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**Topic: “Compatibility of Law of Internal Armed Conflicts with the Doctrine of Humanitarian Intervention: A case study of Libya”.**

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### ABSTRACT

The quintessential body of International Humanitarian Law in its present form is the result of efforts by the humanitarian forces to make wars more humane and ethical since prehistoric times.

The UN Charter followed suit later with parallel effort to regulate wars and bring about lasting peace by working on ways of peace- building through all possible means- economic, social, legal, political, cultural and others. In its elaborate provisions, the importance of non- intervention and conflict management through other peaceful means was repeatedly highlighted barring a single provision that endorsed use of force only under situations where other peaceful means had been exhausted.

What the authors of these parallel legal frameworks could not foresee was the quirk in human nature that displays promptness in finding loopholes for its vested interests. It is this quirk that has of late, rendered the two existing legal frameworks incompatible in reality as has become increasingly evident in the recent past with increase in civilian massacres reaching unprecedented and shocking levels.

This study therefore draws its rationale from this situation of incompatibility that has not been explored much. There is a lot of literature on Humanitarian Intervention as well as Humanitarian Law with special focus on internal conflicts, however, there appears to be a gap in knowledge when a platform for their mutually inclusive threshold is sought. These seemingly mutually exclusive aspects of International Law that have been created for the benefit of the international community appear to negate and defeat each other’s purpose. The research has thus attempted to uniformly define situations and their lower threshold that call for humanitarian intervention. An attempt has been made to analyze and identify an upper threshold for application of (Geneva Conventions 1-4) Common Article 3 and its Additional Protocol II that are compatible with each other and serve a joint purpose of genuine peacemaking.

Accordingly, there are four objectives of this study. First, to understand the historical evolution of IHL with regard to internal conflicts. Second, to examine the usage and upper thresholds of Article 3 Common to the Geneva Conventions and its Additional Protocol II in its application in cases of non- international armed conflicts. Third, to understand the Doctrine of Humanitarian intervention, and fourth, to examine the usage of provisions of UN Chapter VII, Article 42 and its lower threshold. The hypothesis being, first, (GC 1-4) Common Article 3 is compatible to Chapter VII, Article 42. Second, there is role of external state and non-state actors in applicability of the doctrine according to their vested interests.

As per the objectives, the **first chapter** of this study deals with the ‘historical evolution of international humanitarian law’. The chapter traces the evolution of customary international law from antiquity, beginning with the human values found in the earliest tribal societies establishing a socio-centric world view, and laws of war found in the various religious philosophies and their relevant texts. Beginning with the elaborately developed Hindu laws of war, it moves to the Middle ages, Islam and Christianity and their provisions on laws of war and the critique of concept of Just war. Coming to the modern times, the chapter chronicles the changes that developed by the end of the 14<sup>th</sup> Century when a definite turning point arrived in the military history due to arrival of fire arms on the battlefield. Also the formation of the modern states and the decline of papal authority led to a new concept of the law of nations under which political entities took the place of individuals as a subject matter of law. Scholastic philosophers of this period exerted a beneficial influence on the law of war. It then mentions the advent of Grotian philosophy which constituted part of the most solid foundations of the law of war. It then covers the 17<sup>th</sup> Century

that opened the age of Enlightenment, which among other things witnessed the birth of humanitarianism. Lastly, the chapter traces in detail the evolution of formal IHL with the formation of the ICRC and the Geneva Conventions and its Additional Protocols.

The **second chapter** discusses the existing legal framework of IHL, particularly the portion that deals with the non-international armed conflicts. This category of conflict falls within the scope of the Common Article 3 of the GC of 1949 and their Additional Protocol II (AP II) of 1977. The chapter then goes on to discuss in detail the provisions for non-international armed conflicts- specifically the Common Article 3 of the four Geneva Conventions of 1949 and its Additional Protocol II (APII). It provides the situation and scope of their application. Providing a detailed paragraph wise discussion on each provision, the chapter also mentions relevant cases. The chapter then deals at length on the provisions of (APII) and the upper and lower thresholds of its application. It also provides the interpretation of the provisions, gaps in legislation and the problems in the existing legal framework that enables its violations.

The **third chapter** talks about the parallel legal provisions found in the UN Charter regime that deals with armed intervention that has been interpreted into the Doctrine of Humanitarian Intervention. It begins with the historical evolution of UNO. It then highlights the relevant legal provisions of the UN Charter that focus on non-intervention, collective security, use of force and regional arrangements. It then discusses the implications of both liberal and conservative interpretations of each of these provisions along with suitable examples. Delving upon certain common criteria found in each case, it then discusses the problems in its existing legal framework. This is followed by the various definitions and historical evolution of the Doctrine of Humanitarian Intervention mentioning the landmark thinkers. The chapter traces the emergence of interventionist norm with claims of self-help, providing the initial trendsetting cases. The chapter then discusses origin development and advent of Responsibility to Protect. The chapter then traces the origin of the trend by which the Humanitarian Intervention gradually became the most assertive form of promoting human rights at a global level and how this became clearly incompatible with norms such as non-intervention and state sovereignty. The chapter then discusses how trade has become the new tool of international dominance. The chapter talks about how this development has affected the implementation of second and third-generation rights as the complicity of Human Rights with R2P has severely damaged this agenda.

The **fourth chapter** provides historical applications of Humanitarian Intervention and the discrepancies in its applications through case studies that are divided into three benchmark periods namely- the cold war period, the post cold war period and the period after the advent of R2P. The chapter goes on to establish the fact of UN having gradually come to be manipulated by the dominant powers. It demonstrates through various cases how this became an unmistakable pattern that was proved by the inconsistent and partial views taken by UN in the various instances of its acts of commission and omission in the especially resource rich third world cases of civil- strife.

The **fifth chapter** is a detailed case study of Libya, providing its unique history and the Islamic influence that shaped it. It then moves on to the advent of Gaddafi, his philosophy of “Third International Theory” and the drastic changes brought by his regime in the politics and society of Libya. It covers Gaddafi’s international activities, ambitions, developments in Libya leading to Intervention and Gaddafi’s death. The chapter deliberates on the crucial role played by the LAS under the regional arrangements provision of the UN Charter. It ends with describing the current political, economic and social situation in Libya.

The **sixth chapter** is a detailed critical analysis of Humanitarian Intervention in terms of its contemporary usage in the light of the new trend of R2P and the Libyan intervention. It begins with a discussion on different models of intervention, going into their merits and demerits with the relevant cases depicting each model that portray their far-reaching consequences. Analyzing the trend setting case of Yugoslavia, it also provides the opinion of thinkers on the ethical dilemma posed by the tussle between legality and morality in cases of humanitarian emergencies. Citing the various justification criteria forwarded by thinkers. Moving on to the pro-intervention attitudinal change and the beginning of a new trend of roping in regional arrangements to endorse military interventions, the chapter touches upon some such relevant cases. Through analysis, the fact of existence of other ulterior motives like geopolitical and strategic angles as well as the presence of a thinly disguised resource war is brought out. The chapter then provides detailed critical analyses of the Libyan Intervention that proves it to be not only illegitimate but completely violates all scope of compatibility between the law of internal Conflicts and the Doctrine of Humanitarian Intervention. The chapter ends with conclusion.