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SANAULLAH

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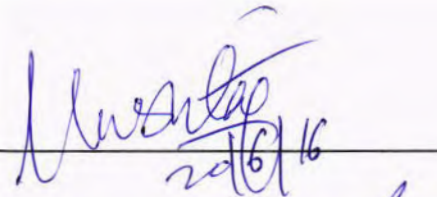
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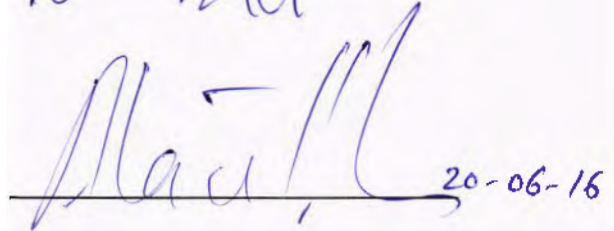

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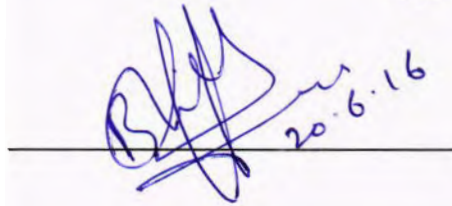

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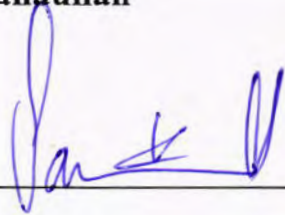

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DECLARATION

I, **Sanaullah**, hereby declare that this dissertation is original in its contents and has never been produced in any other institution. I, moreover, declare that any secondary information used in this dissertation has been duly acknowledged.

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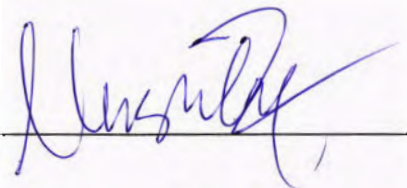


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DEDICATION

This Research work is dedicated to HAZARAT UMAR ABU HAFSE

MUJADDI

The 44th grand son of second caliph, HAZARAT UMAR-E-FAROOQ

(R.A)

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ABSTRACT

COLLATERAL DAMAGE AND VIOLATION OF

HUMAN RIGHTS

A CASE STUDY OF PAKISTAN WAR ON TERROR

2008-2010
By
SANAULLAH

In Pakistan on the name of war on terror big Collateral Damage occurred specially due to drone as well as terrorist attacks by US and enemy forces in which they only targeted the terrorists but along with those terrorists many innocent lives and population of Pakistan perished to death as a result of unintentional and incidental damage over the last past decade especially in the era of 2008 to 2010 which is the severe violation of human rights law as well as international law.

The study shall commence with the history and background of collateral damage. The circumstances and kinds of collateral damage will also be discussed, which lead to collateral damage. The state sovereignty will also be discussed in the context of collateral damage and violation of human rights in the first chapter. It will also be highlighted how state obligations are violated during collateral damage in the light of international humanitarian law.

In the second chapter, a case study of Pakistan war on terror from 2008 to 2010 will be examined and evaluated and analysis to this regard will also be represented in this chapter. Because Pakistan role in the War on Terror is a widely discussed topic among policy-makers of various countries, political analysts and international delegates around the world.

Pakistan has simultaneously received allegations of harboring and aiding terrorists and commendation for its anti-terror efforts. Thousands of people have been killed in Pakistan due to terrorist attacks since the beginning of the war on terror. Moreover in this chapter the impacts and causes of terrorism in Pakistan will also be highlighted.

In the third and last chapter, we will examine the rights and obligations of citizens of Pakistan in case of collateral damage and what responsibilities lies on the shoulders of state representatives in such cases and it will be further reiterated that victims compensation should also catered and accountability mechanism should be developed at national and international level. We will also analyze that which international law rules and regulations are violated in case of collateral damage and how the real soul of these laws can be lived long in the shape of suggestions and amendments, so that human rights of every citizen can be protected in true letter and spirit.

Moreover, in this chapter the analysis of what needs to be done to remove the disparities between theory and practice and the approach to be adopted with regards to regulations and accountability of damages and deaths of innocent lives who fall victims of incidental and unintentional occurrence. so that no one should be deprived of his first and foremost right, "Right to Life", which is infringed in case of collateral damage will also be depicted.

CHAPTER-1

BACKGROUND OF COLLATERAL

DAMAGE AND LAWS APPLICABILITY

1.1 INTRODUCTION

Human Rights are the basic born rights of every man as well as women. Human rights are morally acceptable and general beliefs about the ways of life that depict us in a society how a man or women should be treated as a general rule both in country law and International Law. In fact they are generally known as those fundamental rights which cannot be changed by any person because these rights are inherited by universe "regardless of their nation, location, language, religion, ethnic origin or any other status". They are applied in every situation and at everyplace in the world in a general and particular group of society and they are supporting and following the idea that all people are equal and have same opportunities and rights in their life Moreover it also require that every person should have the feelings and emotions of another person like his own so that every person's human rights can be respected and promoted.¹

The doctrine of human rights law has gained importance within international law, global and regional institutions. The acceptance of these laws by states and non-governmental institutions provide a good platform for public policy all over the world. The idea of human rights law propose that "if the public discourse of peacetime global society can be said to have a common moral language, it is that of human rights." The doctrine of human rights continuously focus and trying to establish the real sense of persons rights in a true letter and spirit so that no one can be infringed from the very rights from its contents and nature but on the other hand .this is considered a debatable topic in such a sense that what should be the defined boundaries of this field and always consensus lies in different fields of study.

¹ Wikipedia, the free encyclopedia
Found at Website <http://en.wikipedia.org/wiki/Collateral_damage >
(Last accessed November 14, 2013)

Some thinkers propose that human rights law should be followed to avoid any unforeseen incidental case in our daily use social life whereas some others thinkers consider it that such laws should be implemented in a society as a highest standard of life ²

Most of the basic ideas that strengthen the human rights movement generated after the consequences of the Second World War in which a lot of destruction of people and assets occurred and at last United Nations General Assembly have to formulate and adopt the Universal Declaration of Human Rights (UDHR) in Paris in 1948. History reveals that old generations did not have the as like conception of universal human rights as present era. The true sense and understanding of human rights is basically the concept of natural rights which was emerged during the European History and it gained reputation in the period of renowned philosophers such as John Locke, Francis Hutcheson, and Jean-Jacques Burlamaqui, and these philosophers' played a prominent role in the American Revolution and the French Revolution."³

Collateral damage have been around within living memory since and through the creation of the world. The term "collateral damage" on the other hand is fairly new. In 1990 it was introduced during Gulf War I to maximize acceptance. In 1999 it was frequently used in the context of self-legitimization of the NATO bombing of former Yugoslavia. Since then, the use of this term has been expanding.⁴

² Ibid

³ Ibid

⁴ Georg Meggle, "Collateral Damage" Available At
<meggle@uni-leipzig.de / www.uni-leipzig.de/~philos/meggle.htm >
(Last accessed July 17,2014)

Today, it relates to much more than just to certain aspects of military interventions. Utterances with which something is classified as a collateral damage have the primary function of an excuse. If the excuse is accepted, these utterances have fulfilled their main purpose: The damage in questions is looked at as something indeed “collateral”, as something at the side of the main action, as something rather accidental or circumstantial, as something from the point of view of the Centre of action less important, in short as something secondary meaning that in relation to this secondary, something else is of primary importance. As an example we can say it as “If you want to make an omelet, you will have to break some eggs.”⁵

In this my thesis I will deal with the study that shall commence with the history and background of collateral damage. The circumstances and kinds of collateral damage will be given due consideration, which lead to collateral damage. The state sovereignty will also be discussed by considering all the factors related to collateral damage and violation of Human Rights Law It will also be highlighted how state obligations are violated during collateral damage both in light of Human Rights as well as Humanitarian Laws

1.2 WHAT IS COLLATERAL DAMAGE?

The word collateral is derived from Latin word collaterals which means all together we can also say that it is the synonym of parallel, then it means that collateral damage is damage which is occurred by military operations and also can cause umintentional damage to non-combatant citizens ⁶

⁵ Ibid

⁶ Etymology Of collateral damage from Wikipedia, the free encyclopedia Found at <https://en.wikipedia.org/wiki/Collateral_damage > (Last accessed May 13, 2012)

The term collateral damage also cater for such a damage which is occurred unintentionally or incidentally due to which following things are effected

- (a) Personnel Facilities ⁷
- (b) Equipment for the support of life betterment
- (c) Human Beings fatalities occurring as a result of military actions
- (d) If targeted against enemy forces or facilities.

Such type of damage may also occur to either friendly, neutral or enemy forces.⁸

During the Research work it is found that United States Department of Defense document speaks about the collateral damage that ,“Unintentional or incidental injury or damage to persons or objects that would not be lawful military targets in the circumstances ruling at the time. Such damage is not unlawful so long as it is not excessive in light of the overall military advantage anticipated from the attack”⁹

If we want to understand collateral damage with some clarity, we will have to look at the following fore coming examples closely, no matter how terribly that might hurt. Such a close examination hasn't been done frequently until now. Even this first, very broad explanation shows that in talking about collateral damage we will have to distinguish the following elements of a situation:

⁷ Some Facilities in peace and war time include basic infrastructure, roads, rail track, water dams, water and gas pipelines, oil and petroleum pipelines, vehicles, aircrafts and ships.

⁸ Secretary of the Air Force, “Usaf Intelligence Targeting Guide Air Force”
Found at <[http://www.neonjohn.com/Misc/ebooks/usaf.Intel.Targeting.Guide\(nuclear\).pdf](http://www.neonjohn.com/Misc/ebooks/usaf.Intel.Targeting.Guide(nuclear).pdf)>
(Last accessed May 13, 2012)

⁹ Available at <<http://www.dtic.mil/doctrine/new.pubs/jpl.02.pdf>>
(Last accessed May 13,2012)

1.2.1 POSSIBLE SUBSTITUTIONS

One would have to distinguish further between direct and indirect damages or victims; that is, i.e., between the children killed by a bomb deviating from its original flight trajectory which will cause collateral damage on the one hand, and the members of their families who possibly will be grieving for the rest of their lives, on the other way.

If we look into the definition of collateral damage then

“A collateral damage is a damage which, in contrast to the actual (intended) aim of the action that brought this damage about, was not intended.”¹⁰

Collateral damage should be distinguished from primary damages by the following: the latter are intended, the former not. If we want more clarity about these different kinds of damages, we need to know what it means to intend something, or to not intend something. Especially in the context of the doctrine of the double effect; and we, today, can still learn a lot from their thought

E.g.: By throwing a stone Ali¹¹ intend to bring it about that the windowpane will brake

E.g.: By throwing a stone, Ali intend to bring about that the windowpane brakes if

(i) I throw the stone,

(ii) I want that the windowpane will be broken, and

(iii) I believe, that this aim (the windowpane's being broken) will be brought about by my throwing the stone Then it might be the case that my action is successful with respect to the aim A1, but not with respect to A2.

¹⁰ Georg Meggle, “Collateral Damage” Available At <mailto:meggle@uni-leipzig.de> www.uni-leipzig.de/~philos/meggle.htm > (Last accessed July 17,2014)

¹¹ A fictitious name just for the sake of example and understanding

In this case my action is only partially successful. In order to be overall successful my action would have to be successful with respect to all of its aims. By definition, the success of an attempt most important for its agent consists in his or her primary aim being achieved.

