Pakhtunkhwa has emerged as an enormous problem in the recent history of Pakistan, coupled with ongoing armed conflict.

This research explores the protection of IDPs under IHL in an Islamic context. The whole legal spectrum for the protection of IDPs, at both national and international level, and its applicability on IDPs in Pakistan is explored. The responsibility of the national governments in the protection of IDPs and efforts of the government of Pakistan are explored through the suitability of domestic legal structure for IDPs in Pakistan. This

⁷³ UNHCR, 'PAKISTAN FACTSHEET December 2015' (UNHCR, December 2015) <http://www.unhcr.org/5000210e9.pdf> accessed 16 June 2016

research is a case study of the protection of IDPs in Pakistan, to assess the applicability of IHL in an Islamic context through the domestic legal structure of Pakistan.

Pakistan hosts refugees from Afghanistan affected by armed conflict in Afghanistan and affected by natural disasters, including the earthquake in 2005, floods and many other natural disasters, but they are not subject of this study, but the condition of other displaced persons is almost same as those affected by armed conflicts. The assessment criteria of non-international armed conflicts are analysed in the context of Pakistan to assess the applicability of IHL.

The causes of displacement, provision of facilities during displacement and arrangements for the safe return of the IDPs in Pakistan are discussed in the light of legal protection available in both domestic and international legal framework available for IDPs. Interviews of IDPs in the camps established for them have been analysed in the light of the protection of rights under domestic and international legal structure.

Pakistan contains a blend of democratic, secular, and religious values in its constitution and is named as the Islamic Republic of Pakistan.⁷⁴ A debate goes on regarding the relationship between IHL and Islam, this research explores that through the Pakistan case study where Islam is given primacy over domestic and International Laws.

Pakistan has 98% of Muslim population; its origin, culture, and customs are based upon Islamic values. People prefer to practice the values of Islam in their routine matters and even give primacy to Islam over the laws of the state.⁷⁵ The working of the legal system of Pakistan and its acceptance of IHL in the context of Islamic Laws is discussed.

⁷⁴ The Constitution of the Islamic Republic of Pakistan 1973, Art. 227

⁷⁵ The Constitution of the Islamic Republic of Pakistan 1973, Art. 1-6

1.4 Aims and Objectives of the Study

The matter of IDPS in Pakistan needs to be studied in a social and cultural context where customs and traditions are followed more closely than rules and regulations. The domestic and international legal framework for the protection of IDPs has not been proved as effective in the protection of IDPs in Pakistan.⁷⁶ This study aims to apply mixed research methods (doctrinal, comparative, and empirical socio-legal) to better understand the application of IHL to IDPs in conflict situations in Muslim countries, through an empirical/socio-legal case study of Pakistan IDPs, using qualitative field interviews and identifying defects of policy & implementation.

This research utilises a mixed research methodology, both legal analysis of IHL to Pakistani IDPs in conflict situation relating to IDPs, and empirical or socio-legal analysis of its effects are drawn from field interviews. The interpretive approach is applied for legal interpretation of Laws applicable to IDPs with Islamic law and application/implementation aspects; whereas empirical/socio-legal case study approach is employed for a case study of the conflict-affected IDPs in Pakistan, using qualitative field interviews and identifying defects of policy and implementation. Analysis of IHL is combined with comparative legal research into relevant Islamic law, and case study research into Pakistan's experience of IHL and IDPs. The methodologies are drawn from empirical legal research and legal anthropology/ethnography.

Moreover, this approach helps in collecting data from targeted respondents through interviews as methods of primary data collection to explore the facts and included ground information on the matter under investigation. The secondary data is collected

⁷⁶ Najam U Din, *Internal Displacement in Pakistan: Contemporary Challenges* (Qasim Press Lahore, 2010) 34

by using the standard methods of data collection that include books, articles, journals, and other published and unpublished material. The case study of displaced persons in Pakistan helps to provide practical application of the phenomenon under investigation. Rather than exploring the impact of IHL in a broader context, a test case is selected for application of IHL Pakistani IDPs.

This study examines the already available legal structure for the protection of IDPs and its applicability to the IDPs in Pakistan by looking at the implementation of the legal framework on the IDPs in Pakistan. The adoption of the legal framework in the domestic structure of Pakistan has been examined and the willingness of the government of Pakistan as to oblige the whole legal framework applicable to IDPs has been investigated. The reasons of non-adherence the whole legal spectrum for IDPs in Pakistan have been highlighted and recommendations have been suggested for the protection of IDPs in Pakistan according to the legal structure available for their protection.

1.5 Research Questions

This study seeks to answer the following questions:

1. How can different research methodologies (specifically doctrinal, comparative, and empirical socio-legal) help to understand the application of IHL to IDP in conflict situations in Muslim countries?
2. What are the particularities of armed conflict in Pakistan as affecting IDPs?
3. How can conflict-affected IDPs be distinguished from other types of IDPs?
4. How effective has domestication of IHL into Pakistani law been in protecting IDPs?
5. Drawing upon the knowledge of Islamic jurists and scholars, how can sharia law and practice of Islamic law relate to established IHL as affecting IDPs?
6. Drawing upon interviews with IDPs in Pakistan, how successful are the protection of IDPs, both in law, policy, and implementation?
7. What conclusions can be drawn from the Pakistan case for other countries (and specifically Islamic countries and those with large Muslim populations) with large IDPs in conflict situations?

1.6 Literature Review

The impact of IHL in the protection of IDPs in Pakistan is not exhaustively studied, yet literature available on IDPs in Pakistan provides a fair amount of information on the protection of IDPs in Pakistan. It needs in-depth study as to assess the conflict as non-international armed conflict under the threshold of common article 3 and additional protocol II. As this study explores the matter of IDPs in Pakistan in the context of the applicability of legal structure available for the protection of IDPs in Pakistan, a legal approach is applied in looking at the matter of IDPs in Pakistan.

The applicability of UN Guiding Principles on Internal Displacement in the protection of IDPs in Pakistan is explored in the context of the general application of UN Guiding Principles on Internal Displacement on IDPs in Pakistan. The whole legal spectrum of domestic and international legal framework applicable to IDPs in Pakistan is investigated, especially in the context of the applicability of International Humanitarian Law by assessing the conflict in Pakistan under the criteria of non-international armed conflicts.

Previous studies on the role and applicability of IHL on displaced persons discuss the rights of displaced persons under IHL in general. Some examine the role and applicability of IHL on the displaced persons in a region or country. In some studies, the applicability of the IHL in some Islamic countries has been discussed, but none has explored the role and applicability of IHL on IDPs in Pakistan.

Bugnion considers wars and armed conflicts responsible for the displacement of refugees and IDPs, and role of International Humanitarian Law, especially the

International Committee of the Red Cross.⁷⁷ Breau and Jachec-Neale explore the implications for IHL in the context of the conflicts of the 21st century. They provide in-depth analysis of the topical issues of terrorism and complex security situation, legal fault-lines, contemporary warfare, post-conflict management, and in problems relative to occupation, interrelations between humanitarian law, and human rights.

Hussain has criticized the policies of the government for causing internal displacement of millions of people and ignoring the needs of conflict-induced IDPs for medical treatment, education, food, nutrition and sufferings of women and children.⁷⁸ Ekpa and Dahlan explore the role of the national government in the protection of the IDPs in Nigeria and lack of implementation of relevant instruments and policies on the protection of IDPs.⁷⁹

According to Brune, IDPs are often deprived of being provided proper protection by their national governments and face more threats than refugees.⁸⁰ Weiss reflects a similar stance, considering refugees as better placed for protection from host countries and UN organizations than IDPs.⁸¹ Cohen and Deng argue that, despite being uprooted for the same reasons as refugees, IDPs are excluded from the international protection afforded to refugees.⁸²

⁷⁷ Francois Bugnion, 'Refugees, Internally Displaced Persons, And International Humanitarian Law' (2004) 28 (5) FILJ 1397

⁷⁸ Monirul Hussain, 'North-east India's forgotten IDPs' (2005) 24 Forced Migration Review 68

⁷⁹ Shedrack Ekpa and Nuarrual Hilal Dahlan, 'Legal Issues and Prospects in the Protection and Assistance of Internally Displaced Persons (IDPs) in Nigeria' (2016) 49 Journal of Law, Policy, and Globalization 108

⁸⁰ Cathrine Brune, 'Local citizens or internally displaced persons? Dilemmas of long term displacement in Sri Lanka' (2003) 16 (4) Journal of Refugee Studies 376

⁸¹ Thomas Weiss, 'Internal exiles: what next for internally displaced persons' (2003) 24 (3) Third World Quarterly 429

⁸² Roberta Cohen and Deng Francis, *Masses in Flight. The Global Crisis of Internal Displacement* (Brookings Institution Press, Washington D.C, 1998)

Geissler aims to contribute to an overdue legal and political debate on the contemporary humanitarian problems of IDPs, pointing the gaps in the general framework for the protection of IDPs and suggesting possible institutional protections.⁸³ Collins examines the protection for conflict-affected IDPs under and suggests possible remedies available to IDPs during all the phases of displacement and at the end of hostilities.⁸⁴

Nair studies the crisis of IDPs, especially conflict-affected IDPs looking at the causes of forcible movements to inhospitable areas and civil wars in which villages have been destroyed and ethnic persecution through government policies. He predicts an increase in the number of IDPs in future due to the lack of implementation of the legal framework and failure of the concerned authorities and the international community.⁸⁵

Shah considers the conflict in Pakistan as a test case for the applicability of IHL in an Islamic country, that there are gray areas in the Islamic Law of War that need to be explained and clarified. According to Shah, the conflict in Pakistan fulfils the criteria of the non-international armed conflict for the applicability of IHL.⁸⁶

The present research adds to the work done by Shah through looking at both the doctrinal and empirical aspects of IDPs, affected by armed conflict in Pakistan. It explores the doctrinal aspects of the conflict as to the applicability of IHL in the Islamic context of Pakistan and law and empirical aspects of the implementation of the law and

⁸³ Nils Geissler, 'The International Protection of Internally Displaced Persons' (1999) 11 (3) International Journal of Refugee Law 451

⁸⁴ Louise Sarsfield Collins, 'Sheltering the Displaced: The Protected Status of Internally Displaced Persons (IDPs) under International Humanitarian Law' (2012) Asia-Pacific Yearbook of International Humanitarian Law 183

⁸⁵ Promod Nair, 'Towards a Regime for the Protection of Internally Displaced Persons' (2001) ISIL Year Book of International Humanitarian and Refugee Law 183

⁸⁶ Niaz A. Shah, *Islamic Law, and The Law of Armed Conflict; The armed Conflict in Pakistan* (Routledge, 2011)

policy in the context of cultural, ethnic, and religious factors of IDPs in Pakistan in the presence of Afghan refugees as sharing the same culture, ethnicity, and religion.

The compatibility of IHL with Islam has been discussed in the literature, some favour the acceptance of IHL in an Islamic context and focus on the similar natures, purposes, and human-friendly rules of IHL and Islamic humanitarian values. Other scholars, mainly western criticise Islamic humanitarian values and suggest two separate and distinct legal regimes.

The September 11 attacks on the United States and other terrorist attacks in the 21st century led critics of Islam to spread the concept of violent and terrorist Islam, and discussion of the Islamic concept of peace and war. The critics of Islamic Law of War, instead of considering the contextual meanings of the Quranic verse, openly started giving generic meanings to the Quranic verse about fighting with non-Muslims.⁸⁷ Their version of the Islamic Law of War was that Muslims were required to conduct a military operation against non-Muslims during war and peace situation.⁸⁸

Such criticism of Islamic Law dates to the early Islamic period, making a comparison between Islam and Christianity. John of Damascus calls Islamic doctrine a mere hodgepodge culled from Bible.⁸⁹ The leading critics of Islam from early Islamic period include Al-Warraq, Al-Rawandi, and Al-Ma'arri.⁹⁰ Kammuna, a Jewish philosopher, severely criticises Islam and considers Islam as incompatible with the principles of

⁸⁷ Ram Puniyani, *Religion, power & violence: expression of politics in contemporary times* (Sage Publications, 2005) 97

⁸⁸ Sohail H. Hashmi and David Miller, *Boundaries, and Justice: diverse ethical perspectives*, (Princeton University Press, 2001) 197

⁸⁹ Orthodox Christian Information Centre, St. John of Damascus's Critique of Islam 26 March 2006 <http://orthodoxinfo.com/general/stjohn_islam.aspx> accessed 21 February 2017

⁹⁰ Marcel A Boisard, 'On the Probable Influence of Islam on Western Public and International Law' (1980) 11 (4) IJMES 429

Justice.⁹¹ Writers criticised Islam such as Novak⁹² and Hume,⁹³ and Hindu politicians, Orientalist scholars, historians, and philosophers.⁹⁴ Margoliouth, an Orientalist, argues that the motive behind the battles by Muslims in early Islamic period was the desire for plunder, especially against Jewish and Meccan tribes who had done nothing against Islam, the Battle of Khyber being a point when Islam started becoming a threat to the whole world.⁹⁵

The modern era criticises Islam and Islamic Law for its relationship with international laws and the international community. Barton argues that the concept of Sovereignty of God in Islamic seems extreme and unbalanced.⁹⁶ Lewis⁹⁷ and Watt⁹⁸ question the primitive nature of Islamic law and its incompatibility with the modern era. Lewis⁹⁹ and Manning¹⁰⁰ consider the humanitarian reforms of Islamic law, against the enslavement of Muslims, as the reason for massive importation of non-Muslim slaves.

Friedmann targets the punishment for apostasy under Islamic law, compared with punishments for apostates by Sassanids and Byzantines.¹⁰¹ The interpretations of Islamic Law by the critics hold it inconsistent with International Human Rights. The

⁹¹ Norman A. Stillman, *The Jews of Arab Lands: A History and Source Book* (Jewish Publication Society, 1979) 261

⁹² David Novak, 'The Mind of Maimonides' (1999)

<https://web.archive.org/web/20060902232213/http://www.firstthings.com/ftissues/ft9902/novak.html> accessed 12 July 2016

⁹³ David Hume, 'Of the Standard of Taste' <http://web.csulb.edu/~jvancamp/361r15.html> accessed 12 July 2016

⁹⁴ James Fitzjames Stephen, *Liberty, Equality, Fraternity*, (Indianapolis: Liberty Fund, 1993) 93

⁹⁵ David S. Margoliouth, *Mohammed and the Rise of Islam* (3rd Edition, The Knickerbocker Press New York 1905)

⁹⁶ James L. Barton, *The Christian Approach to Islam* (The Pilgrim Press Boston, 1918)

⁹⁷ Bernard Lewis *Islamic Revolution* (The New York Review of Books, 1998)

<<http://www.nybooks.com/articles/1988/01/21/islamic-revolution/>> accessed 05 December 2016

⁹⁸ Bashir Maan and Alastair McIntosh, Interview with William Montgomery Watt, Ex Professor of Arabic and Islamic studies at the University of Edinburgh (2000)

<http://www.alastairmcintosh.com/articles/2000_watt.htm> accessed 05 December 2016

⁹⁹ Bernard Lewis, *Race, and Slavery in the Middle East* (New York: Oxford University Press New York 1990)

¹⁰⁰ Patrick Manning, *Slavery, and African Life: Occidental, Oriental, and African Slave Trades* (Cambridge University Press 1990)

¹⁰¹ Yohanan Friedmann, *Tolerance and Coercion in Islam* (Cambridge University Press 2003)

Universal Declaration of Human Rights provides everyone with the right of changing religion. The critics present the restriction on changing religion under Islamic Law as an example of its inconsistency with International Human Rights.¹⁰²

Those who assert a strong correlation between IHL and Islam point to similarities of rules, object, and purpose served by International Humanitarian Law and Islamic Humanitarian Law. Al-Zuhili (2005)¹⁰³ and Al-Dawoody (2011)¹⁰⁴ argue a strong relationship, instead of conflict or competition, between IHL and Islam, both looking forward towards peace, harmony, and brotherhood in the world community, agreeing on the aim and purpose of serving humanity working for the benefit of humankind.

Cockayne discusses the relationship between International Humanitarian Law and Islam from a historical perspective and recognises the role of the modern interaction between Islam and western civilisations in shaping Humanitarian Law.¹⁰⁵

The Muslim scholars, who consider Islamic Humanitarian Law as compatible with International Humanitarian Law, base their argument upon the rules of warfare in Islamic Humanitarian Law. According to them, Islamic Humanitarian Law acknowledges the doctrines of *Jus ad Bellum* and *jus in Bello*. They refuse to accept the argument of the western scholars about the incompatible nature of Islamic Humanitarian Law with International Community due to the rigidity and non-flexibility of God made rules. The warfare has been subsumed into religion under the concept of Islamic Jihad. The rules and regulations regarding war have been framed from the injunctions of Quran, Sunnah, and the conduct of Caliphs.

¹⁰² Universal Declaration of Human Rights 1948, Art. 18

¹⁰³ Wahbeh M. al-Zuhili, 'Islam and International Law' (2005) 87 (858) IRRC 269

¹⁰⁴ Ahmed Al-dawoody, *The Islamic Law of War: Justifications and Regulations* (Palgrave Macmillan US 2011)

¹⁰⁵ James Cockayne, 'Islam and international humanitarian law: From a clash to a conversation between civilizations' (2002) 84 (847) IRRC 597

Hayatli discusses the protection of refugees and IDPs in the Muslim country in the context of the debate about the computability of UDHR and IHRL in the Islamic world. He points out the gaps in the protection of refugees and IDPs in the Muslim countries and suggests the adoption of international treaties to fill the gaps in the Islamic protection regime, especially in the context of the demands for the adoption of sharia as a source of national legislation in the Muslim countries. He believes that creation of an internationally recognized legal framework to protect refugees and IDPs would be a great step in strengthening the existing mechanisms of the protection of Refugees and IDPs.¹⁰⁶

The present research brings together the argument of the application of IHL in a Muslim context through a case study of Pakistani IDPs. It investigates This study explores the doctrinal and empirical legal aspects of the applicability of IHL on the conflict in Pakistan under the criteria of the recognition of conflicts as non-international armed conflict, in protecting conflict-affected IDPs under both international and domestic legal frameworks.

¹⁰⁶ Musab Hayatli, 'Islam, international law and the protection of refugees and IDPs' (Forced Migration Review, June 2012) <http://www.fmreview.org/sites/fmr/files/FMRdownloads/en/FMRpdfs/Human-Rights/hayatli.pdf> accessed 16 June 2016

1.7 Contribution to Knowledge

The present research adds to the existing literature by exploring the doctrinal and empirical aspects of the protection of conflict-affected IDPs in Pakistan under IHL. The legal protection of IDPs in Pakistan in the context of both the applicable domestic and international legal framework has been little researched, especially assessing the conflict in Pakistan against the criteria of non-international armed conflicts. The persistent refusal of the government of Pakistan, and the announcement by the International Committee of the Red Cross of the conflict in Pakistan as legally a non-international armed conflict, is investigated for the applicability of IHL on IDPs in Pakistan, and distinguishes non-international armed conflict from internal tension or political disorder, against the criteria set by common article 3 of the Geneva Conventions 1949, and the additional Protocol II to the Geneva Conventions (1977). This research makes a theoretical and practical contribution to a developing literature, relating IHL on IDPs to the precepts of Islamic law, and thus should help the national authorities of Pakistan to improve the framework for the protection of IDPs in Pakistan, including reform of national legislation.

The research also follows an original mixed research method, which applies a doctrinal or black letter approach as well as a comparative legal approach that takes account of Islamic legal principles. In addition, it applies case study method to the Pakistan situation, relating that country's domestic laws to Islamic law, and an empirical legal research method, combined with perspectives from legal anthropology/ethnography to understanding the social/cultural context through targeted interviews with both legal experts and IDPs, including refugees found within the IDP camps of Pakistan.

1.8 Thesis Structure

This thesis is divided into five chapters, with the synopsis as follows:

Chapter one provides the introduction to this study. It introduces the phenomenon of IDPs in the context of the gaps in their protection at both international and national, especially the protection of conflict-affected IDPs in Pakistan.

Chapter two describes the research methods and methodologies employed to conduct this study. It provides justification for employing a mixed method qualitative approach, combining doctrinal and empirical legal research approach, and justification for the inclusion of case study of Pakistani IDPs and collecting data through field interviews. It also explains the methods of data collection, sampling, data analysis, ethical considerations and validity and reliability issues involved in qualitative studies and explains how these issues are handled in this thesis.

Chapter three explores the legal framework applicable to IDPs at both national and international level, especially from IHL. It discusses types of non-international armed conflicts and their criteria for the application of IHL, and the relationship between IHL and Islam, and the applicability of IHL in the legal framework of an Islamic country under Islamic rules. Moreover, it discusses the geographic applicability of IHL along with domestic laws on the conflict in Pakistan, as well as views of the legal experts in Pakistan.

Chapter four provides a detailed analysis of the protection of IDPs in Pakistan in the light of the legal framework applicable to IDPs. This chapter explores the applicability of IHL on the conflict, because of which Pakistani IDPs are displaced, by applying the criteria of the applicability of IHL on non-international armed conflict. Furthermore,

this chapter analysis the responses of IDPs along-with document analysis as to assess the protection provided to IDPs by the national authorities with the help of International Humanitarian Organizations.

Chapter five provides an analysis of the findings and conclusions of the study.

1.9 Conclusion

This introductory chapter provides a fair idea of the whole research project. This chapter provides the context of the study by introducing the problem of IDPs in Pakistan. The legal framework applicable to IDPs at both domestic and international level has been discussed in the context of the responsibility of national governments in the protection of IDPs. The matter of IDPs in Pakistan needs a lot more efforts from the government of Pakistan to provide adequate protection to IDPs in fulfilling its national responsibility under national and international legal framework available for IDPs.

IDPs are protected under domestic as well as an international legal framework. IHL plays a vital role in the protection of IDPs in the instances of the lack or non-willingness of national governments in providing protection to IDPs. In case of Pakistan, IHL becomes very relevant since its applicability to non-international armed conflicts. Common article 3 and additional protocol II, the customary law as well as specific rights contained in the Geneva Conventions which provide protection to IDPs. They provide IDPs right of the prohibition of displacement, right to voluntary return as well as any other rights relevant to IDPs as civilians i.e. the right to life, dignity, and freedom, living standards and assistance.

CHAPTER TWO: RESEARCH METHODOLOGY

2.1 Introduction

This chapter describes the methods and approaches employed in the collection of primary and secondary data for this study, along with rationale for the approaches to socio-legal case study research. Qualitative methods of case study research data collection and analysis are related to the present study. The existing concepts and ideas from secondary data, relating to the research topic, are compared and analysed with the concepts and ideas found in the primary data. Moreover, this chapter provides consideration to the matters of the selection of participants, ethical issues, privacy and confidentiality and reliability and validity of data.

A combination of doctrinal, comparative, and empirical research methods has been used for this study. The doctrinal part of the study interprets the laws applicable to IDPs, at both national and international level, and relates them to Islamic law for the implementation aspects. Analysis of IHL is combined with comparative legal research into relevant Islamic law, and case study research into Pakistan's experience of IHL and IDPs. The empirical case study investigates the problem of conflict-affected IDPs in Pakistan, using qualitative field interviews and identifying defects of policy and implementation.

2.2 Research Approach

Qualitative research produces holistic understandings of rich, contextual, and generally unstructured and non-numeric data,¹⁰⁷ and a researcher engages in conversations with the participants in a natural setting.¹⁰⁸ The case study method is considered as an appropriate method for descriptive and exploratory research.¹⁰⁹ The present study applies a qualitative case study research method to Pakistani IDPs in their natural setting and explores the application of IHL in conflict-affected IDPs. The involvement of direct participants through interviews of IDPs and legal experts requires a method for evaluating the behaviour of the participants in their own subjective frame of reference.

The empirical legal studies are becoming a popular field of legal research. Over the last decade, legal scholars are tending to employ social science research methods more frequently in exploring the answers to legal research questions. Empirical methods of legal research help reaching to results that are not commonly achieved by employing the traditional methods of legal research. This approach aims to contribute to a systematic understanding of a legal system that is based on empirical data.¹¹⁰ Empirical methods also provide an understanding of the operative and functional aspects of the law along with their effects.¹¹¹ These methods are practiced at a number of forums including

¹⁰⁷ Jennifer Mason, *Qualitative researching* (2nd Edition, London SAGE Publications Ltd 2002)

¹⁰⁸ John W. Creswell, *Research design: Qualitative, quantitative, and mixed methods approach* (Thousand Oaks, Calif.: Sage 2009)

¹⁰⁹ Peter Cane and Herbert Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010)

¹¹⁰ Alexander J. Wulf, 'The Contribution of Empirical Research to Law' (2015) *The Journal of Jurisprudence* 29

¹¹¹ John Baldwin & Gwynn Davis 'Empirical Research in Law' in Peter Cane and Mark Tushnet (eds), *The Oxford Handbook of Legal Studies* (Oxford University Press 2003) 880

leading journals¹¹², conferences¹¹³ and renowned academic societies.¹¹⁴ Empirical methods of legal research bring together scholars from different disciplines who have been working independently on different aspects of the legal system.¹¹⁵

The case study method, described as ‘an empirical inquiry, investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident and it relies on multiple sources of evidence.’¹¹⁶ The present research studies the IDPs of Pakistan in their real-life settings, in the context of the applicability of the IDP legal framework, especially the implementation of IHL.

Qualitative research is comprised of a group of interpretative or explanatory methods, used to collect and analyse data, focusing on meaning. In qualitative research, normally the natural and real-life settings are used to collect data, such as an IDP camp because qualitative methods seek to describe, explore, and understand a phenomenon from the perspective of the individual or group.¹¹⁷ The depth of data worth more than large samples, so individual interviews is most commonly used the method.

The data for the present study is collected from interviews and different libraries of the United Kingdom and Pakistan. The primary data through interviews from IDPs in Pakistan is undertaken in the natural settings by visiting the camps and interviewing

¹¹² For example, the Journal of Empirical Legal Studies, the Journal of Legal Studies, the Journal of Law and Economics and the European Journal of Law and Economics

¹¹³ For example, the annual Conference on Empirical Legal Studies and the annual Conference of the European Association of Law and Economics

¹¹⁴ For example, the Society for Empirical Legal Studies, the American Law & Economics Association, the European Association of Law, and Economics

¹¹⁵ James Lindgren, ‘Predicting the Future of Empirical Legal Studies’ (2006) 86 (5) Boston University Law Review 1447

¹¹⁶ Robert K. Yin, *Case Study Research: Design and Methods (Applied Social Research Methods)* (5th Edition, SAGE Publications 2013)

¹¹⁷ Juliet Corbin and Anselm Strauss, *Basics of Qualitative Research: Techniques and Procedures for Developing Grounded Theory* (3rd Edition, Thousand Oaks, California: Sage Publication 2008)

IDPs for describing, exploring, and understanding the phenomena from the perspective of IDPs. The small number of participants is recruited to ensure the depth of data, rather recruiting large samples, and individual interviews are conducted for data collection.

The secondary data for this study is collected through libraries and online books, journals, articles, and other printed and non-printed material through the internet. This study has chosen a mixed method qualitative socio-legal case study approach, after going through various other available research methods and methodologies. This study adopts interpretive and comparative approaches for analysing data by working with text and presenting a cohesive representation of the data collected through interviews and secondary sources.

2.2.1 Doctrinal Research Approach

Doctrinal research sometimes referred to as armchair research, requires a library base study due to the availability of required material in libraries, archives, and other data bases.¹¹⁸ It analyses the existing statutory provision along with the present case laws by applying the reasoning power of the researcher. In this method of research; judgments, treaties, statutes texts, legal journals, magazines are used to collect all relevant data on the topic, and the researcher then finds out gaps, problems and draws out final conclusions.¹¹⁹ This method of research involves analysis of case law, arranging, ordering, and systematizing legal propositions and study of legal institutions through legal reasoning or rational deduction.³

Doctrinal research is the dominant legal method, especially in the common law world.

The legal academics measure success within a doctrinal methodology framework, which

¹¹⁸ Paul Chynoweth, 'Legal research' in Andrew Knight (eds), *Advanced Research Methods in the Built Environment* (Blackwell Publishing Ltd 2008) 28

¹¹⁹ Mona Purohit, *Legal Education and Research Methodology* (Central Law Publications 2014) 79

includes the tracing of legal precedent and legislative interpretation. It involves a critical conceptual analysis of all relevant legislation and case law to reveal a statement of the law relevant to the matter under investigation.¹²⁰ Although academic lawyers tend to use non-doctrinal methods, they often infuse these methods within their doctrinal research framework.

The present study research adopts a standard issue based doctrinal examination by taking a step by step approach. The first step assembles the facts relating IDPs, especially conflict affected IDPs in Pakistan; the second step identifies the legal issues relating the protection of IDPs; the next step analyses the issue of IDPs with a view to search for the relevant IDP laws under both international and national legal frameworks; the next step reviews the background information on the protection of conflict-affected IDPs by locating and interpreting the laws, especially IHL; the next step synthesizes all the issues relating protection of conflict-affected IDPs under IHL and reaches a tentative conclusion on the protection of conflict-affected IDPs in Pakistan under IHL.

2.2.2 Empirical Legal Research Approach

Legal empiricism originated to challenge the dominance of the legal science, contrasting the law in books with the law in action.¹²¹ Legal realism used the interdisciplinary methods of the social sciences and shifted from considering laws, precedents, and general legal principles only to study the social backgrounds and political convictions of the judge's decision making.¹²² Empirical legal research helps understand the impact of the law, legal institutions, legal personnel and all the associated phenomenon on people,

¹²⁰ Terry Hutchinson, 'The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law' (2015) 3 Erasmus Law Review 130

¹²¹ Frans Leeuw and Hans Schmeets, *Empirical Legal Research. A Guidance Book for Lawyers, Legislators, and Regulators* (Edward Elgar 2016)

¹²² John Baldwin & Gwynn Davis 'Empirical Research in Law' in Peter Cane and Mark Tushnet (eds), *The Oxford Handbook of Legal Studies* (Oxford University Press 2003) 880

communities, and wider organisations.¹²³ It also provides an understanding of the impact of wider social, political, and economic factors upon law, legal phenomena, and legal institutions.¹²⁴ A case study is one of the several methods to conduct empirical research.¹²⁵

The relation of empirical law to the academic study of law and traditional legal scholarship has become a topic of debates.¹²⁶ The content analysis of 60 law review volumes published between 1998 and 2008 shows nearly half of law review articles included some empirical content.¹²⁷ The market share of empirical legal journals is gradually increasing,¹²⁸ bringing in behavioral law and economics,¹²⁹ empirical study of international law,¹³⁰ and empirical legal scholarship,¹³¹ and empirical studies are developing strongly in the area of the sociology of law.

The present case study explores the cultural and anthropological aspects of IDPs, affecting law and policy. The empirical approach helps to understand the cultural, ethnic, linguistic, and religious factors of IDPs and refugees in Pakistan. The legal distinction between both these categories of displaced persons becomes difficult to

¹²³ Theodore Eisenberg, 'The Origins, Nature, and Promise of Empirical Legal Studies and a Response to Concerns' (2011) 20 (5) *University of Illinois Law Review* 1713

¹²⁴ Christine B Harrington and Sally Engle Merry, 'Empirical Legal Training in the US Academy' in Peter Cane and Herbert M Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010) 1044

¹²⁵ Robert K. Yin, *Case study research: Design and methods* (5th Edition, Thousand Oaks, CA: Sage 2014)

¹²⁶ Jan Smits, *The Mind and Method of the Legal Academic* (Edward Elgar Publishing 2012); Daniel E. Ho and Larry Kramer, 'Introduction: the empirical revolution in law' (2013) 65 *Stanford Law Review* 1195

¹²⁷ Shari Seidman Diamond and Pam Mueller, 'Empirical Legal Scholarship in Law Reviews' (2010) 6 *Annual Review of Law and Social Science* 581

¹²⁸ Jonathan Klick, 'The empirical revolution in law and economics: Inaugural Lecture for Erasmus Chair in Empirical Legal Studies' (Erasmus Law Lectures 2011) <http://www.utrechtlawreview.org> accessed 11 June 2016

¹²⁹ Christoph Engel, *Behavioral Law, and Economics: Empirical Methods* (Max Planck Institute for Research on Collective Goods Bonn 2013)

¹³⁰ Adam S. Chilton and Dustin Tingley, 'Why the Study of International Law Needs Experiments' (2013) 52 (1) *Columbia Journal of Transnational Law* 176

¹³¹ Herbert M. Kritzer, 'Empirical Legal Studies Before 1940: A Bibliographic Essay' (2009) 6 (4) *Journal of Empirical Legal Studies* 926

perceive in the context of their social and cultural ties, and the presence of both IDPs and refugees in camps causes overlap between them.

2.2.2.1 Empirical Legal Approach Applied to Muslim Countries

The old-fashioned disciplinary divide has hampered the understanding of the intellectual, sociological, and political aspects of law in the Muslim countries, especially in the Middle East. Social scientists (including political science, sociology, and legal studies) have focused on modern structures by probing such matters as the formation of laws, structure, and adjudication of courts, process of litigation, deployment of laws, instrument writing, and structure of laws. Such scholars investigate the origin, historical development, and religious provenance with a growing focus on Islamic law. Generalization and path dependency in these disciplines has kept the focus on a superficial understanding of history and doctrine by entirely relying on secondary sources.

Therefore, it is needed to understand the politics and sociology of law in the modern Muslim contexts, including the Middle East and the leading Muslim countries including Pakistan. The conception of Islamic law is highly problematic if seen in the context of the divided Muslim world into four major schools of Law. It is necessary to consider the undisputed fundamental historical facts of ethico-legal pluralism in the Muslim world. Sharia Law can never be considered as an exclusive system of the working of the Muslim kingdoms due to the existence of thoroughly pluralistic legal systems of the Muslim kingdoms and empires. However, the religious aspects of the legal pluralism have received great attention in the Middle Eastern legal scholarship.

This Pakistan case study helps understand intellectual, sociological, and political aspects of law in Pakistan, by moving forward from disciplinary divide and considering

Sharia as a part of the legal structure. It studies law with socio-legal, anthropological, and comparative aspects by exploring the domestication of IHL in the democratic constitutional structure of Pakistan in the presence of Sharia Laws. It explores the linkage between Sharia Law and domestic legal structure of Pakistan, and the doctrinal relationship between IHL and Islam through views of the Muslim scholars and legal experts in Pakistan. The political and sociological legal aspects in the Muslim context of Pakistan are studied against the highly problematic conception of Islamic law.

2.2.3 Anthropological Research Approach

Legal anthropology/ethnography specializes in the cross-cultural study of social ordering. It investigates the presence of the law, its manifest, and understanding in a particular culture.¹³² In modern times, legal anthropology/ethnography has become a lively discipline that focusses on issues such as human rights, humanitarian law, Islamic Law, legal pluralism, and political uprisings.¹³³ It is necessary to consider different legal research approaches for understanding the different types and systems of law that occur throughout the world. Social anthropologists take various approaches to law, including informal systems of law and dispute resolution, in other societies and cultures. To explore the cultural specificity of legal concepts and models, they apply various research methods including participant observation and focused fieldwork.¹³⁴

The field of legal anthropology/ethnography developed in the late nineteenth and twentieth centuries. Major empirical monographs were published from the 1860s till 1960s, mainly historical ethnographic descriptions of a single ethnic group to

¹³² Leopold J Pospisil, *Anthropology of law: A comparative theory* (HRAF Press (1974)

¹³³ John Brown, *A New Anthropology of Islam* (Cambridge University Press 2012)

¹³⁴ Chris Fuller, 'Legal anthropology, legal pluralism and legal thought' (1994) 10 (3) *Anthropology Today* 9

understand their observance of law within their society.¹³⁵ In the mid-1960s, the focus of legal anthropology/ethnography shifted to the study of dispute settlement and law as a process, considering the analysis of procedures, strategies, and processes as important for the study of substantive rules and concepts.¹³⁶ The post 1970s period shifted the focus of legal anthropology/ethnography towards a plurality of approaches, more specifically studying the role of the State, and anthropologists started moving beyond the ethnographic case-study methodology of dispute processes.¹³⁷

The Islamic aspects of the case study of Pakistani IDPs investigate the presence of Sharia Laws in the domestic legal structure of Pakistan along with the adoption of IHL. It studies the functioning of the Sharia dominated legal structure in a democratic constitutional framework in the light of the demands of the adoption of Sharia Law (Islamization of Laws in Pakistan) as an exclusive system of the state. This analysis of the discussion on Sharia Law, between Muslim Scholar and western scholars, depicts the views and ways of Muslims and non-Muslims about looking at the religion of looking at religion. The Muslim scholars keep defending the Islamic rules of war by presenting the human friendly rules, while the critics keep searching for rules that violate human rights.

2.2.4 Case Study Method

This study contains both legal and social elements, the application of a legal regime in a social context that goes beyond analysing legal documents and employs various

¹³⁵ Francis Snyder, 'Anthropology, dispute processes and law: a critical introduction' (1981) 8 (2) *British Journal of Law & Society* 144

¹³⁶ Norbert Rouland, *Legal Anthropology* (A&C Black 1994) 37

¹³⁷ Martha Mundy and Tobias Kelly, 'Introduction', in Martha Mundy (ed), *Law and Anthropology* (Aldershot 2002) 16

methods for interpreting laws and their social context and application.¹³⁸ It explores the working of IHL in the context of IDPs in Pakistan. The impact of the international legal framework applicable to IDPs, mainly the application of IHL on IDPs in Pakistan, and its impact on the national legal framework and IDPs is best suited for empirical legal research approach. The legal researcher first collects data and analyses that data in the light of previous readings, understanding or observations in a real-life situation through field research.¹³⁹ The researcher employs a combination of data sources for obtaining in-depth insight into a situation by studying a phenomenon within a real-world context, rather than depending on the library-based research.¹⁴⁰

A case study method requires a mixed method of inquiry including an exploratory, descriptive, and explanatory investigation. The case study normally starts with the identification of methodology, data collection, analysis, and ethical concerns. A composed and well-organized qualitative research helps in enhancing the comprehensibility of a social phenomenon. The nature of the research question is important in adopting the best available research strategy that suits the research objective, access to data sources, and available resources.¹⁴¹

The case study method offers opportunities to verify responses by comparing a few different approaches to resolving an issue. It allows the researcher to look at a situation in some depth and in a broader sense. It allows a contextual rather than an artificially constructed view of experiences. It allows for a contextual approach to the situation, especially regarding ‘time slice’ situations, which can be viewed before and after major

¹³⁸ John Flood, ‘Socio-Legal Anthropology’ in Reza Banakar and Max Travers (eds), *Theory and Method in Socio-Legal Research* (Hart Publishing 2005) 33

¹³⁹ Lee Epstein and Gary King, ‘The Rules of Inference’ (2012) 69 (1) The University of Chicago Law Review 1

¹⁴⁰ Robert K. Yin, *Case Study Research Design, and Methods* (5th Edition, Sage Publications 2014) 12

¹⁴¹ John Gerring, *Case Study Research: Principles and Practices* (Cambridge University Press 2007) 86

events or changes to document actual effects. It allows the researcher to delve further into inconsistent responses. It allows for the complexities of social and political relations to be seen and for the relationships between these and the effects of one on others to become more obvious.

This study starts with the identification of the research question and adopts the mixed method research approach, including a qualitative case study. The data is collected from both primary and secondary sources, and legal regime applicable to IDPs is explored by analysing laws applicable to IDPs through interviews and secondary sources.

The research design provides a logical relationship between the research purpose and questions to the processes for empirical data collection, data analysis, in order to make conclusions drawn from the data.¹⁴² The selection of the research paradigm is very important as research design relies on the chosen research paradigm.¹⁴³ While conducting interpretive case studies, using exploratory research, the researcher must carefully consider the role of prior theory, the unit of analysis, the number and selection of cases, the techniques to be used for data collection, and the method(s) by which data is collected.¹⁴⁴

¹⁴² Hans Zeisel and David Kaye, *Prove it with Figures: Empirical Methods in Law and Litigation* (Springer 1997)

¹⁴³ John W. Creswell, *Research Design: Qualitative, Quantitative and Mixed Methods Approaches* (3rd Edition, Sage Publications 2009) 5

¹⁴⁴ Kathleen M Eisenhardt, 'Building Theories from Case Study Research' (1989) 14 (4) *The Academy of Management Review* 532

Figure 2.1: Interpretive Research Approach Design¹⁴⁵



The research design employed in the present study works on the same pattern. It defines the research question by reviewing the existing literature and adopts the best suitable research methodology by using qualitative case study research method and qualitative methods of data collection and analysis. Afterward, aims to test the existing theory with the results of the case study and provide a conclusion of the study.

2.3 Data Collection

The case study method provides a flexible and adaptable approach to data collection by allowing single or multiple methods of data collection to investigate a research problem. These methods mainly include; direct observation, participant observation, interviews, focus groups, documentary sources, archival records, and physical artifacts. The qualitative researchers tend to use multiple sources of data and multiple participants. The use of multiple sources and participants helps in triangulating the data and allows significant insights to emerge.¹⁴⁶ A big data survey or double-blind experiment are not required in qualitative case study method as it explores a phenomenon in a real-world

¹⁴⁵ Developed by the Researcher

¹⁴⁶ Robert K. Yin, *Case Study Research: Design and Methods* (5th Edition, Thousand Oaks, CA: Sage 2014)

environment in a clear and detailed manner.¹⁴⁷ The qualitative case study method examines a situation in detail to use context for particularising the findings.¹⁴⁸

The present study relies on interviews as a source of primary data collection, as interviews are considered as a most appropriate source of primary data in both qualitative and case study research. Moreover, the document analysis of the global reports, policy frameworks, UNHCR reports and reports of the government of Pakistan is used as a source of primary data for the present study. The secondary data is collected from various sources including books, journal articles, and other printed and non-printed materials, as are considered as suitable sources of secondary data collection in qualitative and case study research.

The direct method of data collection involves recordable spoken and written words; observing body language, actions, and interactions. In this method of data collection, consideration is given to thoughts, feelings, experiences, the meaning of experience, responses, actions, interactions, language and processes of individuals and groups within their social and/or cultural setting. The direct method of data collection normally sets the context of qualitative studies. The direct method of data collection is the most common form of qualitative research. There are various methods, used for direct data collection singularly or in combination, according to the nature of the required data. They include interview, observation, open-ended questionnaire, diary accounts and ‘think aloud’ sessions. The researchers mostly use qualitative approaches to obtain direct data through interviews and observation.

¹⁴⁷ Helen Simons, *Case study research in practice* (London: Sage 2009)

¹⁴⁸ Helen Simons, *Case study research in practice* (London: Sage 2009)

The indirect method of data collection involves someone or something else, rather than direct participants. It includes documents, photographs, reporting events, artistic rendition of events and experience (in the shape of novels, songs, paintings, poems, photographs etc). The indirect data can be collected through systematically searching archives or browsing the internet and can be collected in hard copy or electronic form.

The data for this study was, mainly through interviews, collected through the direct method of data collection, as well as documents, relating policies and protection of IDPs in Pakistan, were used as indirect data. The consideration was given to the narratives of the participants as to deduct required information and give meanings to their narratives.

2.3.1 Case Study Data Collection

There are three common methods of data collection used in qualitative studies; document analysis, direct observation, and interviews that can be used separately or in combination.¹⁴⁹ The present study utilizes a combination of document analysis and interviews methods of data for data collection. The data related to doctrinal part of this research, interpretation of legal framework applicable to IDPs and Islamic Laws, was originated from various significant sources: Humanitarian Law statutes (Geneva Conventions, Additional Protocols to Geneva Conventions, Customary Rules of IHL); UNHCR documents and reports related to IDPs, IDP Reports of the International Organizations and National Government of Pakistan, National Laws of Pakistan and IDP Laws and policies of Pakistan; news articles; journal articles and books.

Documents include texts that are written with a purpose and are based on assumption, and they are presented in a certain way. The content of the documents need to be reliable and researchers should be aware of the nature, purpose, and originality of the

¹⁴⁹ Michael Patton, *Qualitative Research, and Evaluation Methods* (3rd Edition, Sage Publications 2002) 4

documents.¹⁵⁰ The secondary data can be collected through public documents, archival records, personal documents, administrative documents and formal studies and reports relating the topic of research. The present research uses; the published and unpublished material in the shape of books, articles, media reports and internet-based information on the research; for secondary data. The collection of secondary data has remained a constant activity.

The data on the protection of IDPs in Pakistan was obtained through interviews and analysis of the documents (reports of the UNHCR, and other organizations). Two groups of people, including legal experts and IDPs in Pakistan, were interviewed. The legal experts were interviewed for obtaining their opinion on the applicability of IHL in the legal framework of Pakistan and the role of IHL in the protection of IDPs in Pakistan. The interviews of IDPs in Pakistan were conducted as to assess the implementation of the framework applicable to IDPs, mainly provision of their rights and protection under IHL.

2.3.2 Interviews

The present study adopts interviews as a source of primary data collection, as Interviews are considered as the most widely employed qualitative research method.¹⁵¹ This method helps the researcher in understanding the respondent's point of view towards them. Interviews are believed to provide a deeper understanding of social phenomena that would be obtained through quantitative methods in the form of questionnaires. The method of data collection through interviews is considered as most appropriate in situations where the phenomenon is little known and the

¹⁵⁰ Jonathan Grix, *Demystifying Postgraduate Research* (Birmingham University Press 2001)

¹⁵¹ John W. Creswell, *Research design: qualitative, quantitative, and mixed methods approach* (3rd Edition, London: Sage Publications 2009)

information is needed to be gathered through detailed insights from individual participants.¹⁵²

Although unstructured interviews prove to be more advantageous regarding providing the research control over the process of the present study includes the displaced persons as respondents, so to avoid them putting under any uneasy circumstances, the semi-structured interviews have been conducted. Semi-structured interviews have been carried out with the judges and lawyers as well. They have been put some extra questions; their suggestions and experiences have also been considered. They have been given more choice and space to describe their views on the topic.

2.3.2.1 Sampling for Interviews

The qualitative research does not provide any criteria for determining the large or small sample size required for a study, as it focuses on the achievement of saturation and richness of data. In qualitative research, the ‘richness’ of data collected is far more important than the number of participants. The collection of too large data is not appreciated in qualitative research, that makes it difficult to undertake the in-depth and meaningful analysis. However, the researchers require insight into the size for achieving the purpose, context and the richness of the data collected.¹⁵³

The qualitative studies are believed to be usually ranging somewhere from 8-15 participants, varying widely both inside and outside this range. Their qualitative methodologists provide guidelines on sample size for qualitative research designs, ranging from 3–5 participants for a case study, 10 for a phenomenological study and

¹⁵² David E. Gray, *Doing Research in the Real World* (2nd Edition, Thousand Oaks, California: Sage Publications 2009)

¹⁵³ Michael Quinn Patton, *Qualitative Research & Evaluation Methods* (Thousand Oaks, CA: Sage Publications 2002)

15–20 for grounded theory study.¹⁵⁴ The guidelines for qualitative sample size for a phenomenological study suggest six participants and 30–50 for an ethnographic study. In total 30 people were selected and interviewed for this study. Ten people from the legal expert's group and twenty people from the conflict-affected group.

Figure 2.2: Selection of Participants: Legal Experts ¹⁵⁵

Sr.	Name	Age	Gender	Position	Time in Profession	Time and Place of Interview
1	Mr. ZA	67 Years	Male	Ex. Judge High Court	20 Years	12-06-2013 Multan
2	Miss TN	52 Years	Female	Judge High Court	12 Years	14-06-2013 Multan
3	Mr. SK	65 Years	Male	Advocate Supreme Court	35 Years	05-06-2013 Multan
4	Mr. MH	54 Years	Male	Advocate Supreme Court	30 Years	08-06-2013 Multan
5	Mrs. NA	41 Years	Female	Advocate High Court	8 Years	10-07-2013 Islamabad
6	Mrs. RK	55 Years	Female	Advocate High Court	28 Years	02-07-2013 Islamabad
7	Mrs. MB	54 Years	Female	Judge High Court	18 Years	19-07-2013 Lahore
8	Mr. KA	69 Years	Male	Ex. Judge High Court	12 Years	20-07-2013 Lahore
9	Mr. KL	32 Years	Male	Advocate High Court	8 Years	23-07-2013 Lahore
10	Miss SS	43 Years	Female	Advocate High Court	16 Years	24-07-2013 Lahore

¹⁵⁴ John W. Creswell, *Qualitative inquiry, and research design: Choosing among five approaches* (2nd Edition, Thousand Oaks, CA: Sage 2007)

¹⁵⁵ Developed by the Researcher

Sampling is the selection of suitable populations and elements. It helps in the appropriate inquiry of the focus of the study. The qualitative research requires a most appropriate sample selection process, as inappropriate sample selection can affect the findings and results of a study. It is important to select those participants who are willing to share information openly and honestly, it makes easier for the researcher to conduct the interviews in a comfortable environment and the participants also comfortable to share information¹⁵⁶ The population of this study consists of two groups: the conflict-affected IDPs in Pakistan and legal experts in Pakistan.

