

1. INTRODUCTION

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1.1 Introduction

We make war that we may live in peace!

~Aristotle

This quote highlights the dichotomy of human civilization, where to keep peace men must prepare for war and make war with other men. Where the whole world is a battlefield... And peace is nothing but an interval between two consecutive wars.

Violence is not new to the mankind, as even the Universe emerged out of Big-Bang explosion. However, the kind of wars that man has indulged into is no doubt destructive, devastating, and ruinous. Man has always raised several questions pertaining to war, whether the war is needed, whether my conduct is justified, whether my actions are causing unnecessary suffering to others and the like. An antidote to these questions is found in the Indian epic Mahabharat.

In the opening chapter of Bhagwat Geeta, when the grand stage of an unparalleled war is set on the battlefield of Kurukshetra and the estranged cousins *Kauravas* and *Pandavas* are set to fight, Arjun sees the futility of a fratricidal war that would result in the death of kith and kin and enumerates the ills of a war to the society. In response, Krishna emphasised on two terms *Karma* and *Dharma* highlighting the role or *karma* of a Kshatriya to fight for righteousness and uphold dharma or justice.

Thus, Bhagwat Geeta as a treatise is an example of dilemma of just and unjust war. On the same dilemma and distinction is the law of wars based. Once the dilemma of just and unjust war is eliminated the conduct of war and rules pertaining to the same come into focus. The rules pertaining to the conduct of war are collectively known as international humanitarian law.

1.1.1 International Humanitarian Law: Importance

The impact of violence and war on the fighters, their family, the society, and the nation are irreversible. Hence, since the inception of the International Law, it has tried to regulate the hostilities by means of rules under the laws of war. The International Law seeks to avert the occurrence of war and even if the war occurs, attempts are made to bring down its severity. This led to the development of two branches of the laws of war that not just curtail the use of force but also humanize the use of force. These two set of laws are *jus ad bellum* and *jus in bello*. As per Laws of War,

- *jus ad bellum* is a collective term used to represent a set of lawful criteria and conditions that needs to be considered before engaging in war. The purpose of these principles is to determine whether the use of force is happening for a lawful purpose or for is an illegitimate use of force, whereas
- *jus in bello* also known in its modern name as international humanitarian law is that branch of law of war that does not look into the causes of war but regulates the actual conduct of war. Thus, a war may be just or unjust, international humanitarian law strives to soften the effect of war and minimize its casualty.

Thus, as the name suggests, international humanitarian law seeks to humanize the war curtailing its impact by regulating the use of force by combatants and protecting those who are non-combatants. The major principles on which the international humanitarian law is placed is based on the test of distinctions, proportionality, and necessity. The distinction between combatants and non-combatants, between civilian and military objectives, those who can be targeted and those who cannot be targeted, the proportionality of harm caused, and necessity of weapons used. These major guiding principles are reflected in the rights and obligations of those engaged in the hostility and those who are not.

Thus, to sum up, international humanitarian law focuses on the means and methods of war thus protecting persons rather than determining the legality of causation of war.

1.1.2 Purposes of International Humanitarian Law:

The main purposes of the law of war are:

- protecting combatants, non-combatants, and civilians from unnecessary suffering
- providing protections for persons who fall into the hands of the enemy, particularly prisoners of war, civilians, and military wounded, sick, and shipwrecked
- assisting military commanders in ensuring the disciplined and efficient use of military force
- preserving the professionalism and humanity of combatants
- facilitating the restoration of peace

1.1.3 Framework of International Humanitarian Law:

The sources of international humanitarian law are found in modern treaties and customary practices. There are several conventions and protocols that form the core of international humanitarian law. The major instruments are listed below:

- The Hague Regulations respecting the Laws and Customs of War on Land, 1899 and 1907
- The Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1949
- The Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 1949
- The Geneva Convention (III) relative to the Treatment of Prisoners of War, 1949
- The Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 1949

- The Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977
- The Protocol Additional to the Geneva Conventions and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) 1977.
- Protocol additional to the Geneva Conventions and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), 2005.¹

The customary international law has been incorporated and formalized to large extent in the Hague Regulations, thus making it binding on all States irrespective of the fact that States may not accept them. Further, the Geneva Conventions, being of a very recent origin have been universally ratified and have also being recognized as the principles of customary international law and so is the case with their additional Protocols.²

Apart from these, there are certain specialized treaties that regulate the means and methods of warfare, use of weapons thus humanize the conduct of hostilities. Some of these conventions are:

- The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997
- The Convention on Cluster Munitions, 2008
- The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, 1972
- The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1993

¹ United Nations Human Rights Office of the High Commissioner, “International Legal Protection of Human Rights in Armed Conflict”,13 (2011).

Available at https://www.ohchr.org/documents/publications/hr_in_armed_conflict.pdf. (Last visited on June 13, 2019).

² Ibid at 14.

- The Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, 1980 and
- The Treaty on the Non-Proliferation of Nuclear Weapons, 1968.³

1.1.4 International Committee of the Red Cross (ICRC):

Recognized by the Geneva Convention, ICRC plays a salutary role in advancing the purposes of international humanitarian law. As laid down by the Geneva Conventions, ICRC is obliged to do things that humanize the war like “visiting prisoners of war, organize relief operations, contribute to family reunification and conduct a range of humanitarian activities during international armed conflicts. They also allow it to offer these services in non-international armed conflicts.”⁴ It offers its services not just in the conflict zones, but also leads the research and interpretation of international humanitarian law. ICRC’s position in the regime of international humanitarian law is further strengthened due to the responsibility it undertakes for promoting the implementation of international humanitarian law in conflict zones.

1.1.5 Types of Armed Conflicts under Geneva Conventions

The scourge of the two World Wars had tested the saturation of the international community that without delay formalized the laws of war into the Four Geneva Conventions in 1949. The Geneva Conventions itself were pathbreaking for several reasons, however, one of the most significant change that is brought into framework of international humanitarian law was inclusion of internal conflicts in the Conventions. Thus, Geneva Conventions eliminated one of the gravest voids of the laws of war by introducing non-international armed conflicts within its purview. Thereafter, international humanitarian law, as a subset of International Law, that was initially dealing with

³ Supra note at 1 at 16-17.

⁴ Ibid at 17.

conflicts between State was then equipped to regulate the conflicts that were internal to State. Thus, two types of conflicts emerged within the Geneva Conventions. They are:

- International Armed Conflicts: fought between two or more State.
- Non-international Armed Conflicts: fought between Sovereign armed forces and non-State armed forces or between two or more non-State armed groups.

However, these internal conflicts were distinguished from domestic law and order situations, riots, and other internal tensions so as to secure and withhold the supremacy and sovereignty of States in dealing with such matters. These distinctions were qualified on the basis of two thresholds, intensity of the conflict and organization of the armed group, iterated under Common Article 3 of the Geneva Conventions of 1949 and Article 1 of Additional Protocol II.

1.1.6 Types of Non-International Armed Conflicts (NIAC):

Prescribed under Common Article 3 of Geneva Conventions and Article 1 of Additional Protocol II, non-international armed conflicts have two elements:

- First, it must take place within the territory of a State- thus being internal
- Second, it must involve a non-State armed group as a party to the conflict, either fighting against the State forces or against other armed groups.

However, when one zooms into the facts of any ongoing non-international armed conflict, a varied degree of these essential elements getting mixed with some peculiar factors associated with the conflict, has led to the emergence of several types of non-international armed conflicts. The ICRC in its Report titled 'International Humanitarian Law and the Challenges of Contemporary Armed Conflicts' in 2011 had identified several types of non-international armed conflicts and provided a brief typology of the same. The Report pinpointed following non-international armed conflicts existing in current times –

- “Classical” or traditional non-international armed conflicts between a State and a non-State armed group as per Common Article 3
- Conflicts between two non-State armed groups within the territory of a State which is considered as a “sub-set” of classical non-international armed conflicts
- “Spill-over” conflicts where non-international armed conflicts originate in a State but spread into the territory of neighbouring States.⁵

However, this classification, is no longer adequate to include the recent changing patterns observed in contemporary non-international armed conflicts. Several changes like, international interference, extra-territorial element, increased terrorism have made the traditional classification controversial. This has led to the development of debates revolving ‘New Wars and Contemporary non-international armed conflicts.

1.1.7 Contemporary Non-International Armed Conflicts and New Wars:

As discussed earlier, the Geneva Conventions that came after witnessing the two World Wars and experiencing the wave of freedom and independence would not have thought that internal conflicts would become predominant in the next fifty years. Presumably, World War II ushered the era of peace as very few armed conflicts have been fought between the States. However, what needs attention that the Cold War that succeeded the World War II brought with it some significant changes in the international order. These changes were also reflected in the way wars were now being waged and fought. *It was not that just the world got globalized, but also the conflicts.* These conflicts are different from the traditional conflicts so much that they have posed significant challenges to the established rules of international humanitarian law. The features that distinguish these contemporary conflicts from other conflicts has been discussed below.

⁵ International Committee of the Red Cross, "International Humanitarian Law and The Challenges of Contemporary Armed Conflicts," 6 (2011).

- **Multinational Non-International Armed Conflicts**-The recent times have seen conflicts that have been participated by multiple multinational armed forces. Sometimes, these multinational armed forces fight with the State forces or against a non-State armed group and sometimes, these forces support a non-State armed group and fight against the State forces. Although, there are usually no direct support provided by other States to non-State armed groups rather, an indirect support. Example, Syrian Conflict.
- **Multinational Non-International Armed Conflicts with forces of International or Regional Organisations**- These are more peculiar cases where States forming part of International or Regional Organizations send their combined forces to support a State under the pretext of establishing and maintaining peace. Example, war in Afghanistan and Syria.
- **Cross Border Non-International Armed Conflicts**- These conflicts are unique because here the parties of the conflict are not situated in the same territory instead in a neighbouring territory, usually a non-State actor. However, an important point here is that the host State plays no direct role in supporting or controlling the actions of the non-State armed group. Example, Kashmiri separatist and other militant groups having headquarters in Pakistan.
- **Extra-territorial Military Interventions**- Quite like cross border non-international armed conflicts, in extra territorial military interventions, the State armed forces do not engage with non-State armed groups in their own territory but in territories of other States. Example, Israel and Gaza Strip, Turkey and Kurdish Popular Protection Units in Syria.
- **Transnational Non-International Armed Conflicts**- In these kinds of non-international armed conflicts, the non-State actors is actively present and engaged across countries thus resulting in conflicts that are transnational in character. Example, War on Terror/ Al-Qaeda.

The emergence of contemporary armed conflicts is based on the changing nature of warfare. Scholars believe that these changes have arisen due to new generation of warfare identified as the Fourth Generation of Warfare. As per this theory, the first generation of warfare coincided with the Peace of Westphalia or the emergence of nation-State system, where wars were the monopoly of the State. Later, there were gradual transitions in the generations evidenced during the first and second World War when techniques of warfare were evolving swiftly. The fourth generation of warfare is said have taken course during the cold war era, remarked by the two major changes, first the State losing its monopoly over war, and second emergence of non-State actors. This has led to a drastic change in conflicts fought during the contemporary times. Thus, what is seen is the predominance of non-international armed conflicts that do not fit into the existing legal framework of international humanitarian law.

These contemporary conflicts become more catastrophic due to the emerging technologies like weapons of mass destruction, unmanned aerial vehicles and cyber capabilities augmenting the impact of the conflict. Further, due to an increased asymmetry between the State and non-State actors, conflicts have become urbanized, thus pushing more innocent civilian population at risk and suffering.

1.1.8 Characteristics of Contemporary Non-International Armed Conflicts:

An analysis of the contemporary conflicts suggests that the current conflicts are ‘New Wars’ which are distinguished from the traditional conflicts or ‘Old Wars’ due to following traits.

- These conflicts emerge due to internal tensions or causations⁶

⁶ The causations for emergence of non-international armed conflicts may include grave human rights violations, military coup, political disruptions and other internal factors and situations. However, the researcher has limited the study only with respect to grave human rights violations as a cause of non-international armed conflicts.

- Increased involvement of non-State actors, guerrilla gangs, organized groups, terrorist are seen fighting instead of trained professional armed soldiers⁷
- Changes in methods of warfare by using terror and guerrilla actions, as well as deliberate targeting of civilians,⁸ has displaced the combat from displaces the combat conventional battlefields to urban centres and cities.
- Conflicts have gained global dimension rather than limiting within the territory of a State.

Thus, these contemporary non-international armed conflicts have two distinct characteristics:

1. Prevalence of non- state actors: Localized

2. Internationalised non-international armed conflict: Globalized

These features have made it extremely difficult to categorize these conflicts as either international or non-international in character. Thus, considering these changing conditions, armed conflicts have thrown a severe challenge to international humanitarian law. Although, some consider that the existing framework is suitable to deal with these contemporary conflicts, but the way existing conflicts seem to have no end makes us ask a very important question that whether old law is capable to regulate new wars?

1.2 Statement of Problem

A Study of Contemporary Non-International Armed Conflicts and the Applicability of International Humanitarian Law: Issues and Challenges.

⁷ Herfried Münkler, 'The Wars of the 21st Century' 849 *International Review of the Red Cross* 7-22 (2003).

⁸ Ekaterina Stepanova, 'Trends in armed conflicts: one-sided violence against civilians' *Stockholm Peace Research Institute Yearbook* (2009) <<http://www.sipri.org/yearbook/2009/files/SIPRIYB0902.pdf>> (last visited on April 16, 2019).

1.3 Rationale of the Study

The rationale of the study is summarised under the following points: -

- 1.3.1.** Emerging trends in armed conflicts.
- 1.3.2.** States have lost monopoly over war and dominance of Non-State actors in the contemporary conflicts is evident.
- 1.3.3.** Mixed conflicts are now fought around the globe.
- 1.3.4.** Distinction between the international armed conflict and non-international armed conflict is becoming obsolete.
- 1.3.5.** Asymmetric nature of contemporary armed conflicts and emergence of 'New Wars' pose challenge to the application of the international humanitarian law.
- 1.3.6.** Asymmetric warfare clubbed with the fragmentation of armed groups has turned armed conflicts more complex. Regionalisation and internationalization of conflicts, enduring nature and absence of effective international conflict resolution and recurring phenomenon of failed states has aggravated this problem.
- 1.3.7.** International intervention and lack of proper legal framework leads to a 'conflict trap' and multiplication of conflicts.
- 1.3.8.** International humanitarian law, comprising of customary rules and formalized principles under Geneva Conventions of 1949 and the Additional Protocols, has become ineffective with respect to 'New Wars' and contemporary non-international armed conflicts which are the product of 21st century and fourth generation of warfare.
- 1.3.9.** In most of these mixed conflicts, urban warfare in densely populated areas has caused civilians to bear the heat of the conflict, with frequent instances of civilians being deliberately targeted. Thousands of people are being detained without any due process of law and are subjected to ill treatment or inhuman conditions of detention. One of the major consequences of this conflict is the

continuously rising number of displaced people who had to leave their homes and live as refugees.

1.3.10. International human rights law is not the *lex specialis* in times of armed conflict and therefore cannot be solely relied in times of non-international armed conflicts.

1.3.11. Due to the ineffectiveness of the current international humanitarian law framework the regime is now engaged more in humanitarian activities rather than concentrating on conflict.

1.3.12. Although UN has invested lot of energy in negotiations about humanitarian access, ceasefires, truce negotiations, evacuations of civilians, humanitarian corridors, etc., it has failed considerably in addressing the non-international armed conflicts.

1.3.13. Due to dominant political inclinations and agendas, States have failed to take impartial humanitarian action and have acted counter to its object and purpose. Convening policy debates and engagements towards strengthening humanitarian actions without politicizing it has turned out to be one of the biggest challenges for the humanitarian agencies like ICRC.

1.3.14. Numerous conflicts highlight the ineffectiveness of the current legal framework to recognize the dichotomy in categorization of the contemporary non-international armed conflicts and New Wars. 'New Wars' require 'New Laws'

1.4 Object of the Study

The main object of the research is to analyse the nature of contemporary conflicts and study the challenges posed by these conflicts for international humanitarian law. The researcher has the following objectives:

1.4.1 To provide an account of the changing character of the contemporary violent conflict and related crises and to address theoretical debates, political approaches,

and the law on the changing landscape of contemporary non-international armed conflicts.

- 1.4.2 To provide an overview of the challenges posed by contemporary non-international armed conflicts and New Wars for international humanitarian law.
- 1.4.3 To outline the challenges to the application of international humanitarian law in contemporary conflict zones and the inherent inadequacies in the law.
- 1.4.4 To generate broader reflection on those challenges and outline the ongoing or prospective actions under international humanitarian law.
- 1.4.5 To study past instances representing various emerging kinds of armed conflicts and take into account how these problems were addressed by UN and other international agencies.
- 1.4.6 To provide a comprehensive assessment of the current legal framework of the international human rights law and its implementation with respect to its reliability during non-international armed conflicts.
- 1.4.7 To study the difference that would have been made towards victim redressal if different definitions had been applied.
- 1.4.8 To understand the rigidity vis-à-vis flexibility of the existing international humanitarian law framework so as to accommodate the contemporary non-international armed conflicts.
- 1.4.9 To provide preliminary conclusions towards a normative and policy framework that could sufficiently address the challenge posed by contemporary armed conflicts.

