

Legislation for the Domestic Application of International Humanitarian Law in Pakistan

MALIK JUNAID ARSHAD⁹⁸

DR. NADIA

List of Abbreviations

IHL	International Humanitarian Law
GCs	Geneva Conventions of 1949
AP	Additional Protocol to Geneva Conventions
OP	Optional Protocol
IAC	International Armed Conflict
NIAC	Non-International Armed Conflict
IHRL	International Human Rights Law
UDHR	Universal Declaration of Human Rights 1948
ICCPR	International Covenant on Civil and Political Rights
Art.	Article
CIHL	Customary International Humanitarian Law
PPC	Pakistan Penal Code, 1860
Cr.P.C	Criminal Procedure Code
UNHCR	United Nations High Commissioner for Refugees
IDMC	Internal Displacement Monitoring Center
IDP	Internally Displaced Person

⁹⁸ The author is currently working as doctoral visiting researcher at Department of Commercial Law, Stockholm University, Sweden. He is Ph.D. law Scholar (Bahria University Islamabad, Pakistan. Email: malikjunaidarshad@gmail.com

⁹⁹ Assistant Professor, Fatima Jinnah Women University, Rawalpindi, Pakistan

Email: nadiakhadam@fjwu.edu.pk

Abstract

Since Pakistan is a party to the Geneva Conventions of 1949, so that it is under legal obligation for the domestic implementation of International Humanitarian Law (IHL) not only during an International armed conflict (IAC) but also in non-international armed conflict (NIAC). The article articulates that there are several continuous national security threats in Pakistan. The country is coping with NIACs in different areas which require a legal framework and effective enforcement mechanisms for the domestic application of IHL to protect fundamental rights and to strengthen the administration of justice. The Article examines the lack of IHL awareness and legal framework in Pakistan to mitigate the effects of armed conflicts. To prove the hypothesis doctrinal legal research methodology is applied by utilizing primary and secondary legal sources. It considers IHL, domestic legislation, scholarly work, legal provisions implemented in modern democracies, and internationally recognized principles to explore by explaining, comparing, analyzing, and illustrating in an organized form of the facts starting challenges for IHL in Pakistan. The targeted data is to be collected through legal enactments, books, manuals, articles of scholars, as well as certified reports of national and international institutions. Finally, the study concludes that it is a need of the hour to promote domestic compliance of IHL by implementing express legal provisions by keeping in view the Geneva Conventions and customary rules of IHL to alleviate violations of fundamental rights and to strengthen the administration of justice in Pakistan.

Key Words: Domestic Application, Geneva Conventions, International Humanitarian Law, Law of International and Non-International Armed Conflicts.

1. Introduction

Providing a legal framework for the domestic compliance of IHL is the legal obligation of states signatory to the Geneva Conventions (GC) of 1949 and its Additional Protocols (AP) of 1977.¹⁰⁰ It is required that the material process be taken at the state level to respect IHL by adopting a legal framework, even in peacetime. It is to guarantee that state authorities, the armed forces, international organizations comprehend, the guidelines, that the actual measures are undertaken and abuses of IHL are disallowed, and the framework existed to penalized when they take place.¹⁰¹ These actions are important to confirm that the law is working. To organize this meritorious organization among several government units, the armed forces and civil society is compulsory.¹⁰² As the Islamic Republic of Pakistan has ratified the Geneva Conventions of 1949, therefore, it is the responsibility of Pakistan for the effective domestic implementation of IHL.¹⁰³ So for approximately 101 states have established national committees and similar bodies on IHL excluding Pakistan.¹⁰⁴ There are multifarious and overlapping armed conflicts in Pakistan since its independence.¹⁰⁵ Pakistan started armed operations in 2002 against terrorists, foreign fighters, and non-state actors

¹⁰⁰ Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 1949.

See Also Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea 1949. ; Geneva Convention III Relative to the Treatment of Prisoners of War (adopted 12 August 1949) (Geneva Convention III) Art 29 1949. ; Geneva Convention IV Relative to the Protection of Civilian Persons in Times of War 1949.

¹⁰¹ 'Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea', 6 U.S.T. 3217 § 49 (1949), <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/370?OpenDocument>.

¹⁰² International Committee of Red Cross, *Domestic Implementation of International Humanitarian Law A Manual* (2015) <<https://www.icrc.org/en/publication/dvd40-domestic-implementation-international-humanitarian-law-cd-version-including-links>>.

¹⁰³ Muhammad Haroon Khan Muhammad Tahir Malik, 'Establishment of National IHL Committee by High Contracting Party under Geneva Conventions of 1949: Case of Pakistan and the Islamic Outlook' 3, no. Issue: 2 (n.d.): 1-6.

¹⁰⁴ 'Table of National Committees and Other National Bodies on International Humanitarian Law' <<https://www.icrc.org/en/document/table-national-committees-and-other-national-bodies-international-humanitarian-law>> accessed 29 March 2021.

¹⁰⁵ ICRC, 'The War Report: Armed Conflicts in 2018 | Rulac' International Humanitarian Law <<https://www.rulac.org/news/the-war-report-armed-conflicts-in-2018>> accessed 29 March 2021.

hiding in its tribal areas.¹⁰⁶ In 2004, Pakistan launched military offensives against fighters alleged to be associated with al-Qaeda near its Afghan border.¹⁰⁷ Pakistan army launched operation Rah-e-Rast (May 2009), operation, operation Rah-e-Nijat (June 2009), and Zarb-e-Azb (June 2014), against various non-state armed groups and terrorists. The military is also engaged in many conflicts. The law enforcement and civil armed forces are cooping against anti-state activities and dogmatic violence.¹⁰⁸ Violent acts of extremism in schools and other areas are witnessed. In this situation of disturbance, it is necessary to realize the IHL implementation. It would be favorable to incorporate IHL and to expand Pakistan's compliance with IHL obligations.¹⁰⁹ Due to the persistent and diverse nature of the armed conflict, various issues regarding IHL have arisen. According to Internal Displacements Monitoring, 2010-2014, around 25 million individuals were displaced by insurgency, anti-terrorism operations, and other interrelated violence in Pakistan.¹¹⁰ Human Development Index ranked Pakistan 152 out of 189 countries.¹¹¹ The situation becomes worse because of the limited domestic implementing of IHL. The importance of the domestic application of IHL increases while defining how to counter the violence.

Due to these armed conflicts, and by the ratification of the Geneva Conventions of 1949 and the customary rule of IHL, Pakistan is under a direct obligation to take legislative measures for the implementation of IHL into domestic law.¹¹²

Common Art. (1) of GCs I-IV, Art. (1) Additional Protocol (AP) I, the state parties

¹⁰⁶ 'Who Are the Pakistani Taliban? - CNN' <<https://edition.cnn.com/2012/10/17/world/asia/pakistan-taliban-profile/index.html>> accessed 29 March 2021.

¹⁰⁷ 'Pakistan Profile - Timeline' *BBC News* (4 March 2019) <<https://www.bbc.com/news/world-south-asia-12966786>> accessed 29 March 2021.

¹⁰⁸ Niaz Shah, 'War Crimes in the Armed Conflict in Pakistan' (2010) 33 *Studies in Conflict & Terrorism* 283.

¹⁰⁹ Maira Sheikh and Moghees Khan, 'Understand International Humanitarian Law: A Primer on IHL and Pakistan's Domestic Law' (Social Science Research Network 2016) SSRN Scholarly Paper ID 2958928 <<https://papers.ssrn.com/abstract=2958928>> accessed 14 May 2020.9.

¹¹⁰ 'Global Estimates 2015: People Displaced by Disasters | IDMC', accessed 29 March 2021, <https://www.internal-displacement.org/publications/global-estimates-2015-people-displaced-by-disasters> 43.

¹¹¹ United Nations, 'Human Development Report 2019' (New York, 2019), <http://hdr.undp.org/en/content/human-development-report-2019>.

¹¹² Sheikh and Khan (n 10).

undertake to ensure all measures comply with conventions in all circumstances. By Art. (1), (2), to AP I the state parties to the GCs in conflict are under obligation to take all required measures for the accomplishment of their obligations under GCs. To date, Pakistan has implemented IHL to some extent by Geneva Convention Implementing (Amendment) Act, 1963 and different scattered provisions in several laws that have been interpreted and applied accordingly to deal IHL related issues, i.e., The Prisons Act, 1894 and The Prisoners Act, 1900 that covers Art. 13, 14, 15, 16 and Art. 25-28 for food, quarters, clothing, Art. 29-32 for hygiene and medical attention of GC (III) related to the General protection of war prisoners. Similarly, the Anti-terrorism Act 1997, Police Order 2002, the Prevention of Electronic Crimes Act, 2016, Pakistan Army (Amendment) Act 2017, Actions (in Aid for Civil Power) Regulation, 2011 have been interpreted and applied to deal with IHL related cases. Nevertheless, it is evident that the significant sections of the GCs, providing for grave breaches, have not yet been domesticated. As per the state responsibility under Art. 49, paragraph 1 of the Geneva Convention I, high contracting parties undertake to contemplate the grave breaches as crimes in domestic legislation.

Moreover, newly implemented laws are in direct contravention of general principles of protection, discrimination, judicial and fundamental guarantees as enshrined in Geneva Conventions. Protection of Pakistan Act section 15 and 5 (5) reversed the presumption of innocence, section 9 legalizes secret detention, and section 10 empowers the special courts to restrict the right to a public trial, these provisions are in contravention of fundamental principles, disciplinary and judicial guarantees and rights of prisoners/detainees provided under IHL.

Intended for the effective domestic implementation of IHL, Pakistan is required to amend the criminal law to punish war crimes,¹¹³ to translate GC I-IV into the national language¹¹⁴, to provide awareness of IHL as commonly as probable in the armed forces and public,¹¹⁵ to

¹¹³ Geneva Convention I.

¹¹⁴ 'Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field', 75 U.N.T.S. 31 § 48 (1949), <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/365?OpenDocument>.

¹¹⁵ 'Geneva Conventions Additional Protocol I', 1125 U.N.T.S. 3 § 87 (2) (1977).

suppress all violations of IHL, particularly to guarantee that public and property secured by the law is appropriately identified, to regulate the formation, regulation of red crescent societies, national red cross committee, and other voluntary aid societies to ensure that protected individuals during armed conflicts enjoy fundamental judicial guarantees.¹¹⁶ It is obligatory to take all measures to stop the misapplication of the red crescent, the red cross, and other signs and emblems mentioned in GCs.¹¹⁷ Likewise, Pakistan is also required to appoint and train persons for IHL,¹¹⁸ particularly to warrant the existence of legal experts and advisors in the armed forces,¹¹⁹ setting up neutralized zones, hospital zones, and demilitarized zones.¹²⁰

Several countries have taken steps to support domestic compliance with IHL. Presently, approximately 60 states have bodies to deal with cases related to IHL. Belgium has very effectively made provisions in the implementation and further growth of IHL.¹²¹ It has promptly addressed the problem of accusing and prosecuting grave breaches of the GCs. It has established an inter-ministerial commission for humanitarian law in 1952, for the identification and coordination of national measures to implement these new international legal instruments¹²².

Accordingly, the Philippines Republic Act No. 95 was implemented to ensure the domestic implementation of IHL.¹²³ It provided for the incorporation of the Philippine National Red Cross, for the assistance of the obligations outlined in the GCs. In 2009 Republic Act No. 9851 was enacted, it was a step forward for IHL in the Philippines that provided for crimes

¹¹⁶ 'Geneva Conventions Additional Protocol I', 1125 U.N.T.S. 3 § 17, 81 (1977).

¹¹⁷ 'Geneva Conventions Additional Protocol I', 1125 U.N.T.S. 3 § 18 (8) (1977).

¹¹⁸ 'Geneva Conventions Additional Protocol I', 1125 U.N.T.S. 3 § 6 (1977).

¹¹⁹ 'Geneva Conventions Additional Protocol I', 1125 U.N.T.S. 3 § 82 (1977).

¹²⁰ 'Geneva Convention IV Relative to the Protection of Civilian Persons in Times of War', 6 U.S.T. 3516 § 14 (1949), <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/INTRO/380>.

¹²¹ Frédéric Casier and Alix Janssens, 'Belgium's Interministerial Commission for Humanitarian Law: Playing a Key Role in the Implementation and Promotion of IHL' (2015) 1 International Review of the Red Cross 1.

¹²² *ibid.*

¹²³ Republic Act No. 95 Act to incorporate the Philippine National Red Cross, 1979 Republic Act No. 95 Act to incorporate the Philippine National Red Cross, 1979 2018..

against genocide, IHL, and humanity.¹²⁴ It gave IHL accuracy and immediacy in the Philippines. It categorizes specific violations of IHL.¹²⁵

It also provided for emblem protection by the Republic Act No. 10530.¹²⁶ Further, it is the best example of domestic legislation that covers both the International Armed Conflict (IAC) and NIAC.

2. Significance of the study

IHL comprises rules, for humanitarian grounds, that pursue to eradicate the effects of armed conflict. This research work was shaped for the assistance of domestic stakeholders i.e., common people, policymakers, members of the legislature, armed forces, judiciary, law enforcement, and academicians, etc.). It develops an understanding to take measures for the implementation of a legal framework of IHL in the domestic jurisdiction. It is intending to strengthen Pakistan's compliance for the fulfillment of its obligations towards IHL and to draw clearer strategies for the armed forces, law enforcement, and civil armed Forces engaged in law enforcement, security, and military operations. The mode of the organization of the following chapters reveals not only the total application of IHL but a limited selection of appropriate legal rules and customary rules. Altogether, this research work proposes to be a comprehensible overview to construct the capability of a domestic audience. For this purpose, relevant provisions of domestic law were scrutinized to ease apprehensions for the compatibility of domestic legislation with IHL. This paper is not only an absolute legal analysis of the related legislation but also an applied instrument for the introduction of IHL concepts into the domestic context. It should thus prompt further exploration of IHL, its application within Pakistan, and the improvement of domestic compliance with its provisions.

3. Violations of IHL due to Lack of Legal Framework in Pakistan

State parties to GCs have undertaken the responsibility to implement IHL domestically.

¹²⁴ Philippine Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity 2009.

¹²⁵ *ibid.*

¹²⁶ Philipnes-Red Cross and Other Emblems Act, 2013 2013.

These measures are required to be taken by the legislature, government ministries, the courts, military, or other institutions in a state. Professional, educational bodies, Red Crescent Society, the national Red Cross, or other related voluntary organizations may also have a role. At the international level, an International fact-finding commission an international tribunal, and the criminal court was established under the 1998 Rome Statute. But the primary obligation remains with states for efficiently applying the IHL¹²⁷.

4. Violations of Basic Principles of IHL

4.1. Indiscriminate Attacks against, Hors De Combat.

By common Art. 3 to the Geneva Conventions 1949. Pakistan is under an obligation for the least standard to respect IHL and for humane treatment without adverse differences of individuals not taking part or no longer active in hostilities.¹²⁸

Security forces of Pakistan have conducted several small and large military operations against the militant groups in the tribal areas since 9/11.¹²⁹ The five hundred militants have been claimed to be killed by the Pakistan army in the Bajaur operation on 26 September 2008. But no explanation was provided.¹³⁰ Lawyers, journalists, human rights activists, and other defenders faced intimidation, threats, harassment, violence, and enforced disappearance accusing them of being “anti-Pakistan”, “anti-Army” and “anti-

¹²⁷ Christopher Harland, ‘The Domestic Implementation and Application of International Humanitarian Law Norms’ ICRC Advisory Service on IHL, Geneva, Switzerland 2.

¹²⁸ David Elder, ‘The Historical Background of Common Article 3 of the Geneva Convention of 1949’ (1979) 11 Case Western Reserve Journal of International Law 37.

¹²⁹ Naeem Ahmed, ‘Pakistan’s Counter-Terrorism Strategy and Its Implications for Domestic, Regional and International Security’.

¹³⁰ Niaz Shah, ‘War Crimes in the Armed Conflict in Pakistan’ (2010) 33 Studies in Conflict & Terrorism 283.

Islam”.¹³¹ UNHCR reported that the UN refugee agency registered 50,000 afghan refugees that were to return to Afghanistan.¹³²

4.2. Infliction of Unnecessary Suffering

Despite Pakistan’s express obligation towards the implementation and adoption of minimum humanitarian principles, war crimes by Pakistan forces, indiscriminate killing, forced disappearance, extra-judicial killing and soldier abuse, injustice and unfair trial to combatants have been reported. Various journalists and NGOs became the victim of intimidation, harassment, and surveillance by the Government.¹³³

Since 2002, different operations were initiated in the tribal areas against fighters, it has been given the impact that the security forces of Pakistan are in a war for the safety of Pakistan and the indirect message was that every action taken shall not be objected to.¹³⁴ Serious violations during counterterrorism operations, including torture, enforced disappearances, and extrajudicial killings have been witnessed. Suspects were frequently apprehended without any charge or tried without due process. Counterterrorism legislation also continued to be abused as political coercion and silencing dissenting voices.¹³⁵ It was reported by the IDMC there were 2 million IDPs registered in Pakistan as of 2014.

¹³¹ ‘The Amnesty International Report 2017’ (2017) POL 10/6700/2018 <<https://www.amnesty.org/en/documents/document/?indexNumber=pol10%2f6700%2f2018&language=en>> accessed 2 September 2020.

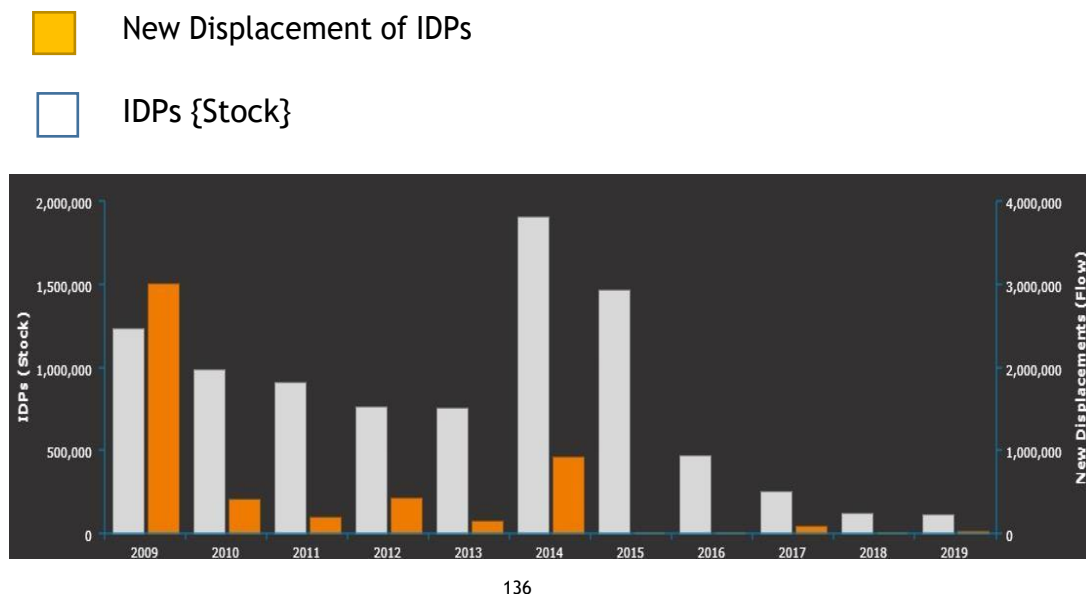
¹³² United Nations High Commissioner for Refugees, ‘50,000 Afghan Refugees from Pakistan Returned This Year under UNHCR Voluntary Programme’ (UNHCR) <<https://www.unhcr.org/news/press/2015/8/55e018386/50000-afghan-refugees-pakistan-returned-year-under-unhcr-voluntary-programme.html>> accessed 30 March 2021.

¹³³ ‘World Report 2018’ (Human Rights Watch 2017) Human Rights <<https://www.hrw.org/world-report/2018>> accessed 26 August 2020.

¹³⁴ Shah (n 9).

¹³⁵ ‘World Report 2018’ (n 34).

Conflict and disaster displacement figures



136

4.3. Failure to adopt key Legislative Measures

Under Geneva Convention II, Art. 50, Geneva Convention I, Art. 49, and Geneva Convention III, Art. 129 states are required to implement domestic legislation regarding the prevention of grave breaches provided under the Geneva Conventions. Pakistan has failed to adopt key legislative measures to fulfill its obligation towards IHL. Pakistan has no such legal framework.

4.4. Wrongful Application of Laws to IHL

To cover the deficiency of domestic legal framework relating to IHL, Pakistan has applied general criminal laws of the state for the prosecution of IHL related cases. The short title, local extent, statement of object, and reasons for such applied legislation does not warrant its application beyond its extent. It is also against the rule of interpretation to apply any law to a subject beyond its object expressly stated in its title.¹³⁷ That's the major

¹³⁶ 'Global Estimates 2015: People Displaced by Disasters | IDMC' (n 11).

¹³⁷ Henry Campbell Black, *Handbook on the Construction and Interpretation of the Laws, with a Chapter on the Interpretation of Judicial Decisions and the Doctrine of Precedents* (The Lawbook Exchange, Ltd 2008).

reason Pakistan has no special procedural laws to try IHL cases, which always cause a miscarriage of justice.

4.5. Denial of Basic Human Rights and Violations of the Principle of Humanity

Including IHL Pakistan is also a signatory to IHRL core Instruments, ICCPR, and UDHR that guarantee basic human rights but arbitrary detention, torture, ill-treatment, unlawful transfer to other countries has been seen in Pakistan.¹³⁸

4.6. Denied Access to Justice

Under Geneva Convention I, Art. 49, Geneva Convention II, Art. 50 and Geneva Convention Art. 93 the state parties are under obligation to provide the right to proper trial and defense. Protection of Pakistan Act Sections 15 and 5 (5) of the Act reverse the presumption of innocence, section 9 of the Act legalize secret detention, and section 10 empowered the special courts to restrict the right to a public trial.

4.7. Fair Trial Denial

The common Art. 3 to Geneva Conventions 1949 and Art. 6(2) of Additional Protocol II of 1977 to Geneva Conventions have guaranteed the sentences and the executions by a competent regularly constituted court. The accused were provided the right to be judged by an impartial, independent, and regularly established court without undue delay. The rights of defense, the right to communicate freely with legal counsel were recognized. IHL also protected the right to be presumed innocent.

In Pakistan, Right to Fair Trial was incorporated as a fundamental right in 2010, however, its protection is not in accordance with international

¹³⁸ 'Pakistan: Human Rights Ignored in the "War on Terror"' (Amnesty International 2006) Human Rights ASA 33/036/2006
<<https://www.amnesty.org/en/documents/document/?indexNumber=ASA33%2f036%2f2006&language=en>> accessed 27 August 2020.

standards. In Pakistan, Army courts were established for two years in 2015 by Pakistan Army (Amendment) Act, 2015.¹³⁹ This was further extended by the (Army Amendment) Act, 2017. In the meantime, the recently organized system of “military justice” of Pakistan should be purely in line with constitution of Pakistan and international commitments to respect the right to life, the right to a fair trial. The impartiality and independence of the judicial prosecution of war crimes, the speedy trial required to be ensured to prevent acts hindering the security of Pakistan.¹⁴⁰

It was reported by the International Commission of Jurists that since January 2015, 12 civilians have been sentenced to death by military courts and were executed. On 02 December 2015 four civilians, namely Hazrat Ali, Mujeebur Rehman, Maulvi Abdus Salam, and Sabeel alias Yahya, in Kohat Jail were hanged by Military Court.¹⁴¹ Right to Public trials or public hearings is not guaranteed by the Pakistani Army Act 1952 either in courts-martial or in appeals. Military Courts in Pakistan violate Art. 84 of Geneva Convention III, Art. 6(2) of the Additional Protocol II, Art. 75(4) of the Additional Protocol I, Art. 6(1) of the 1950 European Convention on Human Rights, Art. 14(1) of the International Covenant on Civil and Political Rights and Art. 6, 7, 8, 11 of Universal Declaration of Human Rights providing for access to justice, fair and public trial.

4.8. Degrading and Inhuman Treatment

Police and other security agencies are involved in torture and cruel, inhuman, or degrading treatment. Extra-Judicial killings in police custody are common.

¹³⁹ Tariq Parvez and Mehwish Rani, ‘An Appraisal of Pakistan’s Anti-Terrorism Act’ (US Institute of Peace 2015) <<https://www.jstor.org/stable/resrep12399>> accessed 1 September 2020.

¹⁴⁰ ‘New ICJ Report on “Military Injustice in Pakistan”’ (HRC, 24 June 2016) <<http://hrcp-web.org/hrcpweb/new-icj-report-on-military-injustice-in-pakistan/>> accessed 1 September 2020.

¹⁴¹ ‘Pakistan: ICJ Denounces Hangings Following Secret Trials by Military Courts’ (*International Commission of Jurists*, 2 December 2015) <<https://www.icj.org/pakistan-icj-denounces-hangings-following-secret-trials-by-military-courts/>> accessed 1 September 2020.

The juvenile has been seen on death row. ¹⁴²Human Rights continuously violated by armed forces, furthermore arbitrary detention, extrajudicial killing, enforced disappearances torture, and other ill and degrading treatment, existed without any impartial mechanisms to investigate and bring offenders to justice.¹⁴³

5. National Implementation of IHL in Pakistan

Though there is no express legislation or any special enactment regarding IHL domestic application in Pakistan. However, there are several provisions from different laws that reflect the application of humanitarian principles in the conduct of hostilities and the law enforcement paradigm.

Domestic Legislation	Relevant Section and Subject	Relevant IHL
1. Pakistan Penal Code, 1860.	1. Sec.339, 364(a), 375 PPC Wrongful restraint, Wrongful Confinement, Rape. 2. Sec. 370 and 371 PPC Prohibition of Slavery. 3. Sec. 436 PPC offenses against property (mischief). 4. Sec. 300, 302 PPC	1. Customary IHL (CIHL) Rule, 93, 95, and 96. ¹⁴⁴ 2. The GCs and AP I lay down that persons accused of "grave breaches" under Geneva Conventions and AP must be searched by the state parties. (GC-I, Art. 49

¹⁴² UN Human Rights Committee and JPP-Justice Project Pakistan; OMCT-World Organisation Against Torture; Reprieve, 'Pakistan: Alternative Report to the Human Rights Committee' (Justice Project Pakistan (JPP) World Organisation Against Torture (OMCT) 2016) Human Rights <<https://www.ecoi.net/en/document/1317319.html>> accessed 2 September 2020.

¹⁴³ 'The Amnesty International Report 2017' (n 32).

¹⁴⁴ Jean-Marie Henckaerts and Louise Doswald-Beck, 'Customary International Humanitarian Law - ICRC' (00:00:00.0) </eng/resources/documents/publication/pcustom.htm> accessed 2 September 2020.

2. Criminal Procedure Code 1898		GC-II, Art. 50 GC-III, Art. 129 GC-IV, Art. 146 and AP I, Art. 85, para. 1). 3. Art. 50, 51, 147 GC-IV, Prohibit Willful Torture, Torture, or inhumane treatment, wilfully causing great suffering respectively.
3. Geneva Convention Implementation (Amendment) Act, 1963	1. Section 2 The Geneva Convention implementing (amendment) Act, 1963 (Act XXI of 1963) was enacted primarily to prohibit the use of the red cross and red crescent emblem without valid permission. It mentioned prohibition under Section 2.	5. GC-1 Art. 38-43, 53 GC-IV Art. 18,20,21,22 AP I, Art. 8, 9, 18
4. Prisons Act, 1894	1. Chapter IV, VIII, and IX treatment with the Prisoners There is no special law in Pakistan for the protection or treatment of prisoners	1. GC-III relative to the Treatment of Prisoners of War, Art. 13, 14, 15, 16 and Art. 25-28 (Quarters, food, and clothing), Art. 29-32

	of war (POWs). However, Regulation III of 1818, the Prisons Act, 1894, the Prisoners Act, 1900, and the Prisons Rules, 1978 have been used to provide legal protection to POWs. Prisoners Rules Extends to State Prisoners.	(Hygiene and medical attention) related to the General protection of prisoners of war.
5. Anti-Terrorism Act, 1997 (XXVII of 1997).	1. Section 4 armed forces to function in aid of civil power. 2. Section 5 provided for the use of force by the armed forces and civil armed forces and the arrest of terrorists. 3. Section 19(10) deals with the terrorist case investigations, trial by ATA Court.	GC-IV Relative to the protection of civilians in time of war of 12 August 1949.
6. The Police Order, 2002	1. Police Order deals with the duties of police. 2. Section 37 provided for the district public safety commission and police complaint commission.	Art. 3, GC- IV Relative to the protection of civilian persons in times of war.

	Chapter XVII deals with the repression of transgressions by police officers, in particular Art. 156 to 158 provide judicial guarantees for any violation and their punishment.	
7. Protection of Pakistan Act 2014.	1. Section 2 clauses (a) and (b) of the Act define armed forces. 2. Section 2 (d) describes the word 'militant'. 3. Section 3 provides that Precautionary measures are required before the use of force against persons deemed to be committing the offenses in Schedule I of this Act. 4. Section 5 requires persons arrested to be brought before a magistrate within 24 hours and Section 6 provides for the requirement of preventive detention.	GC-III Art. 3 and 89, GC-IV Art 122.

10 Pakistan Army (Amendment) Act 2017	1. Pakistan Army Act 1952, Section 2 provides for raising arms or waging war against Pakistan, or attack on law enforcement agencies, Armed Forces, or attack any civil or military installations, etc., and to cause terror or insecurity in Pakistan or outside Pakistan. 2. Section 2 (iv) (e) of the amended Pakistan Army Act 1952 as amended further provides for judicial fundamental guarantees in this process. It provides the right of the accused to appoint counsel of his choice for trial under this Act. If due to any reason the accused cannot employ a legal counsel, the concerned authority at its discretion may provide legal aid at state expenses.	Art. 11, 14, 17, 20, 38 of Geneva Conventions Additional Protocol (1977).
--	---	--

11 The Constitution of the Islamic Republic of Pakistan 1973.	1. Art. 8, 25 of the Pakistan Constitution deals with fundamental rights, 2. Art. 9 Security of Person 3. Art. 10-A It provides the right to a fair trial and due process. 4. Art. 10 Safeguard as to arrest and detention. 5. Art. 14 Provides for the inviolability of dignity of man.	Art. 1, AP I.
12. Actions (in Aid for Civil Power) Regulation, 2011	1. Actions (in Aid for Civil Power) Regulation 2011, promulgated on 27 June 2011 in Pakistan. 2. Section 4 contains both preventive and reactionary provisions as regards the use of force. It provided for the warning to civilians to vacate the area and to withdraw support for miscreants (i.e. terrorists, non-state actors), to take special measures with regards to life and safety of women, children, and old.	Art. 2, 3, 4, 28, 29, 50, 53 GC relative to the protection of civilian persons in time of war.

	3. Section 5 provides for the misuse of force during actions in aid of civil power.	
13 National Commission on the Rights of the Child Act, 2017.	1. Chapters I, II, and III of the Act deal with the establishment of a Commission for the functions and tasks of the Commission. These powers include the examination of international instruments, periodical review of existing policies and programs on child rights, and proposing recommendations for their effective implementation, among others.	Art. 38, Convention on the rights of the child. ¹⁴⁵ Art. 1 to 13 optional protocol on the involvement of children in armed conflict 2000. ¹⁴⁶
14. Prevention of Electronic Crimes Act 2016.	1. Section 9 glorify an offense, person, or	Chapter IX, GC-III 1949, and optional protocol to

¹⁴⁵ Convention on the Rights of the Child 1990.

¹⁴⁶ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict 2002.

	organization related to, or involved in, terrorism. 2. Section 10 criminalizes cyber terrorism. 3. Section 10 B criminalizes the recruitment and planning for terrorism and Section 19 penalizes child pornography. 4. Chapter III and IV provide for the establishment of an investigation agency and chapter IV lays out the procedure for prosecuting the offenses under this Act.	the convention on the rights of the child, sale of children, child prostitution, and pornography.
15 Criminal Law (Amendment) (offenses relating to rape) Act 2016.	Section 2 amends Section 55 and provides for the death penalty for the offenses of rape, and section 6 provides for the non-disclosure of identity information related to rape victims.	Art. 27, GC-IV protection of Civilian Persons in time of War.

6. State Obligations for the Domestic Implementation of IHL

The commitment to respect the Geneva Conventions ensures that the state must take all

measures to safeguard the rules of IHL.¹⁴⁷ According to statistics provided by ICRC, 196 countries are party to Geneva Conventions, 176 countries are party to the Additional Protocol I, and 168 States are party to Additional Protocol II.¹⁴⁸ Common Art. 1 to the GCs creates an obligation to guarantee respect for the Conventions in all circumstances.¹⁴⁹ States have the primary responsibility for ensuring that IHL is implemented effectively inter alia through national legislation.¹⁵⁰ Pakistan has ratified Geneva Conventions, it is a signatory to additional protocols, and the customary rule of IHL also applies in this regard. Therefore, it has a direct obligation to take all necessary measures for the domestic application which includes special domestic legislation related to IHL.

7. Conclusion

It is evident from this discussion that serious violations of IHL and domestic laws are committed by different terrorist organizations, non-state actors, as well as law enforcement agencies and security forces of Pakistan. On the other hand, Pakistan has ratified IHL core instruments and under obligation for domestic legislation. Despite this fact, there is no express legislation for the domestic application of IHL. The statement of object and reasons of applied legislation does not warrant its application for IHL related cases. These laws should not apply to the domestic application of IHL. Moreover, Pakistan has no national IHL committee and other required organizations to fulfill its obligations. For the best solution to deal diverse nature of the conflict, and to fulfill its obligation under GC I-IV, it may be reasonably concluded that it is inevitable for Pakistan to implement a domestic Legal framework of IHL, fully warranted and in compliance with the GCs.

¹⁴⁷ Knut Dörmann and Jose Serralvo, 'Common Article 1 to the Geneva Conventions and the Obligation to Prevent International Humanitarian Law Violations' (2014) 96 International Review of the Red Cross 707.

¹⁴⁸ 'Annual Report ICRC' (International Committee of Red Cross 2015) International Humanitarian Law <<https://www.icrc.org/en/annual-report>> accessed 4 September 2020.

¹⁴⁹ Carlo Focarelli, 'Common Article 1 of the 1949 Geneva Conventions: A Soap Bubble?' (2010) 21 European Journal of International Law 125.

¹⁵⁰ Kathleen Hardy, 'An Analysis of the Domestic Implementation of the Repression of Violations of International Humanitarian Law' (LLM, University of Pretoria 2013) <<https://repository.up.ac.za/bitstream/handle/2263/30130/dissertation.pdf;sequence=1>> accessed 6 May 2018.

8. Recommendations

To achieve domestic compliance special laws are needed to be implemented. Alongside, it is also necessary to make provisions for a special procedure and judicial mechanism. The domestic legal framework should at least cover the following subjects;

1. Translation of IHL conventions and protocols into the national language(s)
2. The compulsory disseminating knowledge of IHL within the armed forces and the common population.
3. The repression of grave breaches and punishment of war crimes.
4. The prevention of the misapplication of the Red Cross, the Red Crescent, and other symbols and emblems.
5. The provision of fundamental and judicial guarantees.
6. The training of persons qualified in IHL, particularly legal advisors within the armed forces.
7. To provide for the regulation and establishment for:
 - i. A national committee of Red Cross and Red Crescent;
 - ii. Organizations of civil defense.
8. Consideration of IHL during:
 - i. Military objectives.
 - ii. Developing weapons.
 - iii. Adopting military tactics.
 - iv. The institution of neutralized zones, hospital zones, and demilitarized zones.
 - v. The training and recruitment of persons.
 - vi. The establishment of special (protective) structures.
 - vii. The development of training and educational programs.
 - viii. The introduction of (protective) planning and administrative procedures.