Purposive or purposeful sampling is a popular type of qualitative sampling. In purposive sampling, those people are invited to participants in a study who are believed to be relevant to a study according to pre-selected criteria. This type of sampling, sometimes known as ‘judgment sampling’ provide information-rich cases for in-depth study. The participants are selected based on their required status, experience, and special knowledge to provide the required information. This type of sampling helps researchers in focusing, according to their required information, on people, time periods or context.¹⁵⁷

To explore the impact of IHL on conflict-affected IDPs in Pakistan, purposive sampling was used to select a population of specific groups of people directly concerned with the subject of investigation. The IDPs were selected by their residential status and identity as IDPs, to gather information on the protection of their rights under IHL, while legal experts were selected based on their relevance to the current research.

¹⁵⁶ John W. Creswell, *Qualitative inquiry, and research design: Choosing among five approaches* (2nd Edition, Thousand Oaks, CA: Sage 2007) 133

¹⁵⁷ Saketh Myneni, *Legal Research Methodology*, (3rd Edition, Allahabad Law Agency, Haryana 2007) 125

The target population was the IDPs in Pakistan, affected by non-international armed conflict in Pakistan. It was impossible to cover the whole of the target population of the study, estimated around 1.5 million people, so that researcher focused on the accessible population residing in IDPs camps in Pakistan.

Both genders were given place in the study as to assess the implementation of specific rules applicable to vulnerable groups of people, specifically the rights of IDP women. Other variables included age, nationality/ethnicity, original background, the length of time in the camps, reasons for leaving home. The participants from the legal expert group were selected based on their experience and relevance to the practices of IHL and IDPs related laws and policies in the national legal framework of Pakistan.

Figure 2.3: Selection of Participants: Displaced Persons¹⁵⁸

Sr.	Name	Age	Gender	Time in Camp	Time and Place of Interview
1	Miss A	34 Years	Female	4 Years	07-04-2013 Peshawar
2	Mr. B	52 Years	Male	3 Years	07-04-2013 Peshawar
3	Mr. C	34 Years	Male	3 Years	09-04-2013 Peshawar
4	Miss D	44Years	Female	4 Years	11-04-2013 Peshawar
5	Miss E	35 Years	Female	2 Years	15-04-2013 Peshawar
6	Mr. F	22 Years	Male	2 Years	17-04-2013 Peshawar
7	Mr. G	45 Years	Male	3 Years	17-04-2013 Peshawar
8	Mr. H	52 Years	Male	2 Years	20-04-2013 Peshawar
9	Miss, I	33 Years	Female	4 Years	20-04-2013 Peshawar
10	Miss J	31 Years	Female	4 Years	21-04-2013 Peshawar
11	Mrs. K	29 Years	Female	3 Years	23-04-2013 Peshawar
12	Miss L	52 Years	Female	2 Years	25-04-2013 Peshawar
13	Mr. M	42 Years	Male	1 Years	25-04-2013 Peshawar
14	Miss N	20 Years	Female	3 Years	27-04-2013 Peshawar
15	Mr. O	27 Years	Male	4 Years	27-04-2013 Peshawar
16	Mr. P	33 Years	Male	4 Years	29-04-2013 Peshawar
17	Mrs. Q	50 Years	Female	3 Years	01-05-2013 Peshawar
18	Mr. R	22 Years	Male	2 Years	03-05-2013 Peshawar
19	Mrs. S	44 Years	Female	4 Years	05-05-2013 Peshawar
20	Mr. T	31 Years	Male	4 Years	09-05-2013 Peshawar

¹⁵⁸ Developed by the Researcher

When interviewers try to contact potential participants whom they do not know, they often should deal with gatekeepers who control access to those people. Interviews with displaced persons were conducted in the IDP camps in around Peshawar, comparatively easy to access as compared to other areas of Pakistan that were not declared as safe.

Access to the camps was sought with the approval of the camp authorities and researcher consulted the data, kept by the camp authorities to find suitable people for interviews. The researcher was given access to interview the displaced persons in total privacy, with no interference from camp authorities.

There were various groups of people residing in the camps in Pakistan who were affected by different man-made and natural disasters; including earthquakes, floods, and other forms of violence as well as Afghan refugees residing in the camps in Pakistan. These were excluded from the study. Those conflict-affected IDPs were included who were affected by non-international armed conflict in North-western areas of Pakistan i.e. those affected by conflict in Pakistan only.

There are used various forms of qualitative interviews designs for obtaining thick and rich data.¹⁵⁹ The informal conversational interview, general interview guide approach, and standardized open-ended interview design are commonly used in conduction qualitative interviews.¹⁶⁰ Informal conversational interview totally relies on the spontaneous generation of questions in a natural interaction, without allowing the researcher to ask any specific question, and occurs as part of ongoing participant observation fieldwork.¹⁶¹

¹⁵⁹ John W. Creswell, *Qualitative Inquiry, and Research Design Choosing among Five Approaches* (3rd edition Sage, Thousand Oaks 2013)

¹⁶⁰ Robert Stuart Weiss, *Learning from Strangers: The Art and Method of Qualitative Interview Studies* (New York: Free Press 1994)

¹⁶¹ Martyn Hammersley and Paul Atkinson, 'Insider Accounts: Listening and Asking Questions' in *Ethnography: Principles in Practice* (London: Routledge 1995) 23

The general interview guide approach provides a more structured approach, with a bit flexibility, and the ways that questions are potentially worded depend upon the researcher who is conducting the interview. The standardized open-ended interview contains a properly structured form of questions, with expected open-ended responses, and allows the participants to ask identical questions.¹⁶² The present study adopts standardized open-ended interviews to gather participants' experiences and viewpoints. Coding the data is difficult in this form of interview approach¹⁶³, but still, this approach seems to be the most appropriate for the present study, as this study needs rich and thick qualitative data.

The interview protocol refinement framework is believed to be an effective way of preparing for interview research, specifically considered as most suitable for refining structured or semi-structured interviews.¹⁶⁴ It provides a systematic way of developing and refining the interview process. This process is comprised of four phases that include: ensuring interview questions align with research questions, constructing an inquiry-based conversation,¹⁶⁵ receiving feedback on interview protocols,¹⁶⁶ and piloting the interview protocol. All the phases of this process help the researcher in taking one step further toward developing an appropriate research instrument for the participants.

¹⁶² Silvia E. Rabionet, 'How I Learned to Design and Conduct Semi-Structured Interviews: An Ongoing and Continuous Journey' (2011) 16 (2) *The Qualitative Report* 563

¹⁶³ John W. Creswell, *Qualitative Inquiry, and Research Design Choosing among Five Approaches* (3rd edition Sage, Thousand Oaks 2007)

¹⁶⁴ Juliet Corbin and Anselm Strauss, *Basics of qualitative research: Techniques and procedures for developing grounded theory* (Thousand Oaks, CA: Sage 2015)

¹⁶⁵ Michael Quinn Patton, *Qualitative Evaluation, and Research Methods* (Thousand Oaks, CA: Sage 2015)

¹⁶⁶ Steinar Kvale and Svend Brinkmann, *Interviews: Learning the Craft of Qualitative Research Interviewing* (Thousand Oaks, CA: Sage 2009) 157

Figure 2.4: Interview Protocol Refinement (IPR) Method¹⁶⁷

Phase	Purpose
Phase I: Ensuring interview questions align with research questions	To create an interview protocol matrix to map the interview questions against the research questions
Phase 2: Constructing an inquiry-based conversation	To construct an interview protocol that balances inquiry with conversation
Phase 3: Receiving feedback on interview protocol	To obtain feedback on interview protocol (possible activities include close reading and think-aloud activities)
Phase 4: Piloting the interview protocol	To pilot the interview protocol with small sample

The present study follows the interview protocol framework, at first phase it focuses focusing on the alignment between interview questions and research questions, to increase the utility of interview questions in the research process and ensures their necessity for the study. At the second phase, it balances inquiry with the conversation by carefully wording and organizing questions, so they are clear, short, understandable, and in a conversational order. A third phase, it obtains feedback on the interview protocol through close reading and think-aloud activities.¹⁶⁸

¹⁶⁷ Source: Milagros Castillo-Montoya, 'Preparing for Interview Research: The Interview Protocol Refinement Framework' (2016) 21 (5) The Qualitative Report 811

¹⁶⁸ The feedback from two of the research colleagues with the same research interest, named Abdul Hameed Panhwar and Waheed Abbasi (PhD Research Scholars at Anglia Ruskin University), was obtained and their suggestions were given consideration

The fourth phase, pilot testing, is given very careful consideration in this study. It assists the research in determining the flaws, limitations, and other weaknesses within the interview design and allows the researcher to make necessary changes and helps the researcher in refining the research question before conducting final interviews.¹⁶⁹ The pilot test should be conducted under real conditions with a small sample of participants having similar interests, and sharing the similar characteristic, as those who are going to participate in the implemented study.¹⁷⁰ However, the pilot testing is normally not reported due to its non-significant effects and journals tend to accept papers with statistically significant results.

The pilot testing was used for the present research as to determine the flaws, limitations, and other weaknesses within the interview design. It helped the researcher in making necessary changes and refining the research question before conducting final interviews. The pilot was conducted during the first research visit to the IDP camps in Pakistan. The real conceptions were used to conduct the piloting by selecting two respondents from each group, IDPs and legal experts. The respondents did not only have similar interests but also shared the similar characteristic, as those who are going to participate in the implemented study: IDPs and legal experts.

The issues relating displaced persons in Pakistan were responded to individual perceptions and suggestions of the legal experts, while issues related protection of displaced persons were answered with some ideas to improve the situation of the displaced persons. In short, the interviews with judges and lawyers added to the extent of recommendations to the government to deal the matter of displaced persons by importing the necessary rules of IHL in its domestic legal structure. These suggestions

¹⁶⁹ Steinar Kvale, *Doing Interviews* (Sage 2008)

¹⁷⁰ David A. de Vaus, *Surveys in Social Research* (3rd Edition, London: UCL Press 1993)

were not only relevant to the protection of displaced persons in Pakistan but also pertinent to the compatibility of IHL with Islam and Islamic Context.

2.3.2.2 Preparation for the Interview

There are believed to be eight important principles to the preparation stage of interviewing which include: choosing a setting with little distraction, explaining the purpose of the interview, addressing the terms of confidentiality, explaining the format of the interview, indicating how long the interview usually takes, tell the participants the ways of getting in touch if they need, asking the participants about their questions before starting the interview, and not counting on your memory to recall the answers of the participants.¹⁷¹

The researcher, instead of interviewing all the people at one place, choose to interview people with minimal distraction. Although all the interviews from displaced persons were conducted in the IDP camps premises with privacy guaranteed. The purpose of interviews was clearly explained to the respondents at the start of the interviews, and they were informed of the aims and objectives of the research. They were briefed on the utility of their participation in achieving the research objectives. Matters of privacy and confidentiality addressed before the start of interviews, and the format explained to the respondents.

The time and length of the interviews were mentioned, but the slight changes were allowed in taking either a bit time in completing an interview. The respondents were given contact details of the researcher and the Anglia Law School, in case they need to get in touch later. The respondents were told and given the option to put questions

¹⁷¹ Herbert Rubin and Irene Rubin, *Qualitative interviewing: The art of hearing data* (Thousand Oaks, CA: Sage 1995)

before, during and after the interviews. The researcher kept taking notes during the interviews and kept writing all the relevant information involved in the interviews.

2.3.2.3 Implementation stage of the interview process

There are various methods of recording interviews, utilized as single or in combination with other methods. The most commonly used methods are notes written at the time, notes written afterward, audio recording, and video recording.¹⁷² The audio recording method is considered as the most appropriate method, however, in exceptional circumstances, handwritten notes serve the purpose. There are situations where audio recording can be compromised due to various reasons, involving privacy, security, confidentiality etc.¹⁷³ The actual setting, the gender of the interviewer and interviewees, and familiarity between interviewer and interviewees are other factors that need to be considered while conducting interviews.¹⁷⁴

There were two groups of people interviewed. The legal experts that include judges and lawyers were interviewed in English. The displaced persons were interviewed in Urdu. The interviews from the legal expert's group were carried out smoothly, without any problem. The researcher, being a part of the court system in Pakistan, had easy access to approach the judges and lawyers in Pakistan. Their responses were tape-recorded as they had no problem in getting their voices recorded. In total ten legal experts were interviewed comprising of five judges and five lawyers. These interviews were conducted in Multan, Islamabad, and Lahore. The interviews with judges were carried

¹⁷² Silvia E. Rabionet, 'How I learned to design and conduct semi-structured interviews: An ongoing and continuous journey' (2009) 16 (2) *The Qualitative Report* 563

¹⁷³ Margaret C. Harrell and Melissa A. Bradley, *Data Collection Methods: Semi-Structured Interviews and Focus Groups* (RAND Corporation 2009)

¹⁷⁴ Steinar Kvale, *Doing Interviews* (Sage Publications 2008)

out in the judge's restroom, and interviews with lawyers were held in the respective barrooms.

The interviews of IDPs took place in the common meeting area specified for the general gathering and ordinary activities of the camp. The interview responses were written on paper because it was promised with the participants not to record their voices. The researcher kept taking the field notes of the gestures and appearances of the respondents and the way they used to listen and respond the questions. The researcher took the field notes of the surroundings as well. These responses of the participants were written on paper. The interviews responses were translated into English by using proper translating process. Keeping in view the concept of "different languages constructs different ways of seeing social life" it has been tried to convert the core ideas of the narration into English, instead of doing a mere translation of words. The proper care was taken in this regard by applying the researcher's knowledge and understanding of the national language.

The format of the interviews was explained to the respondents, and they were given a briefing about the interview process. The time and length of the interviews were mentioned, but the slight changes were allowed in taking either a bit time in completing an interview. The respondents were given contact details of the researcher and the Anglia Law School, in case they need to get in touch later. The respondents were told and given the option to put questions before, during and after the interviews. The researcher kept taking notes during the interviews and kept writing all the relevant information involved in the interviews. All the interviews went smoothly with no physical or verbal conflict. The displaced persons and camp authorities remained friendly with the researcher all the time.

The matter of reliability and validity of data is crucial in all research methods.

Reliability is defined as the degree to which measures are free from error and therefore yield consistent results.¹⁷⁵ Validity means the extent to which measures what it claims to measure.¹⁷⁶ A researcher must give lots of attention to the reliability and validity of data in all research method because an analysis becomes worthless, fiction and loses its utility if the reliability and validity of research methods are not made sure.¹⁷⁷ The proper application of reliability and validity of research methods can make a study highly valuable and trustworthy.

The reliability and validity of data are used to be questioned when interviews are translated from one language to another language.¹⁷⁸ The researcher's position in the research process, the researcher's language, and culture, the researcher's proficiency of the translated language and knowledge of its culture are the factors that raise questions about the reliability and validity of data.¹⁷⁹ As mentioned already, the researcher and the participants interviewed from displaced person group share the same language and culture. The researcher has faced no problem in talking to them and translating their spoken material including contextual meanings and phrases. The researcher is a lecturer at a university in Pakistan, along with his strong educational background that includes a master's degree in English, has been capable enough to perceive the expressions and converting them into English.

¹⁷⁵ Ganesh Thanasegaran, 'Reliability and Validity Issues in Research' (2009) 4 IDR 35

¹⁷⁶ Robert Gregory, *Psychological Testing: History, Principles, and Applications* (Allyn and Bacon: Boston 1992)

¹⁷⁷ Janice M Morse *et al*, 'Verification Strategies for Establishing Reliability and Validity in Qualitative Research' (2002) 1 IJQM 13

¹⁷⁸ Howard S. Becker, *The epistemology of qualitative research* (University of Chicago Press 1996)

¹⁷⁹ Bogusia Temple and Alys Young, 'Qualitative research and translation dilemmas' (2004) 4 (2) SJQR 161

The professional involvement of the researcher in the fields of law and education has helped the researcher in observing the social and cultural phenomenon of the respondents. Therefore, the sense and meaning of the social reality under study are correctly transferred to readers, and appropriate analysis was carried out. The researcher has applied the golden rules of translation that include the reproduction of the source text as accurately as possible, use of a natural form of the target language and expressing all aspects of the meaning in a manner that is understandable. By following the rules of translating a language into the target language, the researcher has been able to produce, understand and communicate the interview responses into English.

There had been social, cultural, religious and language barriers that could have caused problems in interviewing IDPs because the researcher was fully aware of the area from where IDPs belonged. It helped the researcher in conducting interviews of IDPs, considering their social, cultural, and religious limitations. The camp authorities proved to be very cooperative and kept assisting the researcher. They kept the researcher updating about the travelling, security, and weather conditions. The researcher was given access to interview the displaced persons in total privacy. The camp authorities not only refrained from interfering interview process but also kept encouraging the displaced persons in participating and expressing their thoughts freely.

The researcher was fully aware of the responding pattern of the displaced person and it was expected to come across a distinctive pattern of explaining their social and cultural views along with the under-researched problem. In such type of responding patterns, the tendency of the respondents was believed to portray biographical account of events significant to their individual lives.¹⁸⁰ The depiction of such kind of biographical

¹⁸⁰ Donald E. Polkinghorne, *Narrative knowing and the human sciences* (Albany: State University of New York Press 1988)

accounts was understood to be mirrored in the culture and cultural knowledge of the respondents.

The interviews added to the data in terms of gaining both doctrinal and empirical information relating law, policy, and implementation aspects of the study. The interviews from legal experts provided doctrinal aspects of the application of IHL on the conflict in Pakistan as well as compatibility between IHL and Islam, and role of the government in protecting IDPs. The interviews from IDPs helped to gather real-life qualitative information on legal protection of IDPs, especially non-respect of IHL, and understanding their social, cultural, and religious factors affecting law and policy.

2.4 Data Analysis

In qualitative research, data analysis is considered as a complex stage which includes deconstruction, re-organisation, and categorisation of data. The interpretation of data is dependent on its reconstitution and the insight and imagination of the researcher.¹⁸¹ It has been a big challenge to analyze the data gathered through interviews. The proper analysis of the interviews conducted in qualitative research has always been a concern by the researchers as the qualitative data is never easy to be analyzed as opposed to the quantitate data. Most of the researcher face difficulties by not carrying out the proper analytical procedure. In many cases, the researcher does not explicitly and systematically describe the relevant content gathered from the participants.

The researcher needs to go through the interview responses deeply and pull out meanings from the interview responses with a critical approach.¹⁸² The researcher needs

¹⁸¹ Carl Auerbach and Louise B. Silverstein, *Qualitative Data: An Introduction to Coding and Analysis* (New York University Press 2003)

¹⁸² Harry F. Wolcott, *Transforming qualitative data: Description analysis and interpretation* (Thousand Oaks, CA: Sage 1994)

to interpret the ideas and put the ideas into themes by giving thematic meanings to the ideas. The researcher is always able to better understand the interview responses by visualizing himself in the interview journey and looking at his field notes. Sometimes, field notes and research memos work more than the interview responses.

The researchers must be clear on the matter of data analyses. Indeed, the strategies of data analysis and discovery of themes depending on the research objectives and questions, sampling size and critical mind of a researcher. In this concern, all these procedural elements are essential to follow like paying much attention to discovering themes and presenting them in a sensible way by being guided by research objectives and questions.

A researcher is the only person who can interpret the raw text better than anyone else in the world because he fits himself into the contexts of the interviews. A researcher should always keep an eye on the context of interviews and surroundings as they are often highly significant. Moreover, the field notes, observations, and research memos gathered during interview process used to clarify and describing their actions, reactions, and attitudes of the participants. They help while describing and criticizing the content of interviews, viewpoints of the participants and the places where interviews are conducted.¹⁸³

The present study utilizes qualitative content analysis as a tool for data analysis. The content analysis has wider application and helps in examining the nature and frequency of a legal phenomenon.¹⁸⁴ The qualitative content analysis is considered as an

¹⁸³ Herbert J. Rubin & Irene S. Rubin, *Qualitative interviewing: The art of hearing data* (2nd Edition, Thousand Oaks, CA: Sage 2005)

¹⁸⁴ Lisa Webley, 'Qualitative Approaches to Empirical Legal Research' in Peter Cane and Herbert Kritzer (eds), *The Oxford Handbook of Empirical Legal Research* (Oxford University Press 2010)
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appropriate and frequently used method of analysing the qualitative data. It identifies the coherent themes and patterns in data and helps the researcher is looking for quotations or observations that identify the same underlying idea, issue, or concept.¹⁸⁵ Further, these themes and categories are constructed through coding, with a variety of available approaches for researchers.

The present study utilized the thematic network analysis approach, as the data collection need to be analysed in an exploratory perspective. The researcher conducted interviews with the displaced persons and deducted different themes out of the interview responses after analyzing the interviews. The researcher went through the interviews responses by treating them and pulled out the significant phrases, chunks, ideas, concepts, and words carrying important meanings. The researcher was amazed while analyzing the interview responses because he found not only the verbal expressions meaningful but also some non-verbal expressions were highly significant. All the necessary material was separated into different sub-themes, later those sub-themes were organized into major themes.

The researcher did manual coding to convert the interviews material into themes. The computer was not used for coding because the software of equipment deducts the frequency of words only. By using computer software, there was a possibility of missing much valuable and meaningful information. Here, the frequency of words was not significant. The most important thing was to deduct the meanings out of the narratives. The researcher kept focusing on the real implications of the content, instead

¹⁸⁵ Michael Quinn Patton, *How to Use Qualitative Methods in Evaluation* (Newsbury Park, London, New Dehli: Sage Publications 1987) 149

of merely looking at the words spoken by the participants. The researcher analyzed all the interviews information with the help of the context of interviews.

After deducting different themes from the interviews, the researcher organized ideas by sorting them out in the form of categories. Item clusters were generated by putting all the elements of same nature in one theme group. For understanding purpose, different stages of ideas were constituted. The raw material from interviews was converted into sub-themes, then sub-themes were put together in themes, the themes were put into theme clusters, and subject groups were placed into categories.

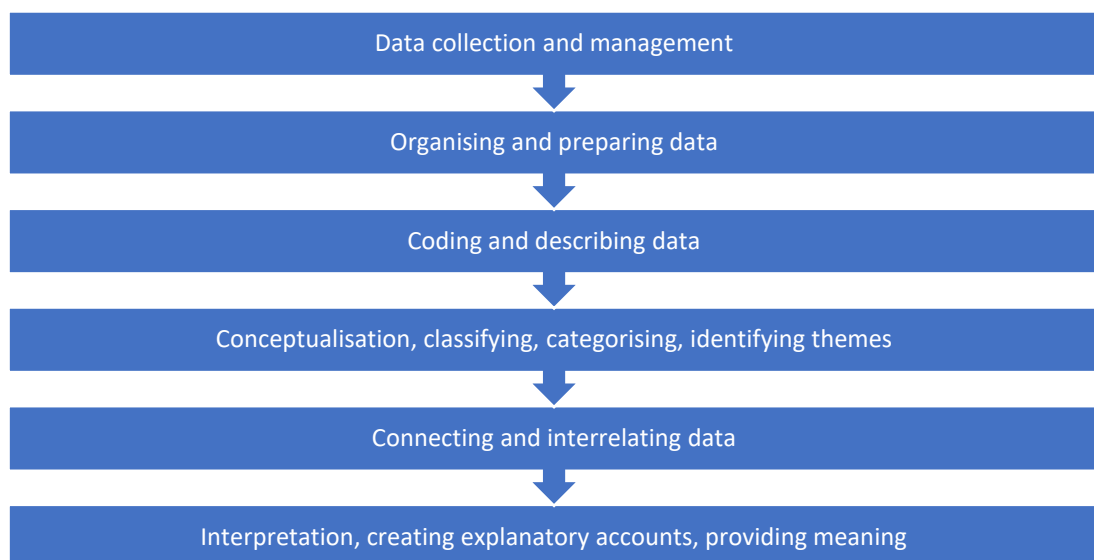
The themes were organized for putting data into meaningful logical order to give a better understanding. This technique was used to make sense of the aggregate information in a meaningful way. The researcher remained very careful in organizing and clustering the themes according to the relevance and correspondence of ideas while putting subjects into groups and clusters. The researcher benefited himself with the liberty of choice and analytical justification in the pattern of the organization and clustering of themes.

There are different terms used in qualitative research for coding interviews, like 'code,' 'theme,' 'concept' and 'category.'¹⁸⁶ It is considered as an essential part of the analytical procedure. A common term used in coding the narrative interviews is 'theme,' so this study uses this term for coding interviews. A theme is “anything” (Reference), any meaningful chunk, a narrative piece or a paragraph or a non-verbal expression in interview texts and field notes.

¹⁸⁶ Norman K. Denzin and Yvonna S. Lincoln (eds), *The SAGE Handbook of Qualitative Research* (3rd Edition, London: Sage Publications 2005)

Secondary data is usually used in research for corroboration by re-examining the primary study question. Secondary data analysis helps to investigate new research questions through analysing pre-existing data. Secondary data is often gathered by analyzing the existing literature in the form of documents that are related to the research topic.¹⁸⁷ The gathering and analysis of secondary data have helped to understand the investigation of the research topic and drawing the possible conclusions in each stage of the research.

Figure2.5: Qualitative analysis process¹⁸⁸



2.5 Ethical Considerations

This study examined all the ethical principles of research related to human participants set out the Anglia Ruskin University. As this study involved the participants residing in IDPs camps in Pakistan, it was duly understood, and consideration was given to the matter of their safety. This study was conducted by following all the ethical approvals

¹⁸⁷ Kenneth Bailey, *Methods of Social Research* (4th Edition, The Free Press New York 1994)

¹⁸⁸ Developed by the Researcher

and procedures. All the measures were taken in seeking the informed consent of the participants and keeping their shared information as confidential.

This study included participants from a legal expert group that includes judges and lawyers and the displaced person's group. The permission was gained from the concerned authorities that regulate the matters of both the groups. The approval was obtained from the concerned High Court and Bar Council for interviewing judges and lawyers. The approval was obtained from the relevant authorities dealing the issues of IDP camps to interview IDPs.

The areas and people where the researcher was conducting interviews were mostly illiterate or having lower education level. Most of the people were unaware of the benefits and utility of research. They were of the view that these research activities are only for education and academics, and they have nothing to do with the particle life. They used to inquire about the risks and concerns in case of their participation in the study.

The respondents were informed of their right to withdraw from the study at any stage if they want to withdraw due to any reason. Most of the time people showed a non-co-operative attitude towards the researcher. Even when some of them were willing to participate in the research, later they use to withdraw from the study. They were very hesitant in taking part in the study. The researcher, instead of forcing them to participate in the study, respected the reservations of such participants and allowed them to withdraw from the study. The people who participated in the study were again assured of their right to withdraw from the study after completing their interviews.

The researcher briefed them about the purpose of the study and their participation in the study. The participants were assured of the secrecy and confidentiality of their shared

information and were given freedom of withdrawal from the study at any point. Some of the participants shown their willingness to participate in the study in pilot interviews but they withdrew from the study at final interview stage. This freedom of choice encouraged the rest of the participants, and they participated in the study with full confidence.

To maintain the anonymity of the participant's names and their shared information, the researcher used Alphabetic series of names instead of using their original names. They were given the names of Mr. A, Mr. B, Miss. C, and Mrs. D, etc to IDPs and initials of the names were used for legal experts. The participants were assured of the secrecy and confidentiality of their identities and shared information. The researcher kept pretending to be ignorant of the situations while participants used to share their experiences and kept putting the question and inquiring about their experiences, which gave the participants a clue that they are being listened carefully and with interest.

They participants were not willing to come in front of the camera and refused to give their voice tape recorded. The researcher used the risk assessment techniques and made them agreed to give the interviews without tape recording. The researcher was aware of the fact that the displaced persons will not feel free and tend to oblige if they have interviewed in the presence of government officials or the camp's authorities. So, the researcher gave the participants an opportunity to express their feelings freely by interviewing them in privacy.

2.6 Conclusion

Research methodology is a comprehensive strategy by which the researcher adopts a proper approach to find and solve the research problem. It helps the researcher in conducting research by adopting specific methods appropriate to a study. It is necessary to adopt the most appropriate research methodology for conducting a well-organized research. Moreover, the qualitative research methodology is believed to be the most suitable method for investigating a new field of study or researcher wants to ascertain and theorize prominent issues. There are various methods applied in conducting a qualitative research, including interviews and observation, that help in developing the in-depth and extensive understanding of the issues.

This study employs a mixed method qualitative research approach, consisting of interpretive and empirical research approaches. The interpretive approach is adopted to investigate and interpret the laws applicable to IDPs, especial the criteria of the applicability of IHL to armed conflicts and conflicts affected IDPs, as well as IDPs related laws in Pakistan. The empirical/socio-legal approach is adopted for a case study of IDPs in Pakistan, using qualitative field interviews and identifying defects of policy & implementation. This study further interprets both the collected data, through both the approaches, to bring originality by confirmation of the doctrinal part of the study with empirical evidence collected from the ground.

CHAPTER THREE: IHL, IDPS, AND ISLAM IN PAKISTAN

3.1 Introduction

This chapter is based on the doctrinal aspects of the armed conflict in Pakistan through investigating the conflict in the context of the applicability of IHL on non-international armed conflicts and the conflict in Pakistan against the criteria of IHL. It contains the views of legal experts, interviewed by the researcher, gathered through qualitative interviews, in adopting a conflict paradigm to deal with the conflict. It also discusses the limited geographic applicability of IHL in the areas of conflict as well as the domestication of IHL into the legal structure of Pakistan. explores the applicability of IHL in the domestic legal structure of Pakistan, relating to IDPs. The acceptance of the IHL in the legal structure of Pakistan is discussed for an insight on IHL in the Sharia-dominated legal structure of Muslim countries. The acceptance of IHL in Sharia Law in Pakistan is interpreted as favouring IDPs.

This chapter examines the relevant rules of IHL and their applicability to armed conflicts, mainly the application of IHL in the situation of non-international armed conflicts in the Islamic context of Pakistani IDPs. It discusses the types and nature of various armed conflicts and discusses the applicability of IHL and customary laws applicable to non-international conflicts. This chapter contains a detailed account of a different type of non-international armed conflicts and relevant laws applicable to these armed conflicts. The criticism on the non-adaptability and territorial application of IHL on the changing dynamics of non-international armed conflicts is discussed in relation

to the different meaning of IHL from interpreting the plain text of common article.3 to the Geneva Conventions of 1949.

3.2 Scope of IHL

IHL, generally defined as a set of rules that protects people in times of armed conflicts, who are not taking part in hostilities. The reason for this protection is to limit the effects of armed conflicts and restrict the means and methods of warfare.¹⁸⁹ IHL is also called 'The Law of War'. It also protects objects such as hospitals, ambulances and significant pieces of cultural property including places of worship, works of art and historical monuments and saves them from the effects of hostilities. IHL prohibits the parties to a conflict from destroying civilian properties and infrastructure. It limits the use of weapons, especially the weapons of mass destructions and prohibits the parties to target civilians.¹⁹⁰

IHL has mainly emerged and developed through the cooperation and willingness of states.¹⁹¹ There are two main treaty sources of IHL, The Hague Conventions (1907) and the four Geneva Conventions. The Hague Conventions (The Hague Law) restrict the methods and means of warfare employed by belligerents against each other. This area of IHL is related to the law of armed conflicts and was mainly developed by The Hague Conventions.

The Geneva Conventions (The Geneva Law) protects persons who are not, or no longer, participating in the hostilities. These persons mainly include civilians, prisoners of war,

¹⁸⁹ Hans-Peter Gasser, 'IHL: An Introduction, in H Haug (ed), *Humanity for All: The International Red Cross and Red Crescent Movement* (Paul Haupt Publishers, 1993) 510

¹⁹⁰ International Committee of the Red Cross, 'What is IHL?' (July 2004)
<https://www.icrc.org/eng/assets/files/other/what_is_ihl.pdf> accessed 10 August 2016

¹⁹¹ James G. Stewart, 'Towards a Single Definition of Armed Conflict in International Humanitarian Law' (2003) 850 IRRC 313

the sick and wounded. This area of IHL is concerned with the protection of victims of armed conflicts and was primarily regulated by the four 1949 Geneva Convention. The Hague Conventions restrict the parties to a conflict to use unlimited means and methods of warfare, and the Geneva Conventions provide protection to vulnerable people.¹⁹²

IHL applies in times of armed conflicts. The state parties to the 1949 Geneva Conventions have given the International Committee of Red Cross (ICRC) mandate to work for the understanding and circulation of knowledge of IHL and its applicability of in the armed conflicts.¹⁹³ IHL applies mainly to the conflicts between sovereign states. These conflicts can be direct, where the states are directly involved in the conflict, and indirect, where a sovereign state supports the local movement of some other state by supporting the movement by sending troops in that state.¹⁹⁴ According to common article two of the Geneva Conventions:

‘In addition to the provisions which shall be implemented in peace-time, the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognised by one of them. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.’¹⁹⁵

Non-international armed conflicts are covered under common article 3 of the Geneva Conventions of 1949 and Article I of the Additional Protocol II. Common Article 3 of the Geneva Conventions applies to non-international armed conflicts that occur in the territory of any of the high contracting parties in which one or more nongovernmental armed groups are involved. There are situations where conflicts may occur between

¹⁹² Huma Haider, *International Legal Frameworks for Humanitarian Action: Topic Guide* (GSDRC, University of Birmingham 2013) 7

¹⁹³ Statutes of the International Red Cross and Red Crescent Movement, 2006, Art 5 (2) (g)

¹⁹⁴ Geneva Conventions, 1949, Common Article 2(1)

¹⁹⁵ Geneva Conventions, 1949, Common Article 2 (2)

governmental armed forces and non-governmental armed groups or between such groups only.

The condition of the territory of the high contracting parties has faded now, due to the universal acceptance and rectification. So, any armed conflict between governmental armed forces and non-governmental armed groups or between such groups is considered as a conflict occurred in the territory of the high contracting parties to the convention. According to these provisions, there are two types of armed conflicts, recognised by IHL, international armed conflicts, and non-international armed conflicts. These provisions can be used as an assumption of the nature of armed conflicts.

3.3 Types of Armed Conflicts

The state parties to the Geneva Conventions of 1949 gave a mandate to the International Committee of Red Cross to work for the understanding and dissemination of knowledge of IHL applicable in armed conflicts and to prepare any development in this regard.¹⁹⁶

The International Committee of Red Cross then presented its legal opinion on the matter of armed conflicts under IHL by dividing armed conflicts into two different categories, international armed conflicts, and non-international armed conflicts.¹⁹⁷

International armed conflicts in which two or more states are involved and non-international armed conflicts that involve governmental forces and non-governmental arm groups or between such groups only.¹⁹⁸ The conflict between North Korea and

¹⁹⁶ International Committee of the Red Cross, 'The ICRC's mandate and mission' (ICRC October 2010) <<https://www.icrc.org/eng/who-we-are/mandate/overview-icrc-mandate-mission.htm>> accessed 10 December 2016

¹⁹⁷ Dieter Fleck, *The Handbook of Humanitarian Law in Armed Conflicts* (3rd edition Oxford University Press 2013)

¹⁹⁸ International Committee of the Red Cross (ICRC) Opinion Paper, 'How is the Term "Armed Conflict" Defined in IHL?' (ICRC March 2008) <<https://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf>> accessed 12 April 2016

South Korea in 1950 is an example of international armed conflicts.¹⁹⁹ According to Geneva Conventions of 1949, international armed conflicts are conflicts when one or more States have recourse to armed force against another State, regardless of the reasons or the intensity of this confrontation. Apart from applicability of IHL in the situation of armed conflict, there are specific provisions and rules of IHL that apply in peace situations, in the absence of open hostilities, to prevent the armed conflicts between the states.²⁰⁰

According to Geneva Conventions of 1949, non-international armed conflicts are the armed conflicts waged between the state armed forces and non-state armed groups or between armed groups themselves.²⁰¹ Such conflicts that take place in the territory of a State and there is no involvement of the other state armed forces but only the forces of that concerned state participate. For example, a conflict that takes place between the armed forces of a state and the rebels or insurgent groups and that conflict fulfils the criteria of armed conflict. Normally states keep their armed conflicts unannounced and try to deal with the conflicts internally.²⁰²

3.3.1 Non-International Armed Conflicts

Non- International armed conflicts are defined under article 3 of the Geneva Conventions as conflicts of non-international nature that occur within the territory of the

¹⁹⁹ Adrian Buzo, *The Making of Modern Korea* (London: Routledge, 2002)

²⁰⁰ Dietrich Schindler, 'The different Types of Armed Conflicts According to the Geneva Conventions and Protocols' (1979) 163 RCADI 131

²⁰¹ International Committee of the Red Cross (ICRC) Opinion Paper, 'How is the Term "Armed Conflict" Defined in IHL?' (ICRC March 2008) <<https://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf>> 12 April 2016

²⁰² Sandesh Sivakumaran, *The Law of Non-International Armed Conflict* (Oxford University Press, 2012)

High Contracting Parties. These conflicts are considered as different from internal disturbances and rioting.²⁰³

According to IHL treaty Law, non-international armed conflicts are further divided into two sub-categories. The first category of non-international conflicts is based on those armed conflicts that fall under the meaning of common Article 3 of the Geneva Conventions of 1949. The conflicts that take place within the territory of a state are covered under Common Article 3 of the Geneva Conventions. The assessment of the existence of an armed conflict and its nature of being a non-international armed conflict needs to be made under the criteria of their assessment under IHL.

Moreover, this provision applies to the situations where armed conflicts take place within the territory of a state that may or may not be a party but two or more dissident groups fight against each other. Normally states make political compromises in declaring the status of non-international armed conflict.

The second category of non-international armed conflicts are those armed conflicts that come under the scope of Additional Protocol II. These types of conflicts take place between incumbent government forces and the armed forces comprised of internal belligerents. The Additional Protocol II becomes automatically applicable in situations of armed conflicts that meet the criteria of armed conflicts under article 1 of the Additional Protocol II.

The legal division of armed conflicts accept these two types of conflicts only. The modern era has introduced a third type of armed conflicts, named Internationalised

²⁰³ Sylvain Vite, 'Typology of armed conflicts in IHL: legal concepts and actual situations, (2009) 91(873) *International Review of the Red Cross* 69

Armed Conflicts but the scope of this type of conflicts is very limited.²⁰⁴ But this type of conflicts is not widely accepted because different situations of armed conflicts can evolve from one type of armed conflict to another, depending on the facts prevailing at a certain moment.²⁰⁵ The changes in the circumstances can convert an international armed conflict into a non-international armed conflict and vice versa.

3.3.2 Categories of Non-International Armed Conflicts

The changing nature of the conflicts has raised many questions about the compatibility of IHL with the modern conflicts. The applicability of IHL has been challenged by the modern conflicts. These conflicts often involve private military companies and transitional armed groups. The involvement of such groups changes the dynamics of the conflicts, and it becomes difficult to assess the nature of conflicts. The introduction of the term ‘war on terror’ has furthermore raised a question about the recognition of such types of armed conflicts under IHL.²⁰⁶

The applicability of IHL is limited to the situations of armed conflicts only. At times, the modern acts of terrorism and internal armed conflicts are difficult to be classified. Most of the times, the status of the freedom fighters and terrorists are difficult to be ascertained. This ambiguity has been created by the definition of terrorism by the USA, who have introduced the concept of a war on terrorism, while international law clearly defines the term terrorism.

²⁰⁴ International Committee of the Red Cross (ICRC) Opinion Paper, ‘How is the Term "Armed Conflict" Defined in IHL?’ (ICRC March 2008) <<https://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf>> 12 April 2016

²⁰⁵ International Committee of the Red Cross (ICRC) Opinion Paper, ‘How is the Term "Armed Conflict" Defined in IHL?’ (ICRC March 2008) <<https://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf>> 12 April 2016

²⁰⁶ Marco Sassoli, *Transnational armed groups and IHL* (Harvard University Press 2006) 8

The term ‘terrorism’ is defined in many ways with different political and regional motives. The American definition of terrorism involves the premeditated political motive behind the acts of violence by the terrorists against civilians. The USA, the creator of this term, defines terrorism in an ambiguous and unclear way.²⁰⁷ On the other hand, International Law provides a clear definition of terrorism. According to International Law, terrorism is;

‘[C]riminal acts directed against a State or intended to create a state of terror in the minds of persons, a group of persons, or the public, any wilful act calculated to endanger the lives of members of the public, wilful destruction of or damage to public property manufacture, obtaining, possession or supplying of arms or ammunition, explosives, or harmful substances with a view to the commission in any country whatsoever.’²⁰⁸

International Law treats terrorism as a form of aggression and defines aggression as ‘the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State.’²⁰⁹ More specifically it states that aggression can be:

‘[T]he sending by or on behalf of a State of armed bands, groups, irregulars, or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein. But modern terrorism is different from the above-stated forms of terrorism because it does not involve the direct participation of state.’²¹⁰

The recognition of three types of armed conflicts under IHL does not cover the acts of terrorism. The global terrorism has different dynamics from those which are recognised by IHL as armed conflicts. In the war on terror, the war is against the transnational groups that have no links with any state. IHL does treat the conflicts between a state and non-state actors as international armed conflict.

²⁰⁷ Marco Sassoli, *Transnational armed groups and IHL* (Harvard University Press 2006) 8

²⁰⁸ Geneva Convention Act 1937, Art. 1 (1)

²⁰⁹ UN General Assembly, Definition of Aggression (14 December 1974)

<<http://hrlibrary.umn.edu/instate/GAres3314.html>> accessed 13 April 2016

²¹⁰ Theodor Meron, ‘The Geneva conventions as customary law’ (1987) 81 AJIL 348

The acceptance of such type of conflicts as the international armed conflict would qualify the non-state actors to claim the same privileges enjoyed by the state armed forces.²¹¹ However, IHL identifies the status of an individual whether he is a terrorist or a combatant in armed conflicts, especially in non-international armed conflicts and in situations of self-determination.²¹²

It is necessary to classify conflicts as armed conflicts for the application of IHL immediately. The lack of classification of conflicts as armed conflicts makes the application of IHL uncertain and results in more human sufferings. IHL provides rules and regulations regarding the behaviour the parties to an armed conflict and protection of people who are not taking part in hostilities. It also provides rules for the protection of the civilian property.

The undefined nature and state practices make it difficult to categories non-international armed conflicts that fall within the scope of common article.3. The changing nature of conflicts in recent times has introduced some new types of non-international armed conflicts. According to Pejic, non-international armed conflicts can divide these conflicts into the following categories:²¹³

The first type of non-international armed conflict is those in which government armed forces are fighting against one or more organized armed groups within the territory of a single state. These types of conflicts fall within the scope of common article 3 and are

²¹¹ Theodor Meron, 'The Geneva conventions as customary law' (1987) 81 AJIL 348

²¹² Global Protection Cluster Working Group, 'Handbook for the Protection of Internally Displaced Persons' (December 2007) <<http://www.internal-displacement.org/assets/publications/2007/200712-idpprotection-handbook-thematic-en.pdf>> accessed 10 August 2016

²¹³ Jelena Pejic, 'The protective scope of Common Article 3: more than meets the eye' (2011) 93 IRRC 189

governed by rules of customary IHL as well.²¹⁴ The conflict in Pakistan falls under this category of non-international armed-conflicts, as government armed forces are fighting against TTP and its umbrella organizations within the territory of Pakistan.

The second type of conflicts normally occurs in the scenario of a failed state, where conflict arises between two or more organized armed groups and they are limited to the territory of a single state. In these types of conflicts, there can be a situation where it is difficult to find the state authority to consult. There can be a situation where there already exists an international armed conflict and a non-international armed conflict occurs between two or more organized armed groups in the territory of a single state. These conflicts fall into the category of non-international armed conflicts and are governed by Common Article 3 and rules of Customary IHL as well.

The third type of non-international armed conflicts is the further expansion of the first type of armed conflicts. There are situations where armed conflicts, between government armed forces and one or more-armed groups, originating within the territory of one state spill over into the territory of the neighbouring states.

These types of situations can give rise to the matter of sovereignty of states. The involvement of the armed forces of the neighbouring states can turn the conflict into an international armed conflict but the status of the parties fighting before the spill over remain the same, and common Article 3 and rules of Customary IHL remain applicable.²¹⁵ It is quite logical that mere spill over of a non-international armed conflict into neighbouring state territory cannot absolve the obligation, and the parties are still

²¹⁴ Jelena Pejic, 'Conflict classification and the law applicable to detention and the use of force' in Elizabeth Wilmhurst (ed), *International law and the classification of conflicts* (Oxford University Press 2007) 6

²¹⁵ Jelena Pejic, 'The protective scope of Common Article 3: more than meets the eye' (2011) 93 IRRC 189

bound to obey the rules of IHL. The mere crossing of the border cannot be presented as an excuse to these obligations.²¹⁶

The last decade has given birth to a specific type of armed conflict that is called multinational armed conflict. Even after the involvement of more than one state, this type of conflict is treated as non-international armed conflict. In this type of conflict, the multinational armed forces fight alongside the armed forces of a host state, in its territory against one or more organized armed groups. Regardless of the involvement of the multinational armed forces, the conflict remains non-international because all the state actors remain on the same side, and their armed forces do not oppose two or more states.

The armed conflicts in Afghanistan can be quoted as an example of such type of non-international armed conflicts. The armed conflict from October 2001 till June 2002 can be classified as international armed conflict and conflict after June 2002 falls under the category of non-international armed conflict.

The fifth type of non-international armed conflict occurs in a situation where UN forces or forces under the aegis of a regional organization are sent to help the state forces in fighting against one or more organized armed groups for attaining stability in the territory of that state. Although the involvement of international forces makes the situation complexed as international forces play their role as a party to the conflict, yet the purpose of such involvement is to provide support and stability to the state.

This situation can become complex due to the involvement of various legal issues. For example, the applicability of the 1994 Convention on the Safety of UN Personnel

²¹⁶ Jelena Pejic, 'The protective scope of Common Article 3: more than meets the eye' (2011) 93 IRRC 189

becomes an issue in the context of multinational forces involved in a conflict.²¹⁷ But even then, in such situations where UN or other regional forces like the African Union become a party to a conflict, the conflict remains the non-international armed conflict and is governed by Common Article 3 and Customary IHL.

In this type of non-international armed conflict, the conflict takes place between state forces and a non-state party that operates from the territory of another neighbouring state and that neighbouring state does not support or control that non-state party.¹¹⁶ This situation can be called a cross-border non-international conflict. For example, the war between Israel and Hezbollah in 2006, where Hezbollah was operating from Lebanon and was chased by Israel army crossing the border.

The discussions on this situation have been divided into three broad positions, whether it should be named as an international, non-international armed conflict. Such a scenario has been hardly imaginable during the drafting of Common Article 3. Despite, having this problem, Common Article 3, and Customary IHL are the appropriate legal framework to deal such types of armed conflicts. These types of conflicts are dealt under the category of non-international armed conflicts by IHL.

3.4 Changing Dynamics of Non-International Armed Conflict

According to the clarification of the International Committee of the Red Cross at different occasions, ICRC does not believe in the existence of any armed conflict of global dimensions.²¹⁸ After 9/11 incident, instead of judging the situations generically, where there is involvement of multinational in fighting against the organized groups,

²¹⁷ Convention on the Safety of United Nations and Associated Personnel, 1994

²¹⁸ ICRC, 'IHL and the challenges of contemporary armed conflicts' (ICRC October 2015) <<https://www.icrc.org/en/document/international-humanitarian-law-and-challengescontemporary-armed-conflicts>> accessed 10 August 2016

ICRC has taken a case by case approach to judging the situations. Some of them have been named as international armed conflicts, some of them amount to non-international armed conflicts, while other situations that involve different acts of terrorism happening in various parts of the world have not been considered as an armed conflict.

The changing circumstances of the present era have provided scholars, nongovernmental organisations (NGOs) and politicians an opportunity to demand amendments and updating of IHL to deal with twenty-first-century challenges. They argue that the context of 1977 has changed, and international wars have become less frequent, but local wars and internal conflicts occur more often than ever, and wars have become shorter but more destructive considering modern military technology. They are of the view that changing dynamics of wars and use of deadly weapons make wars more destructive and affect the whole of the population, instead of targeting the military objects. The demand the establishment of a new legal framework as to cope with the modern challenges.

IHL has been constantly developed from first Geneva Convention of 1864 till date and ICRC have been a driving force behind this development of IHL. Throughout the journey of IHL, ICRC has been active in drafting, negotiating, and amending the IHL. To meet the requirements of the changing times, ICRC has been proposing amendments improve existing conventions, and major revisions have taken place in IHL in 1906, 1929, 1949 and 1977. The ICRC has been officially recognised as a guardian of humanitarian law in the Statutes of the International Red Cross and the Red Crescent Movement adopted by them and by the contracting parties to the Geneva Conventions in 1986.

The compilation of the rules of IHL by ICRC contains the customary rules of IHL applicable in both international and international armed conflicts.²¹⁹ Furthermore, all the treaties adopted since the early 1990s are applicable to both internal and international conflicts. United Nations Security Council (UNSC) resolutions are stating that large-scale violations of human rights and humanitarian law constitute a threat to international peace, considering that domestic armed conflicts tend to become international conflicts and have serious consequences on the international community.

Examples are UNSC Resolution 770 (1992) on Bosnia and Herzegovina; UNSC Resolution 794 (1992) on Somalia; UNSC Resolution 929 (1994) on Rwanda; and UNSC Resolution 1244 (1999) on Kosovo. In such circumstances, the UNSC is empowered to take all measures at its disposal, measures under Chapter VII of the UN Charter, to end such violations.

The UNSC has authorised the use of force in several humanitarian disasters and has set up two international criminal tribunals to deal with the most serious violations of human rights and humanitarian law. IHL has been developed not only through decisions of the UN and judgments of the ICJ but also through international treaties. There is a growing number of States ready to accept important limitations upon their internal affairs.²²⁰

3.5 Non-International Armed Conflict Threshold under IHL

Despite all the deficiencies in ascertaining the nature of armed conflicts and lack of proper definition of non-international armed conflicts, it is widely accepted that the conflicts waged between state armed forces and non-state armed groups or between

²¹⁹ Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary IHL, Volume I: Rules* (Cambridge University Press 2005)

²²⁰ Orna Ben-Naftali, *IHL, and International Human Rights Law* (Oxford University Press 2011)

such groups themselves are considered as Non-International Armed Conflicts.²²¹ These conflicts are covered under common article 3 to the Geneva Conventions of 1949, Additional Protocol II of 1977 and the rules of Customary IHL.

Non-international armed conflicts are divided into two categories according to the criteria of the applicability of IHL. The first category of non-international armed conflicts is comprised of those conflicts that are analysed on the basis Article 3 common to the 1949 Geneva Conventions. The second category of non-international armed conflicts falls under the threshold of Article 1 of Additional Protocol II of 1977. These provisions set the criteria of non-international armed conflict and their interpretations are made in the light of general practices. The matter of the jurisdiction of the non-international armed conflicts is dealt under relevant provisions of the statute of the International Court of Justice (ICC).

The state practices and international judicial bodies and legal literature provide different criteria to be applied for the assessment of these conflicts in different situations. There are two minimum criteria that are compulsory to be applied in the classification of the situation of violence amounting to armed conflicts. The first is the existence of two parties and second is the intensity of violence that reaches the level of armed conflict. These criteria differentiate armed conflicts, falling under Common Article, from internal disturbances or tensions that do not meet the threshold of Common Article 3.

The assessment of the existence of the state party is not difficult but the assessment of the existence of a non-state party under Common Article 3 criteria is a bit complex phenomenon. The lack of the clarity as to the facts and the no acknowledgement of the existence of non-international armed conflicts by the governments makes this

²²¹ Lindsay Moir, *The Law of Internal Armed Conflict* (Cambridge University Press 2002) 35

assessment difficult. However, the organized armed groups, having the capacity to implement IHL, are considered as non-state parties to a non-international armed conflict.²²²

As defined by Geneva Conventions, non-international armed conflicts generally take place within the territory of a high contracting party or state. The Geneva Conventions also recognise the existence of an armed conflict in situations where the intensity of conflicts reaches a certain level which differs the situation from internal disturbance or other types of violence.²²³

The modern law recognizes armed conflicts by using two variables, intensity of the violence and the level of organization of the parties. In the absence of any of the two variables, the situation is considered as a mere disturbance. Such situations where exists a confrontation within the country involving certain seriousness, duration, and acts of violence are mere internal disturbances and not amount to armed conflicts.²²⁴

Common article.3 sets out the acceptance criteria for the existence of non-international armed conflicts based on two elements, the existence of parties to the conflict and the intensity of the violence involved in the conflict.²²⁵ It is very difficult to make a clear distinction between mere disturbances and armed conflicts. The political will of the States plays a major role in making a distinction between mere disturbances and armed conflicts. For ascertaining a situation as armed conflict, two variables are considered

²²² Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary IHL, Volume I: Rules* (Cambridge University Press 2005)

²²³ International Committee of the Red Cross (ICRC) Opinion Paper, 'How is the Term "Armed Conflict" Defined in IHL?' (March 2008)
<<https://www.icrc.org/eng/resources/documents/article/other/armed-conflict-article-170308.htm>>
accessed 12 April 2016.

²²⁴ Gertrude C. Chelimo, 'Defining Armed Conflict in IHL' (2011) 3 *Inquiries Journal of Social Science and Humanities* 1

²²⁵ Jelena Pejic, 'The protective scope of Common Article 3: more than meets the eye' (2011) 93 *IRRC* 189

critical. The hostilities must reach a certain minimum level of intensity and the situation of armed conflicts, therefore relying heavily on the political will of states to classify the situation as an armed conflict.²²⁶

3.6 Laws Applicable to Non-International Armed Conflicts

The states normally refrain from interfering in the internal matters of other states. The states have no authority to interfere in the affairs and conflicts of other states that are recognized by international law as purely domestic and internal. The United Nations also advocates this theory and forbids the interference in the matters that are mainly the internal affairs of a state. The United Nations has the entitlement to use measures to enforce states in situations amounting to threat to peace, breach of the peace or the acts of aggression.²²⁷

Traditionally, non-international armed conflicts do not fall in the scope of IHL but with the passage of time, the states have allowed the interference of IHL in their internal matters for avoiding the situations of extreme violence and cruelty. To deal the internal situations beyond their control and to save the international community from their effects, the states have accepted the rules of IHL that regulate the matters of non-international armed conflicts.

The states have adopted the four Geneva Conventions in 1949 that contain provisions of the minimum standards of humanity and show their commitments to observe the minimum standards of humanity in situations of non-international armed conflicts. These standards have been further developed and supplemented in the later adopted Protocol II additional to the Geneva Conventions in 1977.

²²⁶ Gary D. Solis, *The Law of Armed Conflict; IHL in War* (Cambridge University Press 2010)

²²⁷ Charter of the United Nations 1945

The applicability of IHL in non-international conflicts becomes more complexed due to the undefined and unannounced nature of these conflicts.²²⁸ IHL extends its applicability to the armed conflicts of non-international nature between state and non-state armed groups or between non-state armed groups.²²⁹ The non-international armed conflicts occur much frequently in the present era. The states are often seen reluctant to accept international legal oversight into their internal matters and this phenomenon of violence often need to be identified and defined.

So, the existence of a non-international armed conflict often needs to be defined more than the existence of an international armed conflict in the present era. A non-international armed conflict is defined under common article 3. According to common article 3 to the Geneva Conventions; internal disturbances or tensions, Internal disturbances are riots and demonstrations and sporadic, isolated acts of violence, that take place inside the territory of a state does not qualify as an armed conflict.

IHL does not apply to the internal tensions, disturbances and other isolated acts of violence that occur within the territory of a state.²³⁰ The distinction between International and non-international armed conflicts is a necessary element for the application of IHL to a conflict.²³¹ The conflicts arising between two states are normally considered as International armed conflicts. Internal Humanitarian Law provides a wide range of rules and regulations to be applied in times of International armed conflicts.²³²

²²⁸ Jelena Pejic, 'The protective scope of Common Article 3: more than meets the eye' (2011) 93 IRRC 189

²²⁹ Geneva Conventions I, Art. 3; Geneva Conventions II, Art. 3; Geneva Conventions III, Art. 3; Geneva Conventions IV, Art. 3

²³⁰ Jonathan Crowe and Kylie Weston-Scheuber, *Principles of IHL* (Edward Elgar Publishing 2013)

²³¹ Jahid Hossain Bhuiyan and Louise Doswald Beck, *IHL- An Anthology* (Lexis Nexis 2009)

²³² Terry D. Gill and Dieter Fleck, *The Handbook of the International Law of Military Operations* (2nd Edition Oxford university press 2016)

As defined by Geneva Conventions, the situations of internal disturbances generally convert into a non-international armed conflict when these disturbances reach a certain level. The occurrence of mere violent acts does not convert an internal disturbance into a non-international armed conflict. The non-international armed conflicts occur within the territory of a single state having the status as a high contracting party or state.²³³

The modern law recognises armed conflicts by using two variables, intensity of the violence and the level of organisation of the parties. In the absence of any of the two variables, the situation is considered as a mere disturbance. Such situations where exists a confrontation within the country involving certain seriousness, duration, and acts of violence are mere internal disturbances and not amount to armed conflicts.²³⁴

3.6.1 Non-international armed conflicts under Common Article 3

Common Article 3 contains the essential rules of all the Geneva Conventions in condensed form and makes them applicable to non-international armed conflicts. It requires the parties to apply basic and fundamental rules of humanity, automatically without any condition of reciprocity, irrespective of the recognition of the nature of the conflict.²³⁵ The conflicts of non-international character, occurring in the territory of one of the High Contracting Parties, fall under the scope of common article 3.

The deliberate omission of defining the armed conflict under common article 3, keeps its canvass broad, in the context of the negotiating states hesitant to adopt a resolution which would have effectively extended exterior legal regulation into their internal

²³³ International Committee of the Red Cross (ICRC) Opinion Paper, 'How is the Term "Armed Conflict" Defined in IHL?' (ICRC March 2008) <<https://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf>> accessed 12 April 2016

²³⁴ Gertrude C. Chelimo, 'Defining Armed Conflict in IHL' (2011) 3 (4) *Inquiries Journal of Social Science and Humanities* 1

²³⁵ Jean S Pictet, *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (International Committee of the Red Cross 1952)

affairs. The provisions of the common article 3 have become legally binding on all state due to its status of customary international law. Moreover, it establishes elementary considerations of humanity that apply to a minimum even in international armed conflicts.²³⁶

The conflicts that occur in the territory of one of the High Contracting Parties and are regulated by Article 3 common to the 1949 Geneva Conventions. In these types of conflicts, an armed group, that is not the government, is involved in fighting against government forces or against other armed groups. The intensity of violence needs to reach a certain level for meeting the criteria for non-international armed conflict under Article 3. The intensity of violence distinguishes an armed conflict from other forms of violence for the application of IHL. The situations of internal disturbances and tensions, including riots, isolated and sporadic acts of violence and other acts of a similar nature are not considered as armed conflicts for the application of IHL.²³⁷

The non-state armed groups are assessed based on some factors of organized groups, that include an organized command structure, capacity to conduct military operations and access to weapons, the capacity to recruit new members and training them, having control over a territory, and having internal communication and organisational mechanism.

The conflicts, in which any of the two conditions are met, are considered as internal disturbances or internal tensions. The situations of internal disturbances and internal tensions, not being considered as armed conflicts, are not defined under international

²³⁶ Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America). Merits, Judgment. I.C.J. Reports 1986

²³⁷ International Committee of the Red Cross (ICRC) Opinion Paper, 'How is the Term "Armed Conflict" Defined in IHL?' (March 2008) <<https://www.icrc.org/eng/resources/documents/article/other/armed-conflict-article-170308.htm>> accessed 12 April 2016

law but are referred to explicitly in Additional Protocol II.²³⁸ The states have the responsibility to tackle this situation by calling upon extensive police forces or armed forces.²³⁹ These situations involve less violent circumstances like mass arrests, political detainees, torture, ill-treatment, forced displacements and suspension of judicial guarantees.²⁴⁰

The conflicts that do not involve the territory of High Contracting Parties or spread over the territories of more than one states are not covered by Common Article 3. In terms of the application of Common Article 3, High Contracting Parties are those states that are a signatory to the Geneva Conventions of 1949. The parties involved in conflicts that aim to achieve political objectives are considered as non-state armed groups. The parties involved in conflicts that aim to achieve purely criminal objectives are not considered as nonstate parties and IHL does not entertain such conflicts as non-international armed conflicts.²⁴¹

There is no universally agreed definition of terrorism, rather various legal systems and government agencies use different definitions.²⁴² Moreover, states seem hesitant in agreeing upon the formation of a universally agreed definition of terrorism legally binding on states.²⁴³ Although, international community has been trying to form a universally agreed definition of terrorism yet differences of opinion between various members about the use of violence in the context of conflicts over national

²³⁸ Additional Protocol II, Art. 1(2)

²³⁹ Yves Sandoz *et al*, (eds) *Commentary on the additional protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (International Committee of the Red Cross 1987)

²⁴⁰ Hans-Peter Gasser, 'Humanitarian Standards for Internal Strife – A Brief Review of New Developments' (1993) 294 *International Review of the Red Cross* 221

²⁴¹ David Petrasek *et al*, *Ends and Means: Human Rights Approaches to Armed Groups* (International Council on Human Rights Policy, Geneva 2000) 5

²⁴², Alex P Schmid, The Definition of Terrorism in Alex P Schmid (ed), *The Routledge Handbook of Terrorism Research* (Taylor & Francis 2011) 39

²⁴³ Myra Williamson, *Terrorism, War, and International Law: The Legality of the Use of Force Against Afghanistan in 2001*. (Aldershot, UK: Ashgate Publishing Ltd., 2009) 38

liberation and self-determination have made it impossible to conclude a Comprehensive Convention on International Terrorism that incorporates a single, all-encompassing, legally binding, criminal law.²⁴⁴

The international community, however, managed to adopt a series of sectoral conventions for defining and criminalizing various types of terrorist activities.

Moreover, in 1994, the United Nations General Assembly condemned terrorist acts and provided a political description of terrorism as:

‘Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them.’²⁴⁵

The absence of a universally recognised definition of terrorism makes it difficult to assess the criteria of the applicability of IHL on the acts of terrorism. However, international law defines acts of terrorism as:

‘criminal acts directed against a State or intended to create a state of terror in the minds of persons, or a group of persons, or the public,²⁴⁶ any wilful act calculated to endanger the lives of members of the public,²⁴⁷ wilful destruction of or damage to public property,²⁴⁸ and manufacture, obtaining, possession or supplying of arms or ammunition, explosives or harmful substances with a view to the commission in any country whatsoever.’²⁴⁹

IHL applies only in relation to situations of armed conflict. International armed conflict and non-international armed conflict are generally recognized two categories of armed conflicts under IHL.²⁵⁰ IHL neither provides a definition of terrorism nor applies to the

²⁴⁴ Diaz Paniagua, Carlos Fernando, *Negotiating Terrorism: The Negotiation Dynamics of Four UN Counter-Terrorism Treaties, 1997-2005* (2008) 47

²⁴⁵ United Nations Declaration on Measures to Eliminate International Terrorism 1994

²⁴⁶ Geneva Convention Act 1937, Art. 1 (1)

²⁴⁷ Geneva Convention Act 1937, Art. 2 (3)

²⁴⁸ Geneva Convention Act 1937, Art. 2 (2)

²⁴⁹ Geneva Convention Act 1937, Art. 2 (5)

²⁵⁰ Yoram Dinstein, *Non-International Armed Conflicts in International Law* (Cambridge University Press 2015)

acts of terrorism committed in situations not connected with the armed conflicts. Such acts are normally covered under the domestic law-enforcement regimes and IHRL.²⁵¹ However, it applies to acts of terrorism and other forms of involvement by terrorists in armed conflict, arising in relation international or non-international armed conflicts.²⁵² The acts of terrorism conducted with a sufficient nexus to an armed conflict, mainly directed against civilians, are considered as the violation of IHL.²⁵³

IHL prohibits the acts of terrorism, committed in armed conflicts, through binding the parties to distinguish between civilians and combatants and between civilian objects and military objectives. IHL specifically aims to protect civilians from deliberate or direct attacks against civilians and civilian objects as well as indiscriminate attacks and using civilians as human shields. The measures and acts amounting to terrorism, including collective penalties and all measures of intimidation or of terrorism, are strictly prohibited under IHL.²⁵⁴ It prohibits acts of terrorism against persons not or no longer taking part in hostilities.²⁵⁵ The acts or threats of violence, aimed to spread terror among the civilian population, are prohibited under IHL.²⁵⁶

In short, IHL applies to the acts of terrorism, excluding the acts of terrorism committed in peacetime, committed in the context of armed conflicts. However, such acts of terrorism are covered under both domestic and international law, especially under human rights law.

²⁵¹ Ben Saul, 'Terrorism and IHL' in Ben Saul (ed), *Research Handbook on International Law and Terrorism* (Edward Elgar 2014) 208

²⁵² International Convention for the Suppression of Terrorist Bombings 1997, Art. 19(2)

²⁵³ Ben Saul, 'Terrorism and IHL' in Ben Saul (ed), *Research Handbook on International Law and Terrorism* (Edward Elgar 2014) 208

²⁵⁴ Geneva Convention IV, Art. 33

²⁵⁵ Additional Protocol II, Art. 4

²⁵⁶ Additional Protocol I, Art. 51; Additional Protocol II, Art. 13

The conflict in Pakistan has been discussed in the war report on armed conflict in 2014 under the criteria of the applicability of IHL and the nature of the conflict.²⁵⁷ This report describes the overview, classification, intensity of violence, parties to the conflict and the applicable international law on the conflict in Pakistan. This report considers the conflict as a non-international armed conflict under IHL, mainly fulfilling the criteria of the applicability of common article 3 to the Geneva Conventions, by looking at the organization of the parties and intensity of the fighting.

3.6.1.1 The binding force of Common Article 3

The parties to a conflict are bound to oblige the rules of IHL during an armed conflict. Common article.3 as a treaty law not only binds the states by being party to the Geneva Conventions but also binds the non-state parties as well. There are different theories about the logic behind making non-state parties bound to oblige IHL.²⁵⁸

The customary rules of International Law bind non-state armed groups to oblige the rules of IHL based on the territory of the state where they use to fight. Common article.3 in this regard acts as customary law because all the substantive provisions of Common Article 3 bind all parties to an armed conflict to oblige the rules of IHL beyond any formal classification or geographical reach.²⁵⁹ In these types of situations, common article.3 operates as customary law and it affirmed by International Criminal Tribunal for Rwanda as well.

Basically, Common Article 3 applies to armed conflicts in terms of customary law and extends its applicability to all the parties to such conflicts, without any formal

²⁵⁷ Annyssa Bellal (ed), *The War Report: Armed Conflicts in 2014* (Oxford University Press 2015)

²⁵⁸ ICRC, 'State Parties to the Main Treaties of IHL' (August 2016) <<https://ihl-databases.icrc.org/ihl>> accessed 10 August 2017

²⁵⁹ Marco Sassoli, 'Transnational armed groups and IHL' (2006) 6 (1) HPCR Occasional Paper Series 12

classification and geographical limitations. If a state is bound to oblige some rules of International Law, it ultimately puts non-state parties to oblige the same rules because of being on the territory of that state. The International Court of Justice has reiterated this position by stressing that:

Because the minimum rules applicable to international and non-international conflicts are identical, there is no need to address the question whether those actions must be looked at in the context of the rules which operate for the one or the other category of conflict. The relevant principles are to be looked for in the provisions of Article 3 of each of the four Conventions of 12 August 1949, the text of which, identical in each Convention, expressly refers to conflicts not having an international character.²⁶⁰

3.6.1.2 The territorial scope of application of Common Article 3

The limited scope and application of common article. 3 is often criticized and argued that it applies to the conflicts of non-international nature in which state forces are involved in fighting against non-state armed groups within their territory.¹⁵⁹ The plain language of the common article.3, by itself, provide a defence to this criticism. The different interpretation of the text gives it different meanings and extends its scope and applicability.

The conflicts of non-international character fall under the scope of common article.3 by their organization and intensity. So, the scope and applicability of common Article.3 extend to the non-international armed conflicts spread over the territory of more than one state. A wide interpretation of the text clarifies that territorial clause has not been included deliberately to lemmatise the territorial or geographical scope of common article.3 in this regard.²⁶¹

²⁶⁰ Jean S. Pictet (ed.), *Commentary to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War* (ICRC, Geneva 1958)

²⁶¹ Anthony Cullen, *The Concept of Non-International Armed Conflict in IHL* (Cambridge University Press 2010)

The territorial scope and applicability of IHL are rejected by interpreting and comparing the provisions of Geneva Conventions and Additional Protocol II, related to the occurrence of conflicts in the territory of one state.²⁶² According to the Common article 3, refers to non-international armed conflicts occurring in the territory of one of the High Contracting Parties, on the other hand, Additional Protocol II covers those armed conflicts that occur within the territory of a High Contracting Party between state armed forces and organized armed groups as well as dissident armed groups. The territorial clause of Common Article 3 thus clearly allows a reading according to which it will apply so long as a non-international conflict originated in the territory of one of the High Contracting Parties.

3.6.2 Non-international armed conflicts under Additional Protocol II

A non-international armed conflict falls under the scope of Additional Protocol II when the intensity of violence reaches to a situation that makes it distinct from cases of internal tensions or disturbances.²⁶³ Additional Protocol II provides a more limited definition of the field of application as compared to common Article 3. A conflict requires the involvement of non-governmental forces with a high level of organization and having a responsible command.

Additional Protocol II provides the stricter criteria for the existence of non-international armed conflicts than common article 3. It has been framed with the intention of extending the essential rules of the law of armed conflict to internal wars.²⁶⁴ Additional Protocol II attempts to set out several material concrete elements that need to be present

²⁶² Geneva Conventions of 1949, Common Article 3

²⁶³ Additional Protocol II, Art. 1(2)

²⁶⁴ Yves Sandoz *et al*, (eds) *Commentary on the additional protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (International Committee of the Red Cross 1987)

for establishing the existence of an armed conflict. All the necessary elements must be met for the recognition of an armed conflict under Additional Protocol II.²⁶⁵

These elements include: the conflict must not be of an international character; the conflict must be within the territory of the state party to the Additional Protocol II; one of the parties must be the forces of the state; one of the other parties must be a dissident armed force or an armed group demonstrating some level of organization; and that group must operate under a responsible command and exercise a sufficient degree of control over at least part of the State's territory.²⁶⁶

The scope of the common article 3 is never meant to be challenged or common article 3 is not aimed to be replaced by the Additional Protocol II. In fact, it develops and supplements the provisions of common Article 3 and provides a dual threshold for non-international armed conflicts under International Humanitarian Law. In the context, common Article 3 provides the minimum criteria for the applicability of IHL to non-international armed conflicts and Additional Protocol II applies to conflicts that reach a certain level of intensity.

Therefore, in circumstances where the conditions of Article 1 have been met, the Protocol and common Article 3 will apply simultaneously. On the other hand, where the characteristic features required by Article 1 of AP II have not been met, only common Article 3 will apply.²⁶⁷

²⁶⁵ Ray Barquero, 'The New Thresholds of Non-International Armed Conflict — A product of Jurisprudential Provenance?' http://www.academia.edu/4663155/The_New_Thresholds_of_Non-International_Armed_Conflict--_A_Product_of_Jurisprudential_Provenance accessed 16 June 2016

²⁶⁶ Yves Sandoz *et al*, (eds) *Commentary on the additional protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (International Committee of the Red Cross 1987)

²⁶⁷ Jean S Pictet, *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (International Committee of the Red Cross 1952)1350

3.7 IHL and Islam

Islamic Humanitarian Law lays down the specific rules of warfare deducted mainly from Quran and Sunnah that provide the reasoning and goal of waging war against others.²⁶⁸ So, war is not a matter of attaining power over others. There are norms of Jihad to control the reasons for going to war as well as the actual conduct of hostilities. Islamic Humanitarian Law lays down the specific rules of warfare deducted from Quran and Sunnah.²⁶⁹

The Islamic concept of war considers the doctrines of *Just ad bellum* and *just in bello*. It provides situations when war becomes necessary, and there is a justifiable reason. It also provides rules and regulations to conduct hostilities in accordance with the sanction of religion and the implied commands of Allah.²⁷⁰ The Islamic Humanitarian Law regulates the conduct of Muslims during the conduct of hostilities.

The humanitarian considerations under Islamic Humanitarian Law mainly include the principle of distinction between belligerents and non-belligerents and the distinction between military and civilian objectives. The vulnerable persons, including women, children, and elderly people are prohibited to be killed. It is the duty of the responsible leadership to make the implementation of the rules of war under Islamic Humanitarian Law.²⁷¹

²⁶⁸ Karima Bennoune, 'As-Salamu Alaykum? Humanitarian Law in Islamic Jurisprudence' (1994) 15 Mich. J. Int'l L 605

²⁶⁹ Abdullah An-Naim, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (Syracuse University Press 1990)

²⁷⁰ Abdullah An-Naim, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (Syracuse University Press 1990)

²⁷¹ Abdul Rashid Lawan Haruna, 'War and Islamic Humanitarian Law: Appraising Warfare and Distinction as a Principle in Hostilities' (2014) 4 (5) International Journal of Humanities and Social Science 225

As far as the matter of dealing with people in times of armed conflicts, Islam by itself orders its followers to save people from the effects of hostilities.²⁷² On the other hand, the opponents of the idea of the acceptance of IHL just rely on the rigid nature of Islamic Laws. They argue that Islamic Law does not need any outer rules or regulations to be assimilated into its system. They reject the inclusion of man-made laws into the divine laws. The proponents of the acceptance of IHL in an Islamic context combine their arguments with an example from Quran and Sunnah. They reply the objection of the opponents on the matter of rigidity of Islamic laws by interpreting the divine rules of Islam that favour the acts of serving humanity.²⁷³

Islamic law is not only a law but also provides a complete set of rules for Muslims that regulates their conduct of whole life and dealings with religious and social matters. They Muslims seek guidance from Islamic set of rules in times of armed conflicts as well.²⁷⁴ The branch of the Islamic Law that deals the matters with other states is called Siyar (Islamic international law).²⁷⁵ The relationship between Muslims and non-Muslims are dealt under Al-Siyar.

Islamic Humanitarian Law is a part of Al-Siyar that contains the rules of armed conflicts and conduct of Muslims during armed conflicts.²⁷⁶ Imam Abu Hanifa, being the first scholar to institutionalise and formalise the concept of al-siyar, has given a series of lectures with the title of “the Muslims laws of war and peace.” His lectures have been

²⁷² Abdul Rashid Lawan Haruna, ‘War and Islamic Humanitarian Law: Appraising Warfare and Distinction as a Principle in Hostilities’ (2014) 4 (5) International Journal of Humanities and Social Science 225

²⁷³ Abdul Rashid Lawan Haruna, ‘War and Islamic Humanitarian Law: Appraising Warfare and Distinction as a Principle in Hostilities’ (2014) 4 (5) International Journal of Humanities and Social Science 225

²⁷⁴ Majid Khadduri, *The Islamic Law of Nations* (John Hopkins University Press 2001) 6

²⁷⁵ Muhammad Munir, ‘Islamic International Law (Siyar): An Introduction’ (2012) 40 (4) Hamdard Islamicus 37

²⁷⁶ Mohammed Sule, ‘Islamic Concept of the International Law (The Siyar)’ (2008) 27 (28) Ahmadu Bello University Law Journal 48

compiled by one of his students, named Muhammad Ibn Hassan Shaybani, with the title of “Introduction to the Laws of Nations.” This compilation of lectures has been translated by Majid Khadduri in English with the title of “, The Islamic Law of Nations.” This translated version in English is a valuable contribution towards the understanding of the contemporary Islamic International Law.²⁷⁷

Islamic Humanitarian Law (Qital) that it is an outcome of the humanly interpreted shape of divine laws. The states or individuals play no part in the shaping of Islamic Humanitarian law, except their interpretive abilities. The jurists and scholars play an important role in translating the divine laws into a worldly acceptable legal system, where the state is not given a major role in the formation of the legal system. The scholars do not give much importance to the role played by the scholars and jurists in the translation of divine laws into the worldly legal system. They do not focus on the process of scholarly development of the laws. Their focus remains on the outcomes that are achieved by these laws.

There are some classical and medieval Islamic legal scholars who reflect a high level of originality in their work due to their expert approach towards worldliness. In most of the cases, in the establishment of a coherent legal system on the matter of rules and regulations of war, the intervention by the scholars converted into the shape of a highly legalistic approach, and it influenced the formation of the legal system.²⁷⁸

The Islamic Law of War was originated in the times of frequent interactions and waged wars between the troops of Prophet Muhammad and armed forces of other tribes. The

²⁷⁷ Mahmood Ahmad Ghazi, ‘The Law of War and Concept of Jihad in Islam’ (2008) 5 (1) Pluto Journals 69

²⁷⁸ Nesrine Badawi, *Islamic jurisprudence and the regulation of armed conflict* (Humanitarian Policy and Conflict Research Harvard University 2009) 2

need was felt to elaborate the set of rules and regulations relating Islamic conduct and behaviour during wars.²⁷⁹ These rules of war were compiled and shaped along the waged wars in the times of Prophet of Islam. This law was further, expanded in post-Prophet, medieval Islam, and recent periods. The later established Islamic Law of War mainly included laws of war, treaties of war and humanitarian rules.²⁸⁰

The Islamic Law of War finds its roots in Islamic law and its interpretations.²⁸¹ The Islamic writers unanimously agree upon the four main sources of Islamic Law, The Quran, The Sunna, Ijma, and Qiyas. However, the practices of early Caliphs, the practices of other Muslim rulers that are recognised by the jurists, the opinion of the celebrated Muslim jurists, arbitral awards, treaties, pacts and other conventions, official instruments of commanders, admirals, ambassadors and other state officials, internal legislation regarding conduct of foreigners and foreign relations, custom and usage are also regarded as acceptable sources of Islamic Law.²⁸²

The Muslim scholars, who believe the existence of a strong relationship between IHL and Islam argue that the Islam Law of Qital (armed conflict) and IHL are compatible with each other.²⁸³ They reject the claims of the existence of any fundamental conflict between IHL and Islam and consider such claims as irrational by providing a logical relationship between IHL and Islamic law of war. They give examples of the present global context where Islamic law seems supporting the possibility of IHL in the context

²⁷⁹ Hans Kruse, *The Foundation of Islamic International Jurisprudence* (Islamabad, Pakistan Historical Society Press 1956) 237

²⁸⁰ Michael Bonner, *Jihad in Islamic History: Doctrine and Practice* (Princeton University Press 2008)

²⁸¹ Shaheen Sardar Ali and Javaid Rehman, *The Concept of Jihad in Islamic International Law* (Oxford University Press 2005) 325

²⁸² Majid Khadduri, *The Islamic Law of Nations* (John Hopkins University Press 2001)

²⁸³ Niaz A. Shah, *Islamic Law, and the Law of Armed Conflict: The Conflict in Pakistan* (Routledge 2011)

of Islamic states, and modern Islamic states are a signatory to the IHL documents and are abided by the rules of IHL.²⁸⁴

According to the proponents of the compatibility of IHL with Islam, IHL and Islamic Law of War both are, perhaps, unanimous on the matter of distinction between Combatants and Civilians as both provide protection to civilians by making a distinction between civilians and combatants.²⁸⁵ They argue Islam, as well as IHL, direct the parties to follow the principles and requirements of war and should give way to humanitarian imperatives, and both recognise the principles of proportionality, humanity, compassion, non-discrimination, dignity, equality fraternity and Justice.²⁸⁶

The principle of distinction between civilians and combatants is duly recognised by leading Muslim scholars as is recognised by IHL. According to Al Mawdudi and Al Zuhayli, the renowned Muslim scholars, Islamic Law of war makes difference between combatants and non-combatants and binds the parties to respect and protect civilians in wartime who are not able to fight and harm others.

They argue Islam prohibits the killing of those who do not enter a fight and consider the reasoning of Islam on the matter of distinction between civilians and combatants as like the reasoning of IHL under Article 50 of the 1977 Additional Protocol to the 1949 Geneva Conventions. The Islamic reformist approach of the distinction between civilians and combatants has much in common with the Geneva Conventions, in

²⁸⁴ Abdullah An-Naim, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (Syracuse University Press 1990)

²⁸⁵ Abdul Haleem *et al*, *The Crescent and the Cross: Muslim and Christian Approaches to War and Peace* (New York, MacMillan 1998)

²⁸⁶ Ayatollah M. Damad, 'IHL in Islam and Contemporary International Law' in H. Salimi and H. Moshirzadeh (eds), *Islamic Views on Human Rights: Viewpoints of Iranian Scholars* (New Delhi: Kanishka Publishers 2003)

particular with the fourth Geneva Conventions and with Additional Protocol I to the Conventions.²⁸⁷

IHL prohibits discrimination among the civilians, prisoners of war and persons hors de combat on the basis of race, religious belief, or political opinion. Same is the case with the protected persons and the parties to a conflict are bound to oblige this rule.²⁸⁸ The people affected by the armed conflicts, international and non-international conflicts, are entitled to fundamental rights and guarantees, without any discrimination.²⁸⁹

IHL provides protection to men and women on the basis of equality, without any discrimination, the women receive the same treatment as favourable as that granted to men.²⁹⁰ Traditionally, Islamic Law allows to take men, women, and children as prisoners of war but the killing of women and children, regardless of their religious convictions, is not allowed under any circumstances.²⁹¹

These Muslim Scholars, based on similarities between IHL and Islam, consider IHL and Islam as compatible in theory, and in practice, the peaceful living of large Muslim populations in Western societies without treating them as a hostile force. Most of the Muslim states are the members of all the organisations of the world community and actively participate in the matters of the international community. They have strong ties and relations with the non-Muslim and western countries based on equality. The acceptance of International Law in the context of Islam is not only theoretical but in

²⁸⁷ Marcel A Boisard, 'On the Probable Influence of Islam on Western Public and International Law' (1980) 11 IJMES 429

²⁸⁸ Geneva Convention I, Art. 2; Geneva Convention II, Art. 2; Geneva Convention III, Art. 2; Geneva Convention IV, Art. 2

²⁸⁹ Geneva Conventions I, Art. 3; Geneva Conventions II, Art. 3; Geneva Conventions III, Art. 3; Geneva Conventions IV, Art. 3

²⁹⁰ Geneva Convention III, Art. 14 and 16

²⁹¹ Patricia Crone, *God's Rule: Government and Islam* (Columbia University Press 2004)

practice, most Muslim states are obliged by the rules of IHL and are a signatory to the conventions and treaties of the IHL.

3.7.1 Islamic Law in Pakistan

The religious law and social customs are given importance in the framing of constitutions by various countries in the world, especially, the inclusion of Islamic law in the constitutions of the Muslim countries. The matter of the inclusion of divine laws within the constitutional framework of the modern states is a challenging task. The Muslim countries have developed Islamic constitutionalism from contemporary religious constitutionalism to adopt Islamic law into the constitutional frame of the states.²⁹²

The Islamic Republic of Pakistan binds the legislative authorities to bring all existing laws in conformity with the injunctions of Islam as laid down in the Qur'an and Sunnah and forbids the enactment of any law which is repugnant to such injunctions.²⁹³ The other Islamic countries like Egypt, Iraq, and Brunei adopt Islamic law into their constitutions respectively.

The adoption of Sharia as a legal system has remained a topic of discussions and debates. The Islamic movements all around the world have been trying to compel their states to adopt Sharia as their legal system. These movements have involved a lot of controversies, violence, and warfare.²⁹⁴ This debate has become more significant after the incident of 9/11.

²⁹² Clark B. Lombardi, 'Constitutional Provisions Making Sharia "A" Or "The" Chief Source of Legislation: Where Did They Come From? What Do They Mean? Do They Matter?' (2013) 28 American University International Law Review 743

²⁹³ Constitution of the Islamic Republic of Pakistan, 1973, Art. 227(1)–227(3)

²⁹⁴ Ira Lapidus, *The Cambridge Illustrated History of the Islamic World* (Cambridge University Press 1996)

The legal structures of the Muslim Majority nations give different types of treatment to Sharia (Islamic Laws).²⁹⁵ Most of the Islamic countries use the mixed system by giving importance to Sharia but frame their own legal system, some of the Muslim Majority countries follow the secular system where Sharia is given no role in framing the legal system of the state and only a few Islamic states apply the Classical Sharia system where Sharia is considered as the primary source of their legal system.²⁹⁶

In mixed Sharia systems, sharia does not dominate but plays an important role in framing the domestic legal structure of the nation. In these systems, the legal system is based on the national constitution and the rule of law and rules of Islam play a dominant role in specific areas of national law. There exist different codified laws along with the constitution of the country. Although non-democratic elements interfere in the matters of state, yet these states acknowledge the concepts of separation of powers and democratic electoral system.²⁹⁷

In mixed Sharia Systems, the religious scholars and religious organisations are not given any role in the process of law making. The political and legal authorities play a central role in the law-making process. Pakistan, Afghanistan, Egypt, Morocco, Malaysia, Nigeria, Sudan, and Indonesia and many more Muslim Majority countries. These countries keep changing and modifying their rules, and most of them have undergone many major changes when compared to the rules of classical sharia.²⁹⁸

²⁹⁵ Toni Johnson and Muhammed Aly Sergie, 'Islam Governing Under Sharia' (25 July 2014) <<http://www.cfr.org/religion/islam-governing-under-sharia/p8034>> accessed 08 December 2016

²⁹⁶ Jan Michiel Otto, *Sharia and National Law in Muslim Countries: Tensions and Opportunities for Dutch and EU Foreign Policy* (Amsterdam University Press 2008)

²⁹⁷ Ira Lapidus, *The Cambridge Illustrated History of the Islamic World* (Cambridge University Press 1996)

²⁹⁸ Jan Michiel Otto, *Sharia, and National Law in Muslim Countries: Tensions and Opportunities for Dutch and EU Foreign Policy* (Amsterdam University Press 2008)

Sometimes, this method of adopting religious law into the constitutional structure of Islamic states turns the constitutional structure into a complex system. The presence of conflicting Islamic rules and Human rights establishes legal pluralism where a scheme for a dual system of Islamic law and secular law operates at the same time. The 1957 Constitution of Malaysia is the leading example of the establishment of dual pluralism. In this scheme, the secular court's system works at state in the presence of Sharia courts system at the federal level. The federal level courts have the responsibility to protect the fundamental liberties under the constitution that adopts Islam as a state religion and protect the other religions practised in peace and harmony.²⁹⁹

To protect themselves from this complexity and to fulfil their desire of the enforcement of Islamic Law, Al Sanhuri suggests the Muslim states put their efforts in the codification of Islamic Law. After the codification of Islamic Law, this approach can be considered as a historical identity which has been modernised to meet the modern challenges. This method of holding the religious identity by protecting its values under modern constitutionalism is a difficult task but can be achieved through a systematic way of dealing with this complex phenomenon.³⁰⁰

The assimilation of divine laws into the man-man set of rules is not an easy task. The matter of the interpretation of divine laws and their conversion from jurist's law into positive law is another big task to make the adoption of divine laws into the legal structure of a state. The Muslim states try to achieve the goal of enforcing the Islamic laws in their constitutions along with the working of their legal structures that protect

²⁹⁹ Dawood Ahmed and Tom Ginsburg, 'Constitutional Islamization and Human Rights: The Surprising Origin and Spread of Islamic Supremacy in Constitutions' (2014) 54 (3) Virginia Journal of International Law 615

³⁰⁰ Enid Hill, *'Al-Sanhuri and Islamic Law: The Place and Significance of Islamic Law in the Life and Work of 'Abd al-Razzaq Ahmad al-Sanhuri, Egyptian Jurist and Scholar, 1895-197'* (BRILL: Netherlands 1988)

their religious identity by not giving up their historical, religious, and cultural backgrounds.

The examples of the Iraqi and Afghanistan constitutions provide a glimpse of retaining legitimacy in the eyes of their own people by adopting Islamic Law into their constitutions. Both the countries have given considerable place to Islam in their constitutions of 2004 and 2006 as to gain the support of their people. Islam has been proved as a source of unity and harmony.³⁰¹ The quest to retain the historical past has urged the Iraqi people to get released from a secular government.

The people have considered Islamic Law as a symbol of attachment to a glorious Muslim past and the revival of their history. They have aimed to see Islamic Law as a part of their constitution to limit the political authorities and compel the political authority to obey the Islamic Law by giving supremacy to divine authority.³⁰²

The changing dynamics of the domestic legal structures of the Muslim states have introduced a new concept of the constitutional status of Islamic law where Islamic law is applied within the constitutional structure of the Islamic states. This system gives parliament powers to constitute laws of the state in consultation with the Islamic laws. Although, the matter of the primacy between parliamentary powers and Islamic rules becomes a point of debates and discussions, yet this trend is expected to be successful in framing a unanimously accepted system.

The constitutional structures of Afghanistan, Iraq, Tunisia, and Egypt are the leading examples of the application of Islamic law within the constitutional structure of Islamic

³⁰¹ Jan Michiel Otto, 'Rule of Law, Adat Law and Shari'a: 1901, 2001, and Monitoring the Next Phase' (2009) 1 HJRL 17

³⁰² Nathan J. Brown, *Constitutions in a No Constitutional World: Arab Basic Laws and the Prospects for Accountable Government* (SUNNY Press 2001)

states. This concept is becoming popular and is likely to be applied by many more Islamic states in the near future. The political parties come up with their political philosophies, the religious organisation's stress on the adoption of Islamic law as the law of the state and liberals argue against the adoptions of Islamic laws.³⁰³

The democratic electoral systems of most of the Islamic states suit the concept of parliamentary supremacy over Islamic laws. The parliamentary supremacy allows the lawmakers to adopt a flexible approach in the framing of their domestic legal structures. The rigid nature of Islamic laws become a hindrance in the way of framing new rules when they are needed. The religious organisations often oppose the parliamentary powers to frame rules, and their approach turns into agitation against the states.³⁰⁴

There are many Muslim states that conflict with the religious organisations on the matter of the adoption of Islamic law legal structure of the state. They consider Sharia as the supreme system that stands above any man-made law, and the state must refrain from making legislation in parliament. The Muslim countries face the dilemma of adopting rules of Sharia into their domestic legal systems due to the various interpretations of the rules of Sharia by various schools of thoughts among Muslim scholars. This situation makes the framing of constitution ambiguous when it comes to the matter of the separation of legislative, executive, and judicial powers.³⁰⁵

Pakistan, being a country established on the ideology of religion, is a unique country in the world that owes the deep-rooted legacy of European colonialism and long-standing social roots with Hindus, Christians, and other non-Muslim communities. None of the

³⁰³ Matthew J. Nelson 'Islamic Law in an Islamic Republic: What Role for Parliament?' in Asli Bali and Hanna Lerner (eds), *Constitution-Writing, Religion, and Democracy* (Cambridge University Press 2015)

³⁰⁴ Matthew J. Nelson 'Islamic Law in an Islamic Republic: What Role for Parliament?' in Asli Bali and Hanna Lerner (eds), *Constitution-Writing, Religion, and Democracy* (Cambridge University Press 2015)

³⁰⁵ Matthew J. Nelson 'Islamic Law in an Islamic Republic: What Role for Parliament?' in Asli Bali and Hanna Lerner (eds), *Constitution-Writing, Religion, and Democracy* (Cambridge University Press 2015)

Muslim countries has the same kind of circumstances like circumstances of Pakistan at the time its creation. Martin Lau expresses the situation of Pakistan in the following words;

‘The constitutional history of Islam in Pakistan differs somewhat from that of many other Muslim countries: Egypt and Turkey, for instance, were not created as states defined by religion; Iran and Afghanistan did not experience the same type of European colonialism; Indonesia has its own rather distinctive constitutional vision of Pancasila; Malaysia has its federalization of shari'a. Similarly, many states struggling with the status of shari'a focus on high-profile constitutional clauses — clauses regarding the status of Islamic law as ‘an’ or ‘the’ source of legislation. But, in Pakistan, many of the most important debates regarding shari'a involved, not the substantive features of shari'a, but rather the separation of powers’.³⁰⁶

The matter of the constitutional relationship has always remained a topic of political, social, philosophical, religious, academic, and scholarly discussions throughout the history of Pakistan. Pakistan.³⁰⁷ The study of the matter of the constitutional approaches towards the application of Islamic Law in the parliamentary system of Pakistan provides a comprehensive understanding of the relationship between Islam and democracy.³⁰⁸

According to the supporters of the implementation of Sharia Law, is created for the implementation of Sharia Laws as a system of the state They present the ideology of Pakistan, that is based on the two-nation theory (Muslims are a separate nation)³⁰⁹ in favour of their argument. They present examples from the movement of Pakistan that separates Muslims and Hindus into two different nations.³¹⁰ They support their argument by quoting the summaries from the speeches of Muhammad Ali Jinnah:

³⁰⁶ Martin Lau, *The Role of Islam in the Legal System of Pakistan* (Leiden: Brill 2006)

³⁰⁷ Tanveer Khalid ‘*Islamization in Pakistan: A Political and Constitutional Study From 1947-1988*’ (PhD thesis, University of Karachi, 2004)

³⁰⁸ Richard Wheeler, *The Politics of Pakistan: A Constitutional Quest* (New York: Cornell University Press 1970)

³⁰⁹ Tanveer Khalid ‘*Islamization in Pakistan: A Political and Constitutional Study From 1947-1988*’ (PhD thesis, University of Karachi, 2004)

³¹⁰ Shahid Javed Burki, *Pakistan: A Nation in the Making* (Boulder Westview Press 1986)

The constitution of Pakistan has yet to be framed by the Pakistan Constituent Assembly. I do not know what the ultimate shape of this constitution is going to be, but I am sure that it will be of a democratic type, embodying the essential principle of Islam. Today, they are as applicable in actual life as they were 1,300 years ago. Islam and its idealism have taught us democracy. It has taught equality of man, justice, and fair play to everybody. We are the inheritors of these glorious traditions and are fully alive to our responsibilities and obligations as farmers of the future constitution of Pakistan. In any case, Pakistan is not going to be a theocratic State to be ruled by priests with a divine mission. We have many non-Muslims --Hindus, Christians, and Parsis --but they are all Pakistanis. They will enjoy the same rights and privileges as any other citizens and will play their rightful part in the affairs of Pakistan.³¹¹

In 1940, Muhammad Ali Jinnah claimed, 'Islam and Hinduism: are not religions in the strict sense of the word, but are, in fact, different and distinct social orders and it is a dream that the Hindus and Muslims can ever evolve a common nationality'. The policy makers and parliamentary practices in Pakistan have remained ineffective in the decision making about the implementation of Sharia Law as the legal system of Pakistan. The implementation of secular laws has always been opposed by the religious organisations that have an influence on the decision making of a fair portion of the general masses in Pakistan.

The opponents have been favouring the formation of an Islamic democratic system where Muslims, as well as non-Muslims, could exercise spend their life in complete freedom. They present the theory of the working of a democratic system in Pakistan according to the ideology of the founder of Pakistan (Muhammad Ali Jinnah).³¹² They use the speeches of Muhammad Ali Jinnah that favour the democratic system as the structure of the state, as there are contradictory statements in his speeches on the matter of this matter and create confusion among both the sections.

³¹¹ Broadcast talk to the people of the United States of America on Pakistan recorded February 1948

³¹² Ghulam Ahmad Parwez, *Did Quaid-i-Azam Want to Make Pakistan a Secular State?* (Saleena Karim and Fazal Karim (tr), (Nottingham: Libredux Publishing 2012)

The proponents of Sharia interpret his speeches in their own way and viceverse.³¹³ They call the movement of Pakistan as the movement of Muslims, not a movement of Islam.³¹⁴ They use to link the demand for Pakistan for economic reasons. Adeel Khan states

‘the demand of Pakistan was purely a secular nationalistic demand because Muslims of subcontinent felt threatened by overwhelming Hindu majority, economically not religiously. If threat had been purely religious based, the Muslim religious groups would have been first to demand a separate homeland, but they were not in favour of the creation of Pakistan’.³¹⁵

The application of Islamic Law in the legal system of Pakistan has remained a hot topic of discussion. The first constituent assembly of Pakistan decided to bring all the legislation into accord with the injunctions of Islam.³¹⁶ It was decided that any law made in repugnant to the injunctions of Islam will be considered as invalid. It was clearly conveyed to the legislative authorities that Islamic principles will be realised and it will be the responsibility of the legislature to ensure the application of Islamic rules in framing the legislature.

Despite considering the religious establishment, the democratic constitutionalism was not neglected. In fact, the application of Sharia was proposed to be assimilated into the democratic constitutionalism. The idea of the working of democracy, with the combination of the constitutional law and religion by parliamentary powers, was presented by an early twentieth-century Muslim philosopher Mohammad Iqbal.³¹⁷

³¹³ Zamir Akhtar Khan, ‘Iqbal and Quaid’s Vision of Pakistan’ (2010) 5 (2) *The Dialogue* 144

³¹⁴ Hamza Alavi, ‘Ethnicity, Muslim Society and the Pakistan Ideology’, in Anita M. Weiss (ed), *Islamic Reassertion in Pakistan: The Application of Islamic Laws in a Modern State* (Syracuse University Press 1986)

³¹⁵ Adeel Khan, ‘Ethnicity, Islam and national identity in Pakistan’ (1999) 22 (1) *South Asia: Journal of South Asian Studies* 175

³¹⁶ Matthew Nelson, ‘Inheritance Unbound: The Politics of Personal Law Reform in Pakistan and India’ in Sunil Khilnani and Vikram Raghavan and Arun Thiravengadam (eds), *Comparative Constitutional Traditions in South Asia* (Delhi: Oxford University Press 2012)

³¹⁷ Saleem MM. Qureshi, *Iqbal, and Jinnah: Personalities, perceptions, and politics* (Royal Book Academy Karachi 1988)

The legislative system of Pakistan ties the democracy with Islamic values as well as the separation of powers. The concept of the sovereignty of God has been delegated to the chosen representatives of the state. The representatives have been given the responsibility to make rules as to enable the people of Pakistan to spend their lives in accordance with Islam.³¹⁸ This formulation of the constitutional system does not absolutely represent the pure Islamic concept but makes the working of Islamic Law practicable in a democratic constitutional frame.

The working of this constitutional system provides a context to study the matter of compatibility of Islam with democracy. Although the situations of other Muslim countries vary and this system might not be considered as a model for every Muslim country, the other Muslim countries of the world can have a look at this model to frame their own systems to make the working of democracy possible with Islam. The constitutional system of Pakistan provides a sophisticated image of the working of democracy in an Islamic context. This system provides flexible options for the adoption of the international laws, including IHL, into the legal system of Pakistan.³¹⁹

Most people in Pakistan favour the implementation of Sharia Law. The public narratives support the application of Sharia Law across the country. There is a general belief among the citizens of Pakistan that Pakistan follows Sharia Law, and they favour the implementation of Sharia Law as the official law of the land.³²⁰ The efforts to enforce Islamic Law as a Legal system of Pakistan remained a debatable point in the parliament of Pakistan.

³¹⁸ The Constitution of the Islamic Republic of Pakistan 1973, Art. 2(A)

³¹⁹ Martin Lau, *The Role of Islam in the Legal System of Pakistan* (Leiden: Brill, 2006)

³²⁰ Jason M. Breslow, 'In Pakistan, a Delicate Balance Between Religious and Secular Law' (28 May 2013) <<http://www.pbs.org/wgbh/frontline/article/in-pakistan-a-delicate-balance-between-religious-and-secular-law/>> accessed 16 May 2016

In Pakistan, different factions of society have been struggling to frame the legislative structure of the state based on Islamic or secular structure. The religious leaders have always been demanding the implementation of pure Sharia Law, while the liberals, business communities and political leaders have been contesting on the applicability of Sharia Law into the democratic system of the state. None of them seems to oppose the applicability of Islamic Laws.

The method of adopting the Islamic Laws into the constitutional system and question of supremacy has remained a topic of discussion throughout the constitutional history of Pakistan.³²¹ The cultural, social, theological, economic, and personal factors play an important role in building the views of the individuals on the matter of Islamic or secular system of the state. In a society that derives its roots from religion, the matter of the supremacy of divine will and human will always result in the acceptance of divine laws as supreme.³²²

Until 1980, the Islamic Law remained applicable to the personal status issues of the Muslims in Pakistan. In 1980, Sharia courts were established, and the changes were made in the criminal justice system of the country.³²³ The Sharia courts were given powers to judge and review the cases, court decisions and the acts of government to look at their compliance with the rules of Islam. The rules of Sharia Law were included in Pakistan Penal Code.

The conventional court system of Pakistan remains under the influence of Sharia Law.

The Sharia courts have the power and authority to review any law and declare it invalid

³²¹ Muqarrab Akbar, 'Pakistan: An Islamic State or a State for Muslims? A Critical Appraisal of Islam's Role in Pakistan' (2015) 15 Pakistan Journal of Islamic Research 25

³²² Ishtiaq Ahmed, *The Concept of an Islamic State: An Analysis of the Ideological Controversy in Pakistan* (New York: St. Martin's Press 1987)

³²³ FSCP, 'Introduction: Federal Shariat Court of Pakistan'

<<http://www.federalshariatcourt.gov.pk/Introduction.html>> accessed 08 December 2016

if it is repugnant to any of the injunctions of Islam.³²⁴ But laws have been made to transfer jurisdiction from Islamic Law to the criminal code of the country. In 2006, The Women Protection Act was passed, and the rape cases were moved from the authority of Islamic Law to the authority of the criminal code of the country.³²⁵

3.7.2 IHL in Pakistan

The Muslim states often face criticism on the matter of the applicability of IHL and International Human Rights Law in their national legal framework. The Muslim countries are believed to violate the Human Rights and Humanitarian Laws more than other countries in the world. The Amnesty International, Human Rights Watch, and other International Non-Governmental Organisations confirm these violations in their several reports.³²⁶ The best situation of the application of IHL and Human Rights Law is seen in the United Arab Emirates, while the worst situation is seen in the Islamic Republic of Iran.³²⁷

The study of the legal systems of various Islamic countries shows that majority of the Islamic countries adopt the rules of Human Rights and Humanitarian Law in their national legal systems. There is a common misconception that the existence of Sharia rules put a bar on the adoption of the rules of IHL in the domestic legal structures of the Islamic countries. In fact, the rules of Sharia law are adopted in the domestic structures

³²⁴ Jason M. Breslow, 'In Pakistan, a Delicate Balance Between Religious and Secular Law' (28 May 2013) <<http://www.pbs.org/wgbh/frontline/article/in-pakistan-a-delicate-balance-between-religious-and-secular-law/>> accessed 16 May 2016

³²⁵ Jason M. Breslow, 'In Pakistan, a Delicate Balance Between Religious and Secular Law' (28 May 2013) <<http://www.pbs.org/wgbh/frontline/article/in-pakistan-a-delicate-balance-between-religious-and-secular-law/>> accessed 16 May 2016

³²⁶ Abdullah al-Ahsan 'Law, Religion and Human Dignity in the Muslim World Today: An Examination of OIC's Cairo Declaration of Human Rights' (2009) *Journal of Law and Religion* 571

³²⁷ Human Rights Watch, 'Turkey's Human Rights Rollback Recommendations for Reform 2014 Human Rights Watch United States of America' (Human Rights Watch September 2014) <<https://www.hrw.org/report/2014/09/29/turkeys-human-rights-rollback/recommendations-reform>> accessed 16 July 2016

of most of the Islamic countries through legislation. The same treatment is given to IHL by adopting its rules in the domestic legal structures.³²⁸

The acceptability of the working of IHL in Muslim states has been discussed at different forums. The application of International Law in Muslim countries has remained a hot topic for debates throughout the years. The scholars have always been criticising the rigid nature of Islamic Law and raising questions on the incompatibility of Islamic Law with International Law, while International Law has been criticised for its secular Western origin.³²⁹ The moderate views of the Muslim scholars that find broad similarities between IHL and Islam have been criticised by the Western scholars.

The impact of religion in societies that base their social and cultural norms and traditions on religion cannot be neglected. Some of the societies in the world, as in the case of Pakistan, base their national ideologies on their religion.³³⁰ The western scholars approach the matter of the constitutionalism of Islamic law based on the so-called western principles of democracy, secularism, and human rights. Instead of acknowledging the constitutionalism of Islamic law as an alternative to the transitional constitutionalism, they consider Islamic constitutionalism as a threat to transitional constitutionalism.³³¹ The critics of the constitutionalism of Islamic law believe that religious law challenges the supremacy of the constitution. This approach neglects the

³²⁸ Abdullah al-Ahsan 'Law, Religion and Human Dignity in the Muslim World Today: An Examination of OIC's Cairo Declaration of Human Rights' (2009) *Journal of Law and Religion* 571

³²⁹ Ramin Moshtaghi, 'The Relationship between International Law, Islamic Law and Constitutional Law of the Islamic Republic of Iran - A Multilayer system of Conflict?' in A. Van Bogdandy and R. Wolfrum (eds) *Max Planck Yearbook of United Nations Law* (Koninklijk Brill: Netherlands 2009)

³³⁰ Syed Moinul Haq, *Ideological Basis of Pakistan in Historical Perspective, 711-1940* (University of Michigan 2006) 112

³³¹ Ran Hirschl, 'The Theocratic Challenge to Constitution Drafting in Post Conflict States' (2008) 49 (4) *William & Mary Law Review* 1179

social factors by not acknowledging the role of Islamic law in framing constitutions of the Muslim countries

The progressive Muslim scholars reject the view of the absolute applicability of Islamic Law in Muslim states and advocating the adoption of International Law in the domestic structure of the laws of Muslim states. In practice, modern Muslim states, instead of implementing the Islamic Law only, have declared Islam as their official religion and make rules that are not repugnant to the injunctions of Islam. They have laws in force that are inherited from the colonial era that is compatible with Islamic standards.³³²

The moderate and progressive narrative of Muslim scholars, on the acceptance of humanitarian law and its applicability in the Islamic world, rejects the extremist's interpretations of Islam. Modern Muslim states have already accepted the application of IHL and have no objection to the application of International Law in an Islamic context. Most of the accepted rules and regulation of both the Islamic legal system and IHL are inserted into the domestic legal systems of most of the Islamic states.³³³

The ongoing literary discussion helps us constructing the view that both IHL and Islam, despite some dissimilarities, aims to protect the civilians in times of armed conflicts. There exists no fundamental conflict between both the systems that lead to a deadlock and stops them from working together. The Islamic states are signatories to the Geneva Conventions of 1949 and their Additional Protocols of 1977 and oblige the rules of IHL by accepting the applicability of IHL in their contexts. Likewise, Pakistan as an Islamic context, oblige the rules of IHL and welcomes the applicability of IHL in Pakistan. The

³³² Abdullah Ahmed An-Na'im, 'Islamic Law, International Relations, and Human Rights: Challenge and Response' (1987) 20 (2) Cornell International Law Journal 317

³³³ Andre Nollkaemper, 'The Duality of Direct Effect of International Law' (2014) 25 (1) European Journal of International Law 105

study of the impact of IHL on displaced persons in Pakistan can be considered as a test case and applied to the relevant situations.

The legal experts, interviewed by the researcher, in Pakistan favour the compatibility of IHL with Islam by pointing out slight differences between IHL and Islamic Humanitarian Law. According to them, both come to play their roles in the time of armed conflict. They argue IHL has a wider scope as being applied globally, while Islamic Humanitarian Law is enforced in the areas of the world where Islam is practised as a religion.

‘Almost the same is the role played by Islamic Humanitarian Law in the time of armed conflict as is played by IHL. The only difference later providing a lot of codified rules in the form of conventions, charters, protocols, and many other shapes of renowned laws but the former do not provide the same in codification or refined shape of the law. Hence the basic principles of both the laws serve the same purpose.’³³⁴

‘Like IHL, Islamic Humanitarian Law provides almost the same protection and safety to people. The only difference is that the former is in a best-codified shape, and the latter is not in a codified shape. So, due to this factor, people know less about the later. However, if we see the injunctions of Islam it clearly serves the same purpose as is served by IHL.’³³⁵

On the matter of applicability of International Humanitarian Law in an Islamic context, they favoured the application of International Humanitarian Law in an Islamic context. They argued about Islam as a religion that accepts, in its context, every positive thing done for the betterment of humanity. Speaking about the context of Pakistan they said that Pakistan as an Islamic state, where Islam is practised as a major religion and International Humanitarian Law is being applied in Pakistan, through different Organisations working under the umbrella of International Humanitarian Law.

³³⁴ Interview with SK, Advocate Supreme Court of Pakistan (Multan, Pakistan, 05 June 2013)

³³⁵ Interview with Mr. ZA, Ex-Judge Lahore High Court (Multan, Pakistan, 12 June 2013)

‘Yes, to me, Islam not only welcome the International Humanitarian Law but also can work along with International Humanitarian Law and both the laws can be applied to one and same situation.’³³⁶

‘I think International Humanitarian Law is already working in an efficient manner. There are several organisations, institutions, and NGOs working in Pakistan in the context of International Humanitarian Law, and they are never stopped by any renowned Islamic organisation, institution or group. Islam never stops the works of human well-being; rather it supports every step taken for the betterment of human and humanity.’³³⁷

‘Unfortunately, it is a misconception in the eyes of the people that Islamic Humanitarian Law is different from International Humanitarian Law. However, in reality, it is very much the same as is International Humanitarian Law. In Pakistan, ICRC is working with decades and other organisations as well. So, being a renowned Islamic country if Pakistan is following International Humanitarian Law and allowing it to be applied in its territory than how can we say that it cannot be implemented in an Islamic context?’³³⁸

Most of the states all over the world follow dualism (theory of the relationship between international law and national law) as to the matters of the application of treaties and deal the provisions of Customary International Law in much different.³³⁹ Pakistan, like many other states, follows the same dualist doctrine as to the matters of treaties and deals the matter of Customary International Law. There are some matters of treaties and Customary International Law that is applicable to the legal system of Pakistan without any legislative or executive cover.³⁴⁰

There are some matters that need a relevant legislative or executive cover. There are some matters that are contradictory to the injunctions of Islam or the provisions of the statutes of Pakistan. In all cases the subject matter is essential. There are some issues that need a legislative cover while some of them require an executive cover. After the necessary approval, any provision of a treaty or Customary International Law is treated

³³⁶ Interview with Mr. MH, Advocate Supreme Court of Pakistan (Multan, Pakistan, 08 June 2013)

³³⁷ Interview with Mrs. RK, Advocate Supreme Court of Pakistan (Islamabad, Pakistan, 02 July 2013)

³³⁸ Interview with Miss. TN, Advocate High Court (Multan, Pakistan, 14 June 2013)

³³⁹ Jamshed A Hamid, ‘International Law and Pakistan’s Domestic Legal Order’ in Ko Swan Sik *et al* (eds), *Asian Yearbook of International Law* (1994) 127

³⁴⁰ The Ratification of International Treaties Act 2013

as a part of the Domestic Law. The different matters of treaties and Customary International Law need a different kind of approvals.³⁴¹

The judicial system of Pakistan allows its judiciary to take judicial notice of the matters relating treaties and Customary International Law for meeting the ends of justice.³⁴² It is necessary to understand the different categories in which any provision of a treaty or Customary International Law falls. The followings are three categories of matters that are given different kind of treatment as to make them applicable to the judicial system of Pakistan.

The first category involving the rules of International Law that are not covered by the municipal law of Pakistan through a statutory instrument. These types of matters are applicable in the legal system of Pakistan without any legislative or executive approval provided they do not create direct rights or obligations for the legal subjects of the municipal legal order and do not come into conflict with the existing laws in force within Pakistan.³⁴³

As Pakistan inherits the English Judicial System and the English concepts of Law and the practices in England, and other Anglo-Saxon countries prevail in the judicial system of Pakistan.³⁴⁴ The applicability of International Law in the domestic law of Pakistan is supported by the judicial system of Pakistan. According to Karachi High Court:

“we are of the view that nations must march with the international community and the municipal law must respect rules of international law, even as nations respect international opinion; the community of nations requires that rules of international law may be accommodated in the

³⁴¹ The Ratification of International Treaties Act 2013, Sec. 4

³⁴² M.A Qureshi Vs the USSR and M/s Gammon – Layton Vs Secretary of State of USA [PLD] 1965 (W.P.) Karachi 425

³⁴³ The Ratification of International Treaties Act 2013, Sec. 4(3)

³⁴⁴ Saeed Ahmed Vs Mahmood Ahmed [PLD] 1968 Lahore 520

municipal law even without express legislative sanction provided they do not run into conflict with the Acts of the Parliament.”³⁴⁵

The second category of the matters of a treaty or Customary International Law is based on the matters that are already covered by the existing laws. In this situation, if the provisions of the treaty or Customary International Law resemble with the provisions of the domestic law, they do not need any legislative or executive cover as the domestic laws of Pakistan already cover them. In cases where they involve an additional element, but they are not repugnant to the injunctions of Islam and the existing statutes of domestic law, they need a legislative or executive cover to become applicable in the domestic legal structure of Pakistan.³⁴⁶

The third category of matters under discussion is the matters of treaties and Customary International Law conflicting with a statutory instrument or repugnant to the injunctions of Islam. These kinds of provisions are not applicable in the domestic legal system of Pakistan. Pakistan gives priority to its domestic laws over International Laws and any rule of International Law conflicting the domestic law, or the injunctions of Islam is not applicable.

The national courts Pakistan act as the principal organ of the state that ensures the sovereignty of the state. Despite being a sovereign state, Pakistan holds a prominent position in the community of nations and, in the absence of prima facie conflict between a provision of International Law and municipal law; the courts interpret the municipal law so to avoid confrontation with the world community and well-established principles of International Law.³⁴⁷

³⁴⁵ M/s Najib Zarab Ltd Vs the Government of Pakistan [PLD] 1993 Karachi 93

³⁴⁶ Ratification of International Treaties Act 2013, Sec. 5 (3)

³⁴⁷ Jamshed A Hamid, ‘International Law and Pakistan’s Domestic Legal Order’ in Ko Swan Sik *et al* (eds), *Asian Yearbook of International Law* (1994) 127

3.8 Applicability of IHL

The conflict in Pakistan, in the context of the nation ratification of the government of Pakistan and not attaining the status of customary law, Additional Protocol II does not seem a relevant law. Moreover, the perpetual decaying structure of the non-State armed group does not seem exercising a sufficient degree of control over any part of Pakistani territory. It is becoming difficult for the non-state armed groups to implement the sustained and concerted military operations against the Pakistani State. In short, the conditions of the applicability of Additional Protocol II are not strictly met in the conflict in Pakistan.

On the other hand, the contemporary IHL does not require formal recognition for a situation to qualify as an armed conflict. The jurisprudence of international tribunals has led to the development of objective criteria for the existence of an armed conflict which does not depend on the subjective views of the parties to the conflict. So, the provisions of Common Article 3 seem the most relevant applicable law to the conflict in Pakistan, as well as the provisions of the Geneva Conventions that have attained the status of Customary law.

Moreover, common article 3 of the four Geneva Conventions become the most relevant legal regime that applies to the armed conflicts of internal nature, occurring within the territory of a state, in the context of the armed conflict in Pakistan. Common article 3, is described as a convention in miniature,³⁴⁸ or a convention within the convention,³⁴⁹ that

³⁴⁸ Jean S. Pictet (ed), *The Geneva Conventions of 12 August 1949: Commentary: First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (ICRC Geneva 1952) 49

³⁴⁹ Frits Kalshoven and Liesbeth Zegveld, *Constraints on the waging of war: An introduction to IHL* (Geneva: ICRC 2001) 69

deals with the conflicts of non-international character. It binds the parties to a conflict to adhere specific basic humanitarian provisions.³⁵⁰

The parties are under absolute obligation to treat all those persons humanely, who are not taking part in the hostilities, in all circumstances without any discrimination.

According to common article 3:

‘Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed ‘hors de combat’ by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.’³⁵¹

As IHL applies to armed conflicts. It is necessary to determine the nature of the conflict in Pakistan. The conflict in Pakistan, under investigation, needs to be determined as an armed conflict to the implementation of IHL. It is difficult to determine the nature of the conflict in Pakistan due to the involvement of the terrorism factor and lack of information about the stance of the government of Pakistan. The situation of Pakistan can be assessed by looking at different types of conflicts to determine the nature of the conflict in Pakistan.

International armed conflict, as defined under common article 2 of the Geneva Conventions, 1949, is a declared war or any other armed conflict arising between two or more of the High Contracting Parties even one of them does not recognise the state of war.³⁵² The involvement of the USA in the conflict in Pakistan as a declared ally makes

³⁵⁰ Jean S. Pictet (ed), *The Geneva Conventions of 12 August 1949: Commentary: First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (ICRC Geneva 1952) 51

³⁵¹ Geneva Conventions I, Art. 3; Geneva Conventions II, Art. 3; Geneva Conventions III, Art. 3; Geneva Conventions IV, Art. 3

³⁵² Gary Solis, *The Law of Armed Conflict: IHL in War* (Cambridge University Press 2010) 153

it clear that the USA is helping Pakistan in eradicating the roots of terrorism, instead of being involved in a conflict with Pakistan.

The USA has been helping Pakistan through security and economic assistance to compensate the losses of Pakistan in the war against terrorism.³⁵³ While the USA has declared war against most of the militant groups hiding in Pakistan and Pakistani military forces are fighting against those groups as well. The USA is of the view that these militant groups (including Haqqani Network, Taliban, and al-Qaeda) hiding in the Federally Administered Tribal Areas (FATA) of Pakistan, are united against NATO forces and execute attacks on International Security Assistance Force (ISAF) forces in Afghanistan. Therefore, under the legal framework of IHL, the Haqqani Network and the Taliban can be viewed as military combatants in America's transnational campaign against transnational terrorist groups. So, from USA perspective, it is an international armed conflict.³⁵⁴

The laws that deal with non-international armed conflicts are considered insufficient due to the expansion of these conflicts in different situations and circumstances. Two main views that are presented by the legal experts, interviewed by the researcher, in this regard. According to the first view, it is suggested to reduce the IHL to the few provisions of Common Article 3 of the Geneva Conventions as the only legally binding relevant IHL provisions. The second view doubts the sufficiency of the existing legal framework, common

³⁵³ Ashley J. Tellis, *Pakistan and the War on Terror: Conflicted Goals, Compromised Performance* (Carnegie Endowment for International Peace: Washington 2008)

³⁵⁴ Ashley J Tellis, *Pakistan and the War on Terror* (Carnegie Endowment for International Peace: Washington 2008)

article 3 only covering the non-international armed conflicts within the territory of a single state.³⁵⁵

Furthermore, the applicability of common article 3 to the non-international armed conflicts does not preclude the application of the municipal law. The municipal law of the concerned state remains applicable and the captured militants may be tried for the offences, committed by them, in accordance with the law of the land.³⁵⁶ So, the domestic law of Pakistan remains applicable, along with the applicability of common article 3, on the legal matters arising out of the conflict.

3.8.1 Domestication of IHL in Pakistan

The implementation of IHL requires ensuring the respect of IHL, not only enforcement during armed conflicts, but also during peace times for ensuring the protection, distinction, and compliance. The respect of the principles of IHL, by armed forces and civilians, reduce the violations of IHL and sufferings.³⁵⁷ The high contracting parties have the responsibility to implement, promote and disseminate IHL. The Geneva Conventions confer states responsibility to disseminate,³⁵⁸ translate,³⁵⁹ penal sanctions,³⁶⁰ grave breaches,³⁶¹ and prevention of misuse of the emblem.³⁶²

³⁵⁵ International Committee of the Red Cross (ICRC) Opinion Paper, 'How is the Term "Armed Conflict" Defined in IHL?' (March 2008) <<https://www.icrc.org/eng/resources/documents/article/other/armed-conflict-article-170308.htm>> accessed 12 April 2016

³⁵⁶ United Kingdom Ministry of Defence, *The manual of the law of armed conflict* (Oxford University Press 2005)

³⁵⁷ ICRC 'Implementing International Humanitarian Law: From Law to Action' (ICRC, June 2002) <https://www.icrc.org/en/document/implementing-international-humanitarian-law-law-action> accessed 06 June 2015

³⁵⁸ Geneva Convention I, Art. 47; Geneva Convention II Art. 48; Geneva Convention III Art. 127; Geneva Convention IV Art. 144

³⁵⁹ Geneva Convention I, Art. 48; Geneva Convention II Art. 49; Geneva Convention III Art. 128; Geneva Convention IV Art. 145

³⁶⁰ Geneva Convention I, Art. 49; Geneva Convention II Art. 50; Geneva Convention III Art. 129; Geneva Convention IV Art. 146

³⁶¹ Geneva Convention I, Art. 50; Geneva Convention II Art. 51; Geneva Convention III Art. 130; Geneva Convention IV Art. 147

³⁶² Geneva Convention I, Art. 54; Geneva Convention II Art. 45

The states have the responsibility to clearly obliged to adopt and carry out measures for implementing IHL, mainly through adopting its rules into their domestic legal structure. The states take measures for adopting IHL through its ministries, legislature, courts, armed forces, and other state bodies; and some professional and educational bodies, the National Red Cross or Red Crescent Society and other voluntary organizations play their role in this process. However, states are primarily considered as responsible for effective implementation of IHL through adopting adequate measures at national level.

Th four Geneva Conventions of 1949, especially their common article 3, and their Additional Protocol II of 1977 apply to the armed conflicts of non-international character. Moreover, the customary rules of IHL apply to such conflict situations. The conflict in Pakistan, as already been established as a non-international armed conflict, falls under the threshold of common article 3 and additional protocol II and other rules of IHL as customary law.

The following are the key articles of the IHL documents that require the adoption of IHL national implementation measures:

Figure 3.1: Key articles requiring the adoption of IHL national implementation measures³⁶³

	1949 Geneva Conventions				1977 Protocols		1954 Hague Conv.	1999 Protocol
	First	Second	Third	Fourth	I	II		
Translation	48	49	41, 128	99, 145	84		26	37
Dissemination & training	47	48	41, 127	99, 144	80, 82-83, 87	19	7, 25	30
Violations								
General provisions	49-54	50-53	129-132	146-149	85-91		28	15-21
War crimes	49-50	50-51	129-130	146-147	11, 85-90			
Compensation					91			
Protection								
Fundamental guarantees		3, 12	3, 13-17	3, 27-34	11, 75-77	4-5,7		
Judicial and disciplinary guarantees; rights of prisoners and detainees	3	3	3, 5, 17, 82-90, 95-108, 129	3, 5, 31-35, 43, 64-78, 99-100, 117-126	44-45, 75	6		
Medicinal and religious personnel	40, 41	42		20	15-16, 18	10, 12		
Medicinal transports and facilities	19, 36, 39, 42-43	22, 24-27, 38-39, 41, 43		18, 21-22	12, 18, 21-23	12		
Cultural property					53	16	3, 6, 10, 12	5
Dangerous forces					56	15		
Identity cards	27, 40, 41, Annex II	42, Annex	17, Annex IV	20	18, 66-67, 78-79, Annexes I&II			
Capture and internment cards			70, Annex IV	106, Annex III				
Use/misuse of emblems and symbols	144, 53-54	44-45			18, 37-38, 66, 85, Annex I	12	6, 10, 12, 17	
Experts and advisers								
Qualified persons					6		7, 25	
Legal advisers					82			
Organizations								
National Societies	26			63	81	18		
Civil defence				63	61-67			
Information bureaux			122-124	136-141				
Mixed medical commissions			112, Annex II					
Protected zones and localities	23, Annex I			14, 15	59-60, Annex I			

³⁶³ Source: ICRC ‘Implementing International Humanitarian Law: From Law to Action’ (ICRC, June 2002) <https://www.icrc.org/en/document/implementing-international-humanitarian-law-law-action> accessed 06 June 2015

Pakistan is a state party to the four Geneva Conventions, however, is not a signatory to the Additional Protocol II. The following figure shows the adoption of rules of the most relevant rules of IHL in the domestic legal structure of Pakistan, mainly common article 3 and Additional Protocol II, as applicable to the armed conflict in Pakistan. These rules are found mainly in the constitution of Pakistan and various other domestic laws:

Figure 3.2: Domestic Law (Pakistan) Compliance of Common Article 3 and Additional Protocol II³⁶⁴

1.	Geneva Conventions of 1949
Common Article 3	Constitution of Pakistan, 1973; Pakistan Army Act, 1952; Pakistan Penal Code 1860; Actions (in Aid of Civil Power) Regulation, 2011; Protection of Pakistan Act, 2014; Antiterrorism Act, 1997; The Rangers ordinance, 1959; Police Order, 2002
2.	Additional Protocol II of 1970
Article 1	Constitution of Pakistan, 1973; Pakistan Army Act, 1952; Antiterrorism Act, 1997; Actions (in Aid of Civil Power) Regulations, 2011; Protection of Pakistan Act, 2014 (Article 1 Notes: The scope of a non-international armed conflict is not expressly defined in Pakistan's domestic law. However, several laws penalize the anti-state actions of organized armed groups.)
Article 2	Constitution of Pakistan, 1973; Actions (in Aid of Civil Power) Regulations, 2011
Article 3	No such legal provisions exist in Pakistan's domestic law
Article 4	Constitution of Pakistan, 1973; Pakistan Penal Code, 1860; Prisons Act, 1894; Code of Criminal Procedure, 1898; Prisoners Act, 1900; Pakistan Army Act, 1952; Security of Pakistan Act, 1952; Pakistan Army Rules, 1954; Prisons Rules, 1978; Bonded Labour System (Abolition) Act, 1992; Anti-Terrorism Act, 1997; Actions (in Aid of Civil Power) Regulations, 2011; Protection of Pakistan Act, 2014
Article 5	Prisons Act, 1894; Prisoners Act, 1900; Prisons Rules, 1978; Actions (in Aid of Civil Power) Regulations, 2011
Article 6	Constitution of Pakistan, 1973; Code of Criminal Procedure, 1898; Juvenile Justice System Ordinance, 2000
Article 7	Injured Persons (Medical Aid) Act, 2004
Article 8	Indicated by state practice, but may also be incorporated into a specific law
Article 9	Indicated by state practice, but may also be incorporated into a specific law
Article 10	Injured Persons (Medical Aid) Act, 2004
Article 11	Indicated by state practice (Article 11 Notes: The Cantonment Regulatory Authority has the power to establish and maintain within and outside of the cantonment area medical facilities in accordance with The Cantonments Act, 1924. However, the law neither specifies that these facilities be erected away from military objectives nor that there may be special procedures for medical establishments created in an area of armed conflict.)
Article 12	Geneva Convention Implementing Act, 1936
Article 13	Constitution of Pakistan, 1973; Anti-Terrorism Act, 1997; Protection of Pakistan Act, 2014
Article 14	No such legal provisions exist in Pakistan's domestic law
Article 15	Explosive Substances Act, 1908
Article 16	Pakistan Penal Code, 1860; Antiquities Act, 1975; Punjab Special Premises (Preservation) Ordinance, 1985; Sindh Cultural Heritage (Preservation) Act, 1994; Antiterrorism Act, 1997
Article 17	Constitution of Pakistan, 1973
Article 18	Red Crescent Society Act, 1920

³⁶⁴ Source Data Jamal Aziz, 'The Legal Implications of Adopting A Conflict Paradigm in Pakistan' (Research Society of International Law: Pakistan, May 2015) <<http://rsilpak.org/services/the-legal-implications-of-adopting-a-conflict-paradigm-in-pakistan/>> accessed 15 May 2016

There are various domestic laws of Pakistan that apply to the areas of conflict. The constitution of Pakistan 1973, is the primary domestic law that applies to the whole of Pakistan, including areas of conflict in Pakistan. The constitution of Pakistan, especially fundamental rights under chapter two, apply to every person in Pakistan in all situations:

Every citizen of Pakistan has inalienable right to enjoy the protection of law and treatment in accordance with law:

The right of individuals to be dealt with in accordance with law, etc.–

(1) To enjoy the protection of the law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.

(2) In particular – (a) no action detrimental to the life, liberty, body, reputation, or property of any person shall be taken except in accordance with law; (b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and (c) no person shall be compelled to do that which the law does not require him to do.³⁶⁵

It is prohibited to make any law that is inconsistent with or derogating from fundamental rights under the constitution:

Laws inconsistent with or in derogation of Fundamental Rights to be void. –

(1) Any law, or any custom or usage having the force of law, in so far as it is inconsistent with the rights conferred by this Chapter, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights so conferred and any law made in contravention of this clause shall, to the extent of such contravention, be void.³⁶⁶

The constitution of Pakistan ensures the equality of all the citizens before the law and entitles all the citizens to equal protection of the law:

Equality of citizens. –

(1) All citizens are equal before the law and are entitled to equal protection of the law.

³⁶⁵ The Constitution of the Islamic Republic of Pakistan 1973, Art. 4

³⁶⁶ The Constitution of the Islamic Republic of Pakistan 1973, Art. 8

(2) There shall be no discrimination on the basis of sex.

(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.³⁶⁷

Furthermore, the constitution of Pakistan provides a guarantee to the security of person and life and every citizen of the state is dealt with dignity. In this regard ‘No person shall be deprived of life or liberty save in accordance with law’³⁶⁸ and ‘the dignity of man and, subject to law, the privacy of the home, shall be inviolable. No person shall be subjected to torture for the purpose of extracting evidence’.³⁶⁹

Although, the above constitutional provisions are aimed to protect the fundamental rights of the citizens of Pakistan, yet their applicability extends to everyone in Pakistan, irrespective of being a citizen of Pakistan or national of another country. So, fundamental rights of the people of the conflict-affected areas of Pakistan fall under the scope of the constitution of Pakistan. There is the option of the suspension of the fundamental in situations of war and internal disturbance if the emergency is declared by the president of Pakistan with the approval of a joint session of the parliament.³⁷⁰ At present, no emergency is declared in the tribal areas of Pakistan and fundamental rights under the constitution are in force.

The Pakistan Penal Code is a penal code for all offences charged in Pakistan, originally prepared by Lord Macaulay with a great consultation in 1860 on the behalf of the Government of India as the Indian Penal Code. Later, adopted by Pakistan with several amendments, after the division of subcontinent in 1947, is still in effect.³⁷¹ The Pakistan Penal Code 1980, is another important domestic law that applies throughout

³⁶⁷ The Constitution of the Islamic Republic of Pakistan 1973, Art. 25

³⁶⁸ The Constitution of the Islamic Republic of Pakistan 1973, Art. 9

³⁶⁹ The Constitution of the Islamic Republic of Pakistan 1973, Art. 14

³⁷⁰ The Constitution of the Islamic Republic of Pakistan 1973, Art. 233

³⁷¹ Shaukat Mahmood, *The Pakistan penal code* (Lahore: Legal Research Centre 1989)

Pakistan.³⁷² So, the conflict-affected areas of Pakistan fall under the scope of PPC.

Whoever commits a crime in Pakistan, under the provisions of PPC, is liable to be punished under PPC.³⁷³ It applies to every person committing a crime in Pakistan, irrespective of their nationality, religion, or creed. Moreover, the Anti-Terrorism Act 1997 is a special law that extends to the whole country.³⁷⁴ The Pakistan Army Act 1952 is another relevant law that regulates the organization and discipline of the armed forces.³⁷⁵

This study focusses on the laws applicable to war affected IDPs in Pakistan, the special law that deals with the matter of IDPs are the National Disaster Management Act 2010. It has been later amended in 2012 and named as the National Disaster Management (Khyber Pakhtunkhwa) (Amendment) Act 2012. This law deals with both natural and man-made disasters. The National Disaster Management Commission has been established under this law, with the authority of supreme policy-making. The establishment of the disaster management authorities on a national and provincial level have been proposed by this act. According to section 11 of the NDMA:

“Subject to directions of the National Commission, the National Authority shall lay down guidelines for the minimum standards of relief to be provided to persons affected by disaster which shall include: the minimum requirements to be provided in the relief camps in relation to shelter, food, drinking water, medical cover and sanitation; the special provisions to be made for vulnerable groups; ex gratia assistance on account of loss of life as also assistance on account of damage to houses and for restoration of means of livelihood; and, such other relief as may be necessary.”³⁷⁶

The civilians and the civilian population are generally protected against dangers arising from military operations, in a situation of non-international armed conflicts, under

³⁷² Pakistan Penal Code 1980, Sec. 1

³⁷³ Pakistan Penal Code 1980, Sec. 2

³⁷⁴ Shabana Fayyaz, ‘Responding to terrorism: Pakistan’s anti-terrorism laws’ (2008) 2 (6) Perspectives on Terrorism 10

³⁷⁵ Pakistan Army Act 1952

³⁷⁶ National Disaster Management Act 2010, Sec. 11

IHL.³⁷⁷ Although, civilians are not expressly defined under the domestic law of Pakistan, however, customary rules of IHL define civilians as people who are not a member of the Armed Forces or Civil Armed Forces or a member of a non-state armed group.³⁷⁸ There are various domestic laws of Pakistan that define armed forces,³⁷⁹ and civil armed forces,³⁸⁰ non-state armed forces.³⁸¹

There are various domestic laws in Pakistan that provide protection to civilians in a situation of armed conflicts. According to the constitution of Pakistan:

‘To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan. No action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.’³⁸²

The domestic laws of Pakistan aim to protect civilians from the dangers that arise from military operations. The Pakistan Penal Code, 1860, the Anti-Terrorism Act, 1997 and the Protection of Pakistan Act, 2014 consider the acts as a crime that may harm civilians and the civilian population.³⁸³ In a leading case, the Peshawar High Court has recalled the protection that civilians IHL:

‘According to Article 3 and Article 52 (1) & (2) of the Additional Protocol, targeted killing is only lawful when the target is a “combatant” or “fighter” or, in the case of a civilian, only for such time as the person “directly participates in hostilities”. Additionally, per Geneva Conventions Common Article 3 & [Article 51] of Additional Protocol I, the killing must be militarily necessary, the use of force must be proportionate so that any anticipated military advantage is considered considering the expected harm to civilians in the vicinity, and everything feasible must be done to prevent mistakes and minimize harm to civilians.’³⁸⁴

³⁷⁷ Additional Protocol II, Art. 13

³⁷⁸ Customary Rules of IHL 2005, Rule. 5

³⁷⁹ Pakistan Army Act 1952, Sec. 2 (a)

³⁸⁰ The Constitution of the Islamic Republic of Pakistan 1973, Art. 260 (1)

³⁸¹ Code of Criminal Procedure 1898, Sec. 132-A (aa)

³⁸² The Constitution of the Islamic Republic of Pakistan 1973, Art. 4

³⁸³ Pakistan Penal Code, 1860; Anti-Terrorism Act, 1997; Protection of Pakistan Act, 2014

³⁸⁴ Foundation for Fundamental Rights v. Federation of Pakistan (2013) PLD (Pesh.) 94

The following is the list of domestic laws contains rules that apply to the conflict situations, including armed conflict in FATA, in Pakistan:

Figure 3.3: Domestic Laws Applicable to conflicts in Pakistan³⁸⁵

Provisions of the Pakistan Penal Code, 1860:	<ul style="list-style-type: none"> • Waging or attempting to wage war or abetting waging of war against Pakistan • Collecting arms, etc., with intention of waging war against Pakistan • Concealing with intent to facilitate design to wage war • Condemnation of the creation of the State, and advocacy of abolition of its sovereignty • Waging war against any Power in alliance with Pakistan • Committing depredation on territories of Power at peace with Pakistan • Abetting mutiny, or attempting to seduce a soldier, sailor or airman from his duty
Provisions of the Code of Criminal Procedure, 1898:	<ul style="list-style-type: none"> • Use of military force • The duty of officer commanding troops required by Magistrate to disperse the assembly • Power of commissioned military officers to disperse the assembly • Power to use military force for public security and maintenance of law and order
Provisions of the Civil Procedure Code, 1908:	
Provisions of the Anti – Terrorism Act, 1997:	<ul style="list-style-type: none"> • Calling in of armed forces and civil armed forces in aid of civil power • Use of armed forces and civil armed forces to prevent terrorism
Provisions of the Protection of Pakistan Act, 2014	<ul style="list-style-type: none"> • Empowers the armed forces and civil armed forces to take action against those who advocate, encourage, aids or abet the raising of arms or waging of war or a violent struggle against Pakistan
Action in Aid of Civil Power Regulations, 2011	<ul style="list-style-type: none"> • A legal framework to the military operations conducted in Federally Administered Tribal Areas (Fata)
The Pakistan Army Act, 1952 (amended 2015)	<ul style="list-style-type: none"> • To deal with actors who had been found involved in or were suspected of waging an armed struggle against the state, countries the world over have opted for extreme measures to deal with such individuals
The Security of Pakistan Act, 1952	<ul style="list-style-type: none"> • Generally Applicable
The Prevention of Anti- National Activities Act, 1974	<ul style="list-style-type: none"> • Generally Applicable
The Private Military Organizations Act, 1973	<ul style="list-style-type: none"> • Generally Applicable
The Geneva Conventions Implementing Act, 1936	<ul style="list-style-type: none"> • Generally Applicable
The United Nations (Security Council) Act, 1948	<ul style="list-style-type: none"> • Generally Applicable
The Pakistan Rangers' Ordinance, 1959	<ul style="list-style-type: none"> • Generally Applicable
The Frontier Corps Ordinance, 1959	<ul style="list-style-type: none"> • Generally Applicable

³⁸⁵ Prepared by the Researcher

3.8.2 IHL and IDPs in Pakistan

The situation of armed conflicts normally results in internal displacement. IHL provides protection to IDPs as to save them from the effects of armed conflicts. It aims to prevent civilians from displacement and binds the parties to a conflict to respect the rules of IHL for saving people from displacement.

The parties to a conflict are strictly prohibited from compelling civilians to evacuate their places of residence. It allows temporary evacuations only for the security of civilians or military imperatives and such evacuations are subject to strict conditions. IHL binds the parties to take all possible measures to ensure family unity and providing IDPs all the necessary conditions of shelter, food, health, hygiene, safety, and security. It binds the parties to decide for the safe and voluntary return of the displaced persons when the conditions are safe.

The IDPs, mainly affected by the non-international armed conflict, have become a matter of great concern for Government of Pakistan. Non-international armed conflicts are regulated and covered by IHL, per common article.3 to the Geneva Convention of 1949. Both common article.3 and customary rules of IHL apply in situations of non-international armed conflicts to help and assist the victims, mainly civilians, of these armed conflicts. This research investigates the applicability of IHL on displaced persons in Pakistan with the assumption that displaced persons in Pakistan fall into the category of people protected under common article.3 of the Geneva Conventions and customary rules of IHL.

The displaced persons in Pakistan have been mainly affected by non-international armed conflicts. The IDPs of Pakistan have been affected by the conflict between

Pakistan law enforcing agencies and the armed groups in Northern Areas of Pakistan.³⁸⁶

Apart from the Guiding Principles on Internal Displacement, IHL cover these displaced persons as Common Article.3 to the Geneva Conventions (1949), and their Additional Protol.2 applies to the situations of non-international armed conflicts.

The legal experts, interviewed by the researcher, provide doctrinal interpretations on the applicability of IHL in an Islamic context. They comment on the nature, purpose, and rules of both the legal streams that aim to help and assist civilians in times of armed conflict. They favour the compatibility of IHL and Islam and reject the existence of a fundamental conflict between IHL and Islam that stops IHL from working in an Islamic context. Most of them just tend to mention the version of IHL on the matter of displaced persons.

They, instead of commenting and giving their views about displaced persons in Pakistan, propose and suggest the government of Pakistan make sure the applicability of IHL on displaced persons in Pakistan. The legal experts, interviewed by the researcher, argue the role of IHL is very important in the time of armed conflict. It helps and protects people who are not taking part in hostilities. It limits the use of dangerous weapons and suggests the ways and means of warfare to the parties involved in the conflict.

‘IHL comes to play its role in the time of armed conflict. The conflict in Pakistan requires the protection of IDPs under IHL, as the government has failed to protect IDPs. The international community must take measures to provide support and funds for protecting IDPs in Pakistan.’³⁸⁷

‘IHL helps civilians in non-international armed conflicts and the conflict in Pakistan falls under the category of non-international armed conflict. The

³⁸⁶ Anthony H. Cordesman *et al*, ‘Pakistan: Violence versus Stability: A Net Assessment’(Centre for Strategic and International Studies, 2011) <https://csis-prod.s3.amazonaws.com/s3fs-public/legacy_files/files/publication/110607_Stabilizing_Pakistan.pdf> accessed 08 December 2016

³⁸⁷ Interview with Miss. R.K, Advocate High Court (Islamabad, Pakistan 10 July 2013)

IDPs deserve the protection and safety under the rules of IHL. The government must ensure the implementation of IHL for the betterment of IDPs.³⁸⁸

3.9 Conclusion

The application of IHL in a different context has remained a topic of discussion among scholars. The rules of IHL clearly define the scope and applicability of IHL in different situations. The aim and purpose of International Law have been the protection of civilians and those persons who are not taking part in hostilities. It prohibits the parties from using unlimited force and targeting the civilian and civilian objects. IHL applies to both the International and non-international armed conflicts. Despite, the availability of refugee laws and rules relating displaced persons, the common article 3 of the Geneva Conventions, Additional Protocol II, and the customary rules of IHL cover the matter non-international armed conflicts by protecting the displaced persons under the category of civilians.

The matter the applicability of IHL on the displaced persons in Pakistan has been discussed in this research study in the light of the applicability of IHL on non-international armed conflicts, assuming the displaced persons in Pakistan affected by non-international armed conflict Pakistan. The criticism on the limited applicability of IHL and replies to the criticism gives different meanings to the applicability of IHL with the changing nature of non-international armed conflicts in the last decade or so.

The role of IHL in non-international is discussed as this study is based on the matter of displaced persons in Pakistan that are mainly affected by non-international armed conflicts. The division and categorisation of armed conflicts recognise two types of armed conflicts, international armed conflicts, and non-international armed conflicts.

³⁸⁸ Interview with Mr. K.A, Ex-Judge High Court (Lahore, Pakistan, 20 July 2013)

Non-international armed conflicts are further divided into different categories according to their nature and conduct of hostilities. IHL covers both international and non-international armed conflicts. Non-international armed conflicts are regulated and covered by Common Article.3 to the Geneva Conventions and their Additional Protocol II.

The relationship between IHL and Islam has been discussed and analysed by Western scholars and Muslim scholars at different forums. The Western scholars have been criticising Islam upon its rigid rules and strict approach towards non-Muslims. They have been blaming the concept of Jihad in Islam that aims to establish a universal Islamic state by converting people to Islam through coercion and use of force.

The Islamic Republic of Pakistan, like other Muslim states, base its constitution on the Islamic rules and frame its laws through the law-making authorities. Parliament plays a vital role in the framing of the domestic laws of Pakistan. Islamic laws are considered as a guideline and laws are framed in accordance with the Islamic laws by avoiding the framing of laws that are repugnant to the clear injunctions of Islam.

The applicability of international laws depends on the nature of the rules of international laws. Some rules are made applicable in the domestic legal system through parliamentary or executive approvals, while some rules are applicable without any formal approval. The laws that are in contradiction with the clear injunctions of Islam are hard to be applicable in the domestic legal structure of Pakistan. IHL is applicable in Pakistan and Pakistan is a signatory to the Geneva Conventions and Hague Convention. The Government of Pakistan is dealing the crises of displaced persons with the help and assistance of many national and international organisations that work under the umbrella of IHL.

CHAPTER FOUR: PROTECTION OF IDPS IN PAKISTAN

4.1 Introduction

This chapter addresses the impact of the non-international armed conflict in Pakistan upon IDPs, the applicability of IHL, and the geographical definition of the conflict zone, including interview findings from selected legal experts in Pakistan on the limited applicability of IHL, and the relevant rules and rights available for IDPs. The involvement of international organizations and NGOs, especially UNHCR, is investigated, and their effectiveness in response to the Pakistan government's request for assistance with the protection and assistance of IDPs. Reports and bulletins by the UNHCR and other agencies are combined with interview responses from a sample of those in IDP camps to examine their treatment and support from the Pakistani authorities and international organizations working in cooperation with the Pakistan Government.

This chapter provides an overview of the armed conflict in Pakistan in the light of the criteria of the applicability of IHL, specifically focusing on the conflict in Pakistan as non-international armed conflict, along with the applicability of both national and international legal spectrum. This chapter investigates the applicability of IHL on the conflict in Pakistan, including the limited geographical applicability of IHL to the conflict zone, and includes views of the legal experts, interviewed by the researcher, in Pakistan in considering conflict as non-international armed conflict with the limited applicability of IHL.

Further, this chapter elaborates the treatment given to displaced persons in Pakistan in the light of rules and rights available for displaced persons. Moreover, the responsibilities of the national government, in terms of internal displacement, have been analysed in the context of the protection provided to IDPs in Pakistan. The involvement of international community and the role of international organizations and NGOs, especially UNHCR, has been mentioned, in response to the request of the government of Pakistan for the protection and assistance of IDPs.

To assess the applicability of the legal framework available to IDPs at a national and international level, the treatment provided to IDPs in Pakistan is analysed in the light of fact reports of the UNHCR and responses of IDPs about the treatment given to IDPs in Pakistan. The version of displaced persons has been analysed in the light of help and support provided to displaced persons by the authorities, including UNHCR and other organizations working in cooperation with the Government of Pakistan.

4.2 The Armed Conflict in Pakistan

The conflict in Pakistan needs to be assessed under the criteria of the existence of an armed conflict. According to Common Article 3, the conflict must be of a non-international character, occurring in the territory of one of the High Contracting Parties. There are two basic criteria of the recognition of the non-international armed conflict based on the case law of the International Criminal Tribunal for the Former Yugoslavia (ICTY): the protracted armed violence and organization of the parties.³⁸⁹

Firstly, the intensity of the conflict in FATA needs to be identified, that reaches the required level of intensity to constitute an armed conflict. Secondly, the organisation of

³⁸⁹ Antonio Cassese, *International Law* (2nd Edition, Oxford University Press 2005) 125

the parties to the conflict, including the security forces of Pakistan and the TTP led umbrella organizations fighting against the security forces, need to fulfil the criteria of the existence of an armed conflict, and the organization of the TTP along with its umbrella group also fulfil the criteria of a party to the armed conflict.

As discussed in the previous chapter, the intensity of fight in FATA, beyond any doubt, reaches to a level that fulfils the criteria of the armed conflict. Moreover, there is no doubt about the capacity of the security forces of Pakistan, and the capacity of the non-state actors in the conflict in FATA is identifiable. The capacity of the TTP as a party to the armed conflict can be discussed in the light of the criteria of the capacity of the parties under common article 3 to the Geneva Conventions.

The recognition of non-state actors as armed groups can be assessed under a specific criterion. These groups need to fulfil the requirements of being recognized as an armed group as High Contracting Party under IH.³⁹⁰ These requirements include their structure as an organized body, leadership control, military training, access to weapons and supplies, new recruitments, identified group, and having control over a territory.³⁹¹

A command structure controls the organisational structure of the non-state parties armed groups. They normally use a headquarter where their high command looks after their internal regulations and issue political statements through their spokesperson. They use identifiable ranks and positions in their organisational structure.³⁹² These groups have the operational capacity that enables them to define a unified military strategy and using

³⁹⁰ Sandesh Sivakumaran, 'Binding Armed Opposition Groups' (2006) 55 (2) International and Comparative Law Quarterly 369

³⁹¹ Jean S. Pictet (ed), *The Geneva Conventions of 12 August 1949: Commentary: First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (ICRC Geneva 1952) 49

³⁹² Marco Sassoli, 'Taking Armed Groups Seriously: Ways to Improve Their Compliance with International Humanitarian Law' (2010) Journal of International Humanitarian Legal Studies 5

military tactics. They have used to carry out and coordinate military operations at large scale. They have control over a certain territory and divide that territory into different zones in terms of responsibility. They have the logistic capacity and different supply chains to gain access to weapons and other military equipment. They can move their troops and recruit people and provide the training.³⁹³

It is, however, a question of fact to establish the existence of an armed conflict. The factual conditions of a certain conflict are necessary to be examined for establishing the existence of the armed conflict.³⁹⁴ The factual conditions of the conflict in Pakistan, on the ground, provide a strong indication of the existence of an armed conflict of non-international character. There is no doubt of the involvement of the protracted violence in Pakistan. The TTP and its umbrella groups have inflicted heavy losses on the security forces of Pakistan. The security forces of Pakistan have been using tanks, jets, and gunship helicopters to suppress the TTP's fighters involved in the conflict. Moreover, millions of people have been displaced, from the conflict zone, because of the conflict.³⁹⁵

There are two main parties to the conflict in Pakistan: the security forces of Pakistan and the Tehrik-i-Taliban Pakistan (TTP). The security forces participating in the conflict include the armed forces, the Frontier Corps, the police, and in some cases the levies (government forces also known as Khasadars) comprised of different tribal regions. Most of the operations are supervised by the army.

³⁹³ Jean S. Pictet (ed), *The Geneva Conventions of 12 August 1949: Commentary: First Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (ICRC Geneva 1952) 49

³⁹⁴ Sylvain Vite, 'Typology of Armed Conflicts in International Law: Legal Concepts and Actual Situations' (2009) 91 (873) *International Review of the Red Cross* 69

³⁹⁵ Ariane Rummery, 'Some displaced people visit homes in north-west Pakistan, but no large-scale return yet' (UNHCR 2009) <<http://www.unhcr.org/4a44eb2a9.html>> accessed 30 June 2016

The TTP has affiliated armed groups, that include Lashkar-i-Jhangvi, Sipah-i-Sahaba Pakistan, and Jaysh-e-Muhammad, that carry out a suicide bombing and take part in fighting against the security forces. These groups, often named as the Punjabi Taliban, have a different origin and history than the TTP.³⁹⁶ However, TTP is considered as the main armed group fighting against the security forces of Pakistan in this conflict. The roots of the TTP are traced in 2002 during the search operation of the security forces of Pakistan in the tribal areas, in combat with the militants fleeing from Afghanistan into the neighbouring areas of Pakistan.³⁹⁷ A large number of the TTP leaders are believed to be the veterans of the fighting in Afghanistan against the NATO-led International Security Assistance Force.³⁹⁸

The incident of terrorist attacks in the USA on September 11, 2001, changed the scenario of the world. The after effects of this incident involved the rest of the world. With the announcement of the war on terrorism, the demands were made to the global community to participate in fighting against terrorism. Pakistan was put on a great test, as being the neighbour of Afghanistan with the close ties between the people of both the countries, to participate in fighting against the terrorists in Afghanistan. President Musharraf addressed the nation on September 19, 2001, in an open and candid manner to explain the gravity of the situation in straightforward and direct words. He took the nation into confidence by asking the nation to trust and support his decision.³⁹⁹

When Us-led, the coalition started a war against Afghanistan, Pakistan joined this coalition, and since Pakistan is a major non-NATO ally repetitive and is actively

³⁹⁶ Hassan Abbas, 'Defining the Punjabi Taliban network' (2009) 2 (4) CTC Sentinel 1

³⁹⁷ Zaffar Abbas, '*Pakistan's undeclared war*' (BBC News September 2004) <http://news.bbc.co.uk/2/hi/south_asia/3645114.stm> accessed 15 September 2016

³⁹⁸ Carlotta Gall *et al*, 'Pakistani and Afghan Taliban Close Ranks' (New York Times March 2009) <<https://www.nytimes.com/2009/03/27/world/asia/27taliban.html>> accessed 15 September 2016

³⁹⁹ Marinos Diamantides and Adam Gearey, (eds), *Islam, Law, and Identity* (Routledge 2011)

supporting this war against terrorism, the Taliban have been targeting Pakistan and always spreading their insurgency in the Pakistan area that is adjacent to Afghanistan reference. The spread acts of terrorism and violence are always affecting the whole of Pakistan. Pakistan has sacrificed one thousand military people and about four thousand civilians. Apart from deaths, Pakistan has suffered the injuries over two thousand members of armed forces and eight thousand civilians.⁴⁰⁰

After the US, had led an invasion against Taliban in Afghanistan, the resistance of Taliban appeared in the shape of insurgency within the territories of Pakistan. Not only Taliban from Afghanistan entered in Pakistan for this purpose, but they were joined by a large number of local people as well. Pakistan had been holding the Afghan element responsible for 90% of terrorist attacks. The links of the trouble creators with the refugee camps had remained a topic of concern among Pakistani intelligence agencies.⁴⁰¹ The security agencies of Pakistan, due to the porous nature of the border between Pakistan and Afghanistan, had not been able to have a strict check on the movement of Afghans into Pakistan. This porous nature of the border has been helping the trouble creators from Afghanistan to enter Pakistan for shelter. The tribal areas of Pakistan had remained a paradise for the militant groups, and many of the militants targeted by American drone attacks have belonged to Haqqani Network, Taliban, al-Qaida, Hezb-e-Islami, Chechens, and Islamic Movement of Uzbekistan.⁴⁰²

The analysts consider TTP as an organization with a loose network of dispersed constituent groups of various sizes and coordination levels.⁴⁰³ The structure of the TTP

⁴⁰⁰ Umbreen Javaid, 'War on terror: Pakistan's apprehensions' (2011) 5 AJPSIR 125

⁴⁰¹ AFP, 'Pakistan blames Afghan refugees for Rabbani's murder' (The Express Tribune, 14 December 2011) <<http://tribune.com.pk/story/306490/pakistan-blames-afghan-refugees-for-rabbani-murder/>> accessed 12 July 2016

⁴⁰² AFP '246 Taliban arrested from hospitals within a month' (Pak Tribune, 3 October 2003) <<http://www.paktribune.com/news/print.php?id=156037>> accessed 13 May 2015

⁴⁰³ Carol Christine Fair, 'The Militant Challenge in Pakistan' (2011) 11 (1) Asia Policy 105

differs to the Afghan Taliban due to the lack of a central command and a much looser coalition of various militant groups, in fighting against the security forces of Pakistan.⁴⁰⁴ The analysts consider TTP as an organization, having various umbrella groups, with a limited influence and ability to expand their operations beyond their local territories.⁴⁰⁵

The TTP was established by a council of forty senior Pakistani tribal leaders in the shape of an umbrella organization, around 2001.⁴⁰⁶ There was a proper appointment of the chief (head of the organization), along with the appointment of the deputy chief (deputy head of the organization) of TTP.⁴⁰⁷ The council used to control the matters of the various agencies, through appointing heads in the agencies.⁴⁰⁸ Furthermore, the council had representation from settled districts of Khyber Pakhtunkhwa such as Swat, Bannu, Tank, Lakki Marwat, Dera Ismail Khan, Kohistan, Buner, Mardan, and Malakand. According to estimates, TTP had a total number of around 30–35,000 operatives.⁴⁰⁹

TTP has been considering the Pakistani army as a national institution and claiming of being abstaining from fighting against Pakistan unless the army attacks the TTP

⁴⁰⁴ Ayesha Siddiqi, 'Pakistan's Counterterrorism Strategy: Separating Friends from Enemies' (2011) 34 (1) *The Washington Quarterly* 149

⁴⁰⁵ Carlotta Gall And Sabrina Tavernise, 'Pakistani Taliban Are Said to Expand Alliances' (The New York Times May 2010) <https://www.nytimes.com/2010/05/07/world/asia/07pstan.html> accessed 15 September 2016

⁴⁰⁶ Niaz A. Shah, 'War Crimes in the Armed Conflict in Pakistan' (2010) 33 (4) *Studies in Conflict & Terrorism* 283

⁴⁰⁷ Mushtaq Yusufzai, 'Militants seek end to military operations' (The News International December 2007) <<https://www.thenews.com.pk/archive/print/654156>> accessed 15 September 2016

⁴⁰⁸ Anwarullah Khan, 'TTP threatens to launch suicide attacks across country' (The Dawn. August 2008) <http://www.dawn.com/2008/08/06/top2.htm> accessed 15 September 2016

⁴⁰⁹ Jayshree Bajoria and Jonathan Masters, 'Pakistan's New Generation of Terrorists' (Council on Foreign Relations September 2012) http://www.cfr.org/pakistan/pakistans-new-generation-terrorists/p15422?breadcrumb=%2Fbios%2F13611%2Fjayshree_bajoria%3Fgroupby%3D1%26hide%3D1%26id%3D13611%26filter%3D456. Accessed 12 June 2016

fighters.⁴¹⁰ There has been a short-lived deal from TTP in 2005, broken in 2006, for not fighting against the Pakistan army. In 2006, TTP has moved aggressively against Pakistan army by establishing independent war zone in parts of South Waziristan and capturing three hundred army soldiers August 2017.⁴¹¹ TTP has gradually been expanding its additional resources and geographic reach by conducting violent activities against the security forces in various parts of the country. The government of Pakistan has banned the TTP in 2008 under the Anti-Terrorism Act, 1997. The TTP has refused to obey the order of the government by calling the ban as ineffective.⁴¹²

In 2009, with the killings of the head of the TTP and other leading, the organizational structure and operational abilities of TTP were severely affected and leadership due to the leadership crisis.⁴¹³ In 2011, the head of the TTP started losing his grip, due to the defection of its umbrella militant groups and was reported missing from the scene.⁴¹⁴ In 2012, Pakistani military claimed the loss of the control of the TTP head over various umbrella groups.⁴¹⁵ Soon after, the head of the TTP appeared in the media and called the reports of a split with the umbrella organizations as propaganda.⁴¹⁶

⁴¹⁰ Haroon Rashid, 'Baitullah demands military withdrawal' (BBC April 2006)

http://news.bbc.co.uk/2/hi/south_asia/4887500.stm accessed 16 May 2015

⁴¹¹ BBC, 'Profile: Baitullah Mehsud' (December 2008) <http://news.bbc.co.uk/1/hi/world/south_asia/7163626.stm> accessed 9 July 2016

⁴¹² Dawn, 'Tehrik-i-Taliban Banned' (DAWN August 2008)

<http://www.dawn.com/2008/08/26/top12.htm> accessed 16 June 2015

⁴¹³ Nasir Dawar, 'Sources: Pakistani Taliban leader is dead' (CNN February 2010)

<http://edition.cnn.com/2010/WORLD/asiapcf/02/09/pakistan.meshud.dead/> accessed 16 July 2016

⁴¹⁴ Rebecca Conway, 'Pakistan Taliban leader "isolated," facing splits: report' (Reuters July 2012)

<https://www.reuters.com/article/us-pakistan-taliban/pakistan-taliban-leader-isolated-facing-splits-report-idUSTRE76419E20110705> accessed 16 July 2016

⁴¹⁵ Mehreen Zahra-Malik, 'Exclusive: Emerging Pakistan Taliban chief to focus on Afghan war' (Reuters December 2012) <<https://www.reuters.com/article/us-pakistan-taliban/exclusive-emerging-pakistan-taliban-chief-to-focus-on-afghan-war-idUSBRE8B50G920121206>> accessed 16 July 2016

⁴¹⁶ Saud Mehsud, 'Pakistan Taliban chief says group will negotiate, but not disarm' (Retrieved December 2012) <https://www.reuters.com/article/us-pakistan-taliban/pakistan-taliban-chief-says-group-will-negotiate-but-not-disarm-idUSBRE8BR06F20121228> accessed 16 July 2016

Despite, going through various leadership crisis and splits among the umbrella groups; TTP still consists of an organized structure with operational abilities, necessary for an armed group, to indulge in an armed conflict. It has an effective control of the tribal areas near the border between Pakistan and Afghanistan. TTP has a well-established command structure and abilities to conduct operations against the security forces of Pakistan. There have been several pacts between TTP and security forces of Pakistan but not been followed by TTP.

The conflict in Pakistan fulfils the most stringent requirements of being considered as an armed conflict. It possesses all three elements of the recognition of a conflict as an armed conflict. The ICRC has recognized the conflict in Pakistan as an armed conflict. The parties to the conflict include the security forces of Pakistan and the TTP and the conflict is taking place within the territory of Pakistan.

The armed groups in Pakistan fulfil the criteria for being recognised as non-state actors in the category of High Contracting Party. The Haqqani and Taliban operating in Pakistan are the organized armed groups with cohesive command and control structures. They identify themselves as groups that provide military training and have access to weapons and supplies along with control over a territory. These groups have a strong ideological, religious, and tribal identity and have a well-established communication system.

The conflict in Pakistan, if seen from the perspective of Pakistan, provides a situation of armed conflict between Pakistani military forces and several militant groups. The conflict in Pakistan meets the criteria set for the recognition of non-international armed conflict. A wide array of non-state armed groups is active in Pakistan. Below is a selection of the most important groups or alliances. Tehrik-i-

Taliban (TTP), The Haqqani network, Jamaat-ul-Ahrar, Al-Qaida Lashkar-e-Jhangvi are active mainly in the north western Federally Administered Tribal Areas (FATA) along the border with Afghanistan. Their aim is to resist the state of Pakistan and the NATO-led foreign troops in Afghanistan and to enforce their interpretation of sharia law. They are not affiliated with the Afghan Taliban fighting in the non-international armed conflict in Afghanistan.

The situation in Pakistan fulfils the criteria of non-international armed conflict under International Humanitarian Law, acknowledged by the spokesperson for the International Committee of the Red Cross (ICRC) after the launching of operation by Pakistani military forces in South Waziristan (FATA). The recognition of an armed conflict by ICRC has provided a legal mandate under International Humanitarian Law to protect victims. The conflict meets the threshold criteria set by common article 3.

4.3 Applicable International Laws

The international legal framework, mainly applicable to internal armed conflicts includes the law of armed conflict, customary law, human rights law,⁴¹⁷ international criminal law,⁴¹⁸ and municipal laws. Pakistan is not a party to 1977 Additional Protocol II and ICC statute, however, Pakistan is a signatory of 1949 four Geneva Conventions. So, common article 3 applies to the conflict in Pakistan as well as ICC statute apply as a customary law.

⁴¹⁷ William Abresch, 'A human rights law of internal armed conflict: The European Court of Human Rights in Chechnya' (2005) 16 (4) European Journal of International Law 741

⁴¹⁸ Alexander Zahar and Goran Sluiter, *International criminal law: A critical introduction* (Oxford University Press 2008)

Pakistan is a signatory to the 1966 International Covenant on Civil and Political Rights and 1984 United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as well. Thus, the non-ratification of some of the human rights instrument, from the side of Pakistan, does not affect the applicability of the principles that have acquired the status of customary international law or *jus cogens*.⁴¹⁹ Pakistan recognizes most of the human rights principles, in the form of fundamental rights, under the 1973 constitution of Pakistan.

Apart from, common article 3, the Statute of the International Criminal Court 1998, applies to the conflict in Pakistan as customary law. The wider definition of internal armed conflicts under the Statute of the International Criminal Court indicates its application to internal armed conflicts:

‘It applies to armed conflicts that take place in the territory of a State when there is a protracted armed conflict between governmental authorities and organized armed groups or between such groups’.⁴²⁰

Although Pakistan is not a party to the ICC Statute, this definition is reflective of customary law and applies to the conflict in Pakistan. The interpretation of the International Criminal Tribunal for the former Yugoslavia is more in line with common article 3 and the ICC Statute:

‘an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State’.⁴²¹

The international legal framework, mainly IHL through common article 3 and customary rules of IHL, apply to the conflict in Pakistan, considering as a non-

⁴¹⁹ Silvia Borelli, ‘Casting light on the legal black hole: International law and detention abroad in the war on terror’ (2005) 85 (857) *International Review of the Red Cross* 39

⁴²⁰ The Rome Statute of the International Criminal Court 1998, Art. 8 (2) (f)

⁴²¹ *Prosecutor v Tadic (Judgment in Sentencing Appeals)* (2000) 39 ILM 635

international armed conflict separating it from internal disturbance or civil unrest.

The parties to this conflict and intensity of fight are clear indicators of the existence of a non-international armed conflict situation in Pakistan.

4.3.1 Geographical applicability of IHL

There is no mechanism to specify the temporal and geographical scope of the armed conflicts, as armed conflicts often extend beyond the exact time and place of hostilities.

According to the International Criminal Tribunal for the former Yugoslavia in

Prosecutor v. Tadic case: '[T]he temporal and geographical scope of both internal and international armed conflicts extends beyond the exact time and place of hostilities'⁴²²

So, both the Geneva and The Hague Conventions do not specify the temporal or geographical scope of an armed conflict, except about occupation. The applicability of the armed conflict to the entire territory of a state has also been made clear in the

Prosecutor v. Tadic case:

‘Although the Geneva Conventions are silent as to the geographical scope of international “armed conflicts,” the provisions suggest that at least some of the provisions of the Conventions apply to the entire territory of the Parties to the conflict, not just to the vicinity of the actual hostilities.’⁴²³

Both the international and non-international armed conflict are treated as same, regarding the scope of armed conflicts.⁴²⁴ It is not possible to limit the area of hostilities in situations of international armed conflict. Likewise, the geographical scope of the non-international armed conflicts is similarly broad. Common article 3 extends its

⁴²² Prosecutor v Tadic (Judgment in Sentencing Appeals) (2000) 39 ILM 635

⁴²³ Prosecutor v Tadic (Judgment in Sentencing Appeals) (2000) 39 ILM

⁴²⁴ Noam Lubell and Nathan Derejko, ‘A Global Battlefield? Drones and the Geographical Scope of Armed Conflict’ (2013) 11 (1) Journal of International Criminal Justice 65

applicability outside the narrow geographical context of the actual theatre of combat operations.⁴²⁵

The legal interpretation of the applicability of IHL to armed conflicts clearly confirm the de jure applicability of IHL to the entire territory of a Party to the conflict. However, in situations of localised conflicts in a specific zone, the applicability of IHL needs interpretations as to apply only to the geographical zone concerned or to the entire territory of the state.⁴²⁶

The case to case approach of the applicability of IHL shows that active hostilities do not take place in the entire territories of parties to a conflict, and actual application of IHL rules depends on the facts of the case. So, de facto application of IHL depends on a case-by-case determination of the events, whether they have a substantial relationship with the armed conflict or not? In case, they have a substantial relationship, the rules of IHL apply, otherwise, they are treated under human rights law.⁴²⁷

The constitution of Pakistan provides criteria for the tackling of the armed conflicts by empowering the Federal Government to deploy the armed forces to act in aid of civil power. The federal government specifies, in the notifications, the geographical area of the armed conflict and the time during which that action is intended to begin and end. So, the constitution of Pakistan empowers the federal government of Pakistan to assess the nature of the conflict and deployment of the armed forces to the conflicts. According to the constitution:

⁴²⁵ Geneva Conventions I, II, III, IV 1949, Art. 3 (1)

⁴²⁶ Noam Lubell and Nathan Derejko, 'A Global Battlefield? Drones and the Geographical Scope of Armed Conflict' (2013) 11 (1) Journal of International Criminal Justice 65

⁴²⁷ ICRC, 'Commentary Of 2016 Article 3: Conflicts not of An International Character' (ICRC 2016) <<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=59F6CDFA490736C1C1257F7D004BA0EC>> accessed 16 January 2017

(1) The Armed Forces shall, under the directions of the Federal Government, defend Pakistan against external aggression or threat of war, and, subject to law, act in aid of civil power when called upon to do so. (3) A High Court shall not exercise any jurisdiction under Article 199 in relation to any area in which the Armed Forces of Pakistan are, for the time being, acting in aid of civil power in pursuance of Article 245 (4) Any proceeding in relation to an area referred to in clause (3) instituted on or after the day the Armed Forces start acting in aid of civil power and pending in any High Court shall remain suspended for the period during which the Armed Forces are so acting.⁴²⁸

The legal experts, interviewed by the researcher, consider the intensity of the conflict in FATA as identifiable, that amounts to the non-international armed conflict, that reaches the required level of intensity to constitute an armed conflict.

‘The conflict between Pakistani forces and non-state armed groups in FATA is no doubt a non-international armed conflict because the intensity of fight between both the parties has crossed the required level of intensity of fighting’,⁴²⁹

‘This conflict, by any means exceeds the level of fighting that is required for the categorization of a conflict as an armed conflict’,⁴³⁰

They argue that the involvement of the armed is the primary indicator of the applicability a conduct of the existence of an armed conflict, and the organization of the TTP along with its umbrella group also fulfil the criteria of a party to the armed conflict. The legal experts, interviewed by the researcher, unanimously consider the intensity threshold of the common article 3 as met, that constitutes a non-international armed conflict.

‘The deployment of the military forces is an indicator of the existence of an armed conflict in FATA because Pakistan does not deploy its armed forces for internal tensions in such a manner and for a long time. So, yes common article 3 is the appropriate legal regime applicable to this conflict’,⁴³¹

⁴²⁸ The Constitution of the Islamic Republic of Pakistan 1973, Art. 245

⁴²⁹ Interview with Mr K.L, Advocate High Court (Lahore, Pakistan 23 July 2013)

⁴³⁰ Interview with Mrs N.J, Advocate High Court (Islamabad, Pakistan 10 July 2013)

⁴³¹ Interview with Mrs M.B, Judge Lahore High Court (Lahore, Pakistan 19 July 2013)

The legal experts, interviewed by the researcher, have no doubt in considering the organization of the parties to the conflict in Pakistan as meeting the criteria under the threshold of common article 3, at one side the security forces of Pakistan and on the other side the non-state actors fighting in FATA.

‘TTP and its umbrella organizations have a coherent organizational structure and ability to conduct fights with the military and they are very much capable of obliging the rules of IHL’⁴³²

So, legal experts, interviewed by the researcher, are of the view that both the minimum criteria for the recognition of a conflict as an armed conflict are met and the conflict in FATA amounts to a non-international armed conflict.

‘No doubt, the fighting between the military forces and the armed groups in FATA reach the level of fighting that is considered enough to constitute an armed conflict’⁴³³

The legal experts, interviewed by the researcher, agree to consider the conflict in FATA as an armed conflict, despite the existence of legal implications in considering the conflict as armed conflict and favour the limited applicability of IHL to the areas of the conflict. They favour the case to case approach, in the context of de facto applicability of IHL, in considering the extended applicability of IHL in Pakistan.

‘Yes, there are legal implications in considering the conflict in FATA as an armed conflict, but it is an armed conflict that falls within the geographic applicability of IHL and there is no need to extend the applicability of IHL to the whole of the country’⁴³⁴

In the context of de jure applicability of IHL over the whole territory of the parties to a conflict and case by case approach under de facto applicability of IHL, the legal experts, interviewed by the researcher,, responding to the question of the applicability of IHL on

⁴³² Interview with Mrs S.S, Advocate High Court (Lahore, Pakistan 19 July 2013)

⁴³³ Interview with Mr K.L, Advocate High Court (Lahore, Pakistan 23 July 2013)

⁴³⁴ Interview with Mrs N.J, Advocate High Court (Islamabad, Pakistan 10 July 2013)

the conflict in Pakistan, consider limited geographic applicability of IHL on the conflict zone in Pakistan as relevant paradigm. They believe that the applicability of IHL should be narrowed down to the operations against the non-state actors in the tribal belt of the country. They do not favour the extended applicability of IHL over the whole territory of Pakistan.

‘No, there is no need to consider the whole country under conflict. The conflict is going on in FATA and neighbouring areas only. The fighting with those groups that amount to an armed conflict is limited to those areas only.’⁴³⁵

The legal experts, interviewed by the researcher, favour the applicability of IHL to the conflict-affected areas and the relevant acts to the conflict, as the conflict in Pakistan is easily identifiable that fulfils the criteria of a non-international armed conflict.

However, it is not easy to assess the territory specific application in the context of the spread acts, of the non-state armed groups, to the extended territory.

The legal experts, interviewed by the researcher, in Pakistan are of the view that occasional attacks by non-state actors in urban centres do not expand the zone of the conflict under IHL. They require to meet the criteria of the armed conflict; mainly the intensity of fighting and a systematic and regular pattern; to qualify for armed conflict. The security forces in Pakistan have been very systematic in conducting the operations in FATA by using clearly identifiable force in those areas, as compared to the rest of the country.

‘The attacks in the other parts of the country do not amount to an armed conflict. Although they have connections with the armed groups fighting against military forces of Pakistan in FATA, they do not expand the armed conflict zone.’⁴³⁶

⁴³⁵ Interview with Mrs M.B, Judge Lahore High Court (Lahore, Pakistan 19 July 2013)

⁴³⁶ Interview with Mrs S.S, Advocate High Court (Lahore, Pakistan 19 July 2013)

‘The attacks in the other areas of Pakistan are not intense and systematic enough to be considered as armed conflict. The security forces of Pakistan are also involved in fighting with these groups in the conflict zone only’⁴³⁷

The legal experts, interviewed by the researcher, seem hesitant in favouring the extension of the conflict paradigm to the other areas of the country, as it involves the violation of human rights as well as results in severe political backlash. They argue that domestic criminal law of the land is always applicable that is supplemented by international human rights law.

So, extended conflict paradigm must be adopted only in the situation the existence of the armed conflict to the rest of the territory. In the situation of Pakistan, there is no existence of the armed conflict in the rest of the country, except the conflict-affected area of Pakistan. Therefore, the legal experts, interviewed by the researcher, strongly reject the applicability of IHL to the whole territory of Pakistan. They favour the applicability of the conflict paradigm in the context of operations in FATA and surrounding areas only.

4.4 National Response to the Problems of IDPs

Internally displaced persons do not cross the international borders and remain within the borders of their country. Due to this fact, their protection and assistance is the responsibility of their respective state. They are the individuals or groups of people that are obliged to leave their homes for avoiding the effects of armed conflicts, generalised violence, human rights violence, natural disasters, and manmade disasters.

⁴³⁷ Interview with Mr K.L, Advocate High Court (Lahore, Pakistan 23 July 2013)

There is normally no fault on the side of IDPs in the formation of situations that compel them to leave their homes, so it is the responsibility of their state to protect them.⁴³⁸

Their situation demands adequate steps from their state to provide them with all sorts of protection, assistance, and resettlement according to the rules of International Humanitarian Law and Human Rights without discrimination.⁴³⁹

The national authorities of Pakistan have responded to the problem of internally displaced persons in collaboration with the provincial authorities, host communities, family networks, civil society, and the military. The National Disaster Management Authority (NDMA), at the national level, has the responsibility to focus on displacement caused by disasters, while the Ministry of States and Frontier Regions (SAFRON) coordinates the response to displacement triggered by violence. The FATA Disaster Management Authority (FDMA) and provincial disaster management authorities (PDMAs) in Khyber Pakhtunkhwa, Punjab, Sindh, and Baluchistan coordinate the response at the provincial level.

The government of Pakistan claims that the national government has made substantial efforts in addressing the issue of IDPs from the start of their displacement till seeking durable solutions to the problems of IDPs. According to government officials, the government has enabled hundreds of thousands of people, both living in camps and outside camps, to receive assistance after getting registered. The IDPs have been helped in receiving shelter, cash grants, food, water, sanitation, and healthcare services.⁴⁴⁰

⁴³⁸ Walter Kalin, 'The Guiding Principles on Internal Displacement as International Minimum Standard and Protection Tool' (2005) 24 (3) Refugee Survey Quarterly 27

⁴³⁹ UN Guiding Principles on Internal Displacement 1998, Principle. 3(1) and 4

⁴⁴⁰ Internal Displacement Monitoring Centre, 'Massive new displacement and falling returns require rights-based response' (IDMC June 2013) <http://www.internal-displacement.org/south-and-south-east-asia/pakistan/2013/massive-new-displacement-and-falling-returns-require-rights-based-response> accessed 12 June 2015

In 2009, the government of Pakistan gave policy framework for the return of displaced persons, holding the Khyber Pakhtunkhwa and FATA authorities responsible for ensuring the safe, well-informed, and voluntary return of the displaced persons.³¹ The internally displaced persons in Pakistan were provided accommodation in the camps set for displaced persons in Pakistan. The lack of a proper mechanism for registration and record management made it difficult to assess the gravity of the problem.⁴⁴¹ The cooperation between UNHCR and disaster management authorities of Pakistan helped the internally displaced persons in the process of their registration.

According to the claims of the national government authorities, The Federal Disaster Management Authority (FDMA) has successfully managed the return of IDPs to FATA, coordinated by a task force, with the help of UNHCR. According to the claims of national authorities, the sustainable return and rehabilitation strategy for 2015 and 2016, with technical support from UNDP and financial support from the World Bank, has proved very effective in assisting the return of IDPs in FATA.⁴⁴²

The national response to the problems of IDPs has been severely criticised by legal experts, interviewed by the researcher, in Pakistan. They consider the government as responsible for not facilitating IDPs and leaving them to suffer throughout their displacement. They reject the excuses, provided by the government, of the lack of sources and magnitude of the problem.

It is the primary duty of the concerned authorities to establish conditions and provide adequate means for return, resettlement, and reintegration of the internally displaced

⁴⁴¹ Rafia Zakariya, 'Spare the children' (The Dawn June 2015) <<http://www.dawn.com/news/1188611>> accessed 11 July 2016

⁴⁴² OCHA, 'Pakistan: Humanitarian Snapshot - FATA Return Overview' (OCHA April 2015) <<https://reliefweb.int/report/pakistan/pakistan-humanitarian-snapshot-fata-return-overview-15-apr-2015>> accessed 12 July 2016

persons, as most of them are nationals of the State in which they find themselves. The legal experts, interviewed by the researcher, however, do not seem happy with the role of the government in providing adequate means for return, resettlement, and reintegration of IDPs and treating them equally as nationals of the state.

‘The conditions for return, resettlement, and reintegration have not been properly established by the government authorities to facilitate IDPs and they have been suffering throughout their displacement,⁴⁴³ ‘IDPs must not have been given the same treatment as is provided to the other citizens of state, they have been treated as beggars and often left without protection before the end of their displacement’⁴⁴⁴

The authorities have the responsibility to protect the internally displaced persons from any discrimination and facilitate them to participate in the planning and management of their return or resettlement and reintegration. IDPs are entitled to the full protection of the national law and the rights it grants nationals, without any adverse distinction resulting from the fact of their displacement. The legal experts, interviewed by the researcher, believe that government has not involved IDPs in planning and management process of their return and reintegration, and even the government has lacked the planning and management.

‘Don’t tell me, they are treated as strangers and not owned by the government. They have been considered as a burden on the government and their return and resettlement has not even been planned by the authorities properly, how they would have participated in the planning?’⁴⁴⁵

The competent authorities have the responsibility to assist the international humanitarian organizations and other actors, helping the internally displaced persons in their return, resettlement, and reintegration. The legal experts, interviewed by the

⁴⁴³ Interview with Mr M.H, Advocate Supreme Court of Pakistan (Lahore, Pakistan 08 June 2013)

⁴⁴⁴ Interview with Mr S.K, Advocate Supreme Court of Pakistan (Multan, Pakistan 05 June 2013)

⁴⁴⁵ Interview with Mr S.K, Advocate Supreme Court of Pakistan (Multan, Pakistan 05 June 2013)

researcher, give credit to international organizations and NGOs for making notable efforts for helping IDPs in the process of their return and resettlement.

‘The international organizations and NGOs have done a great job in helping the government in their return and resettlement, especially the UNHCR has made remarkable efforts in this regard,⁴⁴⁶ ‘if you ask from people, they do acknowledge the role of international organizations and NGOs’⁴⁴⁷

The circumstances that compel IDPs to leave their home and their condition are considered as vulnerable. The concerned state has the responsibility to provide them protection and assistance on an urgent basis by making temporary arrangements and later looks for the durable solution of their problems. The legal experts, interviewed by the researcher, believe that temporary efforts to accommodate IDPs have been made on an emergency basis, but durable solutions have not been effective due to various reasons.

‘The response in saving IDPs lives and providing them shelters was totally based on emergency, as in the case of every emergency in Pakistan it was highly concentrated but displacement was not properly foreseen and proper efforts were not made to stop displacement,⁴⁴⁸ ‘the durable solutions were not planned and worked properly that left millions of IDPs in the camps, host communities and other places, waiting for their better times’⁴⁴⁹

The development of a national policy on internal displacement is necessary for a national government that helps the government in framing a plan of action to address internal displacement. The national legal framework for internal displacement is not an absolute policy to tackle internal displacement. It is necessary to develop a proper policy and plan of action coupled with a national legal framework for protecting the rights and specific needs of IDPs. The national legal framework is necessary to be accompanied by national policies, strategies, or plans of action that support timely

⁴⁴⁶ Interview with Mrs S.S, Advocate High Court (Lahore, Pakistan 19 July2013)

⁴⁴⁷ Interview with Mr K.A, Judge Lahore High Court (Lahore, Pakistan 20 July2013)

⁴⁴⁸ Interview with Mr K.A, Judge Lahore High Court (Lahore, Pakistan 20 July2013)

⁴⁴⁹ Interview with Mr M.H, Advocate Supreme Court of Pakistan (Lahore, Pakistan 08 June 2013)

responses to internal displacement crises through measures requiring neither legal amendment nor the passage of new legislation.⁴⁵⁰

The national government authorities are responsible for ensuring a comprehensive Legal Framework that enables national legislation to protect the rights and meeting the specific needs of the IDPs. It is necessary to ensure IDPs protection of their rights and meeting their specific needs. In case of internal displacement, it is always required to develop an adequate legal framework for the protection of IDPs because existing laws of national governments are not framed with the assumption of internal displacements and each displacement contains its own context and circumstances.⁴⁵¹

Almost all the displacements need specific policies and legislations to deal with the problems of displacement. The legal experts, interviewed by the researcher, consider the situation of IDPs in Pakistan as demanding for adequate steps from government and legislative authorities of Pakistan in the framing of proper policies and legislation relating protection of the rights of IDPs and enforcement of such rights.

‘The policy-making and implementation of policies have remained a big problem in dealing with the large scale of internal displacement in Pakistan. The policies have not been properly framed or implemented by the authorities and IDPs have kept suffering in the process of seeking assistance and provision of their rights, while numerous displacements have been occurring in Pakistan’⁴⁵²

The legal experts, interviewed by the researcher, argue that the rights of IDPs remain missing from the legal framework of Pakistan as well as the enforcement of the international legal framework for IDPs unless specific domestic legislation takes place

⁴⁵⁰ Elizabeth Ferris *et al*, *From Responsibility to Response: Assessing National Approaches to Internal Displacement* (The Brookings Institution – London School of Economics Project on Internal Displacement 2014)

⁴⁵¹ Elizabeth Ferris *et al*, *From Responsibility to Response: Assessing National Approaches to Internal Displacement* (The Brookings Institution – London School of Economics Project on Internal Displacement 2011)

⁴⁵² Interview with Mrs N.J, Advocate High Court (Islamabad, Pakistan 10 July 2013)

in recognising the rights of IDPs. They criticise the piecemeal and reactive policies of the government.

‘The piecemeal and reactive policies have never served the purpose of protecting IDPs. A proper legislation, the adequate enactment in addressing internal displacement or proper framework for the protection of IDPs have remained missing in the process of policy making for IDPs in Pakistan’.⁴⁵³

The Guiding Principles are acknowledged as a useful framework for dealing with the needs and protection of the displaced and states are expected to follow them by adopting the rules in their domestic legal structures. Although, these principles are not binding on states under international law, yet they agree on these principles as very effective and can play a valuable practical role in the protection of the internally displaced persons.⁴⁵⁴

The legal experts, interviewed by the researcher, criticise the adequate efforts for the domestication of UN Guiding Principles of Internal Displacement into the legal structure of Pakistan.

‘The efforts of adopting the UN Guiding Principles on Internal Displacement into domestic legislation have not remained fruitful, which are very important to identify the rights and guarantees relevant to the protection of the internally displaced persons throughout their course of displacement.’⁴⁵⁵

‘The lack of proper legislation and adopting the Guiding Principles in the domestic legal structure of Pakistan have kept IDPs exposed against arbitrary displacement, proper protection, and assistance during displacement, seeking rights and guarantees for safe return, and securing resettlement and reintegration.’⁴⁵⁶

Pakistan has shown its commitments in the obligation of international human rights instruments including International Covenant on Civil and Political Rights, The Convention on the Rights of the Child, Convention on the Elimination of All Forms of

⁴⁵³ Interview with Mr K.A, Judge Lahore High Court (Lahore, Pakistan 20 July 2013)

⁴⁵⁴ Walter Kalin, ‘The Guiding Principles on Internal Displacement as International Minimum Standard and Protection Tool’ (2005) 24 (3) Refugee Survey Quarterly 27

⁴⁵⁵ Interview with Mr S.K, Advocate Supreme Court of Pakistan (Multan, Pakistan 05 June 2013)

⁴⁵⁶ Interview with Mr M.H, Advocate Supreme Court of Pakistan (Lahore, Pakistan 08 June 2013)

Discrimination against Women, and Convention against Torture that provide key planks for the protection of the rights IDPs.⁴⁵⁷ Despite, Pakistan's commitment, and willingness to oblige the rules of International Human Rights and International Humanitarian Law, the process of the adoption of these rules into the domestic legal structure of Pakistan has remained on the lower side.

‘The lack of proper policies and implementation have remained a problem in the translation of international human rights treaties, and international obligations under the national legislation of Pakistan. Internally displaced persons keep suffering due to this lack of adoption and face difficulties in invoking their right to protection under international legal framework available for IDPs. Their options remain limited and they rely on the national legislation relating IDPs, which is again not properly framed or implemented.’⁴⁵⁸

According to the government, it has been providing support and assistance to internally displaced persons throughout, with the help of international community.⁴⁵⁹ The National Disaster Management Authority (NDMA) has been working in FATA in coordination with the law enforcing agencies of Pakistan for registration of internally displaced persons, issuing their national identity cards, provision of food and non-food items, health services, cash support scheme and provision of accommodation to vulnerable internally displaced persons.⁴⁶⁰

‘The efforts of the NDMA have remained limited and there have been seen major flaws in the registration process due to the lack of a comprehensive policy by the national government. NDMA lacks the capacity of dealing with all sorts of displacement and at times remains inactive in providing support to IDPs, in the absence of funding from international donors’⁴⁶¹

⁴⁵⁷ Najam U Din, *Internal Displacement in Pakistan: Contemporary Challenges* (Qasim Press Lahore 2010) 33

⁴⁵⁸ Interview with Mr S.K, Advocate Supreme Court of Pakistan (Multan, Pakistan 05 June 2013)

⁴⁵⁹ Najam U Din, *Internal Displacement in Pakistan: Contemporary Challenges* (Qasim Press Lahore 2010) 33

⁴⁶⁰ UNHCR, ‘IDP Returns Fact Sheet Updated: As of 12 November 2014,’ (UNHCR November 2014) <https://www.humanitarianresponse.info/en/operations/pakistan/document/unhcr-idp-returns-fact-sheet-updated-12-november-2014> accessed 12 June 2015

⁴⁶¹ Interview with Mrs N.J, Advocate High Court (Islamabad, Pakistan 10 July 2013)

The assessment of the situation of the problem of displacement is necessary to address the problem effectively. The data collection on the number, location, condition, needs, and vulnerabilities of IDPs is very important for developing programs to plan for assistance and protection of assist IDPs. It is essential to gain possibly accurate data to facilitate durable solutions and to assess the extent of displacement. The national authorities must start collecting data systematically, from the moment of displacement and keep updating the data until the durable solution of the problem has been achieved. The accuracy of data enhances the mechanism of the delivery of humanitarian goods, humanitarian services, and protection framework and helps to enhance prospects for durable solutions.⁴⁶²

Internally displaced persons have been registered from those areas that were declared by the government as affected by the armed conflict, after producing their valid national identity cards from the areas under conflict.⁴⁶³ The government of Pakistan claims for helping the return of the displaced person to the areas declared safe, with the cooperation of international organizations. The displaced persons are hesitant to go back to the areas that have not been declared safe.⁴⁶⁴ The government approved the first phase of the Early Recovery Assistance Framework for FATA in 2013. The framework

⁴⁶² Elizabeth Ferris *et al*, *From Responsibility to Response: Assessing National Approaches to Internal Displacement* (The Brookings Institution – London School of Economics Project on Internal Displacement 2011) 43

⁴⁶³ Internal Displacement and Monitoring centre, ‘Pakistan: Internal displacement in brief’ (IDMC December 2013) <http://www.internal-displacement.org/south-and-south-east-asia/pakistan/summary/> accessed 12 July 2016

⁴⁶⁴ Internal Displacement Monitoring Centre, ‘Pakistan IDP Figure Analysis’ (July 2015) <http://www.internal-displacement.org/south-and-south-east-asia/pakistan/figures-analysis> accessed 12 July 2016

aimed to respond to the needs of the returnees by restoring communities' capacity to recover, but the end of 2013 reported no progress regarding implementation.⁴⁶⁵

IDPs had been reluctant to return because of the bad experiences of the previously returned people who had complained about the lack of basic facilities drinking water, shelter, electricity, education, and health.⁴⁶⁶

'I returned to my house last year but could not survive with my family due to not feeding them and earning for them. I had no money to reconstruct my damaged houses. My wife was sick and the hospital was not there. My source of earning was my land and there was no water for irrigation'.⁴⁶⁷

It is the responsibility of the national government authorities to provide all the necessary documentation to its nationals. The vulnerable people, including internally displaced persons, need more attention of the national authorities as their access to relief stuff depends on their registered status. The concerned authorities must issue all the necessary documentation of the IDPs, for allowing them to exercise their legal rights.⁴⁶⁸

There have been a lot of complains of discrepancies in the process of registration and issuance of identity documents to IDPs. The irregularities and mismanagement have caused problems for vulnerable IDPs in getting registered and issuance of identity documents.

'I have been waiting for 2 years to get my identity card because I have lost all my documents due to the evacuation of my house in an emergency. The authorities have been asking me for proof of my identity unnecessarily, while others have got their identity cards without proof of their identity'.⁴⁶⁹

⁴⁶⁵ Internal Displacement and Monitoring centre, 'Pakistan: Internal displacement in brief' (IDMC December 2013) <http://www.internal-displacement.org/south-and-south-east-asia/pakistan/summary/> accessed 12 July 2016

⁴⁶⁶ Zulfiqar Ali, 'IDPs unwilling to return will be deregistered' (The DAWN, January 2017) <https://www.dawn.com/news/1306699> accessed 12 February 2016

⁴⁶⁷ Interview with Mr M, Residing in IDP camp Peshawar (Peshawar, Pakistan, 25 April 2013)

⁴⁶⁸ UN Guiding Principles on Internal Displacement 1998, Principle 20

⁴⁶⁹ Interview with Mrs. I, Residing in IDP camp Peshawar (Peshawar, Pakistan, 20 April 2013)

The national authorities are responsible raise awareness among people about displacement and keep people updated about their planning and steps taken for the protection of the rights of displaced persons. The national authorities must acknowledge the displacement and respond according to the needs of the displaced persons along with finding solutions to displacement.

The high-level government authorities must spread statements of concern and commitment to address the problem of displacement. The national government authorities must work in collaboration with its municipal authorities for the protection of displaced person at priority. The internally displaced persons must be ensured by the national authorities about their protection and solution of problems. The internally displaced persons must not be left with the feelings of being abandoned.⁴⁷⁰

‘The national authorities of Pakistan have not shown their interest in raising awareness about the conflict-induced displacement. Although, the acknowledgements have been made in public speeches and paper statements Pakistan practically, displacement has not been addressed adequately’.⁴⁷¹

‘The IDP population has not been made aware of their rights and provision of rights has been retained on the lower side. They have not been made aware of their rights to be involved in policy-making and planning of their return’.⁴⁷²

‘There have been made a lot of statements and public speeches for raising awareness of displacement, but no proper policy has been adopted as to address the legal issues of IDPs. The efforts of the government have not been effective in perusing a rights-based approach towards IDPs’.⁴⁷³

It is necessary to review and analyse existing national laws to identify and change provisions that are incompatible with international human rights law and the Guiding Principles on Internal Displacement. It is also necessary to ensure that national laws

⁴⁷⁰ Elizabeth Ferris *et al*, *From Responsibility to Response: Assessing National Approaches to Internal Displacement* (The Brookings Institution – London School of Economics Project on Internal Displacement 2011) 31

⁴⁷¹ Interview with Mrs M.B, Judge Lahore High Court (Lahore, Pakistan 19 July 2013)

⁴⁷² Interview with Mrs S.S, Advocate High Court (Lahore, Pakistan 19 July 2013)

⁴⁷³ Interview with Mrs M.B, Judge Lahore High Court (Lahore, Pakistan 19 July 2013)

provide an inadequate response to internal displacement and ensure the prevention of arbitrary displacement.⁴⁷⁴

‘The lack of proper legislation and not adopting the Guiding Principles on Internal Displacement into domestic legislation leaves the protection and assistance of IDPs in Pakistan uncertain. Mere registration and provision of necessities, on the part of the national government, does not amount to protection and assistance of IDPs. A comprehensive policy framework is necessary for providing proper protection and assistance to IDPs.’