1.5 Scope and Delimitation

The study concerns itself particularly to the non-international armed conflicts, specifically the emerging trends in contemporary armed conflicts that cannot be placed strictly in the international armed conflicts and are therefore looked upon as asymmetric war or mixed conflicts. The research has tried to locate these non-international armed

conflicts in the current legal framework and the law that is relied during crises and applicability of international humanitarian law. Although the research has investigated the cases decided by the International Criminal Courts it has not dealt into the classification of conflicts provided under the International Criminal Law systematically. Case study method has been applied to analyse the applicability of international humanitarian law in conflict areas. Further, to limit the scope of the study the researcher has taken into account only four case studies, viz. Al Qaeda, Syria, Kashmir and Naxalism, which reflect the contemporary non-international armed conflicts. All these four studies depict a distinct nature of contemporary non-international armed conflicts.

1.6 Hypothesis

- ‘New Wars’ pose challenge to the application of the international humanitarian law.
- The distinction between international armed conflicts and non-international armed conflicts has become obsolete.
- ‘New wars’ and contemporary non-international armed conflicts don’t fit in existing framework of the international humanitarian law.
- The current international humanitarian law framework is inadequate to recognize the contemporary non-international armed conflicts and New Wars.
- International human rights law is not the *lex specialis* in times of armed conflict and therefore cannot be solely relied in times of non-international armed conflicts.
- Role of UN in addressing the contemporary non-international armed conflicts has not been satisfactory.

1.7 Orientation to some Basic Concepts

- **Armed conflict:** Use of armed force or protracted violence between two States or between State and non-State armed groups or amongst the non-State armed

groups is called an armed conflict. There are two kind of armed conflict defined under international humanitarian law.

- **Asymmetric Warfare:** Asymmetric warfare is often understood as conflicts involving belligerents who differ either in terms of their legal status, power capabilities, or strategies.⁹ A hostility manifesting irregularity between the parties of the conflict is known as an asymmetric conflict. Stark disproportionateness between the military capabilities, weaponry, arms and ammunition, political acceptance and popular support motivate the weaker party to engage in asymmetric warfare with an intention to balance the unevenness. This often leads to victimization of civilians as the weaker party either uses civilians as targets or shields in order to bring itself at par with the stronger party.
- **Combatants:** All members of the armed forces of a party to the conflict are combatants, except medical and religious personnel.¹⁰ Those who are fighting any hostilities and are members of the armed forces of a party to the conflict can be called as combatants. However, medical, or religious personnel although being a part of the armed forces in a conflict are not considered as combatants.
- **Guerrilla warfare:** A form of irregular warfare in which small group of combatants use unconventional techniques to hit the enemy during his unpreparedness. It involves use of tactics like raids, ambushes, hit and run. “A usually offensive tactical and strategic technique of warfare used in occupied territory by the enemy in connection with conventional operations by friendly

⁹ Gross, M. *Moral dilemmas of modern war: Torture, assassination, and blackmail in an age of asymmetric conflict*. New York, Cambridge University Press. Page 17(2010).

¹⁰ Rule 3 Definition of Combatants, Customary IHL available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule3 (last visited on September 12, 2019).

forces; independently, or as part of territorial defence. Also, term is used in wars of national liberation and non-international armed conflicts by the dissident armed groups or by organized armed groups attempting to alter the established order by force of arms.”¹¹

- **Hors de combat:** Those combatants who become incapable of fighting in a conflict are known as hors de combat. These include, prisoners of war, soldiers who are sick and wounded, or those who have surrendered to the opposite party. “A person hors de combat is:(a) anyone who is in the power of an adverse party;(b) anyone who is defenceless because of unconsciousness, shipwreck, wounds or sickness; or(c) anyone who clearly expresses an intention to surrender; provided he or she abstains from any hostile act and does not attempt to escape.”¹²
- **Hybrid Warfare:** As the name suggests, it is a combination of both regular and irregular forces acting during a conflict in all processes like planning to implementation. More often when political groups act in connivance with armed groups or criminals it can be referred as a hybrid war, sometimes witnessing participation from the civilians also. It refers to conflict “in which states or non-state actors exploit all modes of war simultaneously by using advanced conventional weapons, irregular tactics, terrorism, and disruptive technologies or criminality to destabilize an existing order”¹³.

¹¹ International Committee of the Red Cross (ICRC), Guerrilla Warfare, how does law protect at war? Available at <https://casebook.icrc.org/glossary/guerrilla#:~:text=Term%20used%20in%20wars%20of,order%20by%20force%20of%20arms>. (last visited on August 14, 2020).

¹² Rule 47. Attacks against Persons Hors de Combat. Available at https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule47 (last visited on August 15, 2020)

¹³ R. Wilkie, ‘Hybrid Warfare – Something Old, Not Something New’, Air & Space Power Journal 2009, <https://www.airpower.au.af.mil/airchronicles/apj/apj09/win09/wilkie.html> (last visited on June 1, 2020).

- **Just War:** Hugo Grotius was the first to lay down the criteria for engaging in a just war which consists of seven elements: (1) that there be a just cause; (2) that there is a right authority (legitimate sovereign) to initiate the war; (3) a right intention on the part of the parties using force; (4) that the resort to force be proportional; (5) that force be a last resort; (6) that war is undertaken with peace as its goal (not for its own sake); (7) and that there be a reasonable hope of success.¹⁴ With international law being formalised and modernised post WWII the term just war has been largely replaced by the term legitimate use of force. The principles of just war today are contained in the United Nations Charter, which reaffirms the inadmissibility of the acquisition of territory by force and authorises use of force only in cases of self-defence provided by Article 51 of the UN Charter.
- **Martens Clause:** This clause was first introduced in the Preamble of the 1899 Hague Convention. It covers those cases which do not fall under the conventions of international humanitarian law and offers protection to the combatants and civilians so that they are not deprived of their protections completely. Thus, in cases where laws of war are not applicable, the conduct of the parties of conflict is regulated by the principles and customs of international law, law of humanity, and from the dictates of public conscience. The clause as it appears in the body of the text of the 1977 Additional Protocol I, reads as “In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived

¹⁴ Vincent Ferraro, *Ruth C. Lawson Professor of International Politics, Mount Holyoke College* available at <http://www.mtholyoke.edu/acad/intrel/pol116/justwar.htm> (last visited on September 12, 2019).

from established custom, from the principles of humanity and from the dictates of public conscience.”¹⁵

- **International Armed Conflict:** Hostilities, howsoever low between armed forces of two or more States can be termed as an international armed conflict. Article 2 common to the Geneva Conventions of 1949 states that the Conventions ‘shall apply to all cases of declared war or of any other armed conflict which may arise between two or more High Contracting Parties, even if the state of war is not recognized by one of them’.
- **Internationalized internal armed conflicts:** It is not a legal expression and is used to denote the third category of armed conflicts. An existing non-international armed conflict is transformed into an internationalized armed conflict when a State or group of States or international organisations intervenes in the conflict to support the State involved in the conflict, or when a State or group of States or international organisations intervene in a conflict to support a non-State actor or a combination of the above two situations.¹⁶
- **New Wars:** Coined by Mary Kaldor, new wars are the reflection of new reality, where war has become synonymous to organized crime, large scale human right violations is of common occurrence and political motives and financial interest go

¹⁵ Article 1 para 2 of Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977. Available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=6C86520D7EFAD527C12563CD0051D63C> (last visited on June 1, 2020).

¹⁶ International Committee of the Red Cross (ICRC), Internationalised Internal Armed Conflict, How does law protect at war? Available at <https://casebook.icrc.org/glossary/internationalized-internal-armed-conflict> (last visited on December 14, 2019).

hand in hand. Three major factors are responsible for these changes-globalization, identity politics and changing modes of warfare.¹⁷

- **Non-combatants:** All those who are not taking a direct part in the hostilities are known as non-combatants. Example a military doctor or civilians can be termed as non-combatants.
- **Non-International Armed Conflicts:** Armed hostilities between State forces and non-State armed groups or between two or more non-State armed groups within the territory of a State is known as a non-international armed conflict. “Whenever there is [...] protracted armed violence between governmental authorities and organised armed groups or between such groups within a State”.¹⁸ However, not any level of violence would be termed as a non-international armed conflict. It should be prolonged in nature and of higher intensity to distinguish it from riots and situations of internal disturbances and breach of law and order. Moreover, not every rebel group can be termed as an armed group. To constitute a non-State armed group, it must have organizational characteristics and State like features like occupation of territory, etc.
- **Non-State armed groups:** Additional Protocol II to the 1949 Geneva Conventions defines non-state armed groups in its Article 1.1 as “dissident armed forces or other organized armed groups”, who fight regular armed forces or against each other on the territory of one or several States. In order to be considered as parties to the conflict, these entities have to fulfil some conditions,

¹⁷ Misra, A., *Politics of Civil Wars: Conflict, Intervention and Resolution*. London: Routledge, 2008, p. 3-4. Examples of such conflicts: wars in Bosnia, Liberia, Sierra Leone, DR Congo, Sudan, Chechnya, Afghanistan, Rwanda, etc.

¹⁸ ICTY, *The Prosecutor v. Dusko Tadic*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1-A, 2 October 1995, para.70.

namely be i) under a responsible command, ii) exercise such control over a part of its territory as to iii) enable them to carry out sustained and concerted military operations and to implement this Protocol. In earlier times, conflicts were fought between national armies of two States. However, in last few decades, with growing number of non-international armed conflicts, non-State actors have become predominant participants of any conflict. However, in contemporary conflicts, the nature and character of these non-State armed groups has changed to a great extent. Nowadays, criminal gangs, terrorist organization, armed rebel groups all are referred as non-State armed group due to their active role in any conflict. This has led to the diversification of the non-State armed groups which are loosely structured due to their multiple and varied objectives and diverse agendas.

- **Proxy Wars:** It remains in political and military dictionaries and does not have a legal definition and is used to describe a conflict instigated by opposing powers who do not fight against each other directly. Instead, they use third parties to do the fighting for them.¹⁹ Since the early twentieth century, proxy wars have most commonly taken the form of states assuming the role of sponsors to non-state proxies.
- **Terrorism:** Neither any of the current international conventions on anti-terrorism nor resolutions of the various United Nations bodies set out a comprehensive definition of the term terrorism. In 2004, the Security Council adopted resolution 1566 (2004), in which it called on all States to cooperate fully in the fight against terrorism and, in doing so, to prevent and punish criminal acts that have the following three characteristics, irrespective of whether motivated by

¹⁹ Innes, Michael A. (ed.) Making Sense of Proxy Wars: States, Surrogates & the Use of Force. Washington, DC: Potomac Books, 2012.

considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature:

- Committed, including against civilians, with the intent to cause death or serious bodily injury, or taking of hostages; and
- Committed with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population, or compel a Government or an international organization to do or to abstain from doing any act; and
- Constituting offences within the scope of and as defined in the international conventions and protocols relating to terrorism.²⁰

The regime of terrorism and international humanitarian law are different as certain acts of violence are permitted during an armed conflict; however, terrorist acts are completely prohibited. Even international humanitarian law prohibits certain acts as war crimes. Moreover, terrorists during an armed conflict are to be treated as combatants however, when captured outside any conflict they become the subject of domestic laws.

It refers to a criminal act of intimidating or creating terror to achieve political purpose. The regime of terrorism and international humanitarian law are different as certain acts of violence are permitted during an armed conflict; however, terrorist acts are completely prohibited. Even international humanitarian law prohibits certain acts as war crimes. Moreover, terrorists during an armed conflict are to be treated as combatants however, when captured outside any conflict they become the subject of domestic laws.

²⁰ UNSC Res. 1566(200). Available at <https://www.un.org/ruleoflaw/files/n0454282.pdf> (last visited on July 12, 2020).

1.8 Significance and Utility of the Study

Geneva Conventions had turned seventy in 2019. With the passage of these six decades, tremendous changes in warfare are seen. One can say that, the law of war is moving at a snail's pace whereas the wars are continuously metamorphosing.

It is not controversial to assert that warfare in the 21st century is markedly distinctive from that of the early 20th century. Following World War II, evident changes in the nature of war itself, transformations in both civilian and military technologies, and attitudes toward military occupation have converged to call into question the adequacy of existing international norms during an era marked by the rapid proliferation of violent internal armed conflicts. These localized conflicts, driven by transnational connections are a product of fourth generation warfare, and have made States lose their monopoly in use of force. A transformation of the traditional concept of war indicates that conflict is no longer predominately characterized by a classical, state-centred paradigm in which battle is fought between soldiers as agents of the State, but rather by the 'intermixing of other means' leading to complex and ambiguous situations of violence with less clear-cut distinctions.

In recent years, advances in technology, globalization, and the proliferation of internal conflicts are all contributors to an increasingly complex international system in which international humanitarian law created during the post-WWII era, was not originally intended to operate. The idea of "New Wars" has not been legally conceptualized and hence there is no mechanism available to deal with it. Instead, they are being accommodated in the existing framework creating confusion.

Keeping in mind the increased number of conflicts and the quadrupling of non-State armed groups with grave and large-scale human rights violations happening over all the continents of the world, this research becomes significant due to following reasons:

- Analysis of changing nature of warfare and features of “New Wars” that pose challenge to application of international humanitarian law.
- Attempt to test the old definition of armed conflict with respect to contemporary conflicts.
- Evaluation of the role of human rights law to mitigate the adverse impact of urban warfare on civilians.
- Testing the role of United Nations in dealing with contemporary warfare.

Further, to concretize the research, the researcher has taken four conflicts as case study, viz, the war on terror, the Syrian conflict, Terrorism in Kashmir and Naxal Conflict in India. The *raison d'être* for choosing particularly these conflicts is that all these conflicts are contemporary, have originated after the second world war and have features identifiable to the fourth-generation warfare. All these four conflicts although are non-international in character are different in their nature and thus pose different challenges to the applicability of International Law.

Thus, this study can be used to as a tool to highlight the challenges occurring due to modern modes of war. Further the study conceptualizes the changes and modification that would empower the international humanitarian law framework in dealing with the contemporary non-international armed conflicts. This research is a one place destination to understand the old laws and new wars and their interoperability.

The study can be useful for international organisations like United Nations, ICRC, UNHRC and various States and non-State actors that are involved in any conflict in one way or the other. The students and academicians of International Law can also find this study useful.

1.9 Research Questions

- Whether the various forms of contemporary non-international armed conflicts need significant attention and legal definitions?
- Do ‘New Wars’ pose challenge to the application of the international humanitarian law?
- Whether ‘New Wars’ and contemporary non-international armed conflicts fit in existing framework of the international humanitarian law?
- Whether the role of UN in addressing the non-international armed conflicts has been satisfactory or not?
- Whether the dichotomy and categorisation of armed conflicts has posed biggest challenge to rights of victims?
- Whether international human rights law can be relied in times of non-international armed conflicts?
- Has the distinction between international armed conflict and non-international armed conflict become insignificant?
- Whether the difference in definition of non-international armed conflicts leads to difficulty in implementing international humanitarian law?
- Do ‘New Wars’ need to be addressed with a set of new laws?

1.10 Research Methodology

The study is based on secondary data. The secondary data is be library based, collected from various research, journals, articles, books, and publications. The present study is a doctrinal study. The foundation of the study rests on the international humanitarian law and its sources. The primary source of the research is the treaty law and its interpretation and application by the International Courts and Tribunals in various case laws. In some instances, domestic decisions have also been applied to analyse the transformation of international law into the local law and their complementarity. To further understand the

scope and application of the laws, the researcher has investigated the *travaux preparatoires* and commentaries of international humanitarian law, reports by ICRC and UN Resolutions.

Hence, an analysis of the current legal framework, its application and the judicial decisions is discussed. Apart from legal analysis the research also comprises of examination of situation of armed violence as case studies in order explore the ways of classification and its consequences, the data for which is collected from various published sources. Not only this, but research conducted by various international scholars and legal luminaries has been examined in detail while conducting the study. International opinion and approach towards the issue plays a major role, so various sources have been referred.

Further, to concretize the research, the researcher has taken four conflicts as case study, viz, the war on terror, the Syrian conflict, Terrorism in Kashmir and Naxal Conflict in India. Apart from being contemporary these conflicts have distinct characteristics of their own. The war on terror has been chosen for study to understand whether a terrorist organisation can be an armed group and be a party of armed conflict. Syrian conflict has been preferred because of multiplicity of parties involved in it. Kashmir issue has been chosen because of its fluidity, apprehension of proxy war, cease fire violations and recent incidents of air strikes and surgical strikes. Naxal conflict has been selected as it was biggest internal security threat and because of its duration, vigour, and geographical spread. of All these four conflicts although are non-international in character are different in their nature and thus pose different challenges to the applicability of International Law.

Further, with respect to footnotes and references, ILI Style of Citation is adopted.

1.11 Scheme of the Study

To fulfil the above objectives, the proposed study is divided into the following chapters-

CHAPTER 1. INTRODUCTION

This chapter has discussed about the introduction or the synopsis for the research that has been carried out. It includes general introduction to the research topic, lays out the object, scope, significance, and utility of the research. It has further reviewed the existing literature available on the subject, analyse the research gaps and discuss its implication on the current study. The chapter has also built and iterated the research questions, methodology adopted to answer the questions and the hypothesis of the research. The chapter has also dealt with some important terminologies for better interpretation of the research.

CHAPTER 2. NON-INTERNATIONAL ARMED CONFLICTS: THEIR PLACE IN INTERNATIONAL HUMANITARIAN LAW

In the beginning of this chapter the researcher has examined the foundation and establishment of the term ‘armed conflict’ and how historically the transition from ‘war’ to ‘armed conflict’ took place in the field of International Law. Further, while discussing the development and definition of the concept of ‘armed conflict’ the chapter has navigated through the UN Charter of 1945 and the Geneva Conventions of 1949. The chapter has investigated into the different kinds of armed conflicts recognized under the international humanitarian law i.e., international armed conflicts and non-international armed conflicts and the legal regime of the two. Further, the chapter has deliberated into the causes of this distinction and its significance. The law pertaining to non-international armed conflicts prescribed under Common Article 3 of the four Geneva Conventions, Additional Protocol II and the threshold provided under Article 8 of the Statute of International Criminal Court has also been looked into in a systematic and detailed manner. In all, the chapter has examined the provisions of International Law revolving around armed conflicts and examined its scope, area of concern and its authority to intervene in the cases of non-international armed conflicts.

CHAPTER 3. NEW WARS AND CONTEMPORARY NON-INTERNATIONAL ARMED CONFLICTS: THE EMERGING TRENDS

As the fourth generation of warfare is encompassed all over the globe and has manifested itself majorly in the form of non-international armed conflicts, this chapter has thrown light on the emerging trends in these non-international armed conflicts and the various forms in which these conflicts are been fought. The research has first tried examining various theories with respect to conceptually understand the changing nature of war and further analysed the modern wars and their distinction with the Clausewitz's model of classical war. Further, the research has pursued to understand the changing characteristics of modern armed conflict where the features of regular, irregular, asymmetric war fares have been analysed. Hybrid wars and terrorism have also been discussed and deliberated upon. The chapter has also probed into the complications posed by international intervention to any armed conflict leading to an internationalized non-international armed conflict. The chapter has further appraised various challenges that have been posed by these contemporary conflicts to the international humanitarian law.

CHAPTER 4: ACCOMMODATING NEW WARS IN OLD LAW: CASE STUDY

To illustrate the consequences of classification on the ongoing conflicts around the world and explore the challenges this chapter has analysed several conflicts whose practical operation has been examined historically. The case studies chosen for this purpose are the ongoing war in Syria, global war on terror or war against Al-Qaeda, Terrorism in Kashmir, and Left-Wing Extremism/ Naxalism in India. The purpose of choosing these conflicts is that all the four are peculiar and all stand as a distinct example of contemporary conflicts that the world is currently facing. By studying the overview of the conflicts and the international intervention, the chapter has endeavoured to understand not just the application of the legal principles, recent practice, the difficulties experienced

in classifying the conflicts and the response to these challenges but also the complications. To understand these facets a special investigation has been made on the role of United Nations, its specialized agencies during the crises and evaluate their contribution in promoting humanitarian access and accountability under the law.

CHAPTER 5. HUMAN RIGHTS AND HUMANITARIAN LAW: FROM A VICTIM'S PERSPECTIVE

This chapter has attempted to find the applicability and reliability of the international human rights framework during the contemporary non-international armed conflicts and its relation vis-à-vis international humanitarian law. The chapter has looked into this interface with a victim's perspective, the problems they face due to inadequacies in the international law during a non-international armed conflict. The chapter has been premised on the understanding that although international human rights law is general and universal in nature, its application with international humanitarian law becomes controversial during these new conflicts that have emerged recently. The chapter has scrutinized how even if international human rights law did formally apply, why it has provided no more protection than international humanitarian law and thus needs to develop itself on this front.

CHAPTER 6. CONCLUSION AND SUGGESTIONS

This chapter has discussed the summary of all that been delved and deliberated in the various chapters. The whole study and research has been distilled in this chapter. This chapter has tried to attempt to reach to conclusions to the hypotheses made in the introductory chapter and present the findings of the research. The later portion of the chapter has dealt with all possible suggestions to provide a better international framework. Although the conclusion and suggestions have been based on the case studies discussed in the research, the conclusion can be generalized to understand the future of

the law. At the end, the researcher has also provided a Model Protocol to be applied during the non-international armed conflicts with its commentary appended.

1.12 Review of Related Literature

Some of the related literatures are as follows:

- **Wilmshurst (2018)** – *‘International Law and the Classification of Conflicts’*, is an important book. It brings an empirical discipline and normative rigour to the examination of an issue that has its roots deeply embedded in the structure of international humanitarian law which based on the distinction between kinds of conflicts and hostilities like the distinction between international armed conflicts and non-international armed conflicts and the distinction between these and other situations of armed violence that are completely internal to a State. The book discusses classification and also provides a collection of studies of armed violence viewed through the lens of international humanitarian law, giving historical background, context and an examination of relevant legal issues. The book has attempted to be consistent in the terminology used by its different writers while recognizing that it is not possible always to succeed. It uses synonymously the ‘law of armed conflict’ and ‘international humanitarian law’, while usually preferring the latter. The book is empirical in nature as it has some selected jurisdictions that are indulged in conflict and has tried to analyse the kind of conflict that is going on that jurisdiction. Being a very recent and extensive book written on the subject matter, the work highlights the issues of contemporary non-international armed conflicts, challenges due to the changing nature of warfare and the road ahead.
- **Sassoli (2015)** –In this work *‘The Convergence of the International Humanitarian Law of Non-International and International Armed Conflicts - The Dark Side of a Good Idea’* the author has shown that nevertheless the

difference in international humanitarian law regulating the two types of armed conflicts has come much closer in the last two decades. This development has been uncontroversial and therefore incredibly significant for the jurisprudence of the law of armed conflict. However, the focus of this work highlights two disadvantages: first, the international humanitarian law has become less realistic for armed groups; and second is the overapplication by States of their rights under international armed conflicts in the non-international armed conflicts. One of the highlights of this work is that these two disadvantages have been rarely mentioned in scholarly writings of neutral commentators. Sassoli also admits that the above disadvantages are no way the cause for non-recognition of armed conflicts by States. He has given solutions based on a completely new approach to non-international armed conflicts. Apart from the “Geneva-type-rules” and “human rights-based approach”, he has proposed “zone approach” based on “individualized threat requirement” to tackle the issues of detention and targeting outside the conflict zones.

- **ICRC (2015)** –This work is a report on *‘International Humanitarian Law (IHL) and the Challenges of Contemporary Armed Conflicts’* and provides overall view of contemporary trends in the armed conflicts and their implications on the humanitarian laws. It highlights the normative obstacles for the application of the laws and issues that have created controversies in the past. It has discussed the situations that trigger and end the application of international humanitarian law with respect to the categorization of the conflict. It has also noted the geographical scope of the laws in cases of extraterritorial exercise of force by States and the interoperability of anti-terror laws and humanitarian regulations. Has discussed the issue of "foreign fighters" and multinational forces who are enormously engaged in conflict zones. The study dealt with the interplay of warfare actions and the law enforcement paradigms in armed conflict situations.

- **Sudhakar (2014)** –This research work *‘Protection of Human Rights in Non-International Armed Conflicts and the Emerging Trends in International Law’* being one of its kind comprises of research on protection of human rights during non-international armed conflicts. The research has focused on the growing incidence of internal armed conflicts and resulting human rights violations. The study surveyed the existing network of treaty law and customary law and the growing convergence of international human rights and international humanitarian law. The study focused on institutional mechanism for implementation of the law and constitution of various tribunals for the conduct of proceedings under the internal armed conflicts. However, the study focused on the internal conflicts and not on the emerging trends of the non-international conflicts that are not purely internal in character.
- **Carrasco et all (2014)** –In this work *‘Report On The Survey Study On Human Rights Violations In Conflict Settings’* the author has provided a comprehensive assessment of the European Union external policies in response to conflicts and crises situations, exploring ways to prevent and overcome violence through the integration of human rights, humanitarian law and democracy/ rule of law principles. The report has tackled the complex relationship between conflicts and human rights, taking into account the complex and multifaceted nature of conflicts in the modern world. The report provides a comprehensive survey of the various patterns of human rights violations related to conflict and violent crises situations with a specific focus on the rights of vulnerable groups, as well as the role of non-state actors as key players in the context of new forms of violence and war. It identifies trends in the current landscape of conflict and violent crises and examines the interaction between human rights violations and conflict. This interplay is studied from a multidisciplinary perspective: legal and non-legal approaches taking into consideration conflict analysis discussion and peace and conflict databases. It focuses on the impact of conflicts/crises situations of the

rights of selected vulnerable groups, including women, children, refugees and internally displaced persons and indefinitely displaced persons. It identifies patterns, perpetrators and trends of serious human rights violations committed against them on the basis of the information provided by existing databases and human rights reports. The structural discrimination of vulnerable groups is presented, along with human rights abuses they suffer. The report has offered preliminary conclusions on how prevention of such violations and protection of the selected vulnerable groups might be strengthened.

- **Sivkumaram (2012)** –The author in this work *‘The Law of Non-International Armed Conflict’* has taken a view that the issue of non-international armed conflicts has taken centre stage and the international law has not remained static but has adapted itself to be applied in such situations. In similar vein, the book underscores the equality of obligations of the parties to a non-international armed conflict, irrespective of the asymmetry in the positions of the government forces and the insurgent armed groups. The author would like to invest courts established by these armed groups with a greater degree of legitimacy, recognizing them as a proper “forum for prosecution when none would otherwise exist”. A more traditional position taken by the author is a repudiation of the argument that there are so called “transnational” armed conflicts, which are neither non-international armed conflicts nor international armed conflicts. The book does not address the more momentous issue of foreign recognition of an insurgent regime as a state’s government. The book shows that, in some specialized niches, non-international armed conflict can offer greater protection than international armed conflict.
- **Vacca and Davidson (2011)** –The work *‘The Regularity of Irregular Warfare’* is a critique to the term “irregular warfare” used by several commentators to describe the contemporary conflicts. The term “irregular warfare” reinforces a false and dangerous divide in how war is thought about and planned for. The strategic aim of

war, the use of force to compel others to our will, is the same. Tactical concepts, including the use of cover and concealment, local concentrations of force, and the avoidance of decisive engagements, are the same. It is only the peculiar tactical systems which vary, and which may be asymmetric. By promoting irregular warfare, analysts set it up as something distinct from regular warfare. Once separated, this leads to deductive and inductive logical failures. Deductively, analysts fail to apply the general body of knowledge about warfare to the specific situation at hand. This can include the failure to properly evaluate and manipulate political advantages, a failure to understand the political objective of an adversary, a failure to resort to previously established tactical lessons, and to pursue tactically expedient actions which complicate political solutions. Inductively, analysts fail to place the specific war into the accumulated body of general knowledge about warfare. Lessons, painfully learned through experience, are not reincorporated into the broader understanding of warfare. The author argues that by treating our current experience as “irregular,” and somehow disassociated from “regular” warfare, we diminish our understanding of both.

- **OHCHR (2011)**—The current work *‘International Legal Protection of Human Rights in Armed Conflict’* addresses the interdependent application of the two bodies of law, i.e. international human rights law and international humanitarian law. It offers a summary of their application as well as the necessary legal context required to holistically understand the relationship between these two bodies and the consequences of their application in armed conflict situations. It enumerates various legal sources and the form of legal obligation placed upon the parties that are involved in the armed conflict so as to provide suitable legal context to the application of such law. It also compares the different values of both branches and examines the responsibility of the duty bearers that arises from these bodies of law. It evaluates the formal requirements for the concurrent application of international human rights law and international humanitarian law, particularly from the

viewpoint of the existence of an armed conflict and its territorial scope. It also discusses their limitations in such conditions and analyses the complications that might arise from their concurrent application. It has also scrutinised a selection of United Nations practice in applying international human rights and humanitarian law in situations of armed conflict, together with practice by the Security Council, the Human Rights Council and its special procedures as well as those of the Secretary-General, and the Office of the High Commissioner for Human Rights. It demonstrates with a help of several examples that United Nations has been simultaneously applying these international human rights law and international humanitarian law to armed conflict situations, including in protection mandates for field activities.

- **ICRC (2011)** –The report on *‘International Humanitarian Law (IHL) and the Challenges of Contemporary Armed Conflicts’* provided a summary the challenges posed by contemporary armed conflicts and determined the changing roles and priorities of the ICRC. This study discussed only a part of the current threats to international humanitarian law, such as emerging military techniques or the negotiation of the latest Arms Trade Treaty. The report describes four fields of international humanitarian law in which, in the opinion of the ICRC, the current international humanitarian law does not sufficiently resolve humanitarian issues like security of prisoners, displaced civilians and compliance of law where international humanitarian law needs improvement and reforms.
- **Naftali (2011)** – The edited work *‘International Humanitarian Law and International Human Rights Law’* has several contributions that have tried to explore the interaction between international humanitarian law (IHL) and international human rights law (IHRL) and its functioning in practice. The collection opens with an essay where the author illustrates how after the 11 September 2001 attacks there was a shift from what he calls the ‘law and order’

paradigm, which considered terrorism simply as a criminal phenomenon, to what in his words is the ‘armed conflict’ paradigm, according to which terrorism is ‘a threat equivalent in its magnitude to an inter-state war’, having a dramatic consequence for the respect for human rights in the fight against terrorism. Further, the second essay focuses on the role of international humanitarian law and international human rights law in the allegedly new types of armed conflicts where the asymmetric conflicts, conflicts in failed states, the ‘war on terror’, and peace operations conducted or authorized by the UN have been considered. The author argues that nearly all these types of conflicts, if they are armed conflicts at all, are not of an international character, because the fighting forces do not belong to different states. In the author’s opinion, both international humanitarian law and international human rights law contain rules applicable to many issues arising in such conflicts. The rule that is to be applied in a certain case should be determined according to the *lex specialis derogat legi generali* principle. Further contributions focus on the conflicts between international humanitarian law and international human rights law norms and the methods of avoiding or resolving them. The final chapter sheds light on the role that law, as interpreted and applied by the Israeli authorities, has played in legitimizing and perpetuating Israel’s regime of occupation of the Palestinian territories.

- **Gat (2011)** –This chapter ‘*The Changing Character of War*’ establishes that how ever since the Cold War and over the last decade the rise of insurgents and non-State actors in war, and their readiness to use terror and other irregular methods of fighting, have led the scholars coin the term ‘new wars’, assumed on the basic premise that the ‘old wars’ were waged solely between states, and were accordingly fought between comparable and ‘symmetrical’ armed forces. The author contends that these views and commentaries lack context or sophistication and are bounded by norms and theories rather than messiness of reality. In this book, he argues that the 9/11 attacks have made scholars talk about some trends

more than others without being historically aware of them and have further failed to consider many of the other dimensions which help us to define what war is — legal, ethical, religious, and social. In this book, the author has drawn together all these themes in order to distinguish between what is really changing about war and what only seems to be changing. His contention is that character of a war is a product of its own times and that the character of each war is always changing. However, he argues that even though the character of war is in flux, there remains some internal consistency intact. Each war generates its own dynamic and therefore spirals in directions which are never totally predictable and very strongly forwards his idea that war is both utilitarian, the tool of policy and dysfunctional.

- **Berdal (2011)** – In this chapter *‘The “New Wars” Thesis Revisited’* which is a part of a book titled *Changing Characters of War* the author has focused on the so-called ‘new wars’ which according to him have emerged in the late twentieth century. It examines the proposition that contemporary wars are ‘substantively distinct’ from older patterns of armed conflict and, as such, the ‘new wars’ reflect a new reality. Two related aspects to this general proposition are considered. The first concerns the idea of a historical disjunction between ‘old’ and ‘new’ wars and the accompanying argument that links the emergence of ‘new wars’ to two fundamental processes of change: globalization in the late twentieth century and the end of the Cold War. The second aspect concerns the actual features of the ‘new wars’ and the way in which ‘they differ from earlier wars in terms of their goals, the methods of warfare, and how they are financed’. The most interesting of these relates to the economic underpinnings of contemporary intra-state armed conflicts.
- **Rabbiraj. C (2011)**– The research titled *‘Implementation of International Humanitarian Law with Special Reference to India –A Critical Study’* has discussed the historical origin of international humanitarian law and highlighted

its position in 21st century. This research has elaborately discussed the nature of armed conflicts considering recent development like counterterrorism and the protection of civilians during armed conflicts. It also deals with implementation of the international humanitarian law, not just globally but also in India by analysing the Geneva Convention Act of 1960. The research throws light on the implementation of laws in the Indian context of cross border terrorism and jurisdictional issues.

- **Kaldor (2010)**–The article *‘Inconclusive Wars: Is Clausewitz still Relevant in these Global Times?’* argues that the core Clausewitzian proposition that war tends to extremes no longer applies in contemporary wars. Instead, an alternative proposition is put forward that war tends to be long lasting and inconclusive. The article adopts the Clausewitzian method and derives this proposition from the logic of a redefinition of war. It also shows the relevance of many of Clausewitz’s central tenets if reinterpreted. Thus, contemporary wars are about politics, not policy; they are instrumental and rational but not reasonable (in the sense of being in accordance with universal values); and they bring together a trinity of motivations (reason, chance and passion) but not a trinity of the State, the generals and the people since new wars are fought by a range of non-State actors. The article in particular recommends that, international missions in crisis zones should take seriously what Clausewitz says about the importance of political control, the character of the commander and the crucial significance of moral forces.
- **Mary O’Connell (2010)** – In 2005, the International Law Association decided that a study of the concept of armed conflict should be undertaken to determine the meaning of this term in international law. Despite the importance of the issue over the years, as highlighted by the US “declaration” of a “war on terror” in 2001, the meaning of armed conflict in international law has not been the subject

of comprehensive analysis. The Committee found that the term “armed conflict” had become especially significant with the adoption of the UN Charter in 1945 when the term “war” declined in importance. Nevertheless, neither the Charter nor any other important treaty currently defines armed conflict despite the fact that in many subfields of international law it is critical to determine whether or not a situation is one of armed conflict. The Committee, therefore, undertook extensive research into hundreds of violent situations since 1945 and it is *‘Final Report of the Meaning of Armed Conflict in International Law’* identified significant state practice and *opinio juris* establishing that as a matter of customary international law a situation of armed conflict depends on the satisfaction of two essential minimum criteria, namely:

- the existence of organized armed groups
- engaged in fighting of some intensity

The Committee’s assessment of this evidence is confirmed directly or indirectly in many judicial decisions and in scholarly commentary. These sources also indicate that the following conclusions respecting the concept of armed conflict are confirmed in customary international law:

- In international law the concept of armed conflict has largely replaced the concept of war. Further, the earlier practice of states creating a *de jure* state of war by a declaration is no longer recognized in international law.
- Declarations of war or armed conflict, national legislation, expressions of subjective intent by parties to a conflict, and the like, may have evidentiary value but such expressions do not alone create a *de jure* state of war or armed conflict.
- Also, the *de jure* state or situation of armed conflict depends on the presence of actual and observable facts, in other words, objective criteria.
- The accurate identification of a situation of armed conflict has significant and wide-ranging implications for the discipline of international law. Armed conflict may have an impact on treaty obligations; on UN

operations; on asylum rights and duties, on arms control obligations, and on the law of neutrality, amongst others. Perhaps most importantly states may only claim belligerent rights during an armed conflict. To claim such rights outside situations of armed conflict risks violating fundamental human rights that prevail in non-armed conflict situations, i.e., in situations of peace.

- **Vite (2009)** – Certain challenges arise in consequence of the recent contemporary non- international armed conflicts, this article *‘Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations’* has attempted to highlight those major challenges in context of the current legal framework of international humanitarian law. Although the purpose of international humanitarian law is to restrict the damage caused by armed conflict, it fails to provide a comprehensive description of what exactly falls under its material reach. While it is obvious that the similar conventions apply to various forms of military conflict and therefore provide a snapshot of the legal details of this multifaceted definition, these documents do not propose definite criteria that are precise enough to accurately determine the content of those categories. Thus, a certain degree of clarification is required. Further, the rules that are applied depend on the legal definition of the circumstances. Through presenting a typology of armed conflicts from an international humanitarian law viewpoint, this article seeks to demonstrate how the different types of armed conflicts expected by that legal framework can be viewed with regard to recent developments in international legal practice. It also enumerates certain specific cases the categorization of which has been questioned by current legal principles. First, it tries to illustrate sets out to illustrate how one must look at the different types of armed conflict expected by the legislation with respect to the recent trends in international legal practice. It is reasonable to refer to the actions of conceptualization pertaining firstly to the law of international armed conflict and

secondly to the law of non-international armed conflict. Secondly, it discusses in detail the several contentious implementation situations. Moreover, some observers doubt the adequacy of the legal categories as the armed conflicts are far more complex than the paradigm illustrated in international humanitarian law. This review shows that it is exceedingly difficult to classify situations of violence and then determine the rules that apply due to the complexity of armed conflicts. These difficulties can be partially attributed to the legal definitions as their scope is often vague and they are not explicitly defined in the Treaty. Thus, it can be concluded that the establishment of international practice is essential because it allows certain concepts to be articulated in practical terms by analysing them in the context of real-life situations.

- **Hoffman (2009)** –In this work, *‘Hybrid versus Compound War—The Janus Choice: Defining Today’s Multifaceted Conflict’* the author has distinguished between ‘hybrid’ and ‘classic’ warfare. He begins by acknowledging the importance and policy implications of redefining war as organized violence and how international humanitarian law and international law are important forms of policy negotiations. Hoffman has defined hybrid warfare as "*any adversary that simultaneously and adaptively employs a fused mix of conventional weapons, irregular tactics, terrorism and criminal behaviour in the battle space to obtain their political objectives.*" He has deduced this definition from the war of Hezbollah in Lebanon that began in the year 2006. Further, he cites Islamic State as a hybrid threat. In the next part of his work, he characterizes the distinction between classic wars and hybrid warfare. World Wars I and II are perfect examples of classic wars: battles between (a coalition of) nation-states fought by uniformed soldiers under strict hierarchical military command following a military strategy to fight clear and present military targets, conform international humanitarian law, *ius ad bellum* and *ius in bello* or laws of war (Geneva Conventions 1949). He contends that hybrid soldiers are no longer trained by the

nation-state nor paid professionals but are recruited from all over the world. Roots and military experience are irrelevant. The strict hierarchical military command structure has been replaced by loose, flexible, and ever-changing networks of freelancers, individual combatants ('lone wolfs') or terrorist cells. One can call it the *democratization of war*. A civilian, combatant or cell must follow orders of the leader or is free to commit an 'act of war' on his/her own, shouting 'Allahu Akbar'. Military targets have changed too. The protection of the civilian population is not important anymore. Military targets are civilian targets too: IS uses human shields to defend their combatants in the streets of Mosul. Further, the distinction becomes more evident as classic wars end with a total victory, an unconditional capitulation, or a peace agreement. However, at what point does a hybrid conflict end is yet unanswered. Hybrid warfare needs a new definition of victory. In fact, a total victory over Islamic State might be an illusion. According to him, the best the West can do is to diminish the violence to acceptable proportions. How much violence will be tolerated in a society still worth living is also a question that needs to be determined?

- **Fleming (2009)** – Over the last 18 years or so, much of the debate about modern warfare has been about whether it should be described as 'old' or 'new'. However, there has not been a definitive answer as to which best reflects war in the modern world. Increasingly, the alternative arguments are polarised into opposing camps. Indeed, it would be fair to say that there is little in the way of debate at all. By reevaluating the strengths and weaknesses of each argument, this paper '*New or Old Wars?: Debating a Clausewitzian Future*' has tried to reinvigorate that discussion by examining whether changes in the way we understand war are really required. Finding that the ideas are not in fact mutually exclusive, it suggests that future research could benefit from a combined approach.

- **Bartels (2009)** – The author in this article *‘Timelines, Borderlines and Conflicts: The Historical Evolution of the Legal Divide between International and Non-International Armed Conflicts’* has suggested answers to the recent issues on removal if the distinction between the types of conflicts. As the recent conflicts do not fall neatly in the existing binary framework, this work attempts to clarify the fictional vacuum between the two types of conflicts. This work has discussed the relevance and tenability of the distinction between the two types of armed conflicts and tried to classify certain conflicts based on existing typologies of international humanitarian law.
- **Wilkinson (2008)** – This book *‘Terrorism versus Liberal Democracy: The Liberal State Response’* examines the major trends in international terrorism and the liberal democratic response. Drawing key lessons from the recent experience of democracies, and in particular from the response of the US and UK to the events of 9/11, the author has offered a candid interim balance sheet on the success and failures of the ‘War on Terror’. The book thus analyses the new role assigned to the military, the growing trend in hostage-taking and sieges, the challenges faced by aviation security and the place of international cooperation in combating terrorism. It also highlights some of the major dangers, such as over-reaction, over-reliance on the use of military force in an effort to suppress terrorism and the adoption of measures that involve major curtailments of democracy, human rights and the rule of law, which could undermine the very democracy one, is trying to defend. The author argues that prior to 9/11 the general international response to terrorism was one of inconsistency and under-reaction. However, as resorting to full-scale war in the name of combating terrorism risks the sacrifice of far greater numbers of innocent lives than have ever been killed in non-state terrorist attacks, the author strives to outline a democratic strategy designed to avoid the dangers of both over-reaction and

under-reaction while preserving democratic values, human rights and the rule of law.

- **Hoffman (2008)** – This work *‘Squaring the Circle? –International Humanitarian Law and Transnational Armed Conflicts’* acknowledges that while the armed conflict law historically accepts only the dichotomy of international and non-international armed conflict relevant to the legal system governing armed conflicts, the fact poses circumstances that do not neatly fall into such categories. External State participation is almost universal in current wars, and a substantial number of disputes continue between states and non-state parties that do not generally reside within a country's boundaries. In this article, Hoffman has attempted to explore the legal concept of 'transnational armed conflicts,' i.e. violent wars of a transboundary nature affecting non-state parties and thereby apparently avoiding the traditional distinction between international and non-international violent conflict. After an analysis of the law and the operation of the Administration, he argues that contemporary international humanitarian law is capable of regulating such conflicts and calls for an overhaul of the present system are premature.
- **Byron (2007)** – The author in this work *‘A Blurring of The Boundaries: The Application Of International Humanitarian Law By Human Rights Bodies’* has identified that the blurring of boundaries between different fields is a feature of modern international law. The article has examined this phenomenon with respect to the interaction between human rights law and international humanitarian law. Instead of discussing the influence of human rights upon humanitarian law, this article has concentrated upon how human rights treaty bodies are breaking down the barriers between the two areas of law by applying or referring to humanitarian law.

- **Kaldor (2006)** –The book *'New and Old Wars: Organised Violence in the Global Era'* is a path breaking book as the author has presented, what we think as war- war between states in which the aim is to inflict maximum violence- is becoming anachronism and in its place has come a new type of organized violence or *'new wars'*, which she describes as a mixture of war, organized crime and massive violations of human rights where the actors are both global and local, public and private. The wars are fought for particularistic political goals using tactics of terror and destabilization that are theoretically outlawed by the rules of modern warfare. Kaldor's analysis offers a basis for a cosmopolitan political response to these wars, in which the monopoly of legitimate organized violence is reconstructed on a transnational basis and international peacekeeping is reconceptualized as cosmopolitan law enforcement. This approach also has implications for the reconstruction of civil society, political institutions, and economic and social relations. The author in the last chapter has also answered the critics of the New Wars argument and has shown how old war thinking in Afghanistan and Iraq greatly exacerbated what turned out to be, in many ways, archetypal new wars - characterised by identity politics, a criminalised war economy and civilians as the main victims. It is one of a good book to understand the fundamentals of contemporary war and conflict.
- **Crane (2005)** – In this article *'Terrorists, Warlords and Thugs'* the author has focused on the current state of affairs related to international criminal law. According to him, humanity is in many ways at a crossroads and depending on the path we take, as a global community, will change the face of international criminal law, maybe forever. Apart from many challenges that we are facing, our task with terrorists, warlords, and thugs in West Africa-very much a forgotten part of the world and called this phenomenon as *"criminal warfare"*. Crane contends that international criminal justice can be effectively and efficiently delivered within a politically acceptable time frame. The International War Crimes Tribunal

in West Africa, the Special Court for Sierra Leone, has shown that it can be done. Regional hybrid arrangements are effective in delivering justice directly to the victims, their families, districts, and towns; and they can work in the paradigm of the Rome Statute that established the International Criminal Court. The author is affirmative of the tools in place to face down impunity wherever it rears its ugly head and believes that we must continue to ensure that the rule of law is the guiding principle for good governance and a world at peace. The article is truly relevant for the debate as it brings to forefront a third perspective into discussion.

- **Singer (2003)** –A path breaking book '*Corporate Warriors: The Rise of the Privatized Military Industry*' highlights the growing privatization of militaries and business executives that manage the war these days. The author has discussed the phenomenon where breaking out of the guns-for-hire mould of traditional mercenaries, corporations now sell skills and services that until recently only state militaries possessed. Their products range from trained commando teams to strategic advice from generals. The author has highlighted that how this new '*Privatized Military Industry*' encompasses hundreds of companies, thousands of employees, and billions of dollars in revenue. In this book, Singer provides the first account of the military services industry and its broader implications whether as proxies or suppliers, such firms have participated in wars in Africa, Asia, the Balkans, and Latin America. More recently, they have become a key element in US military operations. Private corporations working for profit now sway the course of national and international conflict, but the consequences have been little explored. The privatization of warfare allows startling new capabilities and efficiencies in the ways that war is carried out. At the same time, however, Singer finds that the entrance of the profit motive onto the battlefield raises a series of troubling questions for democracy, for ethics, for management, for human rights, and for national security.

- **Stewart (2003)**– The article *‘Towards A Single Definition of Armed Conflict In International Humanitarian Law: A Critique Of Internationalized Armed Conflict’* has Tried to focus on the very first issues students are taught in international humanitarian law – the difference between international armed war and non-international armed war. By emphasizing the inadequacies in the handling of internationalized armed conflicts by the new dichotomy, including violent conflicts affecting domestic and external elements. Stewart criticizes the rigid separation of the international humanitarian law and the principles common to all wars and has sought to revive some dead calls that attempted to leave the difference at any point of the Geneva Conventions and their Protocols negotiations. The paper claims that the law designed to assess such "internationalization" has created complex criteria which are nearly impossible to enforce. However, when internationalized, it is impossible to establish the relevant law in any war, when alliances and military presences shift. Moreover, in international humanitarian law the international / non-international dichotomy has proven vulnerable to extraordinary political coercion, even at the detriment of humanitarian security. However, the paper calls for the consideration of concrete elements of a common armed conflict statute as necessary to the establishment of greater humanitarian security during internationalized armed conflict.
- **Provost (2002)** –By the work *‘International Human Rights and Humanitarian Law’* the author has tried to answer an important question as to how international human rights and humanitarian law protect vulnerable individuals in times of peace and war. Provost has analysed systemic similarities and differences between the two to explore how they are each built to achieve their similar goal. He details the dynamics of human rights and humanitarian law, revealing that each performs a task for which it is better suited than the other, and that the fundamentals of each field remain partly incompatible. This helps us understand why their norms succeed in some ways and fail - at times spectacularly - in others.

This study represents innovative and in-depth research, covering all relevant materials from the UN, ICTY, ICTR, and regional organizations in Europe, Africa and Latin America. The idea proposed by this work has later been criticized by others who believe that human rights regime can suitably be applied to conflict situations.

Implications of the Reviewed Literature for the present study:

The study of the existing literature shows that the confusion and difficulty that has crept in the applicability of international humanitarian law on non-international armed conflicts has been either recognized or rejected by the writers. There is no uniformity in the opinion regarding the need of new regime for the contemporary non-international armed conflicts. Various authors have proposed the difficulty in applying the existing international humanitarian law framework to the emerging non-international armed conflicts. However, the international bodies and institutions have offered strict compliance to the existing framework as the better solution to the challenges posed by the contemporary non-international armed conflicts rather than drafting new set of laws. However, authors who propose the existing framework to be sufficient fail to recognize the changing characterizations of the contemporary non-international armed conflicts and try to accommodate them in the existing framework. The researcher intends to study the issue from the perspective that will firstly try to identify the characteristics of contemporary conflicts, find similarities or distinguishing factors from the conventional non-international armed conflicts and test the suitability of the application of existing framework to the contemporary conflicts.