1.3 TYPES OF COLLATERAL DAMAGE

There are two main types of collateral-damages which will be discussed and evaluated through examples¹²

1.3.1 DIRECT VERSUS INDIRECT COLLATERAL DAMAGE EXPLANATIONS

Action-direct versus action-indirect actions It depends on whether the collateral damage is caused directly or indirectly by the forces

One Example

For the first kind could be, and I am sorry to have to go back to it, the terrible spider-example from the beginning, in which I try to kill the spider on the head of Mr. Egghead with the strike of a sledgehammer. The damage would also have been caused, if my action concerning the spider would not have been successful, if the spider would have been much faster than my strike and would have escaped. In other words: action-directed CD-Actions do not require the action

1.3.2 EXAMPLES OF DIRECT COLLATERAL DAMAGE

As the types of collateral damage mentioned earlier however further each types collateral damage elaboration with examples are given below

¹² Georg Meggle, "Collateral Damage" Available At <mailto:meggle@uni-leipzig.de> / www.uni-leipzig.de/~philos/meggle.htm > (Last accessed July 17,2014)

1.3.3 ACTION-DIRECT COLLATERAL DAMAGE EXAMPLE

The ministry of war in the capital of the enemy is being destroyed by a bomb of such a size that in the radius of 1,5 kilometers of the surrounding land all life is being destroyed, including a kindergarten with, at the time of the dropping of the bomb, approximately 50 children, one kilometer away from the ministry. (The destruction of the kindergarten is not the effect of the destruction of the ministry; both damages are directly induced by the dropping of the bomb.)

(a) A missile directed at the enemy ministry of war hits a nearby kindergarten, instead.

(b) A torpedo hits the ship which it was supposed to hit; but the ship is not, as expected, an enemy battle-ship, but a luxury cruise-liner. To make this difference clear The Torpedo hit the ship which it was aimed at; the missile, on the other hand, does not hit the target-building, but another one.

(a) A technical mistake in the function of the missile versus (a failure)

(b) A mistake in identification (an error).

The missile hits the target it was programmed to hit: the ministry of war. But in this building, there is an immense amount of explosives being stored. The hit results in an explosion which also blows up a nearby hospital.

Many of the seriously injured victims of the bomb coming from the further vicinity cannot be helped because the hospital has been destroyed. They die.

To completely describe this case X did not want the additional destruction of the hospital – further, X did not know that the use of the missile would cause this damage (i.e. because X did not know that there was such an immense amount of explosives stored in the ministry of war that it caused the explosion of the hospital); but X could have known (i.e. in paying attention to the recent reports of the military secret agency submitting the information that the ministry of war had been used to store explosives); and because the ministry of war was situated close to a hospital, it would have been the duty of X to calculate this information into the equation, before giving the order to launch the missile.¹³

1.3.4 ACTION-INDIRECT COLLATERAL DAMAGE EXAMPLE

The button, whose function was to start the cruise missile, was pushed by you only by accident) or that, what you did, has been really an action of type f. Or you agree to have done it, but you plead, as far as the inconsistency between $D(X,f)$ and the situation is concerned, X, that he does not want the damage to come about, but nevertheless does perform the very action which he knows will bring about that very damage? There are three 'solutions' to our problem.

First: For him, achieving his primary aim A, is much more important than this damage; he not only accepts that this damage will happen to Y his acceptance of it is fully deliberate.

Second: As far as this damage to Y is concerned, he is indifferent.

All three cases are implying the CD-condition (3). And so, as in all three cases X's damage is being brought about by means of the very action, by which he is trying to achieve his primary aim A, this action counts indeed as a CD-Action or as itself being a Collateral Damage, respectively.

¹³ Ibid

But would we really wish to accept even one of these three reasons as plausible reasons for an excuse? Would you Notice, that our ugly spider and Mr. Egghead example has been exactly a CD-action of this sort. But by this they commit themselves to the mistake of not separating the following three questions clear enough what kinds of CDs may be excused? And which ones might even be justifiable?¹⁴

1.4 HISTORY AND BACKGROUND OF COLLATERAL DAMAGE

If we search for the history of collateral damage in the context of international law then it reveals that the concept emerged aftermath of Vietnam War whose consequences was fatality of noncombatants citizens and catastrophic of all their belongings.¹⁵ Law of war or Humanitarian Law is a complex group of laws placing restrictions on use of violence in war time with a view to limit the effects of war so that minimum collateral damage could occur It is based on a set of fundamental principles which has been considered as being elementary considerations of humanity by international court of justice as well as fundamental general principles of humanitarian law. These Laws are promise and legally commitments to the state parties under all conditions and refusal to this effect is never ever permitted. Because collateral damage happened during war so in the conflicts military forces play vital role in the states.to minimize damages in the country.¹⁶

¹⁴ Ibid

¹⁵ Secretary of the Air Force, "Usaf Intelligence Targeting Guide Air Force"
Available at website

<[http://www.neonjohn.com/Misc/ebooks/usaf.Intel.Targeting.Guide\(nuclear\).pdf](http://www.neonjohn.com/Misc/ebooks/usaf.Intel.Targeting.Guide(nuclear).pdf)>
(Last accessed May 13, 2010)

¹⁶ Defense Gov News Article, "U.S. Military Works to Avoid Civilian Deaths, Collateral Damage" Available at <www.Defenselink.mil>. (Last accessed July 17,2014)

Both international Law and Rome statute states that, the killing of civilian population during war time up to some extent is inevitable because when bombardment will occur ultimately some of the lives will have to face and bear death. But on the other hand such types of deaths are no more war crime .Moreover International humanitarian law and the Rome statute law also describes that hostile country may also launch operation against such country although such type of operation will also cause some fatalities. But it is well clear and evident that under no more circumstances no one country can launch any particular operation against civilian population as an objective means to kill only the population solely.is strictly forbidden, as it is clearly depicted in article, 8 (2) (b) (i)¹⁷ and article 8 (2) (b) (iv) of the statute of the International Criminal Court (created in 1998) ¹⁸ It is also further supported in the article 51(5)(b) of the 1977 additional protocol I to the 1949 Geneva conventions that put on the restrictions on the excessive criminal damage to the civilian population. The application of article 8(2) (b) (IV) requires inter alia, an assessment of

- (a) The probable damage to civilian population or injury.
- (b) The probable advantage to military objectives
- (c) To check either civilian population damage was more than military advantage

¹⁷ “Article 8(2) (b) (i) states that if an attack is launched on a military objective in the knowledge that the incidental civilian injuries would be clearly excessive in relation to the anticipated military advantage it is also called principle of proportionality”.
Found At <<http://ec.europa.eu/justice/criminal/files/victims/guidance.victims.rights.directive.en.pdf>>
(Last accessed May 29, 2014)

¹⁸ “Article 8(2)(b)(iv) criminalizes that intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread long term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated.”
Found At <<http://ec.europa.eu/justice/criminal/files/victims/guidance.victims.rights.directive.en.pdf>>
(Last accessed May 29, 2014)

International Humanitarian Law demands from the citizens and States that are to look after the general public in case of war and no harm is inflicted to their respect and they should be protected as a human being. During war time every citizen should be treated carefully without any classification and arrested soldiers' shall be given appropriate care, without any creed and crest and shall be treated as a human beings

Torture and any type of violence to the arrested combatants shall be avoided, although it is general proverb that all is fair in love and war but contrary to that state parties should choose any way of armed conflicts to achieve some military objectives. Superfluous injuries to the civilian populations shall not be inflicted. In order to prevent the civilian population from any sufferings during war time their territory should be kept separate from the military installations so that they could prevent yourself from any type of inadvertent loss to their lives. Under no more circumstances neither the civilians as a community nor individual civilians or community places shall be the object of military attacks.¹⁹

The first and foremost right of individual is right to life and in collateral damage the very right is infringed , resulting in violation of human rights because right to life is the heart of human rights, every instrument of human right basically protect said right in order to protect and promote human right.²⁰ It is not necessary that Collateral damage which is a great threat to human life will happen just after attack on a military installation but perhaps after the attack some of the effected and damaged facilities could also create collateral damage to the civilian population of a state.

¹⁹ Hans-peter Gasser "international humanitarian law and the protection of war victims"
Found at <<https://www.icrc.org/eng/resources/documents/misc/57jm93.htm>>
(Last accessed June 11,2013)

²⁰ Edition by Christian Tomuschat, Evelyne Lagrang and Stiefen Oeter, "Right to life"
Found at <<https://www.bookdepository.com/Right-Life/9789004183919>>
(Last accessed July 11, 2014)

Likewise in the Gulf War Conflict in the era from 1990-91 in which major killings occurred due to destruction of daily use life facilities E.g. electric grid stations, sewage system and purified drinking water which were completely destroyed during the said war, as compared to destruction which were existed during the same period of time as a result of bombardment.²¹

QUESTION At here an important question lies whether we can reduce the threat of collateral damage to the civilian population by any means?

ANSWER We can reduce to the negligible limit the threat of collateral casualties due to aerial strikes by using the precision guided missiles for the military objectives only, but on the other hand unluckily precision guided missiles also loss the accuracy due to weather phenomena resulting into the some risks of deaths of civil society Basic need of the hour demands that necessary corrective preventive measure should be adopted near the civilian population like smoke and jamming devices which will divert the missiles to prevent the population from any untoward incident.

Fundamental principle and key to successful counterterrorism strategy is to protect civilians both in their lives and property because effort will be aimless if along with insurgents other citizens have to breathe their last. So the force size should be assumed in relation to the dwellers in order to protect the basic and fundamental rights. It can be easily done through coordination with civil agencies to protect the peoples fear from everyday life.

²¹ Reynolds, Jefferson D. 2005 book, "Collateral Damage on the 21st Century Battlefield: Enemy Exploitation of the Law of Armed Conflict, and the Struggle for a Moral High Ground." Air Force Law Review 56:1-108.
Available at <<http://www.lawofwar.org/attachment.4.U.S.A.F.htm>> (Last accessed June 11, 2014)

The violation of private purposes, because in collateral damage probably killing of civilians is practiced. Which is the violation of human rights in the context of humanitarian law as well as international law.²²

Besides this that Pakistan has joined his hands in war on terror with America means allied partner by providing her a range of assistance including use of military bases to US forces other than this America is considering that Pakistan is the safe haven for terrorist as well as Pakistan itself hiding them in the tribal belts along the Durand line with Afghanistan. Whereas Pakistan has abandoned its support for the Taliban regime but contrary to this US state has even allowed CIA and FBI to take part in the raids against Al-Qaeda members who have escaped to Pakistan. To eliminate Al-Qaeda network American forces used aircrafts and attacked in the shape of drones attacks resulting in biggest collateral damage in FATA area and the violation of right to life as well as violation of international law.²³

Now I shall discuss in detail the state sovereignty and state obligations in case of collateral damage and moreover the applicability of IHRL in a wider perspective

²² Samantha power article our war on terror published in New York Times Found at <www.nytimes.com/2007/07/29/books/review/Power-t.html?_r=4.all> (Last accessed July 17,2014)

²³ Najam Rafique, article on “interpreting the nature of US war on terror” Found at <www.theses.iiu.edu.pk:8002/collect/electron/index/assoc/.dir/doc.pdf> (Last accessed March 23, 2014)

1.5 STATE SOVEREIGNTY

International law which is for the purpose of developing good states relations tell us about the definition of sovereign states as, the state which is having permanent inhabitants, having geographic boundaries in the world map, established one government system and have good foreign policy relations with neighbor states or elsewhere states ²⁴

The state is also defined by Aristotle as, “a body of citizens sufficing for the purposes of life”.²⁵ International law, also defines a sovereign state as which is having a jurisdiction with clear identity that is represented by one central system of government that has physical control over all of its territory²⁶

When we talk about any one Nation then it means that the group of peoples who are having the faith to withhold common traditions, language, religion, ancestry, origin and their forefathers history. But on the other hand State means the group of government body and allied institutions that by using the law enforcement agencies control over a great population and exercise their full powers. The term Sovereignty is often misused as a general discipline. But till the 19th century, “the radicalized concept of a standard of civilization” was generally defined to the states that many more peoples in the universe found, “uncivilized and lacking organized societies”. History reveals that some of the nation’s sovereignty was either completely in adverse condition or up to some extent lacking behind as compared to civilized society Lassa Oppenheim said,

²⁴ It is considered generally that the state neither dependent on any other state nor take powers from other states to keep maintain its sovereignty. For further details visit Wikipedia, the free encyclopedia Found at <<http://en.wikipedia.org/wiki/Sovereign.state>> (Last accessed November 11,2014)

²⁵ “Aristotle’s Definition of Citizen, State, Constitution, & Government” Found at <www.scholarlarity.com> (Last accessed March 23,2014)

²⁶ Ibid

“There exists perhaps no conception the meaning of which is more controversial than that of sovereignty” There is no dispute on this concept which was originated from the very beginning in the field of political science to the present era and moreover whole the world cannot be agreed upon the one meaningful statement of it.²⁷

Meaning and definition of sovereignty start changing gradually with the growth of the many legal documents like self-determination principle and the prevention by law in contrast to the intention to inflict injury damage as jus cogens ways of behaving of present era international law. All the International Law treaties and declaration like “The United Nations Charter, the Draft Declaration on Rights and Duties of States, and the charters of regional international organizations” elaborates the point of view in anticipation of International law that all states have full jurisdiction in their territory and enjoys the full rights and duties as framed by their superiors It is well recognized by all international forums that every nation have full rights to frame its own political structure and enjoy lasting sovereignty inside the range of their defined land or sea.²⁸

In social sciences field particularly in the Political Science discipline, state sovereignty is generally defined as the most absolutely and necessary belongings of a state in the form of its completely adequate frames of a defined territory that is practicing its highest authority both in the domestic rules and regulations and good relations in the foreign policy.

²⁷ Casually the terms country, nation, and state are often used as if they were synonymous but in fact their usage will distinguished them as "country" denotes a region of land defined by geographical features or political boundaries

²⁸ Wikipedia, the free encyclopedia
Found at <<http://en.wikipedia.org/wiki/Sovereign.state>> (Last accessed November 11,2014)

Both the words "state" and "government" are often used and considered as synonyms to each other but actually different in meaning, International law clearly differentiate between them and elaborate the word state that which is non tangible whereas the word government; is in fact, the predicted concept of "government-in-exile" States are distinct and independent existence lands upon which some of the persons employ jurisdiction but on the other hand we can simply say it as that Government is the running body of a state which make policies and laws for the smooth functioning of states²⁹

1.6 STATE OBLIGATION IN COLLATERAL DAMAGE AND APPLICABILITY OF IHRL

1.6.1 SOVEREIGNTY

As the word state have been researched earlier and it has been found that the harmony and all the human being's physical and specific activities are belonging to the states. means to say that it is the unity of all necessary powers held by the state E.g. constituting the laws for their full execution, imposition or collection of taxes and to decide about war or peace just for the purposes of good law and order situation inside the governing territory as well as good foreign national policy with other states so that human rights could be protected in a befitting manner.³⁰

Theoretically it has been revealed that the sovereignty inherited in the physical structure of the nations and the peoples of a state In fact all the powers cannot be gathered in in one body but it has to be delegated to the grass root level to solve the general public issues.

²⁹ Ibid

³⁰ Sovereignty meaning taken from the free dictionary by Farlax
Found at <<http://legal-dictionary.thefreedictionary.com/national-sovereignty>
(Last accessed December 17,2013)

Analysis on sovereignty explore that it is constituted of three autonomous powers, the foremost one of which is Legislation, means to constitute new laws and replace old laws with new ones for the state betterment. Second one is executive which stands for the execution of framed laws both national and international so that law and order situation in the country cannot be violated and the last but not least is judiciary which fulfills the timely justice requirements to the peoples of the state so that disputes amongst the citizens of the states can be settled down easily and criminals can be punished strictly Generally talking about the republican configuration of government, the independent and empowered sovereignty of the nation lies with the state peoples; and all the state matters are governed by their own state competent peoples.³¹

1.6.2 APPLICABILITY OF IHL IN COLLATERAL DAMAGE

The supremacy, of independent states are conducted and managed through particular political means of powers and the state have full rights to frame its laws and policies both in the internal matters and foreign policies. International Humanitarian law focus with its sole vision that no other state have intentional right to interfere in the matters of other state because by doing so its sovereignty will be challenged and absolutely the applicability of IHL will be at stake as it is well clear concept that collateral damage happened when the civilian population is targeted rather than military objectives. Moreover any other state have no more rights to intervene in the matters of other states regarding laws, legislation, execution, or to lei eve taxes on the general public³²

³¹ Ibid

³² Ibid

1.6.3 WHEN DOES INTERNATIONAL HUMANITARIAN LAW APPLY?

International humanitarian law deal with armed conflicts between the states as a foreign matter moreover it does not apply to the states internal matters like any type of law and orders violations The applicability of the law is highlighted to its mark as soon as the conflict occurred between or among the two or more states without taking into the considerations who was the first to start the conflict in both the cases its applicability will be same ³³

International humanitarian law clearly differentiate between the international as well as non-international types of state's conflicted matters As a general rule it is defined by the IHL that all those conflicts in which two or more state parties are involved that will be called as International armed conflicts and such types of states are to follow a wide range of rules set out in IHL and moreover in the four Geneva Conventions and Additional Protocol I.so that the collateral damage on both the ends could be prevented³⁴

1.6 4 NON-INTERNATIONAL ARMED CONFLICTS

It are those conflicts which are only limited to single territory state, involving either regular opposition armed forces fighting groups to government official policy, or few of armed groups fighting each other. Some of the rules of IHL also deals with internal conflicts which are clearly defined in, "Article 3 common to the four Geneva Conventions as well as in Additional Protocol II"

³³ Advisory Service On International Humanitarian Law By ICRC
Found at <<https://www.icrc.org/eng/resources/documents/misc/57jnnp.htm>>
(Last accessed March 23,2013)

³⁴ Ibid

It is necessary to distinguish between Human Rights Law and international humanitarian law. Because many of their rules are similar in nature, these two sets of laws have developed separately and are contained in different treaties. While talking specifically about, human rights law it is well evident that it mostly deal during the peace time and most of its provisions are disregarded during war time or any time of states conflict happened but it is reciprocal to international humanitarian law ³⁵

1.6.5 WHAT DOES INTERNATIONAL HUMANITARIAN LAW COVER?

IHL where cover different matters related to war likewise it also defines the humanity in war It is universally recognized that during the war time some of the soldiers are captured by enemy forces as a prisoners of war IHL clearly defines that POWS are to be treated humanely and they are to be provided with proper hygienic food, shelter, medical treatment and the right to contact with their families.

Furthermore this law briefs about the identification signals which are to be used to identify protected people, places and objects. Because when these signals will be displayed then these places could be prevented from aerial bombardment as a result collateral damage, which is the threat to human life, will be minimized. The main symbolic, distinctive badges are of the Red Cross, the Red Crescent and the symbols identifying cultural property and civil defense facilities.³⁶

³⁵ Ibid

³⁶ Ibid

1.6.6 WHAT RESTRICTIONS ARE THERE ON WEAPONS AND TACTICS?

International humanitarian law focuses on the discrimination of participating and non-participating civilians during the time of war. Moreover IHL restricts that non-participating civilians who are not taking part in any activity relating to war are to be protected from any violence and their property are also be prevented from any damage during aerial bombardment

Moreover International Humanitarian law has banned the use of many more weapons, during the period of war like exploding bullets, chemical and biological weapons, blinding laser weapons and anti-personnel mines so that environment pollution could also be prevented As history reveals that whenever such type of mentioned weapons were being used biggest collateral damage occurred in the world IHL desire that history should not repeat with no more incidents in future.³⁷

1.7 CONCLUSION

It is quite clear and evident that under international law the neither US nor any other country does have any right to interfere in the sovereignty of other state neither to launch an strategic operation against any country as it is well elaborated in this first chapter History reveals that USA launch drone attacks in the North Waziristan area of Pakistan just on the mere base perception that Haqqani network is available in the tribal belt which is responsible for attacking US installations in Afghanistan but contrary to it USA launch drone attacks on Pakistan northern Waziristan and many innocent children, women, and old citizens laid down their lives

³⁷ Ibid

It was also observed that by surgical strikes many innocent lives goes to death like in drone attacks at FATA. Such types of drone attacks by the US forces was well clear violation of the state sovereignty of Pakistan which is violation of IHL as well as human rights.³⁸

Unfortunately, there are countless examples of violations of international humanitarian law.in Pakistan and world around in which the victims of war were those civilians who were non-participating in any war activity whereas IHL protects the war victims, prisoners, sick and wounded persons and strictly ban the barbaric weapons.

The fact is that implementation of the law is generally difficult factor for the human beings and basically the laws are framed for the well-being of the peoples so that their human rights could be respected and protected in a befitting manner and all states should have strict implementation of the laws specially related to the human lives

³⁸ Ahmer Bilal soofi, article on “Does International Law permit US strikes inside Pakistan”? Friday, October 07, 2011
Available at <<https://rsilpakistan.wordpress.com/page/2/>> (Last accessed April 10, 2014)

CHAPTER-2

ANALYSIS OF CASE STUDY OF PAKISTAN WAR ON TERROR (2008-2010) AND HUMAN RIGHTS LAW

2.1 INTRODUCTION

Pakistan role in the War on Terror aftermath of 9/11 is a widely discussed and debatable topic among the world scholars and everybody around the world take it granted as a human right discipline Pakistan has got the label to produce terrorists and their assistance but upon receiving that very label Pakistan start efforts to curb this effect resultantly world pay commendations on anti-terrorist efforts

Many more peoples have been killed in Pakistan due to terrorist and drone attacks since the beginning of this curse. Before going towards the impacts and causes of terrorism which resultantly leads to collateral damage in Pakistan I would like to define terrorism. Then afterwards its remedial measures will also be elaborated

2.2 DEFINITION OF TERRORISM

Terrorism can be defined as the “the premeditated use or threat of use of violence by individuals or sub-national groups to obtain a political or social objective through the intimidation of a large audience, beyond that of the immediate victim”. Whenever we talk about terrorism then first of all the thing brainstorm in our minds that is the event of 9/11 attacks on USA in 2001. It was considered by the USA and other world leaders that Afghanistan is providing and supporting the terrorist activities. Resultantly it has gained much more importance in the literature field of social sciences discipline after 9/11 terrorist attacks Although the whole world is effected from this phenomenon but particularly south Asia and middle east is badly effected and moreover in south Asian region countries Pakistan is suffering from this disease.

After the world recognition that Afghanistan is the launching pad for the terrorist activities the USA and NATO forces targeted the objectives of Al-Qaeda in Afghanistan and as a whole Pakistan as a neighbor country was also affected with its consequences and aftermath.³⁹

Sadly Pakistan is suffering from this disease since last two to three decades as Pakistan was also partner with Afghanistan in the past wars Other than this involvement there are some contributory factors like sectarian and ethnic conflicts amongst different local and national groups which were also lead to terrorism in Pakistan territory Resultantly the economic growth rate is reduced to the minimum low level Therefore, this same literature about terrorism will also be discussed in this chapter based on data taken from different sources

Terrorism is a term generally used to describe the maximum possible degrees of illegal threat by using force and maximum citizens are effected as a result both economically and physically and every activity is disrupted but we cannot restrict to this definition as a whole of terrorism. But contrary to that whole world is agreed on this definition that in Terrorism the benefits of the war when concluded always it was found that the costs are more higher than the benefits achieved by war against terrorism History reveals that Pakistan losses much more in this game of war on terror⁴⁰

³⁹ Shabir Hyder, Naeem Akram and Ihtsham Ul Haq Padda , "Impact of Terrorism on Economic Development of Pakistan"

Found At <www.pbr.iobm.edu.pk/wp-content/uploads/2016/01/PBRJan2015.pdf>
(Last accessed on April 20, 2014)

⁴⁰ Muhammad Farooq And Zahoor Khan, "Impact Of Terrorism On Foreign Direct Investment And Key Indicators Of Development In Pakistan"

Available at <www.cityuniversity.edu.pk/curj/Journals/Journal/04%20Farooq.pdf>
(Last accessed on April 20, 2014)

2.3 TERRORISM IN PAKISTAN CAUSING COLLATERAL DAMAGE IN THE ERA FROM 2008-2010 ITS CAUSES REMEDIES AND SOLUTIONS

As it is known widely that different means and ways of terrorism were adopted for centuries ago, to create panic and danger for general public and it was also executed by different terrorist groups in the world for a multiple reasons which is evident violation of Human Rights Law. And due to this violation biggest collateral damage happened in Pakistan and afterwards many organizations come on the front and accept the responsibility of the said terrorist activity which is loud and clear violation of the right to life As we are living in 21st century likewise means of destruction have also been changed with the present development of technology So we can say it as that terrorism is the cruelest of all crimes. The universal revulsion at the events of September 2001, the "War on Terror" has magnified many folds the global threat of terrorism.

2.3.1 HISTORY OF TERRORISM

Terrorism history reveals that the present world crisis and the war on terror and growing militancy phenomena is not new in its sense but it's quite old and initially it was discovered by

Palestinians for the achievement of their political rights conforming to the rules and regulations. It was rightly said and adopted as a tool and weapon for the poor's to fulfill their needs and requirements the biggest event of worldwide terrorism happened on September 11, 2001 as a consecutive attacks on the United States.

In Pakistan, poverty situation have been reached up to some an extent that 40% percent population is living below the poverty line while this graph have been reached up to 45 percent in under-developed areas in Pakistan especially in FATA. In the said region more than 4000 citizens have been killed during the sectarian /religious conflictions.⁴⁵

In Pakistan we are facing the problem of delayed justice system due to which anti state parties feel free from confiscation which is similar to the challenge of government writ. As Pakistan got weak political set up after partition and further the situation become worst after the demise death of the Quaid –E-Azam Muhammad Ali Jinnah, founder of Pakistan moreover the conditions go beyond the control when corrupt and immature leadership take over the legacy of Great Quaid resultantly the Pakistani Nation lost the right direction as was set down by their predecessors All of the above-mentioned factors leads to the deterioration of Government institutions and involvement of citizens in terrorist activities. In such conditions foreign hand get the benefits and promote the separatist movements which at last weaken the state elements.⁴⁶

2.4.1 IMPLICATIONS FOR PAKISTAN

The effects of war on terror in Pakistan had extremely large and far away consequences which have been written in the history and will be remembered for coming generations as Pakistan in the past had suffered and continuously suffering to social, economic, militarily and political issues.

⁴⁵ Ibid

⁴⁶ Ibid

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By looking into the catastrophic happening in USA the country formulate the "War on Terrorism" as a principal factor of its global strategy since the attacks on world trade Centre as well as on Pentagon on 11 September, 2001.

Secondly it was clearly declared by the high officials and the worldwide alliance of leadership to eradicate the scourge of terrorism. But considering this factor we cannot say that the suicide bombing attacks by Afghanistan is not the part of that 9/11 revenge But it is another kind of terrorism against the world people, whosever the innocent person have been killed or is died in this war process that we can count or add into the death toll of citizens who were killed in New York and Washington. The United States is seeking the terrorism solutions without eliminating its root causes which are socio, economic and political in nature and not military.⁴¹

Aftermath of American invasion of Afghanistan in 2001, Al-Qaeda and Afghan Taliban seek refuge in Pakistani tribal belt named, FATA due to the rock and hilly terrain structural nature of Pakistan and Afghanistan border and keep carried on in organizing their strength to face the US forces in Afghanistan with new zeal and zest from the safe place and distance and this factor was more provoked when the both sides regional cultures was associated like in Socio-economic and politico-religious complexion factor of the tribal region also enhanced the morale of these militants. Why looking towards these militants groups the same time, many offender groups also started operating in these areas, at large in the shape of kidnapping, looting, robbing, and even target killing of innocent peoples.⁴²

⁴¹ Muhammad Irshad, "Terrorism in Pakistan: Causes & Remedies"
Found At <www.qurtuba.edu.pk/6/Dialogue.July.September2011.224-241.pdf>
(Last accessed April 20,2014)

⁴² Ibid

During this scenario Taliban try to emphasis Islam on gun point and they also establish their own court and justice system in FATA and maintain security and law enforcement setup in the so called Islamic society As they were trying for new system so there were great structural flaws between the both systems resultantly most of the tribal peoples were deprived of their human rights while residing in FATA, tribal area These flaws created the sense of inferiority complex between the tribal peoples that they have no more right inside the state and a weak state society relationship was developed Pakistan is also facing militant threat with well clear and defined ideology in their minds and moreover some logistic support from international terrorist groups with some desired objectives and targets which may be the followings

(a) To destabilize state's law and order situation so that country whose security mechanism may be destroyed and citizens seek help from militants rather than country's law enforcement agencies for their protection.

(b) To pressurize the Government machinery not to intervene in their matters and areas of field so that they could enjoy their so called Islamic conceptual life without hindrances.

(c) Last but not least to forcefully implement the militant agenda in the country and to bring the government to implement that new system as desired by the militants so in the present era we can say it as, "Religiously motivated terrorism is considered the most alarming terrorist threat today".⁴³

⁴³ Ibid

2.3.2 GEOGRAPHIC CONDITIONS

“Geography can weaken the strongest political regime or strengthen the weakest one.” Same case lies in our tribal belt where the militants and their residents are well aware of their terrain but contrary to that Pakistan law enforcement agencies are not as such familiar about the hilly area and climatic conditions that’s why counterinsurgency missions become difficult as compared to plain land Resultantly the militants get this advantage and immediately come in confrontation with law enforcement agencies and even this operation becomes more difficult when it break out suddenly in the border area due to some external political and moral pressure and support that why Indian consulate office in Afghanistan is pinching to Pakistan due to its existence near Pakistan border area and that office is trying to create hostility between Islamabad and Kabul ⁴⁴

2.4 FACTORS RESPONSIBLE FOR GROWING MILITANCY RESULTING IN COLLATERAL DAMAGE

7H-16460
Where there are multiple factors responsible for growing militancy in the world particularly in Pakistan and resultantly these reasons leads to collateral damage amongst those are the following issues like unemployment to educated persons poverty, lack of health facilities in ruler areas, illiteracy rate in young growing children, costly and lack of justice system at gross root level are the contributory factors in enhancing militancy.in Pakistan and elsewhere that’s why health and Education are considered the most neglected parts because Pakistan spends almost 1.8 percent only of its GDP on education sector but contrary to that Cuba spends 18.7 percent of its GDP on education development.

⁴⁴ Ibid

In Pakistan, poverty situation have been reached up to some an extent that 40% percent population is living below the poverty line while this graph have been reached up to 45 percent in under-developed areas in Pakistan especially in FATA. In the said region more than 4000 citizens have been killed during the sectarian /religious conflictions.⁴⁵

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⁴⁵ Ibid

⁴⁶ Ibid

War on terror have divided the entire nation into two school of thoughts One group considers it that religious parties /groups are mere producing terrorists and extremists but contrary to it other school of thought consider it that USA has launched war against Islam This classification have break down the social elements of Pakistani society in the shapes of hospitality, nice public treatment also.

Due to the effects of war on terror Pakistan economy has so far suffered that collectively it bears approximately loss of \$35 billion (but as per the official data this figure is almost the double of it. i.e. \$70 billion)⁴⁷. Afghanistan region uncertainty situation have led to the smuggling of food item due to which scarcity occurred in Pakistan. "According to the Finance Ministry, Pakistan's participation in the anti-terrorism campaign has led to massive unemployment in the affected regions which has ultimately increased rural poverty. It has reached 37.5 percent from 23.9 percent in 2007-08".⁴⁸

2.5 ROOT CAUSES OF MILITANCY, WAR ON TERROR AND EXTREMISM CAUSING COLLATERAL DAMAGE IN THE ERA 2008-2010

As in the preceding paragraphs different factors of terrorism have been discussed now in the fore coming paragraphs its major root causes will be discussed Most of youngsters accept or support militancy due to some natural factors amongst those may be local or global.

⁴⁷ Pak-US Business Council Report (2009) Found At
<[http:// www.defence.pk/Pakistan_Affairs_Pakistan_Economy](http://www.defence.pk/Pakistan_Affairs_Pakistan_Economy)> (Last accessed May 5,2014)

⁴⁸ Muhammad Irshad, "Terrorism in Pakistan: Causes & Remedies"
Found at <www.qurtuba.edu.pk/6/Dialogue.July.September2011.224-241.pdf>
(Last accessed April 20,2014)

Many important factors enhance the militancy and extremism in the Pakistan region which were discharged from Afghanistan and got shape in poor law and order situation, lack of grooming children education, indignation to war on terror, justice delayed or denied, social short cut culture, nepotism and corruption at higher level, lack of national building leadership, broken family structure, poor condition of civic facilities in the society, involvement of foreign hands, on state religious actors, different sectarian ideologies, and promotion of feudal culture in poor society. After removal of all these evils we as a society can curb the terrorism and resultantly collateral damage will be ended.⁴⁹

2.5.1 PEACE IN AFGHANISTAN

Peace in Afghanistan territory is defined and pre requisite criteria for the prosperity of Pakistani nation. Instability and poor law and order condition in Afghanistan is directly proportional to Pakistan region. But it is too hard to achieve peace in Afghanistan until and unless USA forces existence is there. Because it becomes attractive for terrorists groups on the presence of US forces in Afghanistan Pakistan is greatly paying back due to worst border condition between Afghanistan and Pakistan. Reconstruction of Afghanistan condition where will benefit to its own prosperity and enrich the resources in central Asian states like wise it will promote the economic condition of Pakistan after eradication of thorns of terrorism.

However attainment of peace in Afghanistan is not an easy task in the context of global and regional powers.⁵⁰

⁴⁹ Ibid

⁵⁰ Ibid

2.5.2 LOGICAL END TO WAR ON TERROR

It is generally considered by the peoples of Pakistan that today Pakistan is facing problems due to joining its hands with USA war on terror plan. But actually the time has come to defeat the militants finally with iron hands. This theory have divided the Pakistani nation into confusion that either this war on terror belongs to Pakistan or elsewhere. And this question has become crucial and muddied in the minds of this brave nation and point of interest in different stake holders. If we come to this point that this is Pakistan's own war then as a nation collectively we should fight for or we should find out some other ways of life to avoid confliction with US forces. It can be accomplished through national consensus on the said issue and right course of action can be framed as a roadmap.⁵¹

2.5.3 DEALING WITH MILITANCY IN TRIBAL BELT

A logical and consistent effort is required to deal the evil of militancy in the tribal belt area. It is impossible for the foreign nationals to accommodate in the tribal area without the consent of the local population and it get matured after the bad policies of the government and these bad policies motivate the citizens to come in front to challenge the writ of the government. Therefore, militants take up the local population onboard for insurgency missions.

Need of the hour demands that government should review its policies especially for tribal area and the local tribesmen should be encouraged to run across foreign nationals and join hands to the Pakistan law enforcement agencies, and while operating military operations against such elements it should be considered that collateral damage should be avoided.

⁵¹ Ibid

Moreover it should be kept in mind that during these operations the captured militants should be given due care and be treated humanely as a whole during the operation against militants great loss occurred to the civilian population and the Taliban top leadership is safe and sound.⁵²

2.5.4 ENHANCING COMPETENCE OF SECURITY FORCES

Although Pakistan law enforcement agencies are well trained to deal any type of threat but the terrorist are foreign trained with latest technology, which is up to some extent lacking behind in our country we can enhance the performance of security forces by using new tools and equipment and through on job training on latest version technology and assumption of their duty charge honestly and effectively.

The same phenomenon have been highlighted by the security forces and their high officials at various platforms due to big collateral damage during counter insurgency operations.⁵³ It is the necessity of the time that sufficient competence and capacity building of security forces should be maintained at all times to avoid any sort of embarrassment at national and international level.⁵⁴

2.5.5 REVIVAL OF CIVIC FACILITIES

Civic facilities are the basic necessities of every human body life without these facilities human rights cannot be protected and promoted in a society. Civic facilities include electricity, neat and clean drinking water, sewerage issues, health, education and basic roads infrastructure, etc.

⁵² Ibid

⁵³ For Example in the past terrorist attack on Sri Lankan team at Lahore was serious security threat for law enforcement agencies and security forces personnel failed to encounter with as much competency and efficiency as it should be depicted from the operation. We have to come out of the culture of satisfactory readiness but in fact we have to adopt positive realistic approach and evaluate our shortcomings on departmental forum.

⁵⁴ Muhammad Irshad, "Terrorism in Pakistan: Causes & Remedies"
Found at <www.qurtuba.edu.pk/6./Dialogue.July.September2011.224-241.pdf>
(Last accessed April 20,2014)

Moreover, during the insurgency operation oil prices enhance at the peak level resultantly inflation rate increased and the growth rate decreased.⁵⁶

2.7 IMPACT OF WAR ON TERROR ON FOREIGN DIRECT INVESTMENT

Foreign direct investment (FDI) has proved itself as a source of progress flow and development for third world countries FDI produced many benefits in the country in the shape of technology enhancement in the rural areas of Pakistan, human capital formation, progressive economic growth rate and helps out in alleviation of poverty in the host country. Moreover, with the increase of terrorist activities Foreign Direct investment decrease and foreign investors avoid such type of countries and extract their investment resultantly the state progression is compromised.

There are two opinions regarding the impact of terrorism⁵⁷, terrorist attacks on FDI. Many scholars have come to the point that the terrorism directly and adversely effect on the flow of FDI.⁵⁸

⁵⁶ Muhammad Farooq and Zahoor Khan, "Impact of terrorism on foreign direct investment and key indicators of development in Pakistan"

Found at <www.cityuniversity.edu.pk/curj/Journals/Journal/04%20Farooq.pdf>

(Last accessed on April 20, 2014)

⁵⁷ It is well recognized phenomenon and renowned opinion that terrorist attacks have often negative and adverse effects on the investor's behavior and general public. But on the other hand few investors have opinion that FDI inflow is linked via relative interests and profits rather than any sort of terrorist activities. For further discussion and detail please visit Survey of Pakistan Board of Investment Found At <<https://en.wikipedia.org/wiki/Pakistan.Board.of.Investment>>

(Last accessed May 8, 2014)

⁵⁸ Muhammad Farooq and Zahoor Khan, "Impact of terrorism on foreign direct investment and key indicators of development in Pakistan"

Found at <www.cityuniversity.edu.pk/curj/Journals/Journal/04%20Farooq.pdf>

(Last accessed on April 20, 2014)

2.8 IMPACT OF WAR ON TERROR ON FISCAL AND BUDGETARY RESOURCES

Terrorism where effect on different social evils likewise it's one of bad impact lies on the fiscal and budgetary resources because when military operations are launched federal government have to release more defense budget and due to increase of that budgetary, public development projects finance head is shifted to defense budget resultantly general public have to suffer in the shape of levied of new taxes and government borrowing of money from IMF and world bank and all of these consequences lead to low economy growth, less finance investment, higher trade deficits and few job opportunities. Undermentioned chart depicts the expenditures on defense, law and order situation due to war on terror from the period 2008 to 2010 is as follows ⁵⁹

EXPENDITURE ON DEFENSE, LAW AND ORDER IN PAKISTAN DUE TO WAR ON TERROR 2008-2010

Year	Defense Expenditure at Current Prices in Balances	Growth Rate	Expenditure on Law & Order at Current Prices In Billion Rs.	Growth Rate
2007-08	277.3	8.9	65.0	12.2
2008-09	311.3	10.9	-	-
2009-10	378.2	17.7	-	-

Pakistan before extending cooperation with USA in war on terror its expenditures on law and order situation was 10.9 percentage but this figure shoot out to 45.1 percentage in the period from 2005 to 2006.⁶⁰

⁵⁹ Ibid

⁶⁰ Handbook of Statistics on Pakistan Economy 2010. It includes south Asia terrorism portal (SATP), economic surveys of Pakistan, Federal Bureau of Statistics Islamabad and State Bank of Pakistan (SBP). The data in this handbook have been collected from various national and international sources and moreover converted into averages, percentages and conclusions have been drawn. Handbook is accessed and available at website

<www.sbp.org.pk/departments/stats/pakEconomy.HandBook/index.htm>

(Last accessed May 7, 2014)

As it is well recognized that Government of Pakistan is spending major amount of its budget on maintaining law and order situation since becoming the part and parcel of war on terror. That's why currency amount spending have been increased since 2000-2001 and as a result Rs 320 have been consumed unpleasantly on law and order situation during four years period 2007-2008 to 2010-2011.⁶¹

Khyber Pakhtunkhwa, province is mostly affected from the war on terror activities in Pakistan, who has spent huge amount of its economy for the sake of war on terror including PKRs. 6.5 billion in 2007-08, PKRs. 8.5 billion in 2008-09, PKRs. 18 billion in 2009-10, and PKRs. 17 billion during the year 2010-11⁶² Therefore all of these situations have created imbalance between the government current expenditures and receipts ⁶³

Undermentioned table displays total receipts and expenditure with net lending and borrowing of Pakistan.

PUBLIC RECEIPTS AND EXPENSES 2008-2010. (RS. IN MILLION)⁶⁴

Year	Total Receipts	Total Expenses	Net Borrowing/Lending
2007-08	1,499,380	2,276,549	777,169
2008-09	1,850,901	2,531,308	680,407
2009-10	2,078,165	3,455,120	928,497

⁶¹ The daily Nation, August 22, 2011

Found at <www.thenation.com/issue/august.15.22.2011/> (Last accessed May 6,2014)

⁶² Ibid

⁶³ Ibid

⁶⁴ Economic Surveys (2006-07 and 2011-12) Handbook. It includes South Asia terrorism portal (SATP), economic surveys of Pakistan, Federal Bureau of Statistics Islamabad and State Bank of Pakistan (SBP). The data in this handbook have been collected from various national and international sources and moreover converted into averages, percentages and conclusions have been drawn. Handbook is accessed and available at website

<www.sbp.org.pk/departments/stats/pakEconomyv.HandBook/index.htm > (Last accessed May 7,2014)

The table depicts the year wise graphical data of Pakistan in the shape of lending and borrowing of after sharing cooperation with US war on terror after 2001. However, all of this situation brought up the excess of expenditures on the economy of Pakistan and it was calculated as Rs 164900 million in the year 2000-2001 but it touch the peak level in 2009-2010 at about Rs 928497 million.

It is the clear evidence that Pakistan is continuously trying to curb terrorism from the gross root level and trying to defeat the impacts and effects of terrorism so that countrymen can survive with peace and harmony and human rights can be promoted and protected by minimizing collateral damage ⁶⁵

VALUE OF PAK RUPEE DUE TO WAR ON TERROR 2008-2010

Year	2007-08	2008-09	2009-10	2010-11
Exchange Rate (Rs/USS)	71.1	78.5	83.8	85.5
% Change	14.9	9.4	6.3	1.9

USA and allied forces launched drone attacks against Al Qaeda terrorists to kill their effects and presence but sadly along with them many innocent citizens including children, men and women have to breathe their lost which is a great collateral damage and violation of Human Rights .and this cruelty attitude aggrieved the relatives of deceased persons and they come up to take revenge, for this purpose they lean towards to terrorist groups resultantly war on terror instead of decreasing day by day its graph start increasing and motivation for taking revenge is also enhanced ⁶⁶

⁶⁵ Ibid

⁶⁶ It is further reiterated by Bowcott in the book Guardian that drone attacks have created problems in the shape of creation and recruitment of motivated armed terrorist.

DRONE ATTACKS IN PAKISTAN: 2008-2010

Year	Incidents	Killed	Injured
2008	33	313	17
2009	53	724	75
2010	118	993	85
Total	204	2030	177

FATALITIES IN TERRORIST VIOLENCE IN PAKISTAN 2008-2010⁶⁷

Year	Civilians	Security Force Personnel	Terrorists / Insurgents	Total
2008	2155	654	3906	6715
2009	2324	991	8389	11704
2010	1796	469	5170	7435
Total	6275	2114	17465	25854

Pakistan has paid big cost on the name of war on terror and the Pakistani population as a violent and sudden way have ruined many lives during the period of 2008, which was 6715, in the 2009, it was recorded 11704, but in the era of 2010 it was noticed 7435. Means in the year of 2009 it was found at the maximum level which as described earlier was 11,704 it includes 8389 militants which is 71.7 percent of total fatalities, 2324 civilians which is 19.8 percent of total fatalities of terrorist violence in Pakistan but least figure was recorded for security forces personnel that is 991 consisting of 8.5 percent of the total fatalities in the year 2009.

⁶⁷ Fatalities in terrorist violence in Pakistan 2008-2010
Found at <<http://www.satp.org>> (Last accessed May 14, 2014)

If we go over the total number of fatalities during the period from 2008 to 2010 then it sum up to 25854 constituting of general public 6275, which is 24.27 percent of the three years SFP 2114, which is 8.177 % of the total three years fatalities and at the last 17465, terrorist were killed which is 67.55 percent of the total three years period calculations in Pakistan as shown in the above table.⁶⁸ The most severe problem faced to Pakistani nation due to war on terror was the internally displaced persons (IDPs).

As per the estimates of Internal Displacement Monitoring Centre (IDMC), the total number of IDPs in Pakistan adjusted between 1.47 million to 2 million⁶⁹. Meanwhile World Health Organization (WHO) issued the figure work that the total number of IDPs is 1.9 million. However, the factual condition might be higher or something else contrary to the official figure work.⁷⁰ Undermentioned chart display the number of IDPS in different areas of FATA region, tribal belt, and Khyber Pakhtun Khawa province.

⁶⁸ In this chart only 3 years data 2008 to 2010 is depicted whereas other data is not shown at here

⁶⁹ IDMC, 2010, p.

Found At <www.internal-displacement.org/massive-new-displacement-and-falling> (Last accessed May 20 2014)

⁷⁰ Muhammad Farooq and zahoor khan, "Impact of terrorism on foreign direct investment and key indicators of development in Pakistan"

Available at <www.cityuniversity.edu.pk/cuji/Journals/Journal/04%20Farooq.pdf> (Last accessed on April 20, 2014)

THE NUMBER OF IDPS IN PAKISTAN⁷¹

Area	Total Population	Number of IDPs, July 2010
S. Waziristan	430,000	More than 300,000
N. Waziristan	361,000	Unknown
Kurram Agency	448,000	More than 100,000
Orakzai Agency	225,000	More than 200,000
FR Peshawar	54,000	Up-to 40,000
Khyber Agency	547,000	Up-to 80,000
Mohmand Agency	530,000	Up-to 200,000
Bajawar Agency	949,000	At-least 150,000
Lower Dir	1,093,000	Unknown
Upper Dir	777,000	-
Buner	768,000	-
Shangla	620,000	-
Total	7500,000	More than 1,400,000
Balochistan	6.6 million	40,000-140,000
Azad Kashmir	1.5 million	Less than 5,000
Gilgit-Baltistan	2.2 million	-
Grand Total	More than 18 million	1,470,000-2,000,000

The peaceful joining of IDPs in their dwellers is another faced issue because the shadow of militants threat always surrounding on their minds and heads and poor area economic condition keep them annoyed to go to their homeland. Survey depicts that around 1.6 million IDPs have taken the return way but approximately 1.1 million remained in the status of displaced till the era of September 2009. Moreover the entry of large number of IDPs into the settled population's area with limited resources created both end problems resultantly serious economic, security, health, education and variety of issues occurred at the end.⁷²

⁷¹ The number Of IDPS In Pakistan IDMC, 2010, p. 28
 Found at <www.internal-displacement.org/massive-new-displacement-and-falling>
 (Last accessed May 20 2014)

⁷² The daily DAWN, Sep 12th 2012
 Found at <www.dawn.com/newspaper/front.page> (Last accessed June 5,2014)

Due to the effects of taking revenge most of the IDPs indulge in the suicide attacks which make the whole Pakistani society as a terrorist slogan society. All of these suicide attackers initially belong to Taliban and Al-Qaeda but later on many local religious extremists joined in this bloody activity and carried out altogether. Now after a decade, situation have reached up to such an extent that the world and Pakistani peoples have recognized that Pakistan as a whole greatly loose from “war on terror”⁷³

2.9 EFFECTS OF WAR ON TERROR ON PAKISTAN IN THE ERA 2008-2010 RESULTED IN COLLATERAL DAMAGE

Aftermath 9/11 Pakistan become the main hub of terrorism due to the neighborhood of Afghanistan and that’s why no religious place, educational institutions, hospital building is safe in the country due to war on terror effect Basically the effects of terrorism drifted from Afghanistan to Pakistan initially from tribal belt to the main and small streets of Pakistan

Unfortunately local religious extremists after some time introduced yourself as, “Pakistani Taliban”, and these terrorists extend full cooperation with Taliban belonging to Afghanistan called Tehrik-E-Taliban Afghanistan, who launched different terrorists operations in Pakistan resultantly state destabilization graph goes up day by day especially in the era from 2008 - 2010. By looking all of these factors then Pakistan chief executive President General Pervaiz Musharraf decided to launch counter insurgency operations through Pakistan Army ⁷⁴

⁷³Umbreen Javaid, “War on terror: Pakistan’s apprehensions”
Found at <pu.edu.pk/images/cv/1308025369151.pdf> (Last accessed June 5,2014)

⁷⁴ Ibid

Net effect of Pakistan war on terror in the era of 2008 – 2010 was emerged in the de value of Pakistani currency and increased energy crisis and highest inflation rates so all of these effects of terrorism are being faced by the general public and common citizens and the common man start to feel yourself insecure both financially and life threat due to bomb blasts and drone attacks Moreover the believe of USA state on Pakistani nation was left behind day by day and it caused the denial of USA visas and humiliation of Pakistani high officials at airport by physically searching just like of captured suspects, which depicts the adverse and alarming situation.⁷⁵

2.10 PAKISTAN'S CONCERNS ON WAR ON TERROR

Whole the world have recognized that Pakistan have extended cooperation in counter terrorism and tactical operations with US forces but Pakistan have great concern on the effects and impact of terrorism in the shape of political , economic instability in the country and the frequency of bomb blasts, suicide attacks and drone attacks in the region especially on the security and law enforcement forces and their installations have been increased to its full extent and all the public places like mosques populated areas are being targeted by terrorists.

Resultantly all of these circumstances lead to the mass casualties and collateral damage which is severe violation of human rights law. Pakistan have very serious concern on the increase of collateral damage as discussed in earlier paragraphs and desire to diminish this effect⁷⁶

⁷⁵ Ibid

⁷⁶ Ibid

Pakistan cannot forget about the concerns on the war on terror as due to drone attacks by NATO forces in the Pakistan territory have created adverse situation and produced big collateral damage on every day basis which is violation of human rights law.

In the year 2010 total no of 115 missile have been launched and targeted the terrorist but along with those many innocent children, women and poor peoples were also killed which is considered big collateral damage in the region leading to condemnation and hatred towards US drone strikes from all sections of society⁷⁷

2.11 REMEDIAL MEASURES TO ERADICATE TERRORISM WHICH IN TURN WILL NIP THE COLLATERAL DAMAGE

In the preceding paragraphs, it is widely discussed the root causes, impacts of terrorism, effects of terrorism on Pakistan from different angles now I shall cover the remedial measures that how it could be eradicate from the society and we as a whole nation can make our society a prosperous society If we want effective counter solution of terrorism then we have to nip the root causes and that strategy will be successful pattern. We cannot say it that there is only one single solution to eradicate terrorism but we have to develop multidimensional approach to fix all the issues. Prior to suggesting remedial measure for it, let us again take a look at main reasons that force people to resort to violence.⁷⁸

⁷⁷ Ibid

⁷⁸ Muhammad Irshad, "Terrorism in Pakistan: Causes & Remedies"

Found at <www.qurtuba.edu.pk/.6./Dialogue.July.September2011.224-241.pdf>
(Last accessed April 20,2014)

Militant and extremists threaten the territorial integrity of the State. The asymmetric guerilla warfare introduced by Afghan Jihad continues to haunt us. Rampant corruption, nepotism and breakdown of civic facilities have held the nation hostage. Poor law and order caused by mercenaries, criminals and extremists have taken a heavy toll on the everyday life of innocent people. Doubts are being raised about the capability of the security forces to meet these challenges and even the viability of the state. Pakistani people have the capability to brave all odds given right and sincere guidance. The future course has to be chartered carefully with national consensus. Time has come to involve the people of Pakistan into the decision making that affect their very life. The people must reject extremisms in all its forms and work towards establishing a peaceful, tolerant, pluralistic, law abiding, modern, and progressive and corruption free society.⁷⁹

Compensation for the collateral damage losses sustained in the “war on terror” is nowhere in sight. What to talk of compensation even the funds as coalition partner are badly delayed, over audited and drastically reduced on various pretexts. Pakistanis have a general perception that Pakistan other than suffering the loss of human lives, which is violation of Human Rights and vital infrastructure is fueling the whole bill of “war on terror” all by itself. The economy is creaking and wailing under this awesome burden and the galloping inflation is primarily being attributed to this campaign.

(a) “Compensation for the losses suffered in the war on terror”.

(b) “Restoration of the honor of state, the nation and the society of Pakistan”⁸⁰

⁷⁹ Ibid

⁸⁰ Ibid

2.12 CONCLUSION

At the end of this chapter here it can be concluded that terrorism is a great curse faced to our nation in different ways of life and reducing the political, economic prosperity and stability in the country. Pakistan War on terror have hampered the many more development projects and all the collected Pakistan revenue is spent on maintaining of security situation and different social problems are spreading just like wild fire especially in the province Baluchistan, Khyber Pakhtunkhwa and FATA region. As it is broadly discussed in this chapter the causes and factors of militancy in Pakistan it is found that there is no single solution for all of these problems but multiple course of actions need to be adopted to eliminate the terrorism in Pakistan.

On international level we as a nation have to discourage all the factors of terrorism and on national level we have to find out the progression in economy, health, education and civic infrastructure so that general public could live in a peaceful and prosperous life. It is also demanded that public should eliminate corruption and nepotism as a high priority from society and strict compliance to this effect should be ensured Moreover religious seminaries should be advised to avoid breeding and spreading effects of sectarian extremism.

There is no doubt in this perception that Pakistan have suffered grave results from the war on terror After joining cooperation with war on terror Pakistan have taken serious concerns and leadership want to look green and prosperous country Moreover effective counter insurgency missions by security forces have weaken the strength of militants resultantly peace started in the region and after one decade it would become the pacified zone in the shape of better economic, development, and prosperity which is the dream of every living citizen of Pakistan

CHAPTER-3

CALLING FOR ACCOUNTABILITY

AND

IMPLEMENTATION OF HUMAN

RIGHTS LAW

3.1 INTRODUCTION

In the third and last chapter, we will examine the rights and obligations of citizens of Pakistan in case of collateral damage and what responsibilities lies on the shoulders of state representatives in such cases and it will be further reiterated that victims compensation should also be catered and accountability mechanism should be developed at national and international level.

Moreover analysis of what needs to be done to remove the disparities between theory and practice and the approach to be adopted with regards to regulations and accountability of damages and deaths of innocent lives who fall victims of incidental and unintentional occurrence.so that no one should not be deprived of his first and foremost right, "Right to Life", which is infringed in case of collateral damage

We will also analyze that which international law rules and regulations are violated in case of collateral damage and how the real soul of these laws can be lived long in the shape of suggestions and amendments, so that human rights of every citizen can be protected in real value as well as in true letter and spirit.

3.2 RIGHTS AND OBLIGATIONS OF CITIZENS

Citizenship is such a matter which is having no doubt in its existence but having different interpretations in constitutional law domains as per its significance. If one of the man or women get born at USA he or she will be called as the citizen of USA. Likewise if someone naturalized at Pakistan he will get the citizenship of Pakistan under constitutional law. This citizenship act clearly defines the relationship between state and citizens regarding their rights and obligations while living in community.

Moreover the personal or individual rights, are nothing else but defines the transparent attitude of the person towards the state and to the community.⁸¹

3.3 CONSTITUTIONAL CONNECTION BETWEEN OBLIGATION AND RIGHTS

There is very close interaction between rights and obligations as defined in the constitution of Pakistan. Rights defined the liberty of the citizens, and it hold morally good, justified and acceptable degree of the state and obligations declare the responsibilities and duties imposed on the citizens as a general or particular. Rights and obligations are directly linked to each other. More the rights are given to the citizens mean greater liberty is awarded and their sources of joys are extended with the acknowledgement of their rights. More the liberty is offered to the citizens greater the duty is protected under laws. “Call this the reciprocity understanding of the relationship between rights and obligations our rights and obligations are parallel and roughly correlative”

Lieber⁸² have expressed the views that citizenship does not mean only abiding by the laws framed by the government even to restrain in the framed laws but it also involves the civic understanding to the general public to live their live happily. Further he told that a sensible citizen not only feels liberty in doing all the activities but restricts yourself to the laws rules and regulations and morally bound to abstain from doing unjust, immoral and cruel things while living in the society Every one of the citizen who acts in accordance with the responsibility and obligation will be considered as a mature citizen in the society.

⁸¹ William N. Eskridge, Jr, “Relationship between Obligations and Rights of Citizens” Fordham Law Review volume 69.
Found at <<http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=3707&context=fldr>>
(Last accessed June 6,2015)

⁸² A renowned scholar and thinker in social science discipline.

Every citizen should understand the civic behaviors and connection between rights and obligations, which are paramount factors while living in a society. Rights and obligations are not just reciprocal, they are interwoven each other. Resultantly citizenship provides a legal binding and individual security in a society. Jury service is an exercise of responsible citizenship" to which the citizen as juror has both a right and a responsibility.⁸³

3.4 THE PRAGMATIC UNDERSTANDING OF RIGHTS AND OBLIGATIONS OF CITIZENS

When we talk about the, "pragmatic understanding of the relationship between rights and obligations" then it means that citizens should understand the practical true sense of their rights in their individual as well as collective capacity when such type of sense will be generated citizens will know about their rights and no one will have courage to infringe their rights and likewise citizens should also fulfill their obligations toward state

All people, they are not fully citizens until they are equally obligated as well as equally entitled in their citizenship. A pragmatic or civic republican understanding of rights and obligations also provides theoretical support for "the common benefit, protection, and security of the people, nation, or community," and not just "any single person, family, or set of persons, who are a part only of that community."

⁸³ William N. Eskridge, Jr, "Relationship between Obligations and Rights of Citizens" Fordham Law Review volume 69.
Found at <<http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=3707&context=flr>>
(Last accessed June 6,2015)

Moreover, if in the community unjustified acts, divisions and class system is exercised then the breakage in the citizenship relation will also be developed which ultimately will result in the state and community failure.⁸⁴

3.5 DEFINITION OF RIGHT

Right can be defined as a legally well recognized and protected and promoted interests of the citizens of the state⁸⁵. Any one of the citizens interest which is defined and implemented in the law for the sake of social benefits is the type of legal right. It is not important that legal right has been created and framed by the state but the courts should have considerations in their enforcement and judgments.⁸⁶

In the context of civil society domain right means that a person is entitled to give and take relationship of interests with each other while living in the society within the limits as described by the constitutional and ordinary law In the case of constitutional right it can only be added or removed by constitutional amendment; likewise in the matter of ordinary right it may be abridged, destroyed and enlarged, by ordinary law. Means we can say it as the Right is the combination of duty and claim⁸⁷

If we go over the etymology of Rights then it includes the meaning and analysis of rights. The word right is extracted from old English word Reht or Right. And it gained much more meanings according to the situation and usage in the World With wide variety of expressions.

⁸⁴ Ibid

⁸⁵ Definition of Right by Salmond

Found at <right-mu.blogspot.com> (Last accessed August 13,2015)

⁸⁶ Dr.t. S.N.Sastry, "Introduction to human rights and duties"

Found at <www.voiceofresearch.org/doc/Sep-2015/Sep-2015 8.pdf> (Last accessed August13,2015)

⁸⁷ Ibid

In the light of law fields right means ethical norms, moral entitlements, which are exercised as ruled by the competent authority and it is debatable in different fields of academic circles and social sciences, anthropology particularly in law circles.⁸⁸

Human rights education enable the citizens to learn and get education on the concept and theory of rights there are different kinds and categories of rights as defined broadly

- 1) Natural Rights.
- 2) Legal Rights.
- 3) Claim rights.
- 4) Liberty Rights.
- 5) Positive Rights.
- 6) Negative Rights.
- 7) Individual Rights.
- 8) Group Rights.⁸⁹

3.6 DEFINITION OF DUTY / OBLIGATION

The word obligation commonly refers to as a synonym of duty or vice versa. However, strictly speaking there exists a difference between the two.⁹⁰

⁸⁸ Ibid

⁸⁹ Ibid

⁹⁰ "Duty and obligation are distinct to each other. A right exists without any correspondence to an obligation incurred or created, at times. Whereas duty arises from position, status, role. This means every time a duty has a connection with the position of person, which is linked with right. Hence, an obligation may not correspond to a duty at all times. It is only usage or practice of referring to right as a synonym of duty" Further detail is available in the book Dr.t. S.N.Sastry, "Introduction to human rights and duties"

Found at <www.voiceofresearch.org/doc/Sep-2015/Sep-2015 8.pdf> (Last accessed August13,2015)

3.7 CONCEPT OF DUTY

As the rights and duties are reciprocal to each other so the right is demanded and a duty is an expectation. Moreover social and legal norms demand from us that we as a nation should respect the rights of others and fulfill our own duties. The above distinction and concept can be cleared by an example so that bright picture can be displayed in front of each other as a reality factor.⁹¹

3.8 DEFINITION AND CONCEPT OF CITIZEN

A citizen can be defined as the person who takes part in social and political activities and useful element for the state and community, to be a citizen of a state is called the attainment of citizenship which is gained by some legal requirements of a state or government. A government grants certain rights and privileges to its citizens so that they could defend the country during peace and war time from the enemy forces. Foreign national's citizens are called as the aliens and they are protected by political laws and treaties of the host country⁹²

Aliens exercise full rights and privileges and practice certain professions until they become citizens. At another place it is defined citizen as "A citizen is defined as one who is born of parents who are citizens",⁹³ but this is not a satisfactory definition because it cannot apply to the first inhabitants or founders of a state, nor to those who have had the franchise conferred on them by the state.

⁹¹ E.g. A person should not tell a lie at any point of time. However, in a given circumstance by revealing a truth, which may affect the life of a person, he may tell a lie, though he has a duty to speak the truth. Due to this type of interchanges between laws that are moral and legal, the word duty become an equivalent to the words 'obligation' or 'ought'."

⁹² Dr.t. S.N.Sastry, "Introduction to human rights and duties"
Found at <www.voiceofresearch.org/doc/Sep-2015/Sep-2015_8.pdf> (Last accessed August13,2015)

⁹³ Definition by renowned thinker Aristotle's on the terms Citizen, State, Constitution, & Government Found at <www.scholarjati.com> (Last accessed August 9.2015)

A citizen in the proper sense of the term, then, is one who shares in the administration of justice, and in offices. The most comprehensive definition is one who shares in an “indefinite” office.⁹⁴

3.9 UN PUBLIC ADMINISTRATION GLOSSARY:

Citizenship can be defined in terms of nine distinct but interdependent elements,

1-Membership of a state, society and the world.

2-A sense of personal power, self-esteem and confidence to take part.

3-Democratic values, e.g. freedom, fairness, social justice, respect for democracy and diversity.

4-Political and human rights including enshrined in law and UN Conventions.

5-Civic involvement and responsibility (‘active citizenship’). Rights create obligations on others and ‘duties to the community’ are part of the Universal Declaration of Human Rights (Article 29).⁹⁵

6-Accountability means those responsible for decisions are answerable for their actions.

7-Knowledge and skills needed to take part.

8-Participation in democratic decision-making.

⁹⁴ Ibid

⁹⁵ “Article 29 of UDHR defines that

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.”

For further details and knowledge of UDHR please visit web source <www.ichrp.org/en> (Last accessed August 14,2015)

9- A constitution, written and unwritten rules governing the place of citizens in society.⁹⁶

3.10 STATE RESPONSIBILITY

3.10.1 DEFINITION OF RESPONSIBILITY

“A right is that which a man demands from others justifiability”

A responsibility is that which makes a man accountable to his actions and consequences of his actions and conduct. A right can be moral, ethical, legal or social or cultural. Rights are treated as moral when they are natural i.e. enhance the existence. A rational right is justifiable and not emotive. A right has to be based on reasons and it has to be always general. It is the duty and responsibility of every State to promote, protect and implement all human rights in a society under the jurisdiction so that citizens could enjoy all political, social, and other rights and peoples should feel freedom in their practices.⁹⁷

It is the responsibility of every individual and state not to violate the human rights and victims of human rights violations be redressed in a better way and to curb this effect transparent, impartial and prompt investigation should be conducted at government level so that in future no one can dare to violate human rights regime Human rights law also promote civil economic political social and cultural rights To achieve all of these objectives human right institutions at government level and non-government organizations be created and developed for the protection and promotion of human rights and this discipline should be taught at school level for the orientation and professional training of every citizen.⁹⁸

⁹⁶ Searched from website

Titus Alexander <<http://www.titusalexander.com>> (Last accessed on 14 august 2015)

⁹⁷ Dr.t. S.N.Sastry, “Introduction to human rights and duties” Found at <www.voiceofresearch.org/doc/Sep-2015/Sep-2015_8.pdf> (Last accessed August13,2015)

⁹⁸ Ibid

It is the responsibility of every citizen to defend the human rights and its duty of every one to protect and promote others human rights and to safeguard the spirit and institutions of democracy and law enforcement agencies especially police forces are required not to violate the human rights of others.⁹⁹

Every person should be responsible for its acts toward state and play positive role and depicts a useful citizen picture. Universal Declaration of Human Rights (UDHR), focuses on the fact that the citizens should obey the legal commands of the government and state or its agencies. And the citizens should keep ready their services for military and government services whenever required. To extend cooperation with the state elements and community for the welfare and betterment of society. "To pay the taxes established by law for public purposes. To protect the property and culture of the state. Not to discriminate or advocate anything on communal, linguistic and religious or any other ground that affect the liberty of other individuals"¹⁰⁰

3.11 COMPENSATION OF VICTIMS

Victim can be defined as the person or group of people who as a member or collectively, directly or indirectly suffered from some harm due to any one of those crime which come under the legal jurisdiction of the court of law. "Harm" means mental or physical injury, economic loss or emotional sufferings or substantial impairment of fundamental rights.

⁹⁹ Ibid

¹⁰⁰ UDHR further speaks that children, women, wounded and shipwrecked persons should be respected and treated humanely. "Rendering charitable work through social service, education, religious activities, cultural activities etc. To respect the rights and responsibilities of others. Not to make false allegations or complaints against others. Not to misuse the laws and regulations. Not to discriminate or advocate anything on communal, linguistic and religious or any other ground that affect the liberty of other individuals. To follow and obey the moral and ethical values that belongs to each society"

Retrieved from web source <www.ichrp.org/en> (Last accessed August 14, 2015)

Victims, where appropriate, may also be organizations or institutions which have been directly harmed and Persons who, individually or collectively, have suffered harm, e.g. criminal abuse of power.¹⁰¹

‘Victim’ is a natural person who has suffered harm (including physical, mental or emotional harm or economic loss) directly caused by a criminal offence regardless of whether an offender is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between them. The definition of ‘victim’ also covers family members¹⁰² of the deceased victim, who have suffered harm because of person’s the death directly caused by a criminal offence.¹⁰³

3.12 SUGGESTIONS, AMMENDMENTS AND ROAD MAP REQUIREMENTS TO PREVENT COLLATERAL DAMAGE IN FUTURE

Over the years beginning from 2001 Pakistan is facing big threat of terrorism in different kinds and shapes. Although brave security forces have successfully encounter all of these insurgency operations but the existence of extremists in the tribal belt and FATA area is always live threat to the general public and civil society in the shape of bomb blast and suicide attacks and drone attacks by US and NATO forces and resultantly these operations lead to collateral damage in Pakistan.

¹⁰¹ Principle 1 of the UN Victims Declaration

Found at <www.un.org/documents/ga/res/40/a40r034.htm> (Last accessed April 14,2015)

¹⁰² Family members include the spouse, the person who is living with the victim in a committed relationship and in a joint family set up it also added parents and children, the siblings and dependents of the victim.

¹⁰³ Dr.t. S.N.Sastry, “Introduction to human rights and duties” Found at <www.voiceofresearch.org/doc/Sep-2015/Sep-2015_8.pdf> (Last accessed August13,2015)

Besides the non-measurable loss to humans, other major economic costs of the terrorism include poverty, capital flight, destruction of infrastructure, reduction in FDI and exports, low public revenues and diversion of the development expenditure to the expenditure on law and order maintenance and so forth.

As all the contributory factors of terrorism and collateral damage have been discussed in the preceding paragraphs now I shall briefly discuss about the factors how it could be minimized and I shall put forward my suggestions, amendments and roadmap to prevent the country from collateral damage so that the state could become a prosperous state and where human rights could be prevented and protected

3.12.1 LAW OF ARMED CONFLICT

The Law of Armed Conflict (LOAC) constitutes that part of international law that regulates the conduct of armed hostilities. LOAC imposes restrictions on the types of weapons that may be employed and the targets against which weapons may be applied.

Therefore, combat forces must attempt to minimize collateral damage. These two principles are woven throughout almost the entire LOAC and understanding these will enable personnel to understand what Lawful is and what not Moreover State should frame the rules governing International Law so that no individual or country have courage to violate International Humanitarian Law by its soul and violators should be dealt severely¹⁰⁴

¹⁰⁴ The first and foremost purpose of LOAC is to protect civilian populations as well as prisoners of war, the wounded and sick, and shipwrecked personnel from unnecessary suffering and troubles so that their human rights could be prevented and promoted.
Found at <<https://www.icrc.org/eng/assets/files/other/law1.final.pdf>> (Last accessed April 15,2015)

3.12.2 RISK OF COLLATERAL DAMAGE

Collateral damage as defined in the first chapter again emphasizes to reinforce its importance that any incidental or unintentional damage to civilian population, facilities and equipment which are not considered as the military targets but due to aerial bombardment they have to suffer the collateral damage. Although International law does not prohibit attacks against military objectives even if that operation may cause collateral damage because such type of damage is unavoidable but this damage should not exceed as compared to the military advantage anticipated.

3.12.3 COLLATERAL DAMAGE

If the surrounding resources around the military installations are damaged due to aerial strikes launched specifically against enemy either that is military or nonmilitary that will also be considered as the collateral damage.

3.12.4 THE IMMUNITY OF CIVILIANS.

As it is well defined in international humanitarian law about the protection of the civilian population and civilian objects that civilian population as such, as well as individual civilians, may not be made the object of attack. Acts of violence intended primarily to spread terror among the civilian population are prohibited. Neither any civilian nor any civilian property should not be the objective of attack so that collateral damage could be avoided and human rights be protected in a true sense.¹⁰⁵

¹⁰⁵“International humanitarian law protects those who do not take part in the fighting, such as civilians and medical and religious military personnel. It also protects those who have ceased to take part, such as wounded, shipwrecked and sick combatants, and prisoners of war” Available at <https://en.wikipedia.org/wiki/International_humanitarian_law > (Last accessed April 14,2015)

3.12.5 NON-PARTICIPATION IN HOSTILITIES

Civilian immunity carries with a strict obligation on the part of civilians not to take a direct part in hostilities they must not become combatants. Taking a direct part in hostilities means engaging in acts of war directed toward enemy personnel or materiel. Civilians who take part in fighting (whether singly or as a member of a group) become combatants and lose their personal immunity.¹⁰⁶

3.12.6 REQUIREMENT TO DISTINGUISH

The requirement to distinguish between combatants and civilians and between military objectives and civilian objects imposes obligations on all the parties to a conflict. This is true whatever the legal status of the territory on or over which combat occurs. If the state parties abide by this rule and regulation then maximum collateral damage can be prevented and resultantly human rights will be promoted and protected.

3.12.7 MILITARY OBJECTIVES

Military attacks must be directed only against military objectives. Many objects are clearly military objectives¹⁰⁷

¹⁰⁶ International humanitarian law covers two areas of fields
First, the protection of those who are neither involved nor taking part in fighting.
Secondly restrictions on the means of warfare in particular weapons and the methods of warfare, such as military tactics. These categories of person are entitled to respect for their lives and for their physical and mental integrity. They must be protected and treated humanely in all circumstances, without discrimination. More specifically it is forbidden to kill or wound an enemy who surrenders or is unable to fight, the sick and wounded must be protected and prevented in all the circumstances.
For more details please visit <https://en.wikipedia.org/wiki/International_humanitarian_law>
(Last accessed April 11, 2015)

¹⁰⁷ Military objectives are defined as those objects which by their nature, purpose, location, or by the use make an effective contribution to military action and whose partial or total destruction, capture, or neutralization in the circumstances offers a definite military advantage are called military objectives. For example, military aircraft, antiaircraft guns and the troops in the field and moreover those factories, workshops, and plants that directly support the needs of the enemy's armed forces are also considered as the legitimate military objectives. For more details of military objectives please visit <[http://www.neonjohn.com/Misc/ebooks/usaf.Intel.Targeting.Guide\(nuclear\).pdf](http://www.neonjohn.com/Misc/ebooks/usaf.Intel.Targeting.Guide(nuclear).pdf)>
(Last accessed May 13, 2012)

Controversy exists over whether, and under what circumstances, other objects such as civilian transportation and communications systems, dams, and dikes can properly be classified as military objectives. Modern transportation and communications systems are deemed military objectives because they are used heavily for military purposes in intense conflicts.

However, the inherent nature of an object is not controlling. Even a traditionally civilian object (such as a civilian house) can be a military objective when it is occupied and used by military forces during an armed engagement. The key factor is whether the object makes an effective contribution to the adversary's military action, so that its capture, destruction, or neutralization offers a definite military advantage in the circumstances ruling at the time.

3.13 PRECAUTIONS IN ATTACK TO AVOID COLLATERAL DAMAGE

Only a military objective is a lawful object of attack. Therefore, constant care must be taken when conducting military operations to spare nonmilitary objects and persons, and positive steps must be taken to avoid or minimize any civilian casualties or damage. The principle of proportionality must always be followed, which prohibits an attack when the expected collateral civilian casualties or damage to civilian objects is excessive or disproportionate to the military advantage anticipated by the attack.

3.13.1 TYPES OF PRECAUTIONS

The extent of danger to the civilian population varies with the type of military objective attacked, under following circumstances

- (a) Terrain condition.
- (b) Type of weapons system used for attacks.
- (c) Weather condition.
- (d) Whether civilians are nearby.

Moreover while adopting precautionary measures combatant's profession techniques and their ability greatly matters to reduce the collateral damage so its time requirements that crew should be competent enough to meet the requirements.

3.13.2 COLLATERAL DAMAGE/INCIDENTAL CIVILIAN CASUALTIES MUST BE MINIMIZED

Attacks are not prohibited against military objectives even though they may cause incidental injury or damage to civilians. In spite of precautions, such incidental casualties are inevitable during armed conflict. This incidental injury or damage must not outweigh the expected direct military advantage.

That is, the potential military advantage must be balanced against the probable degree of incidental injury or damage to civilians. If an attack is carried out efficiently, using the principle of economy of force, against a military installation, it would not be likely to violate this rule.

On the other hand, if the attack were directed against objects used mainly by the civilian population in an urban area (even though they might also be military objectives), its military benefits would have to be carefully weighed against the risks to civilians

3.13.3 WARNING REQUIREMENT

A pre warning must be given before any bombardment, when circumstances permit, to permit the civilian population an opportunity to avoid injury. While the Geneva Conventions deal chiefly with the respect due our enemy, who is no longer able to fight, as well as treatment of civilians and civilian objects.¹⁰⁸

3.13.4 PROHIBITION OF ATTACK ON UNDEFENDED AREAS

Hague Regulations, strictly forbidden that an undefended places¹⁰⁹ buildings rural area urban areas and towns should not be attacked and targeted and be protected from such types of incidents.

3.13.5 SEPARATION OF MILITARY ACTIVITIES

International law generally gives civilians “immunity” from attack during armed conflict. However, the parties to a conflict must also take all the precautions practical to protect their own civilian population, individual civilians, and civilian objects. For example, they should remove civilians from military objectives and avoid locating military objectives in or near densely populated areas.

Under the 1949 Geneva Conventions, safety zones or demilitarized zones may be created between the parties of the conflict. Although the creation of such zones is unlikely if past experience is any indication, if created they would be an effective measure to enhance protection of a state's own civilian population. Under these rules, persons who are combatants are required to wear uniforms, and facilities such as hospitals should be clearly marked.

¹⁰⁸ The "Hague Rules", written at Hague Peace Conference of 1907, deal largely with how to fight an enemy who is in the field, and is still fighting. For more details visit <https://en.wikipedia.org/wiki/Hague_Conventions_of_1899_and_1907> (Last accessed July 2014)

¹⁰⁹ An undefended place is such a place which is near, or in, a zone where opposing armed forces are in contact, and which is open for residence by any party without resistance and any sort of reluctance.

3.13.6 RESULT OF FAILURE TO SEPARATE MILITARY ACTIVITIES

A state's failure to segregate and separate its own military activities and to avoid placing military objectives in or near a populated area may greatly weaken protection of its civilian population. Such protection is also compromised when civilians take a direct part in hostilities or are used unlawfully in an attempt to shield attacks against military objectives.

3.13.7 SPECIAL PROTECTION

In addition to the general rules for protecting civilians and civilian populations, there are specific rules for protecting certain persons and facilities. Under the 1949 Geneva Conventions, the following and undermentioned persons and objects must always be protected from attack and damage.

- (a) Sick and wounded persons
- (b) Hospitals and Basic health units
- (c) Ground Ambulances
- (d) Mobile medical setup at different places
- (e) Medical staff like doctors and nurses and paramedical staff
- (f) Air Ambulance when committed for patients.
- (g) Ships hospitals ambulances in the sea and sick bays

3.13.8 RELIGIOUS, CULTURAL, AND CHARITABLE BUILDINGS AND MONUMENTS.

As the afore said buildings are not used for military purposes, so the historical monuments, charity institutions and mosques be prevented from aerial bombardment and the law enforcement and counter insurgency operation agencies should be duty bound to identify them to avoid any unforeseen circumstances and to prevent collateral damage.

3.13.9 PRISONER OF WAR (PW) CAMPS.

Prisoners of war camps should be protected and should not be the object of attack. Moreover PW camps should be marked in such a fashion that letters PW should be visible from air to avoid any collateral damage and these camps cannot be used for unauthorized purposes.

3.13.10 GENERAL PRINCIPLES APPLICABLE TO WEAPONS

UNNECESSARY SUFFERING

It is forbidden and it should be unauthorized to employ any method or weapon of warfare which causes superfluous injury or unnecessary suffering.¹¹⁰ This firmly established rule, incorporated into the Hague Regulations, is a concrete expression of the general principles of proportionality and humanity. All weapons cause suffering. Whether particular weapons or methods of warfare cause unnecessary suffering is best determined by the practice of states. Treaties banning specific weapons, such as gas and toxin weapons, also give specific content to this principle.

As the International law has also condemned the use of expanding bullets against combatants and determined that it is illegal method of usage.

Irregularly shaped bullets.¹¹¹

Indiscriminate Weapons.¹¹²

¹¹⁰ International law strictly prohibits the usage of a specific weapons. A weapon will be considered illegal if it is banned by international law even it will be forbidden in its usage in all the fore coming circumstances. E.g. Poison as a gas, as a coating on munitions, or as a contaminant of water is an example of such an illegal weapon.

¹¹¹ It is unauthorized and forbidden to score the surface, or file off the ends of the hard cases, of bullets, so that they will expand upon contact and thus aggravate the wound they cause and even may become fatal.

Found at <[http://www.neonjohn.com/Misc/ebooks/usaf.Intel.Targeting.Guide\(nuclear\).pdf](http://www.neonjohn.com/Misc/ebooks/usaf.Intel.Targeting.Guide(nuclear).pdf)> (Last accessed May 13, 2012)

¹¹² An indiscriminate weapon is one that cannot be controlled, through design or function. Some weapons are considered indiscriminate because, although they can be directed at a military objective, but they may have uncontrollable effects that cause disproportionate civilian injuries and collateral damage which is the violation of Humanitarian Law and Human rights law.

Found at <https://www.icrc.org/eng/assets/files/other/law1_final.pdf> (Last accessed April 15,2015)

3.13.11 BIOLOGICAL AND CHEMICAL WEAPONS

The use and development, production, stockpiling or transfer of chemical weapons in combat, and biological weapons in war is strictly forbidden and should be implemented from its true letter and spirit ¹¹³

3.13.12 DELAYED ACTION WEAPONS

International law prohibits the usage of such an explosive mines which blast just after physical contact for the purpose of legally protected personnel under the law. Such as the “wounded and sick personnel, dead bodies, or medical facilities”. It should be further reiterated that valuable and attractive types of booby traps like, wrist watches, trinkets, and fountain pens, be avoided to minimize collateral damage during war time as well as during counter insurgents operations

A precautionary and safety distance must be maintained between civilian and general public and military forces both neutral and friendly states to avoid any unforeseen incident in the shape of collateral damage.

3.14 CONCLUSION

It is concluded that Rights and obligations are interconnected to each other in such a design that produce citizenship universally for the purpose of protection and promotion of human rights in a very decent and respectable way When we talk about collateral damage then in the very particular case right to life is infringed which is evident example of violation of human rights.

It is the need of the hour that we as a nation should understand the practical and true spirit of the human rights and international humanitarian law and its

¹¹³ Article 23(a) of the Hague Regulations prohibits the states on the usage of poison or poisonous weapons during war time because it have uncontrolled effects on human body and may become fatal which is violation of this article regulations as well as human rights law. For further information please visit website Available at <https://en.wikipedia.org/wiki/Hague_Conventions_of_1899_and_1907> (Last accessed July 2014)

importance should be penetrated in our body and soul so that collateral damage due to the terrorist operations could be minimized and avoided But unfortunately we are more concentrating on the theory that what is wrong and what is right rather than focusing on the practical and true spirit of human rights law

States and governmental organizations are to ensure that proper teaching is organized at school level so that well educated and civic generation become the future of Pakistan and the violators must be punished so that they become unable to do in future nevertheless. Moreover laws proposals must be framed to punish the most serious war crimes and violators of the, “Geneva Conventions and Additional Protocols”. Moreover the States and countries should frame laws relating to the protection and promotion of worldwide human rights organizations working for the betterment of humanity especially Red Crescent and Red Cross.

It can be rightly said that states during all the war conflicts and counter insurgency operations should follow the above mentioned precautions and it can be followed as a road map for the states for strict accountability and implementation. By acting upon all of these suggestion as a solely and collectively or through governmental and nongovernmental organizations, we can all pay our vital and responsible citizen role and contributions for the compliance of international humanitarian law.as well as Human Rights Law

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