The displacement in Pakistan, from different regions including the Federally Administered Tribal Areas and Khyber Pakhtunkhwa and other tribal agencies, including Bajaur, Mohmand, and Khyber, has occurred mainly due to the military operation against armed groups in these areas. The authorities have not responded to the situation properly, regarding the responsibilities of different authorities towards these displaced people. A proper legislation has not been made or amended, to address the issues of IDPs properly.

‘The National Disaster Management Act deals with, both natural and man-made disasters, including the matters of internal displacement. Unfortunately, this law does not provide a comprehensive domestic legal framework in dealing the matters of internally displaced persons.’⁴⁷⁵

‘NDMA did not even defined internally displaced persons and contained nothing worth mentioning for the protection of internally displaced persons. The process of modification had not been adopted, as to make this law compatible with the requirements of the internally displaced persons in Pakistan.’⁴⁷⁶

The level of commitment and attention in the legislative and policy making process of the government of Pakistan in providing protection to IDPs was pointed out by the legal experts, interviewed by the researcher, by mentioning the

⁴⁷⁴ Roberta Cohen *et al*, *The Guiding Principles on Internal Displacement, and the Law of the South Caucasus: Georgia, Armenia, and Azerbaijan* (Brookings Institution and the American Society of International Law 2003)

⁴⁷⁵ Interview with Mrs S.S, Advocate High Court (Lahore, Pakistan 19 July2013)

⁴⁷⁶ Interview with Mrs M.B, Judge Lahore High Court (Lahore, Pakistan 19 July2013)

lack of coordination between the federal government and the provincial government was pointed out by the Legal experts, interviewed by the researcher.

‘Later, in 2010, after the Eighteenth Amendment to the constitution of Pakistan, disaster management has become a provincial subject and the provincial assemblies have been empowered to make amendments to the National Disaster Management Act 2010.’⁴⁷⁷

The provincial government of Khyber Pakhtunkhwa, mainly dealing with internally displaced persons, has enacted the National Disaster Management (Khyber Pakhtunkhwa) (Amendment) Act 2012, through which amendments have been made to the National Disaster Management Act. These amendments have enabled the provincial government to set up district disaster management units.’⁴⁷⁸

The national disaster management Act addresses both human-made and natural disasters, without defining or identifying Internally Displaced Persons.⁴⁷⁹ The legislation and policy framework, made for IDPs, has not only insufficient but has lacked the implementation as well. The national authorities, both the federal and provincial authorities, have been throwing their responsibilities to each other. The inefficiency and lack willingness in the development of proper policies and framework for the protection of IDPs have been witnessed through all the phases of internal displacement in Pakistan.

‘The significant challenges have not been met in terms of framing adequate national policy framework for the protection and assistance of IDPs. The provincial level policy frameworks in Khyber Pakhtunkhwa and FATA have been put in place to respond displacement caused by both violence and disasters, including the FATA early recovery assistance framework (ERF), but no proper national policy or legislation has been worked for the protection of IDPs.’⁴⁸⁰

The national government must designate a national institutional focal point for addressing internal displacement. The government machinery dealing with internal

⁴⁷⁷ Interview with Mrs S.S, Advocate High Court (Lahore, Pakistan 19 July 2013)

⁴⁷⁸ Interview with Mrs M.B, Judge Lahore High Court (Lahore, Pakistan 19 July 2013)

⁴⁷⁹ National Disaster Management Act of Pakistan, 2010

⁴⁸⁰ Interview with Mrs N.J, Advocate High Court (Islamabad, Pakistan 10 July 2013)

displacement must be aware of their responsibilities and have clear instructions through the designated national institutional focal point. It does not only help in clarifying institutional responsibilities but also helps for increasing government accountability.⁴⁸¹ It ensures sustained national attention to the issue and shows commitment level of the government in dealing with the problem of internal displacement. Furthermore, designating institutional focal points at subnational levels helps the national designated institutional focal point as well as IDPs in liaising the concerns at proper forums.⁴⁸²

‘The designation of the institutional focal point on IDPs has lacked in the process of dealing with the internal displacement in Pakistan. The National Disaster Management Authority has been made responsible for dealing with IDPs, displaced armed conflict, along with those displaced by natural disasters.’⁴⁸³

‘There has not been appointed an institutional focal point for IDPs, which has caused the lack of coordination and cooperation among the authorities. There have been seen a lot of wanderings, uncertainty, and lack of awareness on the issues of IDPs in Pakistan.’⁴⁸⁴

4.5 Role of International Organizations

The UN country team had started working with the help of national authorities and international NGOs through a cluster approach. Later, UNHCR was formally requested by the government of Pakistan to extend its operation by helping the government in the protection and assistance of IDPs in Pakistan affected by the armed conflict. The government of Pakistan had given the humanitarian agencies restricted access to FATA to operate in Mohmand, Bajaur and Kurram agencies only. In 2011, this access was

⁴⁸¹ Elizabeth Ferris *et al*, *From Responsibility to Response: Assessing National Approaches to Internal Displacement* (The Brookings Institution – London School of Economics Project on Internal Displacement 2011) 87

⁴⁸² Elizabeth Ferris *et al*, *From Responsibility to Response: Assessing National Approaches to Internal Displacement* (The Brookings Institution – London School of Economics Project on Internal Displacement 2008) 263

⁴⁸³ Interview with Mr K.L, Advocate High Court (Lahore, Pakistan 23 July 2013)

⁴⁸⁴ Interview with Mr K.L, Advocate High Court (Lahore, Pakistan 23 July 2013)

further extended to humanitarian agencies for helping vulnerable IDPs and IDPs belonging to unsafe declared areas.

Despite, facing so many problems and criticizing the role of government, the people were comparatively satisfied with the role played by NGOs and other Organisations working for the betterment of these people. They people appreciated their honesty, commitment, and support within their limited resources. They were admiring the way of working and aiding these people.

‘These NGOs are working well. They listen and respond our problems and give respect to us. They are very honest and sincere people. They do not refuse us and tell us the right things when we ask them about anything.’⁴⁸⁵
‘They do not hide things from us which they have in stock and ask us to wait for those things which they do not have. They do not make wrong promises.’⁴⁸⁶

The training on IDPs related issues and human rights enable the relief workers to handle internal displacement in more effective and efficient way. A trained staff does not only help IDPs in assisting but also helps in preventing displacement. A trained staff helps the national government authorities in preventing displacement by conducting necessary assessments and taking preventive measures. It helps governments in seeking durable solutions to the problem of displacement. International organizations have been helping the government of Pakistan to ensure adequate training of the concerned government officials dealing with internal displacement.

The Framework for National Responsibility⁴⁸⁷ advice national governments to provide training to specific groups of government officials, policymakers at the national level and government officials and policymakers at the regional and local levels. International

⁴⁸⁵ Interview with Mrs N.J, Advocate High Court (Islamabad, Pakistan 10 July 2013)

⁴⁸⁶ Interview with Mr K.L, Advocate High Court (Lahore, Pakistan 23 July 2013)

⁴⁸⁷ Brookings-Bern Project on Internal Displacement, ‘Addressing Internal Displacement: A Framework for National Responsibility’ (April 2015) <http://www.refworld.org/docid/4d357f4f2.html> accessed 02 May 2016

organizations, especially ICRC and UNHCR, have been providing training to such officials and policy makers. It is important to provide training to those officials who are in direct contact with the displaced persons and have the responsibility for implementing government policy and programs in the field. They include members of the military and the police, IDP camp administrators and officials, commissioners and staff of national human rights institutions, parliamentarians, civil society groups and most important, IDPs themselves, who are entitled to know their rights.

4.5.1 UNHCR

UNHCR has been involved in the protection and assistance of IDPs from the early 1970s; mainly including IDPs in refugee returning programs of South Sudan (1972), Guinea-Bissau, Angola and Mozambique (1974), Vietnam and Laos (1975).⁴⁸⁸ This involvement of UNHCR mainly started because of the similarity between such IDPs and refugees, the reasons and consequences of their displacement, and humanitarian needs.⁴⁸⁹ UNHCR has legal mandate to engage in the activities with IDPs, as specified in paragraph 9 of the UNHCR's Statute which states: 'The High Commissioner shall engage in such additional activities...as the General Assembly may determine within the limits of the resources placed at his disposal.'⁴⁹⁰

The following table contains the list of some formal documents that provide a legal mandate to UNHCR for providing protection to IDPs:

⁴⁸⁸ Vanessa Mattar and Paul White, 'Consistent and predictable responses to IDPs: A review of UNHCR's decision-making processes' (UNHCR Evaluation and Policy Analysis Unit, March 2005) <<http://www.unhcr.org/423551522.pdf>> accessed 11 June 2016

⁴⁸⁹ UNHCR, 'Internally Displaced Persons – The Role of the United Nations High Commissioner for Refugees' UN doc EC/50/SC/INF2, 20 June 2000

⁴⁹⁰ Statute of the Office of the United Nations High Commissioner for Refugees 1950, Art. 9

Figure 4.1: Selected formal documents relating to IDPs⁴⁹¹

The statute of the Office of the United Nations High Commissioner for Refugees: Approved by the UN General Assembly resolution 428 (V) of 14 December 1950	To engaging in additional activities including repatriation and resettlement.
UN General Assembly A/RES/2956 of 12 December 1972:	To continue to participate in humanitarian endeavours of the United Nations
UN General Assembly resolution 47/105 of 16 December 1992	To undertake activities in favour of internally displaced persons in the light of the complementarities of the mandates and expertise of other relevant organizations
UN General Assembly resolution 48/116 of 20 December 1993:	Reaffirming the support of the General Assembly to provide humanitarian assistance and protection to IDPs
UN General Assembly resolution 48/116 of 20 December 1993	To engage actively in consultations with the Department of Humanitarian Affairs of the Secretariat and the Special Representative of the Secretary General on IDPs to explore methods and means better to address the protection and assistance needs of IDPs
UN General Assembly Resolution A/RES/49/169 of 23 December 1994	To acknowledge the exercise of the mandate of the UNHCR, with respect to prevention, protection, humanitarian assistance, and solutions
UN General Assembly resolution 15/75 of 12 December 1996	To contribute to the prevention or mitigation of refugee and IDP situations
UN General Assembly resolution 53/125 of 9 December 1998	Reaffirms the support for the role of the Office of the UNHCR in providing humanitarian assistance and protection to IDPs, on the basis of specific requests from the Secretary General or the competent organs of the United Nations and with the consent of the State concerned.
UNHCR's Executive Committee Conclusion No. 87 of 1999	Reaffirms the support for the role of the UNHCR with IDPs, based on criteria specified in the General Assembly
UN General Assembly resolution 54/146 of 17 December 1999	Reiterates the support for the role of the UNHCR in providing humanitarian assistance and protection to IDPs
UN General Assembly resolution 55/76 of 4 December 2000	Reaffirms the support for the activities of the UNHCR, in accordance with the relevant General Assembly resolutions, on behalf of returnees, stateless persons, and IDPs
UN General Assembly resolution 55/74 of 4 December 2000	Reiterates the support for the role of the UNHCR in providing humanitarian assistance and protection to IDPs

⁴⁹¹ Source used, Vanessa Mattar and Paul White, 'Consistent and predictable responses to IDPs: A review of UNHCR's decision-making processes' (UNHCR Evaluation and Policy Analysis Unit, March 2005) <<http://www.unhcr.org/423551522.pdf>> accessed 11 June 2016

UNHCR and its implementing partners developed strategies to support local authorities in the process of the registering, documentation, and assistance of IDPs in the north-western areas of Pakistan. The support was provided to the national authorities in monitoring IDPs' intentions in terms of return and conditions in home areas.

International aid helped the national authorities in facilitating IDPs and seeking durable solutions of their problems.⁴⁹²

Despite facing difficulties in accessing IDPs, International humanitarian organisations made remarkable efforts in protecting and assisting IDPs. The response of the national authorities had not been welcoming in facilitating these organizations. These organizations need special permissions, documentation, and certificates to operate legally in Pakistan for travel and projects of helping IDPs.

The international community has been involved in the issue of IDPs of Pakistan. The UN Security Council, UNHCR, and ICRC are playing an important to support and assist the displaced persons in Pakistan, especially the vulnerable people. The government of Pakistan has been welcoming IDPs without any hesitation. The women, children, disabled and elderly people are given special care and assistance, both by the government of Pakistan and the International Community. There are special care units for the pregnant women, and the children are being admitted into schools. The disabled and elderly people are respected and given special treatment while the distribution of funds, food items, and accommodation.

UNHCR, with the mandate of protection and assistance of refugees, has been working in Pakistan for protection and assistance of millions of Afghan refugees, before the

⁴⁹² UNHCR, 'Protection cluster detailed assessment - areas of return and areas of displacement, KP FATA, Pakistan' (UNHCR May 2014) <<https://reliefweb.int/report/pakistan/protection-cluster-detailed-assessment-areas-return-and-areas-displacement-kp-fata>> accessed 12 June 2016

occurrence of the internal displacement in Pakistan. UNHCR has been facilitating the safe and voluntary return of Afghan refugees, with the help and cooperation of the Government of Pakistan.⁴⁹³ However, UNHCR has extended its support and assistance to the internally displaced persons in Pakistan, on the request of the Government of Pakistan for registration, return, maintenance of basic services, the supply of relief items and assistance with shelter and transport.⁴⁹⁴

Despite, volatile operating environment for humanitarian actors and fragile security, UNHCR has been working for the betterment of displaced persons in Pakistan in collaboration with the government and other organizations. The lack of proper facilities and adverse circumstances have been neutralised by UNHCR by involving the local and international donors in their working circle. The social and economic challenges and difficult travelling situations have affected the humanitarian operation, but UNHCR has delivered above standard services throughout. The strategy of UNHCR by working in collaboration with local partners and government counterparts has proved very effective.

The policies and strategies framed by UNHCR enabled Pakistan authorities in dealing with the phenomenon of the displaced persons. It not only helped UNHCR to improve outreach to the population of concern but also helped in building local capacity to deal the situation. The coalition of UNHCR and its partners has helped the government of Pakistan to build a favourable environment for the protection and rehabilitation of Afghan refugees and Pakistani IDPs.

⁴⁹³ United Nations in Pakistan 'UNHCR Areas of Support' (UNHCR July 2013)
<https://www.un.org.pk/unhcr/https://www.un.org.pk/unhcr/> accessed 09 February 2015

⁴⁹⁴ Nasreen Ghufuran, 'The Role of UNHCR and Afghan Refugees in Pakistan' (2011) 35 (6) Strategic Analysis 945

UNHCR is working in Pakistan in collaboration with the Government of Pakistan to support the Refugees and Internally Displaced Persons. Despite, security threats, access problems social and economic challenges and volatile operating environment for humanitarian actors; UNHCR has been delivering excellent services in assisting and supporting the displaced persons in Pakistan. Pakistan has been hosting 1.5 million refugees for more than last three decades. UNHCR mainly facilitates the return of Afghan refugees and support them in their proper reintegration. The other priority of UNHCR is to ensure the provision of basic protection and basic services needs to those who cannot return immediately. The Government of Pakistan helps the UNHCR in this regard by providing necessary support and framing proper rules and regulations for the refugees in consultation with UNHCR.

UNHCR helps and supports the local communities of Pakistan where displaced persons reside. It helps the local community to minimise the effects of overpopulation, and the local community feels comfortable in accepting the refugees as part of their community. This develops a healthy atmosphere of peace and prosperity. The local community and displaced persons live together with the notions of equality and brotherhood due to the effective intervention of the UNHCR.

UNHCR is not only supporting and assisting the refugees, but the Government of Pakistan has also been thoroughly assisted by the UNHCR in dealing with displacement of the internally displaced persons. The registration, setting up camps, maintenance of basic services, cooperating with other humanitarian actors, supplying core relief, and assisting with the return, shelter, and transport for the internally displaced persons have been the areas of concern to the UNHCR. UNHCR has played a vital role in assisting and supporting the Government of Pakistan in camp management cluster, emergency

shelter cluster and protection cluster to deal with the humanitarian situation in Khyber Pakhtunkhwa and the Federally Administered Tribal Areas.

4.5.2 ICRC

International Committee of Red Cross has been working in Pakistan, with the mandate of working for the alleviation of human suffering by protecting their life and health and upholding human dignity, especially in the times of armed conflicts and other emergencies. It works closely with the object and purpose of International Humanitarian Law, which aims to save the people, especially civilians, from the effects of armed conflicts. It is the only institution that works as controlling authority in the implementation of International Humanitarian Law.⁴⁹⁵

The recognition of ICRC and its legal mandate given by Geneva Conventions of 1949 and its own statutes gives responsibility to ICRC in the times of armed conflicts. ICRC is considered as the guardian of International Humanitarian in the performance of its duties. ICRC is operating in most of the countries in the world that are affected by armed conflicts.⁴⁹⁶ It works as quick and efficient response organisation to help and assist people in the times of armed conflicts through its millions of volunteers. ICRC also responds to the situations of disasters in conflicts zones if a country is already undergoing an armed conflict.

ICRC generally operates based on International Humanitarian Law and follows the rules provided by four Geneva Conventions of 1949, their two Additional Protocols of 1977 and Additional Protocol III of 2005, the Statutes of the Internationale Cross and Red Crescent Movement, and the resolutions of the International Conferences of the Red

⁴⁹⁵ Statutes of the International Red Cross and Red Crescent Movement 1986, Art. 5 (2) (c)

⁴⁹⁶ Geneva Convention III, Art. 126; Geneva Convention IV, Art.143

Cross and Red Crescent. It is the legal responsibility of ICRC to spread awareness and knowledge of International Humanitarian Law applicable in armed conflict and work for the development of International Humanitarian Law.⁴⁹⁷

ICRC conducts different seminars, conferences, law moot competitions and other educational activities to develop the understanding of International Humanitarian Law worldwide. At present, ICRC is working in more than 80 countries, including Pakistan and Afghanistan, with its 11,000 employees worldwide.⁴⁹⁸ ICRC has been given the additional responsibility of providing protection and assistance to victims of armed conflicts and internal strife and their direct results, through the mutual consent of the states.⁴⁹⁹ ICRC has responded effectively to this additional responsibility by carrying out numerous operational activities in the situations of internal violence in different parts of the world.⁵⁰⁰

ICRC has already been working, in India under British Control, at the time of the birth of Pakistan in 1947 and after the partition, upon the request of Pakistan to help in dealing with the humanitarian consequences of the partition. From the birth of Pakistan till date, ICRC has been working in Pakistan to deal the matters under its mandate, arising in different areas of Pakistan. It has provided support to the people, Pakistan authorities and Red Crescent Society in the events of armed violence and natural disasters.⁵⁰¹

⁴⁹⁷ Statutes of the International Red Cross and Red Crescent Movement 1986, Art. 5(g)

⁴⁹⁸ ICRC, 'The ICRC Worldwide' <<http://www.icrc.org/eng/where-we-work/index.jsp>> accessed 12 July 2016

⁴⁹⁹ Geneva Convention I, Art. 50; Geneva Convention II, Art. 51; Geneva Convention III, Art. 130; Geneva Convention IV, Art. 147; Additional Protocol I, Art. 85 and 11

⁵⁰⁰ ICRC, 'The International Committee of the Red Cross's (ICRC's) role in situations of violence below the threshold of armed conflict: Policy document' (2014) 96 (893) IRRC 275

⁵⁰¹ International Committee of the Red Cross, 'The ICRC in Pakistan' (ICRC September 2013) <https://www.icrc.org/eng/where-we-work/asia-pacific/pakistan/overview-pakistan.htm> 16 February 2016

ICRC had been working for the betterment of the displaced persons in Pakistan. The physical rehabilitation centres established by ICRC provided support to the displaced persons. The maintenance and restoration of people separated by violence, migration, and natural disasters, were supported by ICRC. After the displacement in Pakistan, the separated family members, in large number, were reunited due to the efforts of ICRC, in collaboration with Pakistan Red Crescent Society emergency and disaster management services. The promotion of International Humanitarian Law and humanitarian principles by ICRC created a positive impact on the civil society of Pakistan. Pakistan and the International Organizations although played a major role in the assistance, settlement, and rehabilitation of the displaced persons, yet the magnitude of the problems, the large number of the displaced person and the further displacements made the situation more critical.

4.6 Treatment of IDPs in Pakistan

This section draws upon the interviews with IDPs and some of the refugees, the vulnerabilities, and circumstances of whom put them in similar situations with IDPs, in Pakistani camps. These interviews are interpreted against the legal protection available to IDPs under international and domestic laws, to assess the implementation of laws and policies relating IDPs, and the treatment provided to them by the national authorities with the cooperation of international humanitarian organizations.

The Guiding Principles of Internal Displacement suggest the national authorities to make IDPs enjoy the same rights and freedom under domestic laws, as enjoyed by the other citizens of the state. The discrimination of any kind that stops IDPs from enjoying any of their rights and freedom is prohibited.⁵⁰²International Humanitarian Law

⁵⁰² UN Guiding Principles on Internal Displacement 1998, Principle 1

acknowledges the situation of IDPs and considers their sufferings as particularly vulnerable. The discrimination of any kind against IDPs is prohibited under various rules of IHL. It binds the concerned authorities, both national and international, to provide IDPs equal treatment as provided to the general population.

The national authorities have the responsibility to explore alternatives to avoid displacement as well as measures to minimise displacement and its adverse effects, before making the decision for displacement. Primarily, the national authorities are prohibited from making forcible displacement, secondarily it is the responsibility of the states to make proper arrangements and justifiable considerations for displacement, in case of displacement is unavoidable due to the security of civilians or imperative military necessity.⁵⁰³

National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their authority.⁵⁰⁴ IDPs are part of the civilian population and therefore are entitled to the protections afforded to all civilians.⁵⁰⁵ They must be given same treatment as is given to the general population of a state without any distinction⁵⁰⁶. The internally displaced persons, being a part of the civilian population, entitled to the same protections afforded to all the civilians.⁵⁰⁷

⁵⁰³ UN Guiding Principles on Internal Displacement 1998, Principle 7

⁵⁰⁴ UN Guiding Principles on Internal Displacement 1998, Principle 13

⁵⁰⁵ Geneva Convention IV, Art. 4 and 27; Additional Protocol I, Art. 51 and 75; Additional Protocol II Art. 4 and 5; Customary International Humanitarian Law 2005, Rule 1 and 7

⁵⁰⁶ Geneva Convention IV, Art. 3 and 27; Additional Protocol I, Art. 75; Additional Protocol II, Art. 2 (1) and 4 (1); Customary International Humanitarian Law 2005, Rule 87 and 88.

⁵⁰⁷ Geneva Convention IV, Art. 4 and 27; Additional Protocol I, Art. 51 and 75; Additional Protocol II, Art. 4 and 5; Customary International Humanitarian Law 2005, Rule 1 and 7.

IDPs are required to be treated with the same consideration and without any distinction.⁵⁰⁸ The civilians are provided with the right to employment, economic activities, and social security without any discrimination under International Humanitarian Law.⁵⁰⁹ The abusive forced labour and uncompensated labour is prohibited under International Humanitarian Law. The protected persons who are made to work during armed conflict must be provided with the minimum standards of living conditions.⁵¹⁰

Interviews from IDPs and reports of the UNHCR, OCHA, and IDMC; however, show the lack of the fulfilment of the responsibilities from the relevant authorities of the government in providing facilities to benefit IDPs with the humanitarian relief activities. They show the weaker role of the government authorities in providing protection and assistance to IDPs against IDP rights under both international and domestic laws. There have been complaints from IDPs about the role of the government in terms of and adopting preventive measures, protection during displacement, and deciding for their return without engaging them in the process of decision making.

Internally displaced persons in Pakistan are entitled to the fundamental rights and protection under the constitution of Pakistan on the virtue of being citizens of Pakistan.⁵¹¹ However, they have not been treated as normal citizens of Pakistan and there have been seen restrictions on the entry of IDPs in some parts of Pakistan. Such restrictions amount to the violations of the rights of a constitutional provision

⁵⁰⁸ Geneva Convention IV, Art. 3 and 27; Additional Protocol I, Art. 75; Additional Protocol II, Art. 2(1) and 4(1); Customary International Humanitarian Law 2005, Rule 87 and 88

⁵⁰⁹ Geneva Convention IV, Art. 27; Additional Protocol I, Art. 75 (1)

⁵¹⁰ Geneva Convention IV, Art. 40

⁵¹¹ The Constitution of the Islamic Republic of Pakistan 1973, Art. 15

guaranteeing freedom of movement as well as the right of an individual to move freely throughout Pakistan and reside and settle in any part of the country.

‘We are not allowed to go and settle in the other areas of Pakistan and are compelled to go back to the areas that are selected by the authorities,⁵¹² ‘I don’t want to return to my previous home but want to get settled in some other area that is safe and has no fear of conflict or displacement but authorities do not allow me to choose my liked area of settlement.’⁵¹³

Responding to the question about arrangements before displacement, IDPs told that there were not made prior arrangements for displacement and most of them evacuated their houses in emergency situations:

‘Most of us were not sure about anything that was happening or going to happen in future. Some people were hoping that nothing would happen in the village while others were very frightened and were praying every moment for their safety but then the operation started suddenly’.⁵¹⁴

Some IDPs told that the people of the locality were informed that the military operation is going to be conducted, but there was no proper plan to evacuate the civilians. There were no announcements made for transferring civilians to safe places at the time of the start of the military operation. Most of the people vacated their houses and managed to reach some safe places through self-help and with the help of their friends and families.

‘When Pakistan started military operation in Swat, I was very confident that we will not be affected by this operation, but one day suddenly it started heavy firing and bomb blast, or God knows what else but whatever it was, it was so sudden, extreme and quick that we were clueless to understand the situation’.⁵¹⁵

‘No one knows who announced to vacate the village and run away to save our lives. I was sitting in my shop and wanted to go to my home to inquire about the safety of my wife and son but could not go to my home and ran away along with other people’.⁵¹⁶

⁵¹² Interview with Mr. G, Residing in IDP camp Peshawar (Peshawar, Pakistan, 15 May 2013)

⁵¹³ Interview with Mr. F, Residing in IDP camp Peshawar (Peshawar, Pakistan, 15 May 2013)

⁵¹⁴ Interview with Mr. H, Residing in IDP camp Peshawar (Peshawar, Pakistan, 20 April 2013)

⁵¹⁵ Interview with Mr. O, Residing in IDP camp Peshawar (Peshawar, Pakistan, 27 April 2013)

⁵¹⁶ Interview with Mr. G, Residing in IDP camp Peshawar (Peshawar, Pakistan, 15 May 2013)

Some of the people seemed to be satisfied with the role of law enforcing agencies of Pakistan but still criticizing the government for not dealing with the matter properly. They were satisfied with the efforts and supported provided to them during their displacement but not happy with efforts of the government to prevent the displacement by solving the matter amicably, instead of indulging in armed conflict.

They told that they were informed that their security was at stake, and it was necessary to evacuate their places of ordinary residence to conduct the military operation against the armed groups threatening and challenging the security of the state. They acknowledged the fact that their security was at risk, but they were not sure about the intensity of the military operation:

‘In 2009 it was announced by the law enforcing agencies of Pakistan that a military operation is going to be started against the Taliban in our area. I became very confused and frightened that this will affect our lives. I decided to move to a safe place. I packed up and started my journey along with my family towards Peshawar, knowing nothing where to go’.⁵¹⁷

Most of them preferred to stay at their places and later evacuated their places when they got aware of the intensity of the military operation:

‘It was announced by the military that an operation is going to be conducted against terrorists and the general people are advised to vacate their locality and proceed towards some safe places. I, being a teacher and guide of my people, remained with my people and tried to keep them organized. When it became very urgent to leave, I left with other people from my village’.⁵¹⁸

A little complained that they were not properly informed about the security risk and the conduct of the military operation, but later they evacuated their places:

‘We were not sure about anything that was happening or going to happen in future. Some people were hoping that nothing would happen in our village while others were very frightened, and we were praying every moment for

⁵¹⁷ Interview with Mr. H, Residing in IDP camp Peshawar (Peshawar, Pakistan, 27 May 2013)

⁵¹⁸ Interview with Mr. F, Residing in IDP camp Peshawar (Peshawar, Pakistan, 15 May 2013)

the safety of our children and ourselves. Whatever happened it was very sudden and without any proper information'.⁵¹⁹

The national authorities are responsible for providing humanitarian assistance to internally displaced persons. The national authorities must cooperate with international humanitarian organizations and other appropriate actors, offering their services to support and assist internally displaced persons. The services and support, offered by international humanitarian organizations, must not be regarded as interference in the internal matters of the state. The national authorities must welcome such offers in a friendly manner. All authorities concerned have the responsibility to shall grant and facilitate the free passage of humanitarian assistance in the best interest of internally displaced persons.⁵²⁰

The government of Pakistan, accessing the magnitude of the problem of displacement, requested the International humanitarian organisations to assist and support the protection of displaced persons in Pakistan.⁵²¹ The international organisations and authorities responded the displacement in Pakistan by providing support and assistance to displaced persons in coordination with the government of Pakistan.

All authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.⁵²² If responsible authorities are unable to meet these standards, they should not impair humanitarian assistance from other impartial

⁵¹⁹ Interview with Mrs. D, Residing in IDP camp Peshawar (Peshawar, Pakistan, 24 April 2013)

⁵²⁰ UN Guiding Principles on Internal Displacement 1998, Principle 25

⁵²¹ Anne-Kathrin Glatz, 'Pakistan: solutions to displacement elusive for both new and protracted IDPs' (IDMC August 2015 <<http://www.internal-displacement.org/south-and-south-east-asia/pakistan/2015/pakistan-solutions-to-displacement-elusive-for-both-new-and-protracted-idps>> accessed 12 June 2016

⁵²² UN Guiding Principles on Internal Displacement 1998, Principle 30

humanitarian bodies.⁵²³ The competent authorities have the responsibility to facilitate the international humanitarian organizations and other actors, assisting the internally displaced persons in their return, resettlement, and reintegration.⁵²⁴

The UN Security Council and UN General Assembly are very keen to call upon the parties to a conflict on the matter of the voluntary and safe return of internally displaced persons. The humanitarian organizations have played a significant role in helping and assisting these displaced persons in Pakistan. They worked closely with the government of Pakistan authorities and provided operational and technical support for the management, protection, and return of the displaced persons. These organizations, mainly UNHCR and ICRC, not only supported the displaced persons but also helped and assisted the government of Pakistan and government of Afghanistan in dealing with the phenomenon of refugees and IDPs. Many international and local donors joined UNHCR and ICRC as their partner organizations.⁵²⁵

The displaced persons were brought to the camps, provided with facilities, protected, and voluntarily repatriated by Pakistani authorities with the help and support these organizations. The role of International Humanitarian Law has remained very active, as a regulator during the working of the government of Pakistan and international organizations to protect, assist and plan for the return of displaced persons.

International law provides right to IDPs to humanitarian assistance during international armed conflicts from international humanitarian organizations. In situations of armed conflict, the parties have the right to conduct controls of humanitarian relief but even

⁵²³ Geneva Convention IV, Art. 23 and 59; Additional Protocol I, Art. 70 and 71, Additional Protocol II, Art. 18(2); Customary Rules of International Humanitarian Law 2005, Rule. 55; Statute of the International Criminal Court, Art. 8(2)(b)(iii) and (e)(iii).

⁵²⁴ UN Guiding Principles on Internal Displacement, Principle 28-30

⁵²⁵ See Appendix G

then, they have the responsibility to facilitate the rapid and unhindered passage of humanitarian assistance to civilians in need. They have the responsibility to allow humanitarian relief workers' freedom of movement that is necessary to exercise their functions.⁵²⁶

The vulnerable people are given special treatment under International Humanitarian Law. There are a lot of treaties available on the issue of the treatment of vulnerable people like; children, women, disabled persons, and elderly people; and it is the primary duty of the occupying power to take special care of the vulnerable people on an individual basis.⁵²⁷ The reports of the UCHA and interviews from vulnerable IDPs, especially women, show that they have suffered a lot in accessing their rights.

The IDP population in Pakistan included many Women, children, and other vulnerable people.⁵²⁸ Some of them included heads of their families and was difficult for them to seek assistance and support for their families. They had been facing difficulties in getting their families registered and accessing assistance and support for them.⁵²⁹ The social norms of some local areas did not allow women to hold CNIC, it was again a problem for them.⁵³⁰ The lack of female government officials had caused problems for IDP women in accessing support, as they had been hesitating in consulting male

⁵²⁶ Geneva Convention IV, Art. 23 and 59; Additional Protocol I, Ar. 70 and 71; Additional Protocol II, Art. 18; Customary Rules of International Humanitarian Law 2005, Rule 55 and 56

⁵²⁷ UN High Commissioner for Refugees (UNHCR), Internally Displaced Persons No. 75 (XLV), 1994

⁵²⁸ UNHCR, 'Report of the United Nations High Commissioner for Refugees' (UNHCR June 2015) <http://www.unhcr.org/excom/unhcrannual/562f44619/report-united-nations-high-commissioner-refugees-covering-period-1-july.html> accessed 16 June 2016

⁵²⁹ OCHA and WFP and Government of Pakistan, 'Multi-Cluster Initial Rapid Assessment Bannu Report - July 2014' (OCHA July 2014) <https://reliefweb.int/report/pakistan/multi-cluster-initial-rapid-assessment-bannu-report-july-2014> accessed 16 June 2016

⁵³⁰ OCHA, 'Project NOC Factsheet for KP and FATA - Source: PDMA and FDMA (October 2014 - December 2014)' (OCHA Feb 2015) <https://www.humanitarianresponse.info/en/operations/pakistan/document/project-noc-factsheet-kp-and-fata-source-pdma-and-fdma-october-2014> accessed 16 June 2016

government officials.⁵³¹ The fear of harassment and gender-based violence had also remained a problem for IDP women.⁵³²

Children living in protracted displacement in the north-west have difficulty in accessing assistance such as food and health services, possibly because aid is distributed to heads of household and may not be passed on to them. Some displaced children do not live with their parents, but with their extended families. Others live in madrasas, or religious schools, and other institutions where they receive free education, room, and board.⁵³³

The women's cultural need for purdah, or privacy, had also limited their movement. The lack of separate toilets and washing facilities had been adding into the suffering of such vulnerable group of IDPs. The inadequate medical facilities and access to health services, especially for those pregnant or breastfeeding, and lack of maternal health facilities had caused enormous problems for IDP women.⁵³⁴

'I could not go out and have no male family member. I used to keep waiting in getting food for my children. It used to be harder when I got sick because my children could do nothing for me but going to call someone for help,⁵³⁵

'I was pregnant when we came to the camp. I had faced a lot of problems in maintaining my pregnancy and after the birth of my baby. She used to get sick and take ages to get better. I could not afford to take her to the big hospital in the city'⁵³⁶

⁵³¹ UNHCR, 'Rapid protection cluster assessment on North Waziristan displacement - Bannu, D.I.Khan, Karak, Kohat, LakkiMarwat and Tank 28-30 June 2014' (UNHCR July 2014) <https://reliefweb.int/report/pakistan/rapid-protection-cluster-assessment-north-waziristan-displacement-bannu-dikhan-karak> accessed 16 June 2016

⁵³² OCHA and WFP and Government of Pakistan, 'Multi-Cluster Initial Rapid Assessment Bannu Report - July 2014' (OCHA July 2014) <https://reliefweb.int/report/pakistan/multi-cluster-initial-rapid-assessment-bannu-report-july-2014> accessed 16 June 2016

⁵³³ OCHA and WFP and Government of Pakistan, 'Multi-Cluster Initial Rapid Assessment Bannu Report - July 2014' (OCHA July 2014) <https://reliefweb.int/report/pakistan/multi-cluster-initial-rapid-assessment-bannu-report-july-2014> accessed 16 June 2016

⁵³⁴ OCHA, 'Project NOC Factsheet for KP and FATA - Source: PDMA and FDMA (October 2014 - December 2014)' (OCHA Feb 2015)

<<https://www.humanitarianresponse.info/en/operations/pakistan/document/project-noc-factsheet-kp-and-fata-source-pdma-and-fdma-october-2014>> accessed 16 June 2016

⁵³⁵ Interview with Mrs. Q, Residing in IDP camp Peshawar (Peshawar, Pakistan, 01 May 2013)

⁵³⁶ Interview with Mrs S, Residing in IDP camp Peshawar (Peshawar, Pakistan, 05 May 2013)

The arbitrary displacement is prohibited under International Humanitarian Law as well as Guiding Principles of Internal Displacement provide the right of protection against arbitrary displacement to every human being. The arbitrary displacement is prohibited in situations of armed conflict as well, except the situations of threats to the security of the civilians or imperative military reasons. In such situation, the displacement must not last longer than required by the circumstances.⁵³⁷ The national authorities have the primary responsibility to prevent such conditions that become reasons for internal displacement.

International Humanitarian Law provides protection to the civilians, from the deportation or transfer from the places of their ordinary residence. There are exceptions to this general rule, and the displacement is allowed in the circumstances when the deportation or transfer becomes unavoidable due to the involvement of security threats to the civilians or there are imperative military reasons involved.⁵³⁸

International Humanitarian Law focusses on the prevention of displacement and binds the parties to a conflict, especially a state whose territory is used for armed conflicts, to make efforts to minimize the risks of displacement of civilians.⁵³⁹ Geneva Convention IV⁵⁴⁰, Additional Protocols I⁵⁴¹, Additional Protocol II⁵⁴² and Customary Rules of International Humanitarian Law contain many provisions relating prevention of displacement.⁵⁴³ The states are made responsible for implementing these provision, as to stop displacement, into their legal framework while enacting national legislation.

⁵³⁷ UN Guiding Principles on Internal Displacement 1998, Principle 6

⁵³⁸ Geneva Convention IV, Art 147; Additional Protocol I, Art. 85(4)(a); ICC Statute, Art. 8(2)(e)(viii) ²⁴⁶
Geneva Convention IV, Art. 78

⁵³⁹ Additional Protocol II, Art. 17

⁵⁴⁰ Geneva Convention IV, Art. 49 and 147

⁵⁴¹ Additional Protocol I, Art. 51 (7), 78(1) and 85(4) (a)

⁵⁴² Additional Protocol II, Art. 4(3) (e) and 17

⁵⁴³ Customary International Humanitarian Law 2005, Rule 129 and 132

The efforts of the national authorities, regarding prevention of displacement, were limited in responding the large scale of displacement. The response of the government of Pakistan in collaboration with international organizations did not complement with the enormous problems and steps needed in preventing displacement. The government authorities were seemed to claim that civilians were informed well in time about the operation, and they assisted the civilians in evacuation and facilitated them to reach to safe places.

In such situations, the national authorities must facilitate the IDPs by providing proper accommodation and satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated. It is the responsibility of the concerned state to provide with adequate diet and drinking water. The dietary needs of the nursing mothers and children must be fulfilled by providing them with appropriate and additional food. The IDPs must be protected from adverse effects of the climate conditions by providing them with the proper clothing according to the weather conditions. The utility goods must be given to IDPs to maintain their personal hygiene and facilities should be offered to wash and dry their clothes. Access to sanitary facilities must be available to IDPs always and organized in a way that ensures respect for dignity.

When displaced persons were asked about the facilities provided in the camps; like food, health facilities, hygiene, and shelter; their response was divided. Most of them were satisfied with the facilities provided to them, remaining in the limited resources. But there were others, unsatisfied with the facilities provided to them in the camps and were told that they were being treated like beggars. So, people were having a mixed kind of reaction regarding facilities provided to them in the camps.

The point of view of the judges and lawyers was positive on this matter. They were aware of the limited sources available to the authorities working for the war affected people in the refugee camps. They expressed their concern about the management issues and the discontinuity of the management policies. They suggested that the authorities should bring consistency in their management policies.

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty, and security of those affected.⁵⁴⁴ The basic rights and guarantees must be reaffirmed by national authorities by ensuring the protection of the rights to life, integrity, dignity, and security.⁵⁴⁵ The Guiding Principles on Internal displacement are necessary to be obliged by the national authorities and adopted in the national response framework. The distinction between arbitrary displacement and other forms of displacement is necessary to be made in the framework.

The unity of families should be protected. In situations of internment or detention during armed conflict, and in camps or another communal shelter generally, family members must be accommodated together.⁵⁴⁶ If family members become separated, all appropriate steps must be taken to facilitate their reunification.⁵⁴⁷

The family members should not be separated in the situation of internment or detention in camps or other communal shelters.⁵⁴⁸ All possible measures should be taken for the reunion of the family members in the situations where family members become separated.⁵⁴⁹ The internally displaced persons should get their names registered

⁵⁴⁴ UN Guiding Principles on Internal Displacement 1998, Principle 8

⁵⁴⁵ UN Guiding Principles on Internal Displacement 1998, Principle 10-13

⁵⁴⁶ Geneva Convention IV, Art. 82 (2) and (3); Additional Protocol I, Art. 75 (5); Customary International Humanitarian Law 2005, Rule 131.

⁵⁴⁷ Geneva Convention IV, Art. 26, 27 and 49; Additional Protocol I, Art. 74, Additional Protocol II' 4(3)

⁵⁴⁸ Geneva Convention IV, Art. 82 (2) and (3); Additional Protocol I, Art. 75 (5)

⁵⁴⁹ Geneva Convention IV, Art. 26, 27 and 49

immediately at birth.⁵⁵⁰ The states must ensure the provision of the basic documentation to the refugees and internally displaced persons.⁵⁵¹

They must not be separated from their families. Efforts must be made for the reunion of the family members in a situation of missing family members. They may be allowed to contact with their families, subject to reasonable conditions, through correspondence, visits, or other means of communication available.

There were no adequate steps taken to make sure the family unity of the refugees and internally displaced persons residing in the refugee camps in Pakistan. The members of a lot of families were separated during the evacuation. Most of them, later, managed to search each other by helping themselves. Still, there were many families living with separated family members. The case of the children was different. The authorities played a great role in making the children meet their parents and there were rare cases of missing children noted in the camps.

The IDPs have the right to be provided with the adequate standard of living without any discrimination. It is the responsibility of the competent authorities to provide IDPs safe and ensured access to essential food and water, accommodation, clothing, medical services, and sanitation.⁵⁵² All possible measures are required to be taken to ensure satisfactory hygiene, health, nutrition, and accommodation for IDPs.⁵⁵³

‘There are not adequate medical facilities for us. We are suffering from various diseases. Our children are dying due to many fatal diseases and due to the non-availability medicines and doctors.’⁵⁵⁴

⁵⁵⁰ Geneva Convention IV, Art. 50

⁵⁵¹ Geneva Convention IV, Art. 97(6)

⁵⁵² UN Guiding Principles on Internal Displacement 1998, Principle 18

⁵⁵³ Geneva Convention IV, Art. 49(3); Additional Protocol II, Art. 17(1); Customary International Humanitarian Law 2005, Rule 131

⁵⁵⁴ Interview with Mrs. K, Residing in IDP camp Peshawar (Peshawar, Pakistan, 23 April 2013)

‘We, the women here face many problems during and after pregnancy. The adequate hospitals are not here and medicines are not here for our treatment. They provided us good care and medicines when we came here but now they are not caring us’⁵⁵⁵

These people were being treated very poorly when the researcher visited these camps.

Nothing was worth noting about the management and arrangements made by the government. Yet, there were some NGOs that were working slightly better and trying to facilitate these people. There were people who seemed to be hopeless about their future. They tend to believe that the situation will never get better and they will spend their whole life in these camps. They were picturing their future on a dark side. They were blaming the government for the inefficiency and bad policies towards them.

It is the responsibility of the national authorities to provide opportunities of receiving free and compulsory primary education to internally displaced children.⁵⁵⁶ The efforts must be made for providing opportunities to IDP women and girls in educational programs.⁵⁵⁷ International Humanitarian Law binds the parties to a conflict to take adequate measures to provide education to the children under fifteen who are orphaned or separated from their families as a result of the war in the situation of international armed conflict. The children must be facilitated to receive education including religious and moral education in the situation of non-International armed conflict.⁵⁵⁸ The displaced children under fifteen are particularly considered as vulnerable to forcible recruitment into armed forces or groups.⁵⁵⁹

The government sector did not respond properly to the educational needs of the IDPs, especially children. The UNHCR with the help of NGOs and donors helped the

⁵⁵⁵ Interview with Mrs. N, Residing in IDP camp Peshawar (Peshawar, Pakistan, 27 April 2013)

⁵⁵⁶ UN Guiding Principles on Internal Displacement 1998, Principle 23

⁵⁵⁷ UN Guiding Principles on Internal Displacement 1998, Principle 23; Geneva Convention IV, Art. 24(1).

⁵⁵⁸ Additional Protocol II, Art. 4(3) (a), 28(2).

⁵⁵⁹ Additional Protocol I, Art. 77(2); Additional Protocol II, Art. 4(3)

community services to establish schools to provide both formal and informal education to IDPs. Special arrangements were made for the handicapped and vulnerable children. They were provided with the opportunities to attend the home-based schools and skills training programs were started for the handicapped and vulnerable children.

The armed conflict not only resulted in the displacement of many children but also had a severe impact on children's well-being and access to education. The schools had been destroyed and damaged during the armed conflict in various parts of the North-western areas of Pakistan. This destruction of schools had a severe impact on the educational structure of the area. The remaining schools were used to provide shelters to IDPs in host communities, which meant that not only were IDP children deprived of access to education but so were the children in the communities to which IDPs arrived. The schools needed a lot of rehabilitation and reparation works, to make them usable for students when they were vacated.

‘How can education be a priority when you are dying for food? We were concerned about getting food for our children more than education. These foreign people and donors have tried to provide education to our children but it did not prove very effective’.⁵⁶⁰

‘Education has never remained a priority here. There started many education camps and programs but they kept getting closed after short periods. People did not show interest in education and our children are not happy in studying here because they want to go back to their homes.’⁵⁶¹

The ongoing security issues in Khyber Pakhtunkhwa and FATA have had significant impacts on the lives of the civilians, including students, living in the region. Tens and thousands of displaced children from North Waziristan were taken out of schools due to

⁵⁶⁰ Interview with Mr. O, Residing in IDP camp Peshawar (Peshawar, Pakistan, 27 April 2013)

⁵⁶¹ Interview with Mr. R, Residing in IDP camp Peshawar (Peshawar, Pakistan, 23 April 2013)

various reasons. Some of them lost their schools and others were taken out of supporting their families.⁵⁶²

‘Our girls had already very little opportunities for education, and now the displacement has restricted them from education. It is now difficult for us to send them for education due to our circumstances.’⁵⁶³

The educational opportunities for girls were already rare before displacement, their situation became even worst after their displacement.⁵⁶⁴ The displaced children, especially girls, from such areas could have been easily managed to provide better education opportunities in other parts of the country, as compared to their education opportunities before their displacement.⁵⁶⁵ However, efforts had not been made on the side of government authorities to provide better educational facilities, instead, schools were used as shelters for displaced persons.

Internally displaced persons have the right to voluntary return in a safe and dignified manner. They have the right to choose from various resettlement options. The concerned authorities must establish conditions and provide means for safe and voluntary return of IDPs. After their return or resettlement, the authorities have the responsibility to facilitate the reintegration of returned or resettled internally displaced persons as well.⁵⁶⁶ The authorities must help IDPs in getting their homes and properties back, as soon as the conflict is over, and help IDPs in the recovery of their property.

⁵⁶² Umar Farooq, ‘Education still on hold after year of war in Pakistan, (IRIN June 2015) <http://www.irinnews.org/feature/2015/06/18/education-still-hold-after-year-war-pakistan> accessed 15 June 2016

⁵⁶³ Interview with Mrs. S, Residing in IDP camp Peshawar (Peshawar, Pakistan, 05 May 2013)

⁵⁶⁴ Jon Boone, ‘Men involved in Malala Yousafzai shooting arrested in Pakistan’ (Guardian September 2014) <https://www.theguardian.com/world/2014/sep/12/men-malala-yousafzai-shooting-arrested-pakistan> accessed 15 June 2016

⁵⁶⁵ OCHA and WFP and Government of Pakistan, ‘Multi-Cluster Initial Rapid Assessment Bannu Report - July 2014’ (OCHA July 2014) <https://reliefweb.int/report/pakistan/multi-cluster-initial-rapid-assessment-bannu-report-july-2014> accessed 16 June 2016

⁵⁶⁶ UN Guiding Principles on Internal Displacement 1998, Principle 28; Customary International Humanitarian Law 2005, Rule 133

International Humanitarian Law provides displaced persons with the right of return to their homes as soon as the hostilities are over, and the conditions are suitable for the return of displaced persons either evacuated or transferred. Per the Universal Declaration of Human Rights, ‘Everyone has the right to leave any country, including his own, and to return to his country’.⁵⁶⁷

The efforts for the durable solution of the problem of IDPs did not work properly in Pakistan. The IDPs were not provided with the opportunity to participate in the process of decision-making in terms of seeking a durable solution to their problem. The government of Pakistan, with the help of UNHCR and its partner organizations, planned for return and resettlement of IDPs in the areas that were called safe. But most of the IDPs had been seen complaining about the provision of facilities. They were not satisfied with the arrangements made for their resettlement and places of resettlement. The ongoing conflict and unsustainable living conditions kept compelling them for repeated displacements.⁵⁶⁸ Most of the people resettled in North Waziristan had to make repeated displacements within weeks or months of their return and kept struggling in getting registered as IDPs again.⁵⁶⁹

The ongoing conflict has been the main reason repeated displacements of IDPs. The government authorities have remained incapable of assessing the situation and managing for the durable solution of IDPs. The government authorities have misread the situations while calling the conflict areas safe for living. The returns and resettlements have caused even more problems for those who have been resettled in

⁵⁶⁷ Universal Declaration of Human Rights, 1948, Art. 13(2)

⁵⁶⁸ Amjad Jamal, ‘The dilemma of returning for Pakistan’s IDPs’ (IRIN September 2013) <http://www.irinnews.org/analysis/2013/09/11/dilemma-returning-pakistan%E2%80%99s-idps> accessed 16 June 2016

⁵⁶⁹ OCHA, ‘Humanitarian Bulletin Pakistan Issue 27’ (OCHA June 2014) <https://reliefweb.int/report/pakistan/pakistan-humanitarian-bulletin-issue-27-19-may-19-june-2014> accessed 12 June 2015

most of the areas of Khyber Agency.⁵⁷⁰ The efforts of resettlements have not remained effective, as continued fighting in FATA has caused serious concerns over return and resettlement plans.⁵⁷¹

The ongoing conflict kept the conditions unsafe for sustainable returns and those people continuously needed assistance who was resettled in those areas. Moreover, the conditions for a living did not provide a satisfactory situation as people kept complaining about the provision of basic necessities of life.⁵⁷² The houses were not suitable for living as reparations were still needed and no proper arrangements were made for health, education, and well-being of the children.⁵⁷³ The lack of facilities and living conditions became even worst with the Khyber operations in 2014, which caused insecure conditions and unsustainable return to Khyber Agency and Kurram Agency.⁵⁷⁴ The houses and other infrastructure were destroyed and access to basic necessities of life became more restricted.⁵⁷⁵

Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and

⁵⁷⁰ OCHA, 'Humanitarian Bulletin Pakistan Issue 31' (OCHA December 2014) <https://reliefweb.int/report/pakistan/pakistan-humanitarian-bulletin-issue-31-october-december-2014> accessed 12 June 2015

⁵⁷¹ UNHCR, 'IDP Returns Fact Sheet Updated: As of 12 November 2014' (UNHCR November 2014) <https://www.humanitarianresponse.info/en/operations/pakistan/document/unhcr-idp-returns-fact-sheet-updated-12-november-2014> accessed 12 June 2015

⁵⁷² OCHA, 'Humanitarian Bulletin Pakistan Issue 18' (OCHA September 2013) <https://reliefweb.int/report/pakistan/humanitarian-bulletin-pakistan-issue-18-16-august-15-september-2013> accessed 16 June 2015

⁵⁷³ UNHCR, 'Return monitoring report Tirah Valley second phase of return June 2014' (UNHCR June 2014) <https://reliefweb.int/sites/reliefweb.int/files/resources/Return%20monitoring%20Tirah%20second%20phase%20June%202014.pdf> accessed 11 June 2015

⁵⁷⁴ OCHA, 'Pakistan: Humanitarian Bulletin Issue 33' (OCHA February 2015) <https://reliefweb.int/report/pakistan/pakistan-humanitarian-bulletin-issue-33-18-january-19-february-2015> accessed 11 June 2015

⁵⁷⁵ OCHA, 'Multi Cluster Assessment of FATA Returnees: Bara, Khyber Agency - FATA, Pakistan' (OCHA August 2015) <https://reliefweb.int/report/pakistan/multi-cluster-assessment-fata-returnees-bara-khyber-agency-fata-pakistan> 11 May 2016

reintegration.⁵⁷⁶ The authorities have the responsibility to protect the internally displaced persons from any kind of discrimination and facilitate them to participate in the planning and management of their return or resettlement and reintegration.

The national authorities need to encourage and facilitate IDPs in participating in the process of planning and implementation of policies and programs framed to address the matter of internal displacement. IDPs should be given opportunities to express their choice and demands in the process of decision making that affects their lives.

According to the Guiding Principles on Internal Displacement, national authorities have a responsibility to facilitate the participation of IDPs in the planning and implementation of policies and programs concerning internal displacement.⁵⁷⁷ International Humanitarian law prohibits forced displacement. In case of emergency and armed conflict situations binds the national governments to make arrangements and guarantees to comply with International Humanitarian Law by giving IDPs access to full information on the reasons and procedures for their displacement and, when applicable, on compensation and relocation programs; that free and informed consent is sought from the persons to be displaced; and that the authorities endeavour to involve affected persons, particularly women, in the planning and management of their relocation.⁵⁷⁸

The return of IDPs was started in north-west Pakistan without framing a comprehensive IDP policy. The ongoing military operation and militant activities in the Federally Administered Tribal Areas (FATA) kept producing new waves of IDPs during the process of return of the old IDPs. The IDPs had been facing difficulties in accessing

⁵⁷⁶ UN Guiding Principles on Internal Displacement 1998, Principle 28

⁵⁷⁷ UN Guiding Principles on Internal Displacement 1998, Principle 3 (1)

⁵⁷⁸ UN Guiding Principles on Internal Displacement 1998, Principle 7

assistance due to the complex criteria for registration as IDPs. According to a multi-agency IDP vulnerability assessment profiling (IVAP), almost half of the IDPs were registered in Pakistan and there were noticed irregularities in the process of registration due to the lack of a comprehensive IDP policy. This lack of comprehensive policy exposed IDPs for heightened risk of human rights violations. The process of return was started because of the government authorities and IDPs were not given participation in the decision-making process.

The people were seemed very keen to go back to their homes. They were not concerned with the circumstances whether they were changed or still the same when they left their homes. Although some people said that it would be better to go back to home once the government clears the area but most of the people were not concerned with this. They just wanted to go back to their homes at any cost.

The national authorities must ensure the equal treatment of the IDPs, after their resettlement, and ensure they are not discriminated due to their displacement. The national authorities must provide them equal right to participate in the public affairs and public services, same as provided to ordinary members of the state.⁵⁷⁹ International Humanitarian Law prohibits any type of discrimination against IDPs in all the areas of working conditions, economic activities, and social security.⁵⁸⁰ The civilians, including IDPs, are required to be provided minimum standards of working conditions.⁵⁸¹ The uncompensated or abusive forced labour is also prohibited under Customary International Humanitarian Law.⁵⁸²

⁵⁷⁹ UN Guiding Principles on Internal Displacement 1998, Principle 29

⁵⁸⁰ Geneva Convention IV, Art. 27, Additional Protocol I, Art. 75 (1)

⁵⁸¹ Geneva Convention IV, Art. 40.

⁵⁸² Additional Protocol II, Art. 4 (2) (f); Customary International Humanitarian Law 2005, Rule 95

The national authorities of Pakistan did not make proper arrangements for resettlement and reintegration of displaced persons after their return. The displaced persons were seemed very unsatisfied with the protection and assistance provided to them during their displacement.

When it was asked about the type of life they want to start after going back to homes, the most of them said that the people just want to go back and resume their lives. It does not matter what type of life that would be, but some of them were seen very committed to starting a new life with hope, commitment, and hard work.

There were the young people who were having positive thoughts to lead their people and provide their children with better future. The people residing in the camps were unhappy to live more in the camps. When they were asked about things missing in their life while being in the camps, they said they were missing their homes, their people, their culture, their social life, their liberty, their weather, their business, and their properties.

The displacement has occurred, mainly due to the military operation and was necessary to evacuate the local population for their security. It was observed that security of the local population was at stake and it was necessary to evacuate their places of ordinary residence to conduct the military operation. Most of them preferred to stay at their places and later evacuated their places when they got aware of the intensity of the military operation. Some of them were not properly informed about the security risk and the conduct of the military operation, but later they evacuated their places.

The displacement was mainly caused due to the military operation in FATA and Northern Areas of Pakistan. Some people migrated from their areas due to the activities

of the trouble creators against security forces of Pakistan. Some people came to the camps just to save themselves from any unexpected incident.

There were different methods applied to bring the displaced persons in the camps. Most of the people were brought to the camps by the military and government authorities, while others came here by themselves or with the help of their friends and relatives. According to the government authorities, the civilians were informed well in time about the operation and they assisted the civilians in evacuation and facilitated them to reach to safe places, but hesitation and non-willingness of the civilians to vacate the area caused a delay in evacuation and later it became very difficult to evacuate the people, in short time, at large number.

There were not adequate medical facilities available to these people and many people were suffering from many different diseases. Children were suffering from many fatal diseases and due to the non-availability of proper treatment, there were high death rates among children. Women, particularly the pregnant women, were facing many complex maternity problems.

There were people who seemed to be hopeless about their future. They tend to believe that the situation will never get better and they will spend their whole life in these camps. They were picturing their future on a dark side. They were blaming the government for the inefficiency and bad policies towards them. There were many elderly people who were having these thoughts.

The displaced persons are in a dire need of support and assistance, as they are not being provided with the minimum international standards of rights and facilities. The laws applicable to the displaced persons, although provide protection to them yet the lack of implementation of these laws add more to their hardships. In the absence of a proper

legal framework for the protection of IDPs and non-willingness and lack of resources from the part of the national government, International Humanitarian Law plays a vital role in the provision of rights and facilitating the displaced persons in the situation of armed conflicts.

4.7 Conclusion

The conflict in Pakistan fulfils the criteria of non-international armed conflict under IHL. The parties to the conflict and the organization of parties confirm the conflict falls under common article 3 and Additional Protocol II to the Geneva Conventions. The legal experts, interviewed by the researcher, and believe that IHL applies to the conflict and Pakistan must implement the rules of IHL in protecting IDPs. Pakistan is not a party to the Additional Protocol II, however, its rules apply as the customary law applies to the conflict in Pakistan and domestic legislation of Pakistan deals with these rules through various laws.

The rules applicable to displaced persons provide protection, assistance, shelter, food, health facilities, education facilities and all those favourable conditions of living that amount to minimum living standards on International Level. The literature and reports available for the treatment of displaced persons in Pakistan, by the Government authorities, UNHCR, ICRC and other organizations working for displaced persons in Pakistan, show a positive image of the working of all the authorities. The responses of the displaced persons, by themselves, on the one hand, show contentment on the role of UNHCR, ICRC, and other organizations, but on the other hand, they severely criticize the role of government and its relevant authorities. But none of them refuses to accept the help and services and assistance provided by International Humanitarian Law or any other organization.

International Humanitarian Law, through its rules relating displaced persons and working with different international organizations with the cooperation of government authorities of the concerned area of displaced persons, plays a vital role in the protection, assistance, and provision of rights to displaced persons. The displaced persons in Pakistan need to be protected, assisted, and provided rights by International Humanitarian Law through the inclusions of its rules relating displaced persons in the legal system of Pakistan and the working of different organizations in supporting the government authorities of Pakistan on the matter of displaced persons.

This chapter embeds the information gathered through interviews with the displaced persons with the laws and principles relating the displaced persons. The interviews with the displaced persons show that they are not happy with the situation and want no more to live in the camps. The role of the government of Pakistan is severely criticised by them. To some extent, they are satisfied with the role of the international organizations and NGOs working for them. They are very keen to go back to the places of their original residence and demand the authorities to take adequate measures for their safe return and rehabilitation.

CHAPTER FIVE: ANALYSIS OF FINDINGS AND CONCLUSIONS

5.1 Introduction

This study began by introducing the problem of IDPs, identifying the defects in the protection of IDPs, and differentiating IDPs from refugees. The protection available to IDPs under both national and international legal framework was analysed and exploring the laws available for the protection of IDPs. It overviewed IDPs in Pakistan affected by non-international armed conflict in the North-western regions of Pakistan including FATA and Khyber Pakhtunkhwa.

The mixed method research approach, including a doctrinal method for exploring legal framework applicable to IDPs and case study method for qualitative interviews, was adopted to study the Pakistani IDPs in real life setting. The applicable criteria of IHL on non-international armed conflict, focusing on the conflict in Pakistan was analysed, in the context of most relevant legal regime applicable including common article 3 to the Geneva Conventions of 1949 and Additional Protocol II of 1977 as well as customary rules of international law.

The compatibility of IHL with Islam was assessed in the Sharia-dominated domestic legal structure in Pakistan along with adoption of IHL in the domestic legal structure of Pakistan. The movement for the conversion of the democratic constitutional structure of Pakistan into a pure Sharia structure, while allowing both Sharia and international laws including rules of IHL, was discussed in relation to the adoption of IHL.

The case study of conflict-affected IDPs in Pakistan used interviews of IDPs and legal experts, interviewed by the researcher, in Pakistan to assess the in real condition against the legal framework, and response of the national government authorities with the cooperation of international humanitarian organizations, especially UNHCR, measured against standard criteria.

5.2 Answers to Research Questions

The present study has explored the protection of IDPs under IHL, in the Islamic context of Pakistan, by analysing the legal spectrum available for IDPs at both national and international level, focusing on the role of IHL in the protection of IDPs affected by non-international armed conflict. The research questions, proposed in chapter 1, have been answered in this section one by one.

5.2.1 Methodologies to understand the application of IHL to IDP in conflict situations in Pakistan

The mixed method research approach has helped understand the application of IHL to IDPs in Muslim countries through the case study of Pakistan. The doctrinal method has helped understand the legal framework applicable to IDPs at both international and national levels. This method has also helped in reaching to an argument about the application of IHL in a Sharia dominated legal structure of a Muslim country through comparison of IDP laws with Islamic Laws and their favour in providing protection to IDPs.

This method has helped to explore the conflict in Pakistan under applicable criteria of IHL on non-international armed conflict, through implementing the said criteria on the conflict in Pakistan. The doctrinal aspect of this criteria has been analysed by thorough comparative analyses of the rules of IHL and domestic laws of Pakistan in assessing the

most relevant legal regime applicable including common article 3 to the Geneva Conventions of 1949 and Additional Protocol II of 1977 as well as customary rules of international law.

The doctrinal method has provided reaching an agreement of the legally acceptable possibilities of the acceptance of the rules of IHL in the Sharia-dominated domestic legal structure in Pakistan, as well as other Muslim countries, along with adopting the rules of IHL in the domestic legal structure of Muslim countries. Moreover, the limited geographic applicability of IHL on the conflict in Pakistan along with the domestication of IHL, and the applicability of the domestic laws on the conflict is explored through doctrinal method.

Empirical legal research method has worked for understanding the application of IHL on IDPs of a Muslim country by exploring the applicability of the legal IDP regime in the real life, more precisely contrasting the law in books with the law in action. This method has been applied to understand the impact of IDP laws, legislative authorities, concerned government and all the associated phenomenon on IDPs in Pakistan. It has helped in understanding of the impact of wider social, political, and economic factors upon law, legal phenomena, and legal institutions relating IDP laws and IDPs in Pakistan. This study employs an empirical method which makes an addition to the gradually increasing empirical legal studies and opens the gates for further studies on the relevant topics to this study in the field of IHL. Furthermore, this mix method research study has helped to understand cultural and anthropological aspects of IDPs, affecting law and policy through exploring the cultural, ethnic, linguistic, and religious factors of IDPs in Pakistan.

The case study method of exploring the phenomenon of IDPs in a real life through conducting qualitative interviews from IDPs and legal experts, interviewed by the researcher, in Pakistan has proved to be the best method for collecting primary data for the present study. It has helped in gathering targeted information and exploring some facts that have not been anticipated by the researcher at the start of the study. For example, the researcher has explored, during his visits to IDP camps, the weak concept of the legal division among IDPs and refugees due to the involvement of the similarity of social, cultural, and religious factors between IDPs and refugees. The social, cultural, and religious ties between IDPs and Afghan Refugees have been noted strong enough to negate the boundaries between two countries i.e. the border between Pakistan and Afghanistan.

These above discussed methods have helped understanding intellectual, sociological, and political aspects of IDP laws in Pakistan, by moving forward from disciplinary divide and considering Sharia as a part of the legal structure. The present research has studied law with socio-legal, anthropological, and comparative aspects by exploring the domestication of IHL in the democratic constitutional structure of Pakistan in the presence of Sharia Laws method empirical legal research.

These methods have proved to be the most suitable in exploring the linkage between Sharia Law and domestic legal structure of Pakistan, and the doctrinal relationship between IHL and Islam through views of the Muslim scholars and legal experts, interviewed by the researcher, in Pakistan. Moreover, the political and sociological legal aspects in the Muslim context of Pakistan are studied against the highly problematic conception of Islamic law through applying the above-mentioned methods of research.

5.2.2 The Armed conflict in Pakistan under IHL and protection of conflict-affected IDPs

The armed conflict in Pakistan, displacing millions of people IDPs fulfils the criteria of the non-international armed conflicts under IHL. The government of Pakistan, after remaining hesitant for years, has started accepting the conflict in FATA as non-international armed conflict under IHL, with the promulgation of the Actions in Aid of Civil Power (AACP), 2011. The armed conflict in FATA and surrounding areas involves fighting between security forces of Pakistan and TTP. The intensity of violence, number of people involved in fighting, duration of confrontations, use of weapons, number of deaths, number of displaced persons and involvement of UN Security Council are the factors that help in differentiating the conflict from internal disturbance.

The conflict-affected IDPs in Pakistan have remained a big challenge to the security and economy of Pakistan. The internal displacement is mainly the outcome of the military operation conducted against the militants, in FATA and North-western areas of Pakistan. The issue of displaced person needs a lot of efforts and support, especially the return of IDPs Common Article.3 of the Geneva Conventions and the customary rules of IHL apply to the situations of non-international armed conflicts.

IHL provides a suitable legal framework for regulating the conduct of parties, and non-compliance with IHL rules by the parties give rise to humanitarian issues. The conflict in Pakistan has raised humanitarian issues due to the non-compliance of the rules of IHL by the non-state armed groups and the lack of ability to cope with the armed conflict by the national government authorities of Pakistan.

Internal displacement is considered as one of the most common consequences of armed conflicts and a matter of growing concern throughout the world. Despite, being an appropriate legal framework for the protection of conflict-affected IDPs, IHL lacks the measures for enabling IDPs to return to their homes under satisfactory conditions; ensuring the family unity of IDPs; and helping IDPs in getting necessary documentation.

Although, IHL provides protection to IDPs as civilians, yet there are specific humanitarian concerns of IDPs that need more attention of IHL, rather than depending on the discretion of the concerned states. These problems include freedom of movement, voluntary return or resettlement, infringements of the civilian character of IDP camps, and the absence of mechanisms for individuals or compensation for lost property etc.

The situation of Pakistani IDPs needs a bit more focus as the government has lacked the proper implementation of IHL, as well as policies of the government, have not worked effectively in terms of meeting the humanitarian concerns of IDPs. UN Guiding Principles of Internal Displacement deal these concerns which do not provide a binding legal framework and Customary IHL does not provide sufficient response to these concerns of IDPs as well. However, these humanitarian concerns are mainly the outcome of the non-compliance with the rules of IHL by the parties to a conflict which can be solved by preventing displacement.

The conflict in Pakistan has caused restrictions on the freedom of movement of IDPs due to the involvement of the security risks. After their displacement, IDPs have been confined to make-shifts camps and have been prevented from moving further away from the conflict as well as from going about their daily lives and finding work. Moreover, IDPs have often been relocated during their displacement and returned to their homes

without being given adequate information and meaningful options. There have been vulnerable conditions in terms of family unity due to the disruption, caused by armed conflict in Pakistan.

The women, children, the elderly and disabled people have suffered the most during the period of displacement. The large scale of displacements has created the situation of the separation of family members. Furthermore, despite being displaced for many years, 1.5 million IDPs are still waiting to return to their homes and places of usual residence; and other lasting solution. Pakistani IDPs have suffered in terms of receiving reimbursements for their damaged and destroyed properties, facing unsafe conditions for their return and integration into their community, and have faced problems in relocation. The efforts of the government of Pakistan have remained pathetically on the lower side in facilitating IDPs with possible solutions.

The rules of IHL clearly bind the parties to find durable solutions of the problems of conflict affected IDPs in terms of return and resettlement, however, the concerned parties often fail to oblige with these rules in considering the humanitarian concerns of IDPs. Therefore, humanitarian concerns of IDPs, considering the problems faced by Pakistani IDPs, need to be supplemented with a binding legal framework at international level.

The treaty law governing non-international armed conflicts as well as customary law lacks an explicit right to return and positive duty on the part of the parties to the conflict to take all feasible measures to facilitate voluntary, dignified, and safe return. There is needed a legally binding international framework, depending on the circumstances and the capacities of the parties, to take measures such as; meeting with the urgent needs of IDPs, healthcare arrangements, construction of infrastructure, providing household

items, occupational training programmes and allowing IDPs to visit the places prior to return.

IHL does not provide specific rules for parties to address the documentation related problems of IDPs. The conflict-affected often lose their identity documents and other papers relating property, education, health and birth and marriage certificates. Many of the conflict affected IDPs in Pakistan have lost these documents during displacements occurred in emergency situations. The loss of these documents has caused problems in claiming their properties, freedom of movement, accessing legal rights, receiving social benefits and humanitarian aid. They have faced problems in returning and other lasting solutions due to their missing documents. The national authorities have been helping IDPs, in cooperation with UNHCR, to get their identity documents but access to certain rights and claims has been conditional with the provision of such documents.

The mitigation of the losses and sufferings of IDPs is not covered under IHL and concerned states often close their eyes to these issues. IDPs in Pakistan have not been adequately compensated with their losses and sufferings in terms of financial help and restitution of properties. The displacement has caused destruction and damage to their properties and IDPs are deprived of their livelihood. The efforts and claims of the national government have not resulted in providing adequate compensation to IDPs.

The humanitarian concerns of the conflict-affected IDPs can be responded by preventing internal displacement. The efforts must be made to make the parties practically oblige the rules of IHL and stop violations of the rules of IHL in situations of armed conflicts. Most of the sufferings and losses can be prevented by stopping the displacements. It is the best possible way of dealing the humanitarian concerns of IDPs

that displacements must be prevented from occurring in the first place, which is only possible if the parties to a conflict respect the basic rules of IHL.

Non-international armed conflicts are covered under common article 3 of the Geneva Conventions of 1949 and Article, I of Additional Protocol II. The protocol covers and deals with all those conflicts that arise in the territory of a High Contracting Party. The state forces and dissident armed forces or other organized armed groups are parties to such conflicts. The non-state parties are the organised parties under a responsible command and exercising control over a specific territory. They can carry military operations and have the capacity to implement the rules of IHL.

Common Article 3 of the Geneva Conventions applies to non-international armed conflicts that occur in the territory of any of the high contracting parties in which one or more non-governmental armed groups are involved. There are situations where conflicts may occur between governmental armed forces and non-governmental armed groups or between such groups only.

There are specific provisions of law that deal with the non-international armed conflicts. Common Article.3 to the Geneva Conventions (1949) generally covers the matter of non-international armed conflicts. Due to the variety of the situations and different natures of these conflicts, different laws are applying in different situations. The customary rules of International Humanitarian Law and Treaty Laws are employed to deal the matters, along with the common article.3, according to the nature of the armed conflicts.

IHL applies to non-international character, although this dichotomy is widely criticised due to the unannounced armed conflicts situations and changing nature of armed conflicts. IHL does not apply to the internal tensions, disturbances and other isolated

acts of violence that occur within the territory of a state. The distinction between International and non-international armed conflicts is a necessary element for the application of IHL to a conflict. The conflicts arising between two states are usually considered as International armed conflicts. International Humanitarian Law provides a wide range of rules and regulations to be applied in times of International armed conflicts. The four Geneva Conventions of 1949 and Additional Protocol I of 1977 contain rules that apply to the International armed conflicts. The non-international armed conflict is those conflicts that arise within the territory of a single state. These conflicts involve either fighting between armed forces of a state and armed groups or two or more armed groups fighting against each other.

The applicability of IHL in non-international conflicts becomes complex due to the undefined and unannounced nature of these conflicts. IHL extends its applicability to the armed conflicts of non-international nature between state and non-state armed groups or between non-state armed groups. The non-international armed conflicts occur much frequently in the present era. The state is often slow reluctant to accept international legal oversight into their internal matters, and this phenomenon of violence often needs to be identified and defined.

So, the existence of a non-international armed conflict often needs to be defined more than the existence of an international armed conflict in the present era. A non-international is generally defined under. According to common article three of the Geneva Conventions; internal disturbances or tensions, Internal disturbances are riots and demonstrations and sporadic, isolated acts of violence, that take place inside the territory of a state does not qualify as an armed conflict.

5.2.3 Difference Between Conflict affected IDPs and other types of IDPs

This research has explored the matter of displaced persons, involving IDPs in Pakistan affected by non-international armed conflict in North-western (FATA) areas of Pakistan. Pakistan hosts refugees from Afghanistan affected by armed conflict in Afghanistan and internally displaced persons from Pakistan affected by natural disasters, including the earthquake in 2005, floods and many other natural disasters, but they are not a subject of this study.

The camps set in Pakistan combine various types of displaced persons and camp authorities help and assist all of them. This condition of other displaced persons is almost same as the condition of internally displaced persons affected by armed conflicts, but this research covers displaced persons in Pakistan affected by non-international armed conflict in North-western (FATA) areas of Pakistan.

The very definition of IDPs is of a descriptive nature that does not have a legal status, indicating the factual situation of displacement within a country. The protection of IDPs depends on the willingness and abilities of the concerned states, as there is no international law that exclusively applies to IDPs. In situations of conflict-affected IDPs, the concerned states often fail to provide protection to a high number of IDPs due to their inability or non-willingness. The role of the international organizations and institutions becomes important in providing protection to IDPs in conflict situations. The IDPs in Pakistan have been suffering from the same problems due to the enormous displacement because of conflict in Pakistan and the inability of the government of Pakistan and the lack in the implementation of the rules of international law, especially IHL, has caused IDPs uncertainty of their future and status as IDPs for ages.

The criteria of the identification of IDPs still remain undefined, as the flexibility of the definition of IDPs provides a vast scope of the applicability of the definition to the person who is forced to leave their home or a place of residence but did not cross the border. It becomes quite confusing while recognizing the status of IDPs, as it is difficult to differentiate between IDPs and potential victims of domestic violence leaving their homes on purpose to avoid any upcoming violence.

Moreover, the geographic situation of the border of Pakistan with Afghanistan makes it impossible to stop Afghans entering Pakistan, who share the cultural ties with the neighbouring areas of Pakistan and their recognition becomes difficult as Afghans. Moreover, the conflict situation provides them a justification for not having their identity documents. In a situation like this, the difference between IDP and refugee and the legal implications of displacement across a line on a map seem artificial.

The termination of IDP status remains undefined as it is difficult to name an end of the situations causing internal displacement. In Pakistan return, resettlement, and reintegration have been prevented by repeated displacement and ongoing conflicts. There are many IDPs in camps and host communities in Pakistan that are affected by repeated displacements and they grow old with their status as IDPs not cancelled or resolved. Furthermore, there is no mechanism under the national and international law for Pakistani IDPs to provide a termination criterion.

The shifting of resources, attention, and responsibility to the development of long-standing IDP communities has never worked in Pakistan. Neither the government authorities nor the IDPs have been able to end the status of IDPs, also are uncertain about losing benefits they have been enjoying and falling into many risks for being vulnerable. The existing definition on IDPs remains ambiguous and open to criticism

due to its flexible approach towards the assessment of the status of IDPs. A strict definition of IDPs, consisting of the conflict-affected IDPs, could prove more benefiting in respect of protecting the conflict-affected IDPs.

5.2.4 Effect of domestication of IHL into Pakistani law in protecting IDPs

Despite, non-availability of an international body to search and try the persons accused of committing grave breaches of IHL at domestic level, International Humanitarian Law, yet allocates universal jurisdiction to contracting parties to deal with the matters of grave breaches of IHL. Each of the contracting parties has the power to search and try the persons alleged to have committed grave breaches of the humanitarian law by without distinction of their nationality. So, anyone who is suspected of committing, or ordering to be committed, any grave breaches anywhere in the world may stand trial in any contracting State.

The procedure of extradition is applied in case a person is needed to be handed over by another contracting state. The states implement IHL by adopting the rules of IHL into their domestic legislation and provide effective penal sanctions for persons responsible for grave breaches of the Geneva regime and the obligation to enforce such legislation in national courts. International Humanitarian Law does not specify the punishment for grave breaches of their provisions, so contracting parties have powers to specify the punishments in their own legislative and judicial system.

First, States must ensure the inclusion of the relevant rules of IHL into military manuals, IHL trainings of armed forces, spreading information through the population, instructions to police force, and teaching of IHL in universities and schools and public education programs are the appropriate measures that can be taken by a state to ensure

the respect and understanding of IHL in peace times. The states are responsible for halting the breaches of IHL in situations of armed conflicts and should take measures to ensure the respect for IHL.

IHL allocates universal jurisdiction to contracting parties to deal with grave breaches of IHL, with the power to search and try those alleged to have committed grave breaches of the humanitarian law without distinction of nationality. States are expected to adopt the rules of IHL into their domestic legislation and provide effective penal sanctions for persons responsible for grave breaches of the Geneva regime. IHL does not specify the punishment for grave breaches of their provisions, so contracting parties have powers to specify the punishments in their own legislative and judicial system.

The IDPs have the right, as all persons under the authority of a State, to the full protection of national laws. Additionally, under international human rights law, States have the obligation to respect, protect and fulfil the human rights of their citizens and other persons on their territory or under their jurisdiction. Furthermore, in situations of armed conflict, IHL applies. Thus, national law, together with international human rights law and IHL, form the basic legal framework for the protection of IDPs.

The efforts of Pakistan in domesticating IHL have not proved as effective in protecting IDPs due to various reasons. Despite, being a signatory to the four Geneva Conventions, Pakistan still needs a lot of work in fulfilling its obligations by adopting the rules of IHL into the domestic legal structure. Pakistan has not yet signed Additional Protocols I & II, that are very important documents in the context of the conflict in FATA.

Pakistan needs to establish a national IHL committee, representing the ministries of Foreign Affairs, Defence, Interior, Finance, Armed Forces, and independent humanitarian organization as an observer. The religious scholars of Pakistan should be

included in the committee to check the consistency of the proposed laws with the injunctions of Islam, as any law inconsistent with the injunctions of Islam is declared as invalid according to the constitution of Pakistan. The suggestions of the religious scholars must be incorporated in context of Islamic Law of War to harmonize International Humanitarian Law with Shariah.

Empowering the committee to work for disseminating, implementing, and promoting IHL and following the legal and technical advice of the committee to the government can be handy in implementation, promotion, and dissemination of IHL. The committee should also be given the mandate to convince the world to improve the image of Pakistan, relating obligations to IHL, in the world community. To make sure the implementation of IHL in Pakistan, especially for the protection of IDPs, the following measures are suggested for the

- 1) Translating the major IHL Conventions and Protocols into the national language.
- 2) Spreading the knowledge of the important provisions of IHL among the armed and civilians.
- 3) Repressing the violations of IHL and adopting criminal legislation for the punishments of war crimes
- 4) Ensuring the protection of civilians, civilian property, and protected places under IHL.
- 5) Ensuring the judicial and fundamental guarantees of civilians, especially IDPs, during armed conflicts.

6) Appointing trained and qualified staff in IHL, especially legal advisers, within the armed forces.

7) Taking account IHL when deciding to conduct a military operation, by making sure the protection of civilians, especially IDPs.

5.2.5 Relevance of Sharia law in establishing IHL as affecting IDPs According to Islamic Jurists and Scholars.

The analysis of the rules of International Humanitarian Law and Islamic Humanitarian Law results in the existence of similarities and differences in both the systems.

Although, there exist differences between International Human Law and Islamic Humanitarian Law and their ways of giving treatment to the armed conflicts in their own perspectives, both aim to save people and humanity.

Pakistan, being a leading Islamic State practices Islam as their state religion and empowers parliament to frame the domestic legal structure of the state. The constitution of Pakistan binds the legislature to frame the laws of the state in accordance with the injunctions of Islam. Pakistan duly obliges the rules of International Humanitarian Law and adopts these rules into various domestic legislations of the state. The incorporation and adoption of Islamic law, as well as international laws, is mainly done by the act of parliament or executive.

The Islamization of laws in Pakistan has remained disputed/debated among religious and liberal forces. The religious authorities have been trying to implement Sharia as the legal system of the state, while progressive forces have been opposing the implementation of Sharia in Pakistan. The legal system of Pakistan is based on the middle path between both the extremes.

The various Muslim states in the world base their democratic and constitutional structures on the rules of Islam and adopt International Law, including International Humanitarian Law into their domestic legal structure. Most of the states follow the doctrine of dualism in Applying International Humanitarian Law in the court system of their states. Pakistan, being a leading Islamic state, not only apply International Law in the domestic legal system the state but also is a signatory to most of the international conventions including Geneva Conventions and Hague Convention. Furthermore, Pakistan is a full member of the bodies of the United Nations and obliges the rules of International Humanitarian Law.

Almost all the leading Islamic countries are a signatory to the Geneva Conventions and Hague Convention and oblige the rules of International Humanitarian Law by adopting them into their domestic legal structures in various ways. Although there exist some differences between International Humanitarian Law and Islamic Humanitarian Law, the Islamic states consider the rules of International Humanitarian Law in their domestic legal structures. The nature and purpose of both International Humanitarian Law and Islam aim to serve the humanity, and this aim overcomes the differences that exist among them.

The constitutions of the leading Muslim states confirm the applicability of International Humanitarian Law in the constitutions of the Muslim countries. They seem to have no problem in adopting the rules of International Law and making the applicability of International Humanitarian Law in their Islamic constitutional structures that are dominated by Islamic Law. Hence, Islamic law seems not in conflict with International Humanitarian Law and the working of both the systems is possible in the constitutional structure of the Islamic states. Most of the Islamic countries, including Pakistan, Iran,

Saudi Arabia, Afghanistan, Bangladesh, Iraq, Egypt, and Brunei have Islamic constitutional structure dominated by the rules of Islam. They are active members of the world community and abide by the rules of International Law, including International Humanitarian Law. In the case of Pakistan, neither Islam nor International Humanitarian Law prohibits the application of each other. The domestic legal system of Pakistan adopts the rules of Islamic Law, as well as the rules of International Humanitarian Law.

5.2.6 Views of IDPs regarding their protection under the law, policy, and implementation in Pakistan

More than 1.5 million IDPs still remain displaced in Pakistan, ranging from 2009 to 2016, still struggling to get their lives back on track and in fear of repeated displacements due to the uncertainty of the termination of the conflict in Pakistan. The responses of the IDPs in the interviews show understandable frustration for the unsatisfactory efforts of the government of Pakistan in collaboration with the international organizations.

However, the satisfactory efforts for providing protection to IDPs would have benefited those who are already displaced. What is needed is a stricter and comprehensive legal framework for protection of the conflict-affected IDPs at both national and international level to resolve the causes of displacement and save people from future displacements. The limitations of IHL still await a political resolution.

The interviews with displaced persons in Pakistan contradict the version of government authorities. Most IDPs show their unhappiness and resentment on the arrangements made by the government for their return and hold the government responsible for their sufferings and criticise its involvement in the armed conflict. Some of them,

understanding the situation and magnitude of the problem, recognize the efforts made by the government. The interviews show that principles of international law have not been applied appropriately to these displaced persons, especially regarding prevention, return, and resettlement.

5.2.7 Conclusions from the Pakistan case for other countries, specifically Islamic countries with large Muslim populations, having conflict-affected large IDP populations.

This case study of Pakistani IDPs provide recommendations for other countries for protecting IDPs, specifically Muslim countries with large Muslim populations, having conflict-affected IDPs. The presence of Sharia Law does not hinder the application of IHL, and other international laws helping the protection of IDPs, in providing protection to IDPs in the Muslim majority countries of the world.

The domestication of IHL, however, is necessary for the existing legal structures of the Muslim countries because IDPs need recognition of their rights legally protected and implemented under domestic legislation. The domestic laws, relating IDPs, of the Muslim countries, also need to be updated for providing specific need based rights to IDPs in accordance with the circumstances and conditions of their displacement.

The Western narrative about the non-compatibility of IHL with Islam seems irrational in the context of the applicability of IHL to conflict-affected IDPs in Pakistan. Hence, other Muslim countries in the world including Afghanistan, Somalia, Iraq, Syria, Sudan, and Turkey can be protected under IHL through proper adoption and implementation of the rules of IHL.

The national governments with the support of international humanitarian organizations must deal with the conflict-affected IDPs in such Muslim countries in accordance with

the IDP legal framework at both international and national level. The Sharia law, instead of being considered as a distinct legal system, must be interpreted in favouring the protection of IDPs under IHL and acceptance of the rules of IHL in the Islamic contexts.

5.3 Recommendations for the Protection of IDPs in Pakistan

The matter of IDPs in Pakistan has emerged as an enormous issue during the last decade. The literature written on the matter of IDPs in Pakistan includes the role of the government and its policies for the legal protection of IDPs in Pakistan. The government of Pakistan and its policies have been severely criticised for not being able to provide legal protection to IDPs and domestic laws do not meet the standards set by the UN Guiding Principles of Internal Displacement, 1998.

The lack of a legal structure available to IDPs, limited resources and non-willingness the government of Pakistan all contribute to IDPs suffering. In view of the unsatisfactory role of domestic law to IDPs in Pakistan, the international legal framework becomes more important in providing legal protection to IDPs in Pakistan.

Although the government and NGOs tried to provide facilities to IDP in the camps, it was difficult to sustain that over a long period. With the passage of time, the arrangements became less effective and inadequate. These IDPs were being treated poorly when the researcher visited these camps, with poor management, although some NGOs were working better.

The efforts made by the government of Pakistan and the International Organizations although played an important role in the assistance, settlement, and rehabilitation of the displaced persons, yet the magnitude of the problems, the large number of the displaced

person and the further displacements have made the situation more critical. The government of Pakistan has not only to deal with the matter of the displaced persons at one time but also must fight against the militant groups and perpetually receiving more displaced persons.

Despite, facing so many problems and criticising the role of government, the people were comparatively satisfied with the role played by NGOs and other Organisations working for the betterment of these people. They people were appreciating their honesty, commitment, and support to their limited resources. They were admiring the way of working and helping these people. There were some of them who were not happy with the facilities provided to them, in general, but there were few of them who were unhappy, specifically, with the role of the International Community. They admitted that the authorities try to provide special care and assistance to the vulnerable people and pay reasonable attention towards the problems of women, particularly the pregnant women, and children.

The role of government was, perhaps, the most criticized and people were seemed to be complaining about government all the time. None of them seemed to be satisfied with the role played by the government to amend their loss and sufferings. Although some people recognized the positive steps of the government, they were short termed or limited. The people were not satisfied with the role of government in the rehabilitation process. They were criticising the policies of the governments and the discontinuity of policies. They told that earlier the government took some good steps but with the passage of time, it failed to maintain its tempo.

The problem of displaced persons in Pakistan is so big, and continuous activities are resulting in the displacement of much more people time to time, that it disturbs the

plans and strategies of the Government and other authorities and add to the sufferings of displaced persons. The displaced persons, unaware of the situation of their original places of residence, keep demanding their return to homes and complaining about the non-cooperative role of the Government. In fact, the magnitude of the problem of displaced persons and limited availability of resources seem to justify the slow working of the Government and other organizations, but the provision of minimum standards of living for the displaced persons is not justifiable. Although at times, displaced persons tend to exaggerate their situation to draw the attention of media and government authorities, still their grievances are genuine. The International Community needs to be invited and involved more by the Government of Pakistan to tackle the problem of displaced persons more effectively.

This research suggests some steps for the government of Pakistan to respond to this problem of IDPs better:

The provision of security to displaced persons is the basic responsibility of the government. The limited sources are no excuse for the government, as governments owe the responsibility to provide sustainable security to the life and property of the people living in its territory. IDPs are considered as a part the civilian population of the state; therefore, the government of Pakistan is legally responsible for the provision of sustainable security to displaced persons in Pakistan. It is the responsibility of the government of Pakistan to assure the security of displaced persons in a respected and graceful manner. The efforts of the government of Pakistan are not satisfactory and need to be carried some solid and sustainable steps in making the security of displaced persons assured.

The provision of basic services to displaced persons is another responsibility of the government of Pakistan. The basic needs of displaced persons that include food, water, shelter, clothing, sanitation, medical treatment and special needs of women and children are needed to be fulfilled by the government of Pakistan. Where the displaced persons are housed in camps set up for the purpose, efforts should be made, as far as possible, to house people from a community or village together in the same camp to allow them to maintain social bonds and community networks.

The criticism of the role of the government authorities in the provision of basic services can be responded in a better way by providing managed, transparent, and equal system of the distribution of the relief goods to displaced persons. The help and support of the international and national NGOs play an important role in providing necessities to displaced persons. The displaced persons and civil society have acknowledged the role of international and national NGOs in helping displaced persons. The government of Pakistan must ensure the fair utilisation of this funding in providing necessities to displaced persons.

The return of displaced persons is the most appropriate solution to the problem of displaced persons. The government of Pakistan has the responsibility to make assisted and controlled the return of both refugees and IDPs to their original places of residence. The efforts made by the governments of Pakistan with the help and assistance of UNHR have worked wonderfully well. The acknowledgement of these efforts has not been made by displaced persons and civil society as compared to the efforts shown in the official records of the government reports. The government needs to build a relationship of trust and confidence with displaced persons in making their voluntary and friendly return. The reports of the condition of the post return phase of displaced persons do not

show a satisfactory situation. Most of the returnees have been reported facing difficulties in adjusting to the new phase of their lives.

The compensation and reimbursement of the destructed properties are the responsibility of the government, in the case of IDPs, and adequate provision of the financial requirement to the refugees. As per reports of the neutral sources, the adequate compensation for the destructed properties, crops, businesses, livestock, and other financial loss of IDPs have not been made by the government of Pakistan. The financial aid and support provided by various national and national agencies have not been properly utilised in making compensation for the losses of displaced persons. The international support and funding for refugees need to be distributed among refugees properly. Despite, poor financial conditions and limited resources, the government of Pakistan has the responsibility to manage adequate compensation and reimbursement to displaced persons. The government of Pakistan needs to seek help from the international community, United Nations, UNHCR, ICRC and developed countries, to compensate displaced persons.

It is the responsibility of the government of Pakistan to construct the schools, hospitals, residential houses and provide work and business opportunities for displaced persons. The displaced persons are willing to earn their livelihood by working in different sectors, instead of remaining dependent on the financial support. The farming, small industries, and skilled jobs opportunities help to earn displaced persons a respected and graceful livelihood. The displaced persons in Pakistan complain the role of government in planning for the provision of working opportunities and most of them search these opportunities by helping themselves or with the help of their friends, family members, and the local community. The establishment of camp hospitals and schools have served

the medical and educational needs of displaced persons in Pakistan with the help of UNHCR, ICRC, and other NGOs. The situation has still not worked as to the provision of adequate medical and educational needs of displaced persons. The government of Pakistan needs to put more efforts in meeting these requirements of displaced persons.

The process assessment, registration of record keeping is necessary to assess the needs and measures necessary for helping displaced persons. The provision of protection and deciding for the return of displaced persons is not possible without proper assessment.

The government of Pakistan has not been able to assess the matter of displaced persons properly. The registration and record keeping has remained a big issue in Pakistan.

Thus, the government authorities have been struggling in policy making for displaced persons. The emergency response has remained very poor and inefficient. The restoration of electricity and telecommunication system, preparation of infrastructure and water supplies have remained another problem in Pakistan. The disaster response system needs to be upgraded to provide a quick and efficient response in case of emergency to displaced persons.

The government needs to ensure proactive measures for preventing conflict affected displacement from occurring in the first place. The concerned authorities must show their vigilance in identifying and anticipating threats by continuously assessing and monitoring of risks of displacement. The appropriate response must be adopted and efforts must be made to mitigate as far as possible the impact of the conflict on the affected population in situations of unavoidable displacement. The government of Pakistan must adopt a different policy for conflict affected IDPs as compared to the natural disasters affected IDPs. The needs, circumstances, and vulnerabilities of conflict-affected IDPs are often different from natural disasters affected IDPs.

The government of Pakistan needs to develop a separate template for protection and assistance of conflict-affected IDPs in Pakistan. The additional vulnerabilities of the conflict-affected IDPs must be specifically considered on an individual basis, considering the age, gender, religious belief, health conditions and physical and mental disabilities of the vulnerable IDPs. The minimum entitlements relevant to conflict-affected IDPs must be identified and domestic laws and policies must reflect such entitlements to the vulnerable conflict-affected IDPs.

The response to conflict-affected displacement must be expanded from mere emergency situations to all the phases of displacement. There are many instances when conflict-affected IDPs in Pakistan have been left unassisted and unattended after providing them emergency assistance. The government must recognise the importance of assisting the conflict-affected IDPs beyond the immediate emergency response and must assess and respond their needs during all the phases of their displacement. The right centric policies, in collaboration with the applicable human rights and humanitarian law, must be framed covering all the phases of displacement.

The conflict-affected women and children are considered as the most vulnerable IDP population which suffers the most. They must be provided with special care and assistance according to their specific needs. The government of Pakistan has not been able to treat these vulnerable people accordingly, therefore, it is strongly recommended to provide women equal access to assistance and protection. The specific needs and risks of conflict affected IDP women must be met, by addressing all the gaps in their assistance and protection. The social and cultural norms of the conflict-affected areas of Pakistan, that stop women from coming out of houses and camps, must not compromise

their protection and authorities must adopt policies to facilitate women by considering their social and cultural norms.

Efforts must be made by the government authorities to meet the special needs of the conflict-affected displaced children. The impact of displacement on children must be tried to reduce as much as possible by providing a child-friendly atmosphere and protecting them from trafficking, sexual exploitation, and other forms of exploitation. IDP children in Pakistan, though not been the victims of such abuses, still need to be ensured about their safety and proper treatment during their displacement. They must be provided with the best possible facilities of education, health, sports, and recreation as provided to the normal children of Pakistan.

The return and resettlement policies and plans need to be framed and executed in consultation with IDPs as they are the most concerned people. This process has not properly consulted IDPs and their concerns have not been adequately responded. The conflict-affected IDPs in Pakistan have faced various problems due to unsuitable conditions of their native places for return. The policies and planning must be done by providing IDPs reliable information and giving them freedom of choice in making decisions for their return in a voluntary manner. The future policies relating return and resettlement of the conflict-affected IDPs must include the voices of the concerned IDPs including women. It is necessary for the government authorities to ensure the safe, dignified, and voluntary return of the conflict-affected IDPs in Pakistan.

The national government should develop a comprehensive framework for its IDP response and assign resources to match its obligations to its displaced citizens. Military operations to secure FATA should not compromise IDPs' protection or their right to return in conditions of safety and dignity. There is a need at the political and social level

to increase understanding of the circumstances of displaced populations to promote empathy towards IDPs.

The government of Pakistan must ensure the implementation of its human rights obligations under international law, especially IHL, by adopting the rules relating IDPs into the domestic legal structure of the country. It can help IDPs, especially the conflict-affected IDPs, in accessing their legal rights and benefits. The enforcement of human rights instruments and IHL rules can support measures for the protection, empowerment, and rights of the conflict-affected IDPs during all the phases of their displacement. The legislative authorities of Pakistan must seriously work on the incorporation of the UN Guiding Principles on Internal Displacement in domestic legislation to enable IDPs for invoking their rights.

Every possible effort must be made to revive economic prospects for the affected population returning to their native areas to prevent recurrence of displacement. The inclusion of programmes for livelihood support, irrespective of gender, must be an integral component of the overall strategy concerning the return of the displaced and must not focus only on the male gender. Provisions must also be made for those who cannot benefit from livelihood support programmes for any reason.

Failure to implement the country's human rights obligations under international instruments through domestic legislation has deprived the displaced persons of the resulting benefit. Enforcement of human rights instruments specific to women and children can support measures for their protection, empowerment, and rights in situations of displacement. Incorporating Guiding Principles on Internal Displacement in domestic legislation will also enable the displaced persons to invoke their rights.

There is an urgent need to ensure implementation of rights of IDPs and to plan for them to have easy and affordable access to justice.

The legal protections for the displaced persons need to be fully observed to save their future from dangers and uncertainty. In the case of the displaced persons in Pakistan, the situations seem complex due to the involvement of various factors that put their future at stake. Many displaced persons in Pakistan, in the presence of ongoing armed conflict between trouble creators and law enforcing agencies of Pakistan, put the limited resources of Pakistan in deep trouble. Despite, the availability of legal protection, the role of the international community becomes important in the situation of displaced persons in Pakistan. The international community must make adequate measures save the future of displaced persons in Pakistan from destruction.

The national governments must take steps in preventing displacement and helping IDPs where it occurs. The government has the responsibility of minimizing the adverse effects of displacement and raising national awareness about internal displacement. The data collection, training on the rights of IDPs, framing national legal framework to ensure the protection of the rights of IDPs, and development of a comprehensive national policy on internal displacement need to be performed by the government authorities.

The competent authorities have the responsibility to assist the international humanitarian organizations and other actors, helping the internally displaced persons in their return, resettlement, and reintegration. Often, national governments need help from the international community and international organisations in building their capacity to prevent and respond to situations of internal displacement, and early recovery efforts in situations of internal displacements.

The international legal framework provides them protection under various bodies of international law, mainly under IHL, and states are suggested to apply the UN Guiding Principles of Internal Displacement to protect IDPs. To protect IDPs in situations of armed conflicts of non-international character, IHL extends its applicability to the situations of non-international armed conflicts. Common article 3 of the Geneva Conventions of 1949 and Additional Protocol II to the Geneva Conventions specify the criteria of non-international armed conflicts.

The existence of the UN Guiding Principles of Displaced Persons and IHL is not the solution to the problem of displaced persons. The proper implementation of such legislation, with the help and support of international community, can assist the government of Pakistan to handle this matter in a better way. In order to provide adequate support and assistance to displaced persons, the government of Pakistan should present the matter of displaced persons at international forums in an efficient way. The help and support of the international community can enable Pakistan to cope with the problems of displaced persons in a better way.

5.4 Conclusion

The present research adds to the existence literature by exploring the doctrinal and empirical aspects of the protection of the conflict-affected IDPs in Pakistan under IHL. Legal protection of IDPs in Pakistan in the context of the whole legal spectrum of domestic and international legal framework applicable to IDPs in Pakistan has not been studied, especially assessing the conflict in Pakistan against the criteria of non-international armed conflicts. The persistent refusal of the government of Pakistan, and the announcement of the International Committee of the Red Cross about considering the conflict in Pakistan as non-international armed conflict needs an investigation to assess the applicability of IHL on IDPs in Pakistan.

The nature applicability of IHL to the conflict in Pakistan is explored in the context of non-international armed conflict, separated from internal tension or political disorder etc, against criteria set under common article 3 of the Geneva Conventions, 1949 and additional protocol II to the Geneva Conventions, 1977. This research explores the protection of IDPs in Pakistan under domestic and international legal structures. It makes a theoretical and practical contribution to an existing and developing body of literature, building a theory of the compatibility of IHL on IDPs with Islamic Law. Practically, this study helps the national authorities of Pakistan to improve the framework for the protection of IDPs in Pakistan, including reform of national legislation.

The applicability of IHL on the displaced persons in Pakistan has been explored through this study that involves a case study of displaced persons in Pakistan. The matter of the application of IHL in an Islamic context has been explored by looking at the compatibility of IHL with Islam. The adoption of IHL in the domestic legal systems of

the leading Islamic states, including Pakistan, has been explored with the engagement of scholarly discussions and theories about the compatibility of IHL. The role of Islamic law in the constitutional structures of the leading Islamic states and adjustment of the rules of International Law, including IHL, has been analysed as to explore the compatibility IHL and Islam in the context of Islamic states. After reaching to an argument about the applicability of IHL in an Islamic context, the matter of displaced persons is explored as to look at the applicability of IHL on displaced persons in Pakistan.

The Western narrative had been considering Islam as incompatible with IHL, while modern Muslim scholars had been favouring the compatibility of IHL with Islam. The major Islamic states, including Pakistan, apply different methods of the incorporation of the rules of IHL and Sharia Law into their domestic legal structures. The compatibility between IHL and Islam has been established by looking at both the theoretical and practical aspects of the matter. The existence of Islamic Laws in the domestic legal structures of most of the Islamic countries does not prohibit the adoption of the rules of IHL. The Muslim states base their constitutions on the rules of Islamic Law and frame their domestic laws through congressional legislation by considering Islamic Laws and IHL.

Pakistan, being a leading Islamic State practices Islam as their state religion and empowers parliament to frame the domestic legal structure of the state. The constitution of Pakistan binds the legislature to frame the laws of the state in accordance with the injunctions of Islam. Pakistan dully obliges the rules of IHL and adopts these rules into the various domestic legislation of the state. The incorporation and adoption of Islamic law, as well as international laws, is mainly done by the act of parliament or executive.

The Islamization of laws in Pakistan has remained a matter of dispute among religious and liberal forces. The religious authorities have been trying to implement Sharia as the legal system of the state, while progressive forces have been opposing the implementation of Sharia in Pakistan. The legal system of Pakistan is based on the middle path between both the extremes. So, the existence of Islamic rules in the legal structure of Pakistan cannot be considered a hindrance to the adoption of the rules of IHL, especially the rules relating protection of IDPs.

Pakistan, being a leading Islamic state, not only apply International Law in the domestic legal system the state but also is a signatory to most of the international conventions including Geneva Conventions and Hague Convention. Furthermore, Pakistan is a full member of the bodies of the United Nations and obliges the rules of IHL. Islamic states rather than following the Islamic Law only, in practice accept the rules of International Law to be adopted into their domestic laws. Pakistan also allows the applicability of IHL in its context and welcomes IHL to help and assist the displaced persons in Pakistan.

The conflict in Pakistan, the main reason of the displacement of the millions of IDPs, after being assessed as non-international conflict, demands an effective role of International Humanitarian Law after the failure of the state in providing adequate assistance and protection to IDPs. The lack or non-willingness of the government of Pakistan in providing proper protection to IDPs needs the intervention of the humanitarian organisations in providing protection to IDPs. Hence, the government of Pakistan has not provided full access to humanitarian assistance to displaced population due to various reasons. The ongoing armed conflict and insecurity in Khyber

Pakhtunkhwa and FATA have been the main reasons for providing restricted access to humanitarian assistance to internally displaced people.

The situation of IDPs in Pakistan has been studied in the light of laws applicable to IDPs, in both domestic and international frameworks, and their applicability in Pakistan, by considering the conflict in Pakistan as a non-international armed conflict that. The previous literature available on the protection of IDPs in Pakistan has been analysed in the context of laws applicable to IDPs and their implementation in Pakistan. The role of the humanitarian organisations and the international community has been studied by considering the lack of implementation of IDPs laws and non-willingness of the government to provide proper protection to IDPs.

IDPs are protected under domestic as well as an international legal framework. IHL plays a vital role in the protection of IDPs in the instances of the lack or non-willingness of national governments in providing protection to IDPs. In case of Pakistan, IHL becomes very relevant because of its applicability to non-international armed conflicts. Common article 3 and additional protocol II, the customary law as well as specific rights contained in the Geneva Conventions which provide protection to IDPs. They provide IDPs right of the prohibition of displacement, right to voluntary return as well as any other rights relevant to IDPs as civilians i.e. the right to life, dignity, and freedom, living standards and assistance.

The interviews of the displaced persons residing in the IDP camps in Pakistan have been conducted, analysed, and indented considering the rules of IHL regarding the displaced persons. These interviews show that the displaced persons in Pakistan have not been treated properly, and the principles of international law have not been applied appropriately to these displaced persons. The media reports, blogs, and news stories

available on the treatment of displaced persons in Pakistan present the different picture from government authorities reports.

The rules available for a displaced person in different laws made for displaced persons suggest the protection of displaced persons by assisting and helping them right from the start of displacement till their return and settlement. The state is held responsible for the provision right to displaced persons with the help of international community and different organisations working for displaced persons. IHL comes forward to help, and assists displaced persons and various agencies work under the umbrella of IHL with the support of the government of the territory where displaced persons are kept. Customary rules of IHL rules from refugee laws and principles of internal displacement propose criteria of minimum living standards for the provision of rights to displaced persons.

The conflict-affected IDPs in Pakistan have been provided shelter by Pakistan with the help and assistance of the international organisations. The organisations working under the umbrella of IHL have been supporting the Government of Pakistan in help and return of the displaced persons. The legal framework available for the protection of IDPs, mainly UN Guiding Principles on Internal Displacement has not been properly abided by Pakistan through adopting them into different national and domestic laws. Thus, the role of IHL becomes definitive in the protection of the displaced person. It protects IDPs as civilians, in situations of non-international armed conflicts, conflicts under common article 3 to the Geneva Conventions of 1949 and 1977 Additional Protocol II to the Geneva Conventions.

The working of the government, along with different organisations has been criticised at various forums. The displaced persons have not been satisfied with the help and support provided to them by the government authorities. The limited resources and the intensity

of the problem of displaced persons have kept the government authorities under pressure. The ongoing military operation against the trouble creators within Pakistan has been adding more problems. Although, the displaced persons have acknowledged the role of the international organisations and NGOs but keep criticising the role of the national authorities in providing them protection and assistance.

The state is held responsible for the provision of the right to displaced persons with the help of international community and different organisations working for displaced persons. IHL comes forward to help, and assists displaced persons, and various agencies work under the umbrella of IHL with the support of the government of the territory where displaced persons are kept. Customary rules of IHL rules from refugee laws and principles of internal displacement propose criteria of minimum living standards for the provision of rights to displaced persons.

The Government Authorities reports and figures, regarding displaced persons, show that authorities have played a satisfactory role in the protection, help, and assistance of displaced persons in Pakistan. The working of UNHCR, the government authorities of Pakistan have supported ICRC and other International organisations and NGOs. UNHCR has been provided with all necessary support by the government authorities of Pakistan in making sure the assisted return of refugees and displaced persons.

The government claims for properly raising the issue of displaced persons in front of the international community and support and funding from the international community have been utilised to accommodate the displaced persons. They blame the ongoing armed conflict and constant rising of the number of displaced person as responsible for the delay in planning for the return of displaced persons. According to the government,

the causes of the sufferings of displaced persons have been the limited funding and lack of resources for many displaced persons.

Pakistan still needs a lot of work to be done for implementing the IHL into the domestic legal structure of the state. Hence, being a signatory to the Geneva Conventions and its additional protocols, it is the responsibility of Pakistan to oblige the rules of IHL. The displaced persons in Pakistan can be better served by the government of Pakistan with the help of international organisations, NGOs, and other authorities. The role of ICRC, UNHCR and Security Council is very useful in this regard. The displaced persons are not hesitant in accepting the help and support provided to them by any of the international community.

In situations of the non-willingness or lack of resources by the concerned state, the role of IHL becomes important in the protection of IDPs affected by conflict, especially affected by non-international armed conflicts, as in the case of Pakistani IDPs. The criteria for the existence of non-international armed conflict is necessary to be met, for the application of IHL, set under common article 3 and Additional Protocol II to the Geneva conventions. The conflict in Pakistan meets this criteria and provision and IHL becomes relevant in the context of unsatisfactory protection to IDPs by the national government authorities.

Moreover, the context of Pakistan is considered as an Islamic context due to the inclusion of Sharia Laws in the domestic legal structure and religion dominated strict social and cultural rules. The applicability of IHL in the Islamic contexts, as debated at different forums, does not provide a concrete evidence about the acceptance or rejection of the applicability of IHL in Islamic contexts. As for as Pakistan is concerned, it adopts rules of Sharia in the domestic legal structure as well as abide by the rules of IHL.

Islamic context does not become an issue in the application of IHL for the protection of IDPs in Pakistan.

The conflict-affected IDPs in Pakistan can be protected and provided with minimum international standards of living with the help of all the authorities responsible for their well-being. The combined effort of the international community and the government of Pakistan can help them in making them returned to their original places of residence and protect them during displacement. It is the responsibility of the international community and government of Pakistan to provide them security and fundamental human rights.

The international organizations can play a very useful role with the help of the International community and work together with the government of Pakistan.

5.5 Recommendations for Further Research

This research has explored the protection of conflict-affected IDPs, under both domestic and international legal framework, especially under IHL, in the Islamic context of Pakistan by looking at the applicability of IHL on a conflict in an Islamic country. This research suggests the exploration of democratic values of the Islamic countries in the presence of Islamic Laws in the constitutional and domestic legal structures of the Islamic countries in the context of the protection of IDPs.

This study recommends further research to be carried on the applicability of domestic and international laws various contexts, including specific rights and specific categories of IDPs. This research further opens the gates for exploring the domestic legal structures of states, hosting displaced persons, involving the matters Human Rights, Humanitarian Law, Constitutional Law, and International Law for exploring the violations of various legal rights, under domestic and international legal frameworks, of

displaced persons in other countries like Syria, Afghanistan, Myanmar, Somalia, and Sudan.

The matter of displaced persons in other Muslim countries is another recommended topic of research. The debates and discussion for putting a ban on the refugees from Muslim countries by the United States can be studied as a matter of conflict in the context of International law and Islam. The protection of the rights of IDPs and International Law and the violation of the rights of the IDPs in Muslim countries be valuable areas of research in the present scenario of the displaced persons in Muslim countries.

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LIST OF PLACES

Azad Kashmir	A self-governing region polity administered by Pakistan
Baluchistan	A province in Pakistan
Bannu	A District of Khyber-Pakhtunkhwa
Buner	A District of Khyber-Pakhtunkhwa
Dera Ismail Khan	A District of Khyber-Pakhtunkhwa
Dir	A District of Khyber-Pakhtunkhwa
FATA	Federally Administered Tribal Areas in Pakistan
Gilgit-Baltistan	A self-governing region polity administered by Pakistan
Hangu	A District of Khyber-Pakhtunkhwa
Islamabad	Capital City of Pakistan
Khost	A province in Afghanistan
Khyber Agency	An Agency in FATA
Khyber-Pakhtunkhwa (KPK)	A province in Pakistan
Kohat	A District of Khyber-Pakhtunkhwa
Kohistan	A District of Khyber-Pakhtunkhwa
Kunar,	A province in Afghanistan
Lahore	A Major City in Pakistan
Lakki Marwat	A District of Khyber-Pakhtunkhwa
Malakand	A District of Khyber-Pakhtunkhwa
Mardan	A District of Khyber-Pakhtunkhwa
Multan	A Major City in Pakistan

North Waziristan	An Agency in FATA
Nowshera	A District of Khyber-Pakhtunkhwa
Orakzai Agency	An Agency in FATA
Paktia	A province in Afghanistan
Paktika	A province in Afghanistan
Peshawar	A District of Khyber-Pakhtunkhwa
Punjab	A province in Pakistan
Sindh	A province in Pakistan
South Waziristan	An Agency in FATA
Swat	A District of Khyber-Pakhtunkhwa
Tank	A District of Khyber-Pakhtunkhwa

TERMS AND ABBREVIATIONS

IDMC	Internal Displacement Monitoring Centre
NIAC	Non-International Armed Conflict
ICJ	International Court of Justice
EXCOM	The Executive Committee of the High Commissioner's Program
UNGA	United Nations General Assembly
UNICEF	United Nations Children's Fund
UNDP	United Nations Development Program
IBRD	International Bank for Reconstruction and Development
WFP	World Food Program
WHO	World Health Organization
OHCHR	Office of the High Commissioner for Human Rights
IOM	International Organization for Migration
ELS	Empirical Legal Studies
HC	High Court
SC	Supreme Court
IPR	Interview Protocol Refinement
ICRC	International Committee of Red Cross
ICTY	The International Criminal Tribunal for the former Yugoslavia
USA	The United States of America
UN	The United Nations
UNSC	The United Nations Security Council
NDMA	National Disaster Management Authority
ISAF	International Security Assistance Force

SAFRON	Ministry of States and Frontier Regions
FDMA	FATA Disaster Management Authority
PDMA KPK	Provincial Disaster Management Authorities' Khyber Pakhtunkhwa
PDMA Punjab	Provincial Disaster Management Authorities Punjab
PDMA Sindh	Provincial Disaster Management Authorities Sindh
PDMA Baluchistan	Provincial Disaster Management Authorities Baluchistan
UNDP	The United Nations Development Program
CNIC	Computerized National Identity Card
Al-Siyar	Conduct of the Muslims in their relations with nonbelievers generally referred to Islamic international law
Allah	In the English language, the word generally refers to God in Islam
Sharia (Islamic Law)	Religious law forming part of the Islamic tradition
URDU	The National Language of Pakistan
TTP	Tehrik-i- Taliban Pakistan (The non-state armed group fighting against the security forces of Pakistan)
The Frontier Corps	A unit of the security forces of Pakistan
Levies (Khasadars)	A unit of the security forces of Pakistan
Sipah-i-Sahaba Pakistan	A militant organization in Pakistan
Jaysh-e-Muhammad	A militant organization in Pakistan

Haqqani Network	A militant organization operating in the south-eastern region of Afghanistan and the northwestern Federally Administered Tribal Areas (FATA) in Pakistan
Hezb-e-Islami	An Islamist organization commonly known for fighting the Communist Government of Afghanistan
Madrasas	A type of educational institution in Pakistan, generally associated with religious education
Purdah	A practice among Muslim women wearing clothing that covers their bodies completely when they go out

APPENDICES

Appendix A: Interview Questionnaire for Displaced Persons

Title of Project: Applying Humanitarian Law in an Islamic Context: A case study of Pakistan after September 11, 2001.

PERSONAL DETAILS

Name:

Gender:

Age:

Head of Family or not:

Area of Displacement:

Former occupation:

Length of time in the camp:

Location of camp:

Interview Questions:

1. Why did you leave your home? Who did inform you? How much time before?
2. Who did help you bring to the camp?
3. Were you properly informed about displacement? Do you think it was necessary to save your life?
4. Have you been asked to return home? Why have not you returned home? If returned: why have you come back
5. What was told to those who returned? Any communication with them? What do they tell?
6. Do you think you are being treated equally in the camps? Who is responsible for this?
7. How do the camp authorities treat you?
8. Do you feel safe here? I mean any threat to your life and security?
9. Are you happy with the accommodation, food, water, clothes, and medicines provided to you?
10. Where are your other family members? Questions about reunification
11. Did you get your ID cards and other necessary documents easily? What difficulties?
12. Do you have any update on your property left behind? Returnees asked about the condition of their property
13. Do you get chances for employment and paid work or any work without pay?
14. Do you know about any of your children getting selected for police, an army of security forces? If yes: Who convinced and how?
15. Were your children studying before displacement and what are they doing now?

APPENDIX B: Interview Questionnaire for Legal Experts

Title of Project: Applying Humanitarian Law in an Islamic Context: A case study of Pakistan after September 11, 2001.

PERSON DETAILS:

Name.	Gender.	Age:
Profession:	Time in Profession:	
Place of Interview:	Contact:	

Interview Questions:

1. Role of IHL in times of armed conflict, especially in Pakistan
2. The compatibility of IHL with Islam and its application in Islamic context, especially in Pakistan
3. Armed conflict in Pakistan and its categorization as NIAC under IHL criteria
4. Considering the conflict in FATA and surrounding areas as NIAC against legal implications
5. Expanding the conflict zone to the whole country against the attacks of armed groups
6. Role of the government of Pakistan in providing assistance, protection and arrangements for return and resettlement of IDPs
7. Role of the humanitarian organizations in helping IDPs, especially assisting the return and resettlement of IDPs.
8. The role of government in spreading awareness of the problem of displacement, designation of the focal point and calling humanitarian organizations for helping IDPs
9. The temporary efforts to accommodate IDPs and durable solutions
10. The planning, policies and legislative steps of the government in providing legal protection to IDPs
11. The domestication of IHL and adoption of UN Guiding Principles of Internal Displacement
12. The role and effectiveness of the National Disaster Management Authority and National Disaster Management Act, in protecting IDPs

APPENDIX C: Anglia Ruskin University Ethics Approval Application Form

PLEASE COMPLETE THE FORM IN WORD PROCESSING FORMAT. HANDWRITTEN APPLICATIONS WILL NOT BE ACCEPTED.

Name	FAIZ BAKHSH
Faculty	ARTS, LAW, AND SOCIAL SCIENCES
Title of Proposed Research	APPLYING HUMANITARIAN LAW IN AN ISLAMIC CONTEXT: A CASE STUDY OF PAKISTAN, AFTER SEPTEMBER 11, 2001
Address	
E-mail address	
Type of Researcher (please tick)	Postgraduate student: <input checked="" type="checkbox"/> <input type="checkbox"/> Doctorate
Supervisor/Project Director	DR PENNY ENGLISH: FIRST SUPERVISOR
Collaborators	PROFESSOR ROBERT HOME: SECOND SUPERVISOR DR RUBYA MEHDI: EXTERNAL ADVISOR
Expected date of commencement	23 JANUARY 2012
Approximate duration	3-4 YEARS
Externally funded	<input checked="" type="checkbox"/> <input type="checkbox"/> Yes

The University offers indemnity insurance to researchers who have obtained formal written ethics approval for their research. For details see page 25 of “*Ethics Committee Procedures for the Conduct of Research*”.

1.	Briefly describe the rationale for and state the value of the research you wish to undertake. This study will contribute to the implementation of the humanitarian law in an Islamic context and especially about Pakistan after September 11, 2001. Measures will be suggested to the authorities working in Pakistan for the betterment of the people effected by the war on terrorism.
2.	Suitability/qualifications of researchers to undertake the research. M.A English Literature LL.B
3.	What are the aims of the research? To apply the humanitarian law in an Islamic context, with special reference to Pakistan.
4.	Briefly describe the overall design of the project This study will provide the rationale for the application of humanitarian law in an Islamic context. More specifically this study will suggest the measures to be taken by the authorities working in Pakistan for the betterment of the people effected by the war on terrorism.
5.	Briefly describe the methods of data collection and analysis The researcher will gather data, collect published studies from the different UK and Pakistani libraries and articles from different books and journals. Afterwards, the researcher will summarise all the information and make a conclusion based on the hypothesis posited. Moreover, the research will also conduct an interview with the respondents. The researcher will prepare a questionnaire and a set of guide questions for the interview that will be asked of the intended respondents. The questionnaire will be of non-threatening nature. The interview shall be using a semi-structured interview. It shall consist of a list of specific questions and the interviews, at times, does deviate from the list of or inject extra remarks into the interview process.

6.	Describe the participants: give the age range, gender, and any characteristics pertinent to the research project. <i>For experimental studies state the inclusion and exclusion criteria</i>
	The population of this study will be the judges, lawyers, scholars, war affected people, NGOs working in Pakistan and some government officials related to this study. As far as the war affected people are concerned, the refugees, internally displaced persons, families of deceased or/and missing persons residing in camps settled for these people near Peshawar, will be included. The other interviews and questionnaires will be conducted in the cities of Multan and Islamabad. The age range of the participants will be 18-65 consisting of both men and women.
7.	If your participants are under 18, please attach a copy of your clearance letter from the Criminal Records Bureau (if UK) or equivalent non-UK clearance, or, if not, explain below:
	Not applicable
8.	How will the participants be selected and recruited?
	The participants will be selected from six different sectors. Except war affected the sector, all the participants will be recruited according to their suitability and firm knowledge of the matter involved in research.
9.	How many participants will be involved? For experimental studies, specify how the sample size was determined. In clinical trials, a Power calculation <i>must</i> be included.
	In total 60 participants will be involved from six different sectors, 10 participants will be selected from each sector.
10.	What procedures will be carried out on the participants (if applicable)?
	Interviews and questionnaires
11.	What do potential risks to the participants you foresee?
	The only risk involved to the participants can be the economic harm due to the reaction of the institutions, organizations, government officials, agencies for which or under whom the participants work.
12.	How do you propose to ameliorate/deal with potential risks to participants?
	The researcher will seek prior approval from all the relevant institutions, organizations, government officials, agencies for which or under whom the participants work.
13.	What do potential risks to the interests of the researchers you foresee?
	The research involved to the researcher can be the risk of health and safety because the researcher will be travelling overseas (Pakistan) for research.
14.	How will you ameliorate/deal with potential risks to the interests of researchers?
	For this purpose, the researcher will make sure the travel insurance before leaving for Pakistan.
15.	Has a risk assessment been completed? (Yes) (Please be aware that the risk assessment must be kept on file and updated annually). Details of the risk assessment procedure can be found at http://rmd.anglia.ac.uk/form.asp?id=17&sectionid=19
	The eligibility for Anglia Ruskin's Travel Insurance is confirmed. Medical assistance E Card is attached with the application. Medical Assistance Card is also secured.

16. How will you brief and debrief participants? (<i>Attach a copy of the information to be given to participants</i>)		
The research will involve human participants. The researcher will get approval from the participants on a consent form. Before getting the formal consent from the participants, they will be fully informed about the purpose and design of the study as well as of their right to withdraw any time during the process of research.		
17. Will informed consent be sought from participants?	Yes (<i>Please attach a copy of the consent form</i>)	<input type="checkbox"/>
No		<input type="checkbox"/>
<i>If no, please explain below:</i>		
18. If there are doubts about participants' abilities to give informed consent, what steps have you taken to ensure that they are willing to participate?		
The participants will be given permission to exclude themselves if they express any doubt or inability to give informed consent to participate.		
19. If participants are under 18 years of age please describe how you will seek informed consent		
Not applicable		
20. How will consent be recorded?		
The consent will be recorded on the consent application form.		
21. Will participants be informed of the right to withdraw without penalty?	Yes	<input type="checkbox"/>
No		<input type="checkbox"/>
<i>If no, please detail the reasons for this:</i>		
22. How do you propose to ensure participants' confidentiality and anonymity?		
The participants will be fully ensured the confidentiality anonymity and if it is needed to use the information their consent will be taken. The Data Protection Act, Intellectual Property Rights, Ethical Considerations will be fully obliged for this purpose.		
23. Please describe which of the following will be involved in your arrangements for storing data:		
<div style="display: flex; flex-direction: column; gap: 5px;"> <div> <input checked="" type="checkbox"/> <input type="checkbox"/> Manual files (e.g. paper documents or X-rays) </div> <div> <input type="checkbox"/> Home or another personal computer </div> <div> <input type="checkbox"/> University computer </div> <div> <input type="checkbox"/> A private company or work-based computer </div> <div> <input checked="" type="checkbox"/> <input type="checkbox"/> Laptop computer </div> <div> <input checked="" type="checkbox"/> Other (please define) </div> </div> <p style="margin-top: 10px;">Please explain, for each of the above, the arrangements you will make for the security of the data (please note that any data stored on the computer must have password protection as a minimum requirement):</p> <p>The researcher will make sure that each part of the data stored by using password protection and for damage control the data will be stored in more than one place</p>		
24. Will payments be made to participants?	Yes	<input type="checkbox"/>
No		<input type="checkbox"/>
<i>If yes, please specify:</i>		

25. Modification of Proposal	
Some necessary changes will be made in the proposal if the need is felt during the research process.	

26. (EXTERNALLY-FUNDED PROJECTS ONLY) Has the funding body been informed of and agreed to abide by Anglia Ruskin University's Ethics Procedures and standards?	Yes No <input type="checkbox"/>
If no, please explain below:	

27. (EXTERNALLY-FUNDED PROJECTS ONLY) Has the funder placed any restrictions on a) the conduct of the research b) publication of results?	Yes <input type="checkbox"/> No
If yes, please detail below:	

28. Are there any further points you wish to make in justification of the proposed research?
STATEMENT OF THE APPLICABLE LAWS AND LOCAL ETHICAL REQUIREMENTS As my research includes interviews and questionnaires in Pakistan, I will comply with all the relevant laws such as Constitutional laws of Pakistan, Administrative laws of Pakistan, Companies Ordinance, Muslim personal laws of Pakistan along with Data Protection Act, Intellectual Property Laws. For this purpose, I will get approvals from the relevant law enforcing authorities of Pakistan. The consent from the relevant authorities will be provided later. As far as local ethics requirements are concerned, I will comply with the local customs and traditions of the people involved in my research. Consent will be taken from the participants. Participants will be properly informed about any risks. They will be given the opportunity to withdraw at any stage. They will be informed about their legal rights, storage of data, use of data and destruction of data. They will be provided contact details for further information

UREC REGISTER

UREC publishes a list of approved projects on the University intranet, which is searchable by all staff and students of the University. The entry for each project comprises the following data:

- project title
- funding body (if appropriate)
- duration of project
- date and expiry of ethics approval
- name of researcher

Inclusion on this list is a condition of ethics approval unless the Committee is informed of compelling reasons for an exemption. If you wish to request that your information is withheld, please tick the box below and state the reasons for your request.

☐ **I do not wish my project details to be included on the UREC list for the following reasons:**

Please indicate that you are enclosing with this form the following completed documents:

- | | |
|---|--|
| <input type="checkbox"/> Participant consent form | <input type="checkbox"/> Participant Information Sheet |
| <input type="checkbox"/> Summary of the research | |

Appendix D: Participants Consent Form

NAME OF PARTICIPANT:

Title of the project: APPLYING HUMANITARIAN LAW IN AN ISLAMIC CONTEXT: A CASE STUDY OF PAKISTAN, AFTER SEPTEMBER 11, 2001

Main investigator and contact details:

- Faiz Bakhsh, Ph.D. Law Student Anglia Ruskin University Cambridge, UK
- Present Address:
- Permanent Address:
- Email

Members of the research team:

- Faiz Bakhsh:
Researcher (Ph.D. Law Student Anglia Ruskin University, Cambridge, UK)
- Dr. Penny English:
First Supervisor (Anglia Ruskin University, Cambridge, UK)
- Professor Robert Home:
Second Supervisor (Anglia Ruskin University, Cambridge, UK)
- Dr. Rubya Mehdi:
External Advisor (Bahauddin Zakaria University, Multan, Pakistan)

1. I agree to take part in the above research. I have read the Participant Information Sheet which is attached to this form. I understand what my role will be in this research, and all my questions have been answered to my satisfaction.
2. I understand that I am free to withdraw from the research at any time, for any reason and without prejudice.
3. I have been informed that the confidentiality of the information I provide will be safeguarded.
4. I am free to ask any questions at any time before and during the study.
5. I have been provided with a copy of this form and the Participant Information Sheet.

Data Protection: I agree to the University⁵⁸³ processing personal data which I have supplied. I agree to the processing of such data for any purposes connected with the Research Project as outlined to me*

Name of participant
(print).....Signed..... Date.....

YOU WILL BE GIVEN A COPY OF THIS FORM TO KEEP

If you wish to withdraw from the research, please complete the form below and return to the main investigator named above.

Title of Project: APPLYING HUMANITARIAN LAW IN AN ISLAMIC CONTEXT: A CASE STUDY OF PAKISTAN, AFTER SEPTEMBER 11, 2001

I WISH TO WITHDRAW FROM THIS STUDY

Signed: _____ Date: ____

⁵⁸³ "The University" includes Anglia Ruskin University and its partner colleges

APPENDIX E: Participant Information Sheet

Section A: The Research Project

1. The title of this project is “APPLYING HUMANITARIAN LAW IN AN ISLAMIC CONTEXT: A CASE STUDY OF PAKISTAN, AFTER SEPTEMBER 11, 2001”
2. Purpose and value of this study are that this study will contribute to the implementation of the humanitarian law in an Islamic context and especially about Pakistan after September 11, 2001. Measures will be suggested to the authorities working in Pakistan for the betterment of the people affected by the war on terrorism.
3. You are respectfully invited to take part in this research as a participant.
4. Anglia Ruskin University, Cambridge, UK is organising this research
5. This study will try to prove that Humanitarian Law can be applied in an Islamic context and the situation of Pakistan provides its best example. The victims of the war on terrorism in Pakistan can be protected under Humanitarian Law.
6. The source of funding for this study is Ph.D. Law Overseas Scholarship under the project “Establishment of Gillani Law College, Bahauddin Zakariya University, Multan, Pakistan”
7. For further information you can contact:
Faiz Bakhsh, Ph.D. Law Student Anglia Ruskin University Cambridge, UK
Present Address:
Permanent Address:
Email

Section B: Your Participation in the Research Project

1. You have been invited to take part in this research project because you are very much attached to the matter involved in this research project and your opinion will be included as an essential part of this research.
2. You can refuse to take part in this research project if you have any reservations.
3. You can withdraw at any stage without any compulsion, even after being included in this research project.
4. If you agree to take part in this research project you will just be asked to fill a questionnaire and/or Interview of a simple and general type just to record your views upon the matter involved in this research project.
5. As far as any risk is concerned e.g. side effects from taking part, there is no such risk involved. The only risk can be the reaction of your employer, Institution, Organization but their prior approval will be taken before involving you in this research.
6. Agreement to participate in this research should not compromise your legal rights should something go wrong.
7. There are not any special precautions you must take before, during or after taking part in the study.
8. All the information/data/samples collected from you will be used for this research study only.
9. If you take part in this study it will benefit the people of Pakistan that have been affected by the war on terrorism.
10. As your opinion will be used just for this research study so there will be no publishing or unauthorised use of the data provided by you. So, you will be kept confidential and your name, designation, the address will not be shown anywhere.

YOU WILL BE GIVEN A COPY OF THIS TO KEEP, TOGETHER WITH A COPY OF YOUR CONSENT FORM

APPENDIX F: Guiding Principles of Internal Displacement 1998

GUIDING PRINCIPLES ON INTERNAL DISPLACEMENT, 1998

INTRODUCTION: SCOPE AND PURPOSE

1. These Guiding Principles address the specific needs of internally displaced persons worldwide. They identify rights and guarantees relevant to the protection of persons from forced displacement and to their protection and assistance during displacement as well as during return or resettlement and reintegration.
2. For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border.
3. These Principles reflect and are consistent with international human rights law and international humanitarian law. They provide guidance to:
 - (a) The Representative of the Secretary-General on internally displaced persons in carrying out his mandate;
 - (b) States when faced with the phenomenon of internal displacement;
 - (c) All other authorities, groups, and persons in their relations with internally displaced persons; and
 - (d) Intergovernmental and non-governmental organizations when addressing internal displacement.
4. These Guiding Principles should be disseminated and applied as widely as possible.

SECTION I - GENERAL PRINCIPLES

Principle 1

1. Internally displaced persons shall enjoy, in full equality, the same rights and freedoms under the international and domestic law as do other persons in their country. They shall not be discriminated against in the enjoyment of any rights and freedoms on the ground that they are internally displaced.
2. These Principles are without prejudice to individual criminal responsibility under international law, in particular relating to genocide, crimes against humanity and war crimes.

Principle 2

1. These Principles shall be observed by all authorities, groups, and persons irrespective of their legal status and applied without any adverse distinction. The observance of these Principles shall not affect the legal status of any authorities, groups or persons involved.
2. These Principles shall not be interpreted as restricting, modifying or impairing the provisions of any international human rights or international humanitarian law instrument or rights granted to persons under domestic law. In particular, these Principles are without prejudice to the right to seek and enjoy asylum in other countries.

Principle 3

1. National authorities have the primary duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction.
2. Internally displaced persons have the right to request and to receive protection and humanitarian assistance from these authorities. They shall not be persecuted or punished for making such a request.

Principle 4

1. These Principles shall be applied without discrimination of any kind, such as race, color, sex, language, religion or belief, political or another opinion, national, ethnic or social origin, legal or social status, age, disability, property, birth, or on any other similar criteria.

2. Certain internally displaced persons, such as children, especially unaccompanied minors, expectant mothers, mothers with young children, female heads of household, persons with disabilities and elderly persons, shall be entitled to protection and assistance required by their condition and to treatment which takes into account their special needs.

SECTION II - PRINCIPLES RELATING TO PROTECTION FROM DISPLACEMENT

Principle 5

All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons.

Principle 6

1. Every human being shall have the right to be protected against being arbitrarily displaced from his or her home or place of habitual residence.
2. The prohibition of arbitrary displacement includes displacement:
 - (a) When it is based on policies of apartheid, Aethnic cleansing or similar practices aimed at/or resulting in altering the ethnic, religious or racial composition of the affected population;
 - (b) In situations of armed conflict, unless the security of the civilians involved or imperative military reasons so demand;
 - (c) In cases of large-scale development projects, which are not justified by compelling and overriding public interests;
 - (d) In cases of disasters, unless the safety and health of those affected requires their evacuation; and
 - (e) When it is used as a collective punishment.
3. Displacement shall last no longer than required by the circumstances.

Principle 7

1. Prior to any decision requiring the displacement of persons, the authorities concerned shall ensure that all feasible alternatives are explored in order to avoid displacement altogether. Where no alternatives exist, all measures shall be taken to minimise displacement and its adverse effects.
2. The authorities undertaking such displacement shall ensure, to the greatest practicable extent, that proper accommodation is provided to the displaced persons, that such displacements are effected in satisfactory conditions of safety, nutrition, health and hygiene, and that members of the same family are not separated.
3. If displacement occurs in situations other than during the emergency stages of armed conflicts and disasters, the following guarantees shall be complied with:
 - (a) A specific decision shall be taken by a State authority empowered by law to order such measures;
 - (b) Adequate measures shall be taken to guarantee to those to be displaced full information on the reasons and procedures for their displacement and, where applicable, on compensation and relocation;
 - (c) The free and informed consent of those to be displaced shall be sought;
 - (d) The authorities concerned shall endeavor to involve those affected, particularly women, in the planning and management of their relocation;
 - (e) Law enforcement measures, where required, shall be carried out by competent legal authorities; and
 - (f) The right to an effective remedy, including the review of such decisions by appropriate judicial authorities, shall be respected.

Principle 8

Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty, and security of those affected.

Principle 9

States are under a particular obligation to protect against the displacement of indigenous peoples, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.

SECTION III - PRINCIPLES RELATING TO PROTECTION DURING DISPLACEMENT

Principle 10

1. Every human being has the inherent right to life which shall be protected by law. No one shall be arbitrarily deprived of his or her life. Internally displaced persons shall be protected in particular against:

- (a) Genocide;
- (b) Murder;
- (c) Summary or arbitrary executions; and
- (d) Enforced disappearances, including abduction or unacknowledged detention, threatening or resulting in death.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

2. Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against:

- (a) Direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted;
- (b) Starvation as a method of combat;
- (c) Their use to shield military objectives from attack or to shield, favor or impede military operations;
- (d) Attacks against their camps or settlements; and
- (e) The use of anti-personnel landmines.

Principle 11

1. Every human being has the right to dignity and physical, mental and moral integrity.

2. Internally displaced persons, whether or not their liberty has been restricted, shall be protected in particular against:

- (a) Rape, mutilation, torture, cruel, inhuman or degrading treatment or punishment, and other outrages upon personal dignities, such as acts of gender-specific violence, forced prostitution and any form of indecent assault;
- (b) Slavery or any contemporary form of slavery, such as sale into marriage, sexual exploitation, or forced labor of children; and
- (c) Acts of violence intended to spread terror among internally displaced persons.

Threats and incitement to commit any of the foregoing acts shall be prohibited.

Principle 12

1. Every human being has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention.

2. To give effect to this right for internally displaced persons, they shall not be interned in or confined to a camp. If in exceptional circumstances such internment or

confinement is absolutely necessary, it shall not last longer than required by the circumstances.

3. Internally displaced persons shall be protected from discriminatory arrest and detention as a result of their displacement.
4. In no case shall internally displaced persons be taken, hostage.

Principle 13

1. In no circumstances shall displaced children be recruited nor be required or permitted to take part in hostilities.
2. Internally displaced persons shall be protected against discriminatory practices of recruitment into any armed forces or groups as a result of their displacement. In particular, any cruel, inhuman or degrading practices that compel compliance or punish non-compliance with recruitment are prohibited in all circumstances.

Principle 14

1. Every internally displaced person has the right to liberty of movement and freedom to choose his or her residence.
2. In particular, internally displaced persons have the right to move freely in and out of camps or other settlements.

Principle 15

Internally displaced persons have:

- (a) The right to seek safety in another part of the country;
- (b) The right to leave their country;
- (c) The right to seek asylum in another country; and
- (d) The right to be protected against forcible return to or resettlement in any place where their life, safety, liberty and/or health would be at risk.

Principle 16

1. All internally displaced persons have the right to know the fate and whereabouts of missing relatives.
2. The authorities concerned shall endeavor to establish the fate and whereabouts of internally displaced persons reported missing, and cooperate with relevant international organizations engaged in this task. They shall inform the next of kin on the progress of the investigation and notify them of any result.
3. The authorities concerned shall endeavor to collect and identify the mortal remains of those deceased, prevent their despoliation or mutilation, and facilitate the return of those remains to the next of kin or dispose of them respectfully.
4. Grave sites of internally displaced persons should be protected and respected in all circumstances. Internally displaced persons should have the right of access to the grave sites of their deceased relatives.

Principle 17

1. Every human being has the right to respect for his or her family life.
2. To give effect to this right for internally displaced persons, family members who wish to remain together shall be allowed to do so.
3. Families which are separated by displacement should be reunited as quickly as possible. All appropriate steps shall be taken to expedite the reunion of such families, particularly when children are involved. The responsible authorities shall facilitate inquiries made by family members and encourage and cooperate with the work of humanitarian organizations engaged in the task of family reunification.
4. Members of internally displaced families whose personal liberty has been restricted by internment or confinement in camps shall have the right to remain together.

Principle 18

1. All internally displaced persons have the right to an adequate standard of living.

2. At the minimum, regardless of the circumstances, and without discrimination, competent authorities shall provide internally displaced persons with and ensure safe access to:
 - (a) Essential food and potable water;
 - (b) Basic shelter and housing;
 - (c) Appropriate clothing; and
 - (d) Essential medical services and sanitation.
3. Special efforts should be made to ensure the full participation of women in the planning and distribution of these basic supplies.

Principle 19

1. All wounded and sick internally displaced persons, as well as those with disabilities, shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services.
2. Special attention should be paid to the health needs of women, including access to female health care providers and services, such as reproductive health care, as well as appropriate counseling for victims of sexual and other abuses.
3. Special attention should also be given to the prevention of contagious and infectious diseases, including AIDS, among internally displaced persons.

Principle 20

1. Every human being has the right to recognition everywhere as a person before the law.
2. To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one's area of habitual residence in order to obtain these or other required documents.
3. Women and men shall have equal rights to obtain such necessary documents and shall have the right to have such documentation issued in their own names.

Principle 21

1. No one shall be arbitrarily deprived of property and possessions.
2. The property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the following acts:
 - (a) Pillage;
 - (b) Direct or indiscriminate attacks or other acts of violence;
 - (c) Being used to shield military operations or objectives;
 - (d) Being made the object of reprisal; and
 - (e) Being destroyed or appropriated as a form of collective punishment.
3. Property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use.

Principle 22

1. Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights:

- (a) The rights to freedom of thought, conscience, religion or belief, opinion, and expression;
- (b) The right to seek freely opportunities for employment and to participate in economic activities;
- (c) The right to associate freely and participate equally in community affairs;
- (d) The right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right; and
- (e) The right to communicate in a language they understand.

Principle 23

1. Every human being has the right to education.
2. To give effect to this right for internally displaced persons, the authorities concerned shall ensure that such persons, in particular, displaced children, receive an education which shall be free and compulsory at the primary level. Education should respect their cultural identity, language, and religion.
3. Special efforts should be made to ensure the full and equal participation of women and girls in educational programmes.
4. Education and training facilities shall be made available to internally displaced persons, in particular adolescents and women, whether or not living in camps, as soon as conditions permit.

SECTION IV - PRINCIPLES RELATING TO HUMANITARIAN ASSISTANCE

Principle 24

1. All humanitarian assistance shall be carried out in accordance with the principles of humanity and impartiality and without discrimination.
2. Humanitarian assistance to internally displaced persons shall not be diverted, in particular for political or military reasons.

Principle 25

1. The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lie with national authorities.
2. International humanitarian organizations and other appropriate actors have the right to offer their services in support of the internally displaced. Such an offer shall not be regarded as an unfriendly act or an interference in a State's internal affairs and shall be considered in good faith. Consent thereto shall not be arbitrarily withheld, particularly when authorities concerned are unable or unwilling to provide the required humanitarian assistance.
3. All authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced.

Principle 26

Persons engaged in humanitarian assistance, their transports and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence.

Principle 27

1. International humanitarian organizations and other appropriate actors when providing assistance should give due regard to the protection needs and human rights of internally displaced persons and take appropriate measures in this regard. In so doing, these organizations and actors should respect relevant international standards and codes of conduct.
2. The preceding paragraph is without prejudice to the protection responsibilities of international organizations mandated for this purpose, whose services may be offered or requested by States.

SECTION V - PRINCIPLES RELATING TO RETURN, RESETTLEMENT, AND REINTEGRATION

Principle 28

1. Competent authorities have the primary duty and responsibility to establish conditions, as well as provide the means, which allow internally displaced persons to return voluntarily, in safety and with dignity, to their homes or places of habitual residence, or to resettle voluntarily in another part of the country. Such authorities shall endeavor to facilitate the reintegration of returned or resettled internally displaced persons.
2. Special efforts should be made to ensure the full participation of internally displaced persons in the planning and management of their return or resettlement and reintegration.

Principle 29

1. Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services.
2. Competent authorities have the duty and responsibility to assist returned and/or resettled internally displaced persons to recover, to the extent possible, their property and possessions which they left behind or were dispossessed of upon their displacement. When recovery of such property and possessions is not possible, competent authorities shall provide or assist these persons in obtaining appropriate compensation or another form of just reparation.

Principle 30

All authorities concerned shall grant and facilitate for international humanitarian organizations and other appropriate actors, in the exercise of their respective mandates, rapid and unimpeded access to internally displaced persons to assist in their return or resettlement and reintegration.

APPENDIX G: UNHCR Partners in Pakistan

Government Agencies	NGOs
<p>Commissionerate for Afghan Refugees FATA Disaster Management Authority National Database and Registration Authority National Disaster Management Authority Provincial Disaster Management Authority Social Welfare Department Peshawar</p>	<p>Alisei – Italy American Refugee Committee Awaz Welfare Organization Azat Foundation Balochistan Balochistan Foundation for Development Basic Education for Afghan Refugees Blue Veins Centre of Excellence for Rural Development Chaghi Development Organization Children First Church World Service Community Motivation and Development Organization Council for Community Development Danish Refuge Council DOST Welfare Foundation Foundation for Rural Development Frontier Primary Health Care Hujra Village Support Organization Humanitarian Assistance and Facilitating Organization Initiative for Development and Empowerment AXIS International Rescue Committee International Medical Corps – UK Koshan Welfare Society Legend Society Naveed Khan Foundation New Ray of Hope Norwegian Refugee Council Pakistan Community Development Programme Regional Institute for Policy Research and Training Relief International Sarhad Rural Support Programme Save the Children Society for Community Support to Primary Education Society for Empowering Human Resources Society for Human Rights and Prisoners Aid Society for Humanitarian Assistance Empowerment and Development Struggle for Change Taraqee Foundation Union Aid for Afghan Refugees Environment and Sanitation Society Wing for the Awareness and Development of Dir Area Natives Wish International</p>