

Of Divine Wars: A Comparison of Hindu Teachings with International Humanitarian Law and *Jus Ad Bellum*

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IHL studies have benefited greatly by drawing parallels with the rules of war in different religions. This article expands this scholarship by further considering the ideas of morality and humanity through the lens of Mahabharata, a text of Hindu origin. This research unravels intriguing insights related to what constitutes *Dharma* and *Dharmayuddha* (righteous warfare), the bridge between *jus in bello* and *jus ad bellum*, and how IHL is compromised by the realities of war. It argues that the true value of IHL comes from accepting both the ideal and real and accepting accountability for one's actions in war. In doing so, the study discovers how the concept of *Dharma* may be beneficial, how studying ancient ethics of war is important for the incorporation of humanity in war, why the *Bhagavad Gita* born out of the Epic is essential to study the correlation of IHL with *jus*

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ad bellum, and how this entire context exists in the realities of war.

Keywords. Bhagavad Gita, Comparative IHL, Humanity, Hinduism, Jus Ad Bellum, Mahabharata, Morality in Law, Rules of Battle, Sacred Texts.

Introduction

“Whatever is here, may be found elsewhere; what is not cannot[,], be found anywhere else [...].” It is said about the *Mahabharata*.

The relationship between international humanitarian law (IHL) and religions is one of immemorial interdependence.² Many scholars have explored how IHL was shaped by the teachings of different religions, and have discussed the importance of imbibing their focus on peace and humanity even further into the practice of IHL.³ The International Committee of the Red Cross (ICRC) similarly pays due attention and respect to the influence religions have had on developments in IHL.⁴ Amongst scholars, Singh said

¹ Bharti Kalra, Manash P. Baruah, and Sanjay Kalra, "The Mahabharata and reproductive endocrinology", *Indian journal of endocrinology and metabolism*, Vol. 20, No. 3, 2016, pp. 404-407.

² Andrew Bartles-Smith, "Religion and international humanitarian law." *International Review of the Red Cross*, Vol. 104, No. 920-921, 2022, pp. 1725-1761.

³ William Vendley, and David Little, "Implications for Religious Communities: Buddhism, Islam, Hinduism, and Christianity", in Douglas Johnston and Cynthia Sampson (eds), *Religion, The Missing Dimension of Statecraft*, New York, NY, 1994; online ed., Oxford Academic, 31 Oct. 2023; Weeramantry, Christopher G. Weeramantry, *Islamic Jurisprudence: An International Perspective*, 1988; Davis New, *Holy War: The Rise of Militant Christian, Jewish and Islamic Fundamentalism*, 2002; Theodor Meron, "The Humanization of Humanitarian Law", *American Journal of International Law*, Vol. 94, 2000, pp. 239-264.

⁴ A. Bartles-Smith, above note 2, p. 1.

that “the influence of religion in regulating warfare to deprive it of its savagery has been nowhere better indicated than by ancient Indian and Islamic laws of war.”⁵

Articles such as "The World Is Without Shelter, Without Protector: Buddhism, the Protection of Displaced People, and International Humanitarian Law"⁶, “Ethical Paradigm of Buddhism”⁷ and about the “Prohibition of the Use of Nuclear Weapons under Islamic Law”⁸ are great examples of academic analyses on how ancient religions may fill gaps present in IHL. However, while there have been some contributions to Hinduism and IHL such as “Exploring Hindu ethics in warfare: the Puranas”,⁹ they remain in the minority. Typically, the exploration of the Epic to IHL by legal scholars has been mostly to discuss the concept of *jus ad bellum*.¹⁰ The theoretical discussion has been limited to the intriguing way in which the concept of just war plays out.¹¹ I argue

⁵ Carl Landauer, "Passage from India: Nagendra Singh's India and International Law," *Indian Journal of International Law*, Vol. 56, No. 3, 2016, pp. 265-305.

⁶ “The World Is Without Shelter, Without Protector: Buddhism, the Protection of Displaced People, and International Humanitarian Law.” in Deniz Cosan Eke and Eric Trinkka (eds), *Religion, Religious Groups, and Migration*, Transnational Press, London, 2023.

⁷ Pimchanok Palasmith, "Ethical Paradigm of Buddhism: A Buttress for Compliance with International Humanitarian Law", *Asia Pacific Journal of International Humanitarian Law*, Vol. 4, 2023, p. 64.

⁸ Kheda Djanaralieva, "Prohibition of the Use of Nuclear Weapons under Islamic Law: Filling the Gap of International Humanitarian Law?" *Asia Pacific Journal of International Humanitarian Law*, Vol. 4, 2023, p. 31.

⁹ Raj Balkaran and Walter Dorn, “Exploring Hindu ethics of Warfare: The Puranas”, *International Committee of the Red Cross*, 17 January 2024, available at: <https://blogs.icrc.org/religion-humanitarianprinciples/exploring-hindu-ethics-warfare-puranaas/>.

¹⁰ *Ibid.*

¹¹ Francis X. Clooney, “Pain But Not Harm: Some Classical Resources Towards a Hindu Just War Theory”, in Paul Robinson (ed.), *Just War in Comparative Perspective*, Ashgate, Aldershot and Burlington, VT, 2003; Matthew A. Kosuta,

in this paper that this narrow focus is short-sighted. Hinduism is one of the oldest religious practices. It is built around the idea of righteous conduct and has dense knowledge related to warfare within itself.¹² The exploration of *Dharma* in its myriad aspects is a vast and vibrant thread, the fabric of which is useful material to religious teachers, scientists, philosophers, law-makers, and lawyers alike.¹³

Hindu philosophy is one that IHL can borrow greatly from, and this article aims to take the discourse forward by linking the law of armed conflict to the ancient teachings of Hinduism. To achieve this goal, parts of the Mahabharata will be covered that give clear examples of leadership on the battlefield, codes of conduct, deceit, deception, and the psychological dimension of warfare.¹⁴ The Epic is the longest-known saga, with a scale so vast that it encompasses ideas of great importance to all aspects of humankind.¹⁵

"Ethics of War and Ritual; The Bhagavad Gita and Mahabharata as Test Cases", *Journal of Military Ethics*, Vol. 19, No. 3, 2020; Ravi Khangai, "Why Should Arjuna Kill? The Bhagavad Gita's Justification of Selective Violence", *American Research Journal of History and Culture*, Vol. 1, No. 2, 2015.

¹² Raj Balkaran and Walter Dorn, "Charting Hinduism's Rules of Armed Conflict: Indian Sacred Texts and International Humanitarian Law." *International Review of the Red Cross*, Vol. 104, No. 920-921, 2022, pp. 1762-1797.

¹³ Carolyn Evans, "The Double-Edged Sword: Religious Influences on International Humanitarian Law", *Melbourne Journal of International Law*, Vol. 6, No. 1, 2005, pp. 1-32.

¹⁴ Jonathan Gosling, Peter Villiers, and Harsh Verma, "Leadership and Dharma: The Indian Epics Ramayana and Mahabharata and Their Significance for Leadership Today", *Fictional Leaders: Heroes, Villains and Absent Friends*, 2013, pp. 182-201; Matthew A. Kosuta, "Ethics of War and Ritual: The Bhagavad-Gita and Mahabharata as Test Cases", *Journal of Military Ethics*, Vol. 19, No. 3, 2020, pp. 186-200; Swarna Rajagopalan, "'Grand Strategic Thought' in the Ramayana and Mahabharata", in *India's Grand Strategy*, Routledge India, 2014, pp. 31-62.

¹⁵ Raashi Saxena, "Mahabharata: A Law Student's Perspective", *Indian Journal of Law & Legal Research*, Vol. 4, No. 1, 2022, p. 1.

Many myths and legends run back and forth through the narrative of the Epic, connecting an ever-expanding set of beliefs, emotions, morals, philosophies, customs, rituals and ethics. All these co-exist in the chapters and verses of the Mahabharata. It weaves in philosophical teachings of all kinds, such as that of military law and the ethics of warfare. It arguably provides a cultural context to the study of IHL, describes the social structure of the ancient Indian perspective, and describes the interplay between the intentional setting of laws in war and actual wars.

This article will discuss *Dharma*, the *Mahabharata*, and the *Bhagavad Gita* as propounded by Hinduism, and draw connections between them and the important themes and challenges in contemporary IHL.

This has three main purposes. Firstly, it is a statement of how the law of war has been perceived in the Asian subcontinent. Amid a much larger sociological context in which this Epic exists, there lies an undeniable importance in drawing a link where local values, religions and myths are connected to IHL. The positive impact flows from inculcating value to narratives of IHL that appeal to non-western States.¹⁶ They serve as both valuable inventories of parallels between IHL and older norms, and serve a useful policy purpose by allowing disseminators to re-frame IHL as

¹⁶ Jonathan Kwik, Ai Kihara-Hunt, and Kelisiana Thynne. "From Theology to Technology: A Call for IHL Ambassadors in the Asia-Pacific Region", *International Committee of the Red Cross*, 27 March 2024, available at: <https://blogs.icrc.org/law-and-policy/2024/03/28/from-theology-to-technology-a-call-for-ihl-ambassadors-in-the-asia-pacific-region/>.

an evolved form of pre-existing local norms, instead of norms that are externally imposed on a people.¹⁷

Second, this article aims to address and add to the academic community's comparisons of peace and humanity in armed conflict. Currently, in the literature related to religion and IHL, the principles of peace and humanity are most widely discussed as propounded by Buddhism.¹⁸ Hindu literature has many sources of warfare.¹⁹ The perspective of Hinduism, a religion that allows war as an acceptable last resort, but still has a solidified morally and ethically charged set of rules of battle that all share an underlying and overarching focus on peace, is intriguing to explore. It offers a chance to view the humanisation of armed conflict, concepts of *jus in bello* and *jus ad bellum*, and their connection, through the lens of a religion that has arguably allowed "Just War".²⁰

Thirdly, and finally, tracing these stories leads to account for the realities of war, one that both the Epic (with its strictness) and IHL (with its pragmatic practicality) face. The Epic in itself is not concerned with the manifestations of these realities. It purposely limits itself to the rules, ethics and spiritual values. Minowski argued that the *Mahabharata* is the first ever text that "possesses

¹⁷ *Ibid.*

¹⁸ P. Palasmith, above note 7, p. 2.

¹⁹ Gerald Draper, "The contribution of the Emperor Asoka Maurya to the development of the humanitarian ideal in warfare", *International Review of the Red Cross*, No. 305, 1995, pp. 192-206; Romila Thapar, *Asoka and the Decline of the Maurya*, Oxford University Press, Delhi, 1997; Charles Alexandrowicz, "Kautilyan principles and the law of nations", *British Yearbook of International Law*, 1965-66, Vol. 41, pp. 301-320.

²⁰ Heike Krieger, Pablo Kalmanovitz, Eliav Lieblich, and Rebecca Mignot-Mahdavi, eds. *Yearbook of International Humanitarian Law – Cultures of International Humanitarian Law*, Vol. 24., Springer Nature, 2023.

an embedded structure of stories within stories. One story often leads to the telling of another so that they are embedded in a complex web of interlocking narratives”.²¹

As an ode to the text from which this article is inspired, and agreeing with this analogy, I intend on similarly approaching this current article. The intention is to draw connections with certain interesting stories and accounts of the Epic that are relevant to the subject of IHL. The epic is vast, and I do not propound to give definite answers to the questions raised while exploring these connections. Instead, the purpose of the article is to draw awareness to the timely relevance of these specific connections to IHL, *jus ad bellum* and their interaction in reality. I argue that the academic community, the ICRC and comparative studies will benefit from delving deeper into these accounts, for the connections have been chosen to address the morality of war and the way it is fought in its various aspects.

I narrate four connections in this regard. The first is of *Dharma* and IHL, the second is of the *Mahabharata*, comparing the Geneva Conventions to the rules of battle, the third is the Bhagavad Gita and *jus ad bellum*, and the final account concludes with a connection of *Krishna's* punishment upon wavering from his own rules of war. From these connections that are discussed, set against the backdrop of an interlinkage between *jus ad bellum* and *jus in bello* from an Asian perspective, we see a narrative emerging

²¹ Christophe Z. Minkowski, "Janamejaya's Sattrā and Ritual Structure", *Journal of the American Oriental Society*, Vol. 109, No. 3, 1989, p. 412. As mentioned in *Disorienting Dharma: Ethics and the Aesthetics of Suffering in the Mahabharata*, by Emily T. Hudson, p. 23.

of the inescapable reality of war which cannot be seen without combining the two.

1. Societal Background of the Mahabharata

For the substantive analysis that follows, it is useful to briefly introduce the Epic upon which this article rests. The *Mahabharata* is one of the two foundational Sanskrit Epics.²² It has 100,000 verses and is spread across 18 *Parvas* (books). Hinduism states that the Mahabharata was originally composed by a religious Sage *Ved Vyasa*, composed of 1,00,000 *shlokas* (couplets). Multiple versions of the Epic have been developed as time progressed. According to Penna, “[t]wo thousand years before Grotius, Rachel, or Ayala recalled Europe to humanitarianism, ancient Indians had a body of rules for governing the relations between the States of the sub-continent in the event of armed conflicts.”²³ It therefore has been compared to the works of Shakespeare and Greek tragedies in terms of literature, and the Bible and Quran in terms of religious wisdom and knowledge in the same breadth.²⁴ That is to say, it exists at the macro-level of life lessons and value systems, and is a guiding document for the religion of 15% of the world’s population.²⁵ At the same time, it also exhibits the same level of

²² R. Balkaran and W. Dorn, above note 9, pp. 1-23.

²³ Arthur Llewellyn Basham and Saiyid Athar Abbas Rizvi, *The wonder that was India: A Survey of the Culture of the Indian Sub-Continent before the Coming of the Muslims*, Sidgwick and Jackson, London, 1956, p. 8.

²⁴ Emily T. Hudson, *Disorienting Dharma: Ethics and the Aesthetics of Suffering in the Mahabharata*. Oxford University Press, USA, 2013.

²⁵ “Projected Changes in the Global Hindu Population”, *Pew Research Center*, 2 April 2015, available at: <https://www.pewresearch.org/religion/2015/04/02/hindus/>.

societal relevance of literature in the Asian continent that Shakespeare or others have in the Western world.²⁶

The *Mahabharata* emerges as a story of and from ancient India and narrates the lineage of the *Kaurava* Clan (the unjust) and the *Pandava* Clan (the righteous) between whom the war takes place in *Kurukshetra*.²⁷ The primary narrative is the struggle for the throne of the Kingdom of *Hastinapur* and the battle fought between the warring groups. Lord *Krishna*, the incarnation of the god *Vishnu*, is said to have come to earth to orchestrate and mediate the *Mahabharata*.²⁸ Right before the initiation of the great war in the *Mahabharata*, *Krishna* narrated to *Arjuna* (the great warrior who hesitated to go to war due to the destruction it would inevitably cause, regardless of the righteous cause) the importance of *Dharma* (divine duty, law and actions) and produced what is known as the *Bhagavad Gita*.²⁹ The *Gita* serves as a manual for ethical, even spiritual conduct on the battlefield,³⁰ and has been established to present an “intimate link between war and religion.”³¹ Addressing the ‘divinity’ of this war leads one to question whether it describes a real war or is merely a religious tale, and whether ancient battles were fought like this historically. Although these concerns cannot be cleared completely, there is

²⁶ William Shakespeare, ‘Comedies, Histories, & Tragedies – The Complete Works of William Shakespeare’, Project Gutenberg, January 1994
<https://www.gutenberg.org/cache/epub/100/pg100-images.html>.

²⁷ John M. Koller, *The Indian Way: Asian Perspectives*, Macmillan, New York, 1982, p. 62.

²⁸ Emily T. Hudson, *Disorienting Dharma: Ethics and the Aesthetics of Suffering in the Mahabharata*, p. 24.

²⁹ Juan Mascaró (trans.), *Bhagavad Gita*. Bhaktivedanta Book Trust, USA, 1994.

³⁰ Steven J. Rosen’s edited volume, *Holy War: Violence and the Bhagavad Gita*, Hampton, Virginia, Deepak Heritage Books, 2002.

³¹ Jeffery D. Long, *War and Nonviolence in the Bhagavad Gita: Correcting Common Misconceptions*, 2009.

enough South Asian literature to prove that these religious texts drive the way wars are fought.³²

Before diving into the *Mahabharata*, it is imperative to understand the concept of *Dharma* – the backbone and guiding principle upon which all characters of the Epic operate.³³ In Hinduism, *Dharma* is the highest governor of conduct.³⁴ For a religion famous for the worshipping of many gods, this concept is still its most important and overarching theme. In essence, the philosophy of *Dharma* is to fulfill one's righteous duty in all spheres of life. This includes law, morality, conduct and all else. The literal Sanskrit translation of *Dharma* is 'to bear, uphold, maintain and sustain an individual and State's duty as the law'.³⁵ It is an overarching principle valid in all spheres of conduct. Radhakrishnan says: "If morality is that which conscience imposes, and law that which state commands, the *Dharma* is neither the one nor the other. It is the tradition sustained by the conviction of countless generations of men, which helps to build the soul of truth in us".³⁶ Still, from a strictly legal perspective, it can be viewed as the "laws and traditions governing society, applicable to all according to their position in society and stage in life- as that determines their specific dharma".³⁷

³² See generally, Lakshmikanth Penna, "Traditional Asian approaches: An Indian view", *Australian Yearbook of International Law*, 1985, Vol. 9, pp. 168-206.

³³ K. R. R. Sastry, "Hinduism and international law", *International Review of the Red Cross*, Vol. 117, No. 1, 1966, pp. 507-614.

³⁴ Jagdishlal Shastri (trans.), *The Śiva-Purāna, Ancient Indian Tradition and Mythology*, Vol. 1-4, Motilal Banarsidass, Delhi, 1950, p. 901.

³⁵ Naresh Chandra Sen-Gupta, *Evolution of Ancient Indian Law: Tagore Law Lectures, 1950*, Probsthain and Eastern Law House, 1953.

³⁶ Sarvepalli Radhakrishnan, "The Hindu Dharma", *International Journal of Ethics*, Vol. 33, No. 1, 1922, pp. 1-22.

³⁷ *Ibid.*

2. Dharma's connection to International Humanitarian Law

Dharma is in its genesis a law of conduct. Some compare it to positive law,³⁸ and others to the moral and philosophical discussions of law.³⁹ This section aims to discuss *Dharma* in the context of war, rules of battle and conduct. The relevance of discussing *Dharma* is that it is an ever-present notion in the *Mahabharata*, often quoted by the characters as the driving force behind their decision-making. A verse of the *Manu*,⁴⁰ one of the founding documents of laws of Hinduism upon which the *Mahabharata* is based,⁴¹ states that:

There are restrictions on an honorable warrior, which every soldier must remember during war. This is the declared law for warriors, that a warrior must not transgress from who he is to remain unblemished when he is fighting with his foes on the battlefield. He should fight only following Dharma.⁴²

In a way, it is also the responsibility of individuals to protect the peace and security of the cosmic order – as Hinduism is the religion that inculcated the concept of *Karma*⁴³ (good deeds and their connection to rebirth and paying for one's sins). The burden

³⁸ R. Balkaran and W. Dorn, above note 12, p. 3.

³⁹ N. A. Deshpande (trans.), *Padma Purāna, Ancient Indian Tradition and Mythology*, Vol. 39–48, Motilal Banarsidass, Delhi, 1988, p. 129.

⁴⁰ Radhabinod Pal, "The History of Hindu Law: In the Vedic Age and in Post-Vedic Times Down to the Institutes of Manu", 1958.

⁴¹ *Ibid*, p. 34.

⁴² R. Balkaran and Dorn, above note 12, p. 3.

⁴³ Baṅkima Candra Caṭṭopādhyāya, *Essentials of Dharma*, Sribhumi Publishing Company, 1977.

of acting correctly, since the consequences are carried into the next life, is therefore heavy.

Originally, scholars of Buddhism arose from Hinduism. There is still often a misconception of the main teachings of *Dharma* flowing from Buddhism.⁴⁴ This is because, as pointed to earlier, the ideas of peace are propounded at the forefront by Buddhism,⁴⁵ making it also a reliable source of teachings of conduct. In fact, *Dharma* is originally derived from Hinduism,⁴⁶ making it equally essential to trace the concept back to its origins. The *Mahabharata* discusses in detail the specific *Dharma* related to warfare, military conduct, and the importance of maintaining humanity during armed conflict. In IHL, the concern is, or ought to be, the ‘humanisation’ of a conflict.⁴⁷ While there is a highly debated paradox concerning the concept,⁴⁸ there are no questions about the need for its implementation. The inevitable nature of wars makes Hinduism’s *Dharma* appropriate for comparisons of

⁴⁴ “The Dharma: the teachings of the Buddha”, *The Pluralism Project - Harvard University*, available at: https://pluralism.org/the-dharma-the-teachings-of-the-buddha_

⁴⁵ Dr. Sumana Ratnayaka, “The Path of Peace: Using the Buddhist ‘Middle Way’ to Encourage IHL Compliance”, 2023, available at: <https://blogs.icrc.org/religion-humanitarianprinciples/peace-using-buddhist-middle-way-ihl-compliance/>; Andrew Bartles-Smith, Kate Crosby, Peter Harvey, et al., , “Reducing Suffering During Conflict: The Interface Between Buddhism and International Humanitarian Law”, *Contemporary Buddhism*, Vol. 21, No. 1–2, 2020, pp. 369–435.

⁴⁶ Stephanie W. Jamison and Joel Brereton (trans.), *The Rigveda: The Earliest Religious Poetry of India, Vol.3*, Oxford University Press, Oxford, 2014, p. 1652.

⁴⁷ H. Krieger, above note 20, p. 4.

⁴⁸ The concept engages on the irony that IHL finds itself in – having to govern an act that involves violence and conflict and make rules around it, potentially having to turn a blind eye to the obvious wrong taking place. See also Kieran RJ Tinkler, “Does International Humanitarian Law Confer Undue Legitimacy on Violence in War?” *International Law Studies*, Vol. 100, No. 1, 2023, p. 18.

conduct during armed conflict: as Glucklich says, “*Dharma* is not a what, it is the how”.⁴⁹ Eyffinger further observes that “it was expressly enjoined by the sacred laws of *Dharma* that all belligerents at all times and in all circumstances must adhere to the accepted rules of warfare”.⁵⁰ Therefore, like IHL, *Dharma*, and the laws of war as showcased in the *Mahabharata*, were “designed to make the conduct of war as humane as possible”,⁵¹ recognising the inevitable nature of States resorting to armed conflict.

“States” as we recognise them today could not have been envisioned by the crafters of the ancient rules,⁵² just like the way that developments of armed conflicts could not have been accounted for.⁵³ Thus, it raises the interesting conceptual question: “*What is international humanitarian law’s Dharma?*”? IHL is first and foremost shaped by the conduct and practice of States.⁵⁴ In that case, IHL’s primary *Dharma* applies to States. After exploring the ideas of *Dharma* as mentioned above, however, the answer may be broader. It can be said that the ICRC’s guiding role

⁴⁹ Ariel Glucklich, *The Sense of Adharma*, Oxford University Press, April 1991, pp. 7–8.

⁵⁰ Arthur Eyffinger and Arthur Witteveen, *The International Court of Justice 1946–1996*, 1966, pp. 204-205.

⁵¹ Above note 33.

⁵² Gaurav Arora, Gunveer Kaur, Supriya Prodaturi, et al., “International Humanitarian Law and Concept of Hinduism”, *Zenith: International Journal of Multidisciplinary Research*, Vol. 2, No. 2, February 2012.

⁵³ Mahmoud Cherif Bassiouni, “The Normative Framework of International Humanitarian Law: Overlaps, Gaps and Ambiguities”, *Transnational Law and Contemporary Problems (Transnat’l L & Contemp Probs)*, Vol. 199, 1998, p. 200; Christopher Greenwood, “Historical Development and Legal Basis” in D. Fleck and M. Bothe (eds), *The Handbook of International Humanitarian Law*, Vol. 1, 2008, p. 11.

⁵⁴ Antoon De Baets, “The View of the Past in International Humanitarian Law (1860–2020)”, *International Review of the Red Cross*, Vol. 104, No. 920-921, 2022, pp. 1586-1620.

ensures Dharma in IHL.⁵⁵ Academics too, who contribute to IHL by developing important soft laws such as the Tallinn Manual,⁵⁶ take forward the practice of *Dharma*. Humanitarian organisations and NGOs play their part in actively trying to engage all in humanising IHL. As a result, the *Dharma* of IHL remains distributed between a shared responsibility of many. A detailed study of the relationship between IHL and *Dharma* may result in valuable new insights on the morality and responsibility related to the modern laws of war. At the same time, it is equally important to discuss the inculcation of *Dharma* into warfighting. For that reason, the next section will delve deeper into the rules of battle in the *Mahabharata*, and what can be learned in this regard for both civilians and the armed forces of States.

3. *Mahabharata* and *Jus in Bello* – Tales of Dharmic Fighting

There is a strong connection between the Epic and the law of armed conflict. The *Mahabharata* is primarily the story of a battle that took many lives, with only a few known survivors.⁵⁷ For IHL, its relevance is multi-fold because it explores the rules of conduct and the humanisation of armed conflict. This section aims to establish the relativity of the Epic with IHL by providing an overview of certain accounts within the story. As the *Mahabharata*

⁵⁵ *Ibid.*

⁵⁶ Michael N. Schmitt (ed), *Tallinn Manual 2.0 on the International Law Applicable to Cyber Warfare*, 2nd ed., Cambridge University Press, 2017.

⁵⁷ John. L. Brockington, *The Sanskrit Epics*, E.J Brill, Leiden, 1998, pp. 41-66; Aditya Adarkar, “The Mahabharata and Its Universe: New Approaches to the All-Encompassing Epic”, *History of Religions*, Vol. 47, No. 4, 2008, p. 317.

is considerably lengthy, a comparison of certain rules of conduct is sufficient to highlight this linkage to IHL.

Jus in bello, international humanitarian law and the law of armed conflict are used interchangeably to refer to the rules of lawful conduct during armed conflict.⁵⁸ The all-encompassing rules are spread differently across international and non-international armed conflict, land and sea, combatants, the protection of civilians, the prisoners of war, and so on. It is ideally meant to include all those who could be affected by the conflict.⁵⁹ The sixth book of the *Mahabharata* is called the *Bhishma Parva*.⁶⁰ It is most widely known for its teachings on military conduct. Interestingly, *Bhishma*, the greatest warrior and teacher imparting knowledge on the fair means of warfare, leads the battle from the “unjust” side of the *Kauravas*.⁶¹ The fact that the rules of battle are preached and taught to both sides by someone representing the “aggressors” is significant. It aims to convey that, like in IHL, once a war has begun the laws of conduct during the conflict apply impartially and equitably to both the aggressor and the aggrieved parties. IHL turns a blind eye to the genesis of conflict⁶² to focus

⁵⁸ Robert Cryer, “Chapter 23: The Impact of Human Rights Advocacy: Between (Mis)stating the Law and Pursuing Humanitarian Policies?”, in *Law-Making and Legitimacy in International Humanitarian Law*, Edward Elgar Publishing, 2021, pp. 385-403.

⁵⁹ The Geneva Conventions and their Commentaries, International Committee of the Red Cross, available at: <https://www.icrc.org/en/war-and-law/treaties-customary-law/geneva-conventions>.

⁶⁰ Kisari Mohan Ganguli (ed. and trans.), *The Mahābhārata: Vol. 1: The Book of Bhishma*, Bharata Press, Calcutta, 1884.

⁶¹ Sabindra Raj Bhandari, “Bhishma as a Superman in the Mahabharata”, *The Outlook: Journal of English Studies*, Vol. 11, 2020, pp. 42-56.

⁶² Yishai Beer, “Military Strategy: The Blind Spot of International Humanitarian Law”, *Harv. National Security Journal*, Vol. 8, 2017, p. 333; Walter Dorn, Raj Balkaran, Seth Feldman, et. al., *The Justifications for War and Peace in World Religions, Part II: Extracts, Summaries and Comparisons of Scriptures of Religions of Indic Origin*

on the conduct of hostilities between the involved parties devoid of a “moral” allowance for the “just” belligerent. Hence, like the *Mahabharata*, in IHL both the hypothetical “righteous” side and the “unjust” side share the same rules. However, the necessity of this dissimilitude is validated by the *Mahabharata* through the above-mentioned comparison. There are the blurry lines States often attempt to create to invoke a “justified” reason for aggression.⁶³ This is *Adharma* (unrighteous conduct or act)⁶⁴ and does not conform to principles that international law traditionally set out to protect.

Therefore, the basis of *Dharma’s* universal application becomes apparent as we further examine the interplay of politics, wars, and the realities of the interpretations of IHL.

As far as the similarities between the Geneva Conventions and the rules of the *Mahabharata* are concerned, a few of them can be highlighted in particular.

Rules for Combatants

The definition of combatants under IHL is “those members of the armed forces who have the right to directly participate in hostilities between States”.⁶⁵ If captured, a combatant has the

(*Buddhism, Hinduism, Jainism and Sikhism*), Contract Report 2010-034, Defence Research and Development Canada, Toronto, 2010.

⁶³ For an example, consider the case concerning allegations of genocide brought against Ukraine by Russia.

⁶⁴ *Ibid.*

⁶⁵ Emily Crawford, "Combatants", in Rain Liivoja and Tim McCormack (eds), *Routledge Handbook of the Law of Armed Conflict*, Routledge, London/New York, 2016, pp. 123-138.

privilege of “prisoner of war” status.⁶⁶ In the *Mahabharata*, “warriors” are directly comparable to combatants under IHL.

The verses of *Mahabharata* provide clear unacceptable practices in war such as “[a] warrior in armor must not fight with another warrior without armor”,⁶⁷ and “[w]arriors should fight only with their equals e.g., cavalry soldiers should not attack a chariot-warrior”.⁶⁸ Although at first glance, this comparison appears impractical on a battlefield where there are no clear demarcations, the first verse draws an interesting link with the so-called “unlawful combatants”.⁶⁹ In this manner, the Epic also adds rules that are not found in IHL, such as of different types of combatants clearly not being allowed to fight each other, suggesting a stronger sense of fairness.⁷⁰ Unlawful combatants, the role they play as actors of an armed conflict and the protection (or lack thereof) that they possess under IHL, have been discussed extensively in literature.⁷¹ The distinction here that becomes apparent with the first verse is the *Mahabharata*’s strict protection

⁶⁶ Katherine Del Mar, “The Requirement of ‘Belonging’ under International Humanitarian Law”, *European Journal of International Law (EJIL)*, Vol. 21, No. 1, February 2010, pp. 105-124.

⁶⁷ Kisari Mohan Ganguli (trans.), “The Mahabharata, Book 6: Bhishma Parva”, Sacred Texts, Verse 45, available at: <https://www.sacred-texts.com/hin/m06/m06096.htm>.

⁶⁸ Kisari Mohan Ganguli (trans.), “The Mahabharata, Book 7: Drona Parva”, Sacred Texts, Verse 32, available at: <https://www.sacred-texts.com/hin/m07/m07190.htm>.

⁶⁹ Frédéric Mégret, “From ‘Savages’ to ‘Unlawful Combatants’: A Postcolonial Look at International Humanitarian Law’s ‘Others’”, in Anne Orford (ed.), *International Law and Its ‘Others’*, Cambridge University Press, Cambridge, 2006.

⁷⁰ Venkateshwara Subramaniam Mani, “International humanitarian law: An Indo-Asian perspective”, *International Review of the Red Cross*, No. 841, 2001, pp. 59-76.

⁷¹ *Ibid.* p. 306.

offered to unlawful combatants, who in today's time are arguably not entirely,⁷² or at least not sufficiently, protected.⁷³

“It does not please me to fight against a man who laid down his weapons, who has fallen, or whose armor and standard are lost”.⁷⁴ This sentence spoken by *Bhishma* reflects the preferential conduct expected of all warriors.⁷⁵ These rules parallel the thoughts submitted in Geneva Convention I⁷⁶ and also parallels prohibitions related to attacking those “hors de combat”.⁷⁷

For wounded soldiers, the *Bhishma Parva* states, “One who surrenders should not be killed, but he can be captured as a prisoner of war”⁷⁸ and “A wounded prisoner should either be sent home or should have his wounds attended to”.⁷⁹ Both rules are visible in general evolution of the Geneva Convention III.⁸⁰ Article

⁷² Chris Jochnick and Roger Normand, “The Legitimation of Violence: A Critical History of the Laws of War”, *Harvard International Law Journal*, 1994, pp. 49- 95.

⁷³ Elbridge Colby, “How to Fight Savage Tribes”, *American Journal of International Law*, Vol. 21, No. 2, 1927, pp. 279-288.

⁷⁴ John D. Smith, (ed. and trans.), *The Mahābhārata*, Penguin Classics, London, 2009, p. 402.

⁷⁵ The rules set out in the Mahabharata are not simply laid out in a handbook or manual or a separate chapter but are rather spread out through dialogue and discourse.

⁷⁶ Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, 75 UNTS 31 (entered into force 21 October 1950).

⁷⁷ Nick Allen, “Just War in the Mahabharata”, in Richard Sorabji and David Rodin (eds), *The Ethics of War: Shared Problems in Different Traditions*, Ashgate, Burlington, VT, 2006, p. 139

⁷⁸ Samuel C. Duckett White, *The Laws of Yesterday's Wars 2: From Ancient India to East Africa, 1st ed*, Brill, 2022.

⁷⁹ John Duncan Derrett, *Introduction to Modern Hindu Law*, Oxford University Press, California, 1963.

⁸⁰ Lakshmikanth R. Penna, “Written and Customary Provisions relating to the Conduct of Hostilities and Treatment of Victims of Armed Conflicts in ancient India”, *International Review of the Red Cross*, Vol. 29, No. 271, 1989.

12 regarding the humane treatment of prisoners (POWs are to be sent back after the war ends) specifically is in line with the aforementioned.⁸¹ The *Shanti Parva*, the Book of Peace, discusses the treatment of prisoners even beyond basic humanity and seeks to ensure their overall well-being. Detailed attention is paid to the food, hygiene of the quarters, and general treatment of prisoners. This mirrors the requirements contained in Article 26 of Geneva Convention IV,⁸² for example.

Rules for Civilians

“The sleepy, the thirsty, a peaceful citizen walking along the road, the insane, one engaged in eating, a camp-follower, a war musician, and the guards at the gates should not be killed”.⁸³

Civilians are defined under IHL as “those who in an international armed conflict do not belong to the armed forces and do not take part in hostilities or ‘levee en masse’.” In this regard, the rules regarding a civilian population in the *Mahabharata* and IHL differ slightly. In battles fought in ancient times, the fact that armies fought in separate allotted battlefields (such as the *Kurukshetra*) itself protected civilians. Therefore, conduct with those who are

⁸¹ Johannes Van Buitenen (ed. and trans.), *The Mahābhārata: Book 4: The Book of Virāta; Book 5: The Book of The Effort*, Vol. 3, University of Chicago Press, Chicago, 1978.

⁸² Geneva Convention (IV) relative to the Protection of Civilians in Time of War of 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950), Art. 26.

⁸³ Sushma Garg, “Political Ideas of Shanti Parva,” *The Indian Journal of Political Science*, Vol. 65, No. 1, January-March, 2004, p. 77.

not combatants is not expressly described in the *Mahabharata*, other than in the way of the aforementioned quote.

Despite this omission in the strict sense, the *Mahabharata* maintains an unwavering dedication to the humanisation of conflict and a strict set of rules of conduct. In the *Mahabharata*, many verses point to absolute intolerance of injuring a woman, child, or elderly. One paragraph states “[n]ever forsake a given word or kill a fallen foe or who has surrendered. No one kills a woman, or a child, or one unseated from his chariot, one gone to pieces, or one whose sword and weapons are broken”.⁸⁴ In IHL, female combatants can be killed but the abovementioned verse agrees with the protection of women covered under Additional Protocol I, which states, “[w]omen shall be the object of special respect”.⁸⁵ Similarly, the First Geneva Convention states that “[w]omen shall be treated with all consideration due to their sex”.⁸⁶ Even though the *Mahabharata* does not specifically provide indicators as to how to treat civilians, through these warnings, it indirectly establishes the need for combatants to engage in hostilities only with opposing combatants.

Specific Principles

A *Kshatriya* (the warrior class according to Hinduism) must fight fairly. Neither poisoned nor barbed arrows should be used. These are instruments of the wicked.

⁸⁴ J. Van Buitenen, above note 81, p. 145.

⁸⁵ Additional Protocol I, Article 76(1).

⁸⁶ First Geneva Convention, Article 12, fourth paragraph (cited in Volume II, Chapter 39, Section 1 of the ICRC database). However, the traditional lens of the *Mahabharata* portrays women as victims and the most vulnerable group, and it does not address developments such as female combatants, etc.

One should fight without yielding to wrath or being fond of unnecessary slaughter. Even he that is wicked should be subdued with fair means⁸⁷

says *Bhishma* in a verse of the *Shanti Parva*. These rules agree with those given under Article 12 of the First and Second Geneva Conventions, and Articles 35 and 41 of Additional Protocol I – stating that parties to the armed conflict cannot defer from certain rules.⁸⁸ In reality, however, there is an imbalance in the implementation of military necessity.⁸⁹ The principle of military necessity often permits armed forces to cause “lawful” destruction⁹⁰ that may be necessary and proportionally justified to the harm it will cause.⁹¹ The principles to balance these with are proportionality⁹² and humanity.⁹³ In practice, military necessity

⁸⁷ Kisari Mohan Ganguli (trans.), "The Mahabharata, Book 12: Shanti Parva", Sacred Texts, Verse 6, available at: <https://www.sacred-texts.com/hin/m12/m12a095.htm>.

⁸⁸ Paul Kennedy and George J. Andreopoulos, "The Laws of War: Some Concluding Reflections", in Michael Howard, George J. Andreopoulos and Mark R. Schulman (eds), *The Laws of War: Constraints on Warfare in the Western World*, 1994.

⁸⁹ Michael N. Schmitt, "Military Necessity and Humanity in International Humanitarian Law: Preserving the Delicate Balance", *Essays on Law and War at the Fault Lines*, T.M.C Asser Press, Springer, 2012, pp. 89-129.

⁹⁰ Expert Meeting on "Targeting Military Objectives", organized by the University Centre on International Humanitarian Law, Geneva, 12 May 2005, discussing the "controversial interpretation and application".

⁹¹ Dietrich Schindler, "International Humanitarian Law: Its Remarkable Development and Its Persistent Violation", *Journal of the sHistory of International Law*, Vol. 5, 2003, p. 165.

⁹² Eric Jaworski, "'Military Necessity' and 'Civilian Immunity': Where is the Balance?", *Chinese Journal of International Law*, Vol 2, No. 175, 2003, pp 179–180.

⁹³ Chris af Jochnick and Roger Normand, "The Legitimation of Violence: A Critical History of the Laws of War", *Harvard International Law Journal*, Vol. 35, No. 49, 1994, p. 66. Declaration Renouncing the Use, in Time of War, of Explosive Projectiles under 400 Grammes Weight (entered into force 11 December 1868), *American Journal of International Law*, Vol. 1, No. 95.

usually takes the lead.⁹⁴ Although not all commentators adopt this position,⁹⁵ the claims in support of this argument go far enough to say that “the laws of war are formulated deliberately to privilege military necessity at the cost of humanitarian values”.⁹⁶

So, when it is time to apply the principle of distinction, under which there exists an obligation to target only combatants and not those who are protected under the Geneva Conventions, the infamous balance between military necessity and proportionality gets thrown off, and there is room for ambiguity. The conversations around civilian casualties are tough because while the language proposes that they cannot be harmed, the principle of proportionality suggests that harming them is not per se prohibited.⁹⁷ When targeting military objectives, harm to civilians is permissible if not excessive.⁹⁸ Though they cannot be targeted, if they are or if they suffer, it is “collateral damage”.⁹⁹ Kennedy describes this in his chapter “Reassessing International Humanitarianism; the dark sides”, where he criticizes the justifications of civilian casualties as “part bureaucratic necessity, part instrumentalism, central to the effectiveness of the mission

⁹⁴ Josef .L. Kunz, “The Chaotic Status of the Laws of War and the Urgent Necessity for Their Revision:”, *American Journal of International Law*, Vol. 45, No. 37, 1951, p. 59.

⁹⁵ Frits Kalshoven, “Human Rights and Armed Conflict: Conflicting Views: Remarks”, *American Society of International Law Proceedings*, Vol. 67, 1973, p. 159.

⁹⁶ Judith Gardam, “Women and the Law of Armed Conflict: Why the Silence?”, *The International and Comparative Law Quarterly*, Vol. 46, 1997, p. 62; See generally George Aldrich, “Prospects for United States Ratification of Additional Protocol I to the Geneva Conventions”, 1991.

⁹⁷ Amanda Alexander, “The Genesis of the Civilian”, *Leiden Journal of International Law*, Vol. 20, No. 359, 2007, p. 364. [no such supra note]

⁹⁸ Christopher Greenwood, “A Critique of the Additional Protocols to the Geneva Conventions of 1949” in T.L.H. McCormack and H. Durham (eds), *The Changing Face of Conflict and the Efficacy of International Humanitarian Law*, Vol. 3, 1999, p. 7.

⁹⁹ Radhika RV, “Revisiting the Ancient Indian Laws of Warfare and Humanitarian Laws”, *IndraStra Global*, Vol. 3, No. 3, pp. 1-4.

and the safety of the colleagues – wrapped in honor, integrity, on a culture set off from civilian life, a higher calling”.¹⁰⁰ While Article 48 of the Additional Protocol relates to the protection of victims of international armed conflicts (IACs)¹⁰¹ and Article 51 protects civilians from military operations¹⁰², the principle of distinction allows certain “privileges”¹⁰³ and “mistakes”¹⁰⁴ made by combatants which the strict laws of the *Mahabharata* prohibit. However, the permissibility of committing mistakes in IHL is for sure grounded in its pragmatism and practicality. As discussed, even without express declarations, the *Mahabharata* operates in a reality wherein civilians are inherently and unequivocally protected because of factors like the separate battlefield. This offers an easier set-up for disseminating stricter rules as opposed to IHL’s need to consider the acceptance of States. In the *Mahabharata*, the humanisation of armed conflict is present in all of its teachings. It can be argued that there is a desired, even if realistically unachievable, equipoise and balance of the principles. This insinuates that the means and method of warfare could never be devoid of adherence to humanity (if not human rights per se). IHL strives to achieve a similar kind of synergy with international human rights law.

¹⁰⁰ *Ibid.*

¹⁰¹ Above note 59.

¹⁰² Jean Pictet, *The Fundamental Principles of the Red Cross: Commentary*, Henry Dunant Institute, Geneva, 1979.

¹⁰³ William J. Fenrick, “Attacking the Enemy Civilian as a Punishable Offense”, *Duke Journal of Comparative and International Law*, Vol. 7, 1997, p. 539.

¹⁰⁴ Michael Barnett, *Empire of Humanity: A History of Humanitarianism*, Cornell University Press, New York, 2011, pp. 16–17; Oona A. Hathaway, Azmat Khan, “Mistakes’ in War”, *University of Pennsylvania Law Review*, Vol. 173, No. 1, 2024, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4799550.

The discourse in the *Mahabharata*, with all its connections, brings us a step closer to an ancient take on the collaboration of humanity in war. To that effect, as this section highlighted the rules, it is only natural to explore why these rules exist in the first place – an explanation of which will follow in the next section.

4. The *Bhagavad Gita* and *Jus Ad Bellum*

Jus ad bellum is concerned with proponents of going to war such as a just cause.¹⁰⁵ For fruitful implementation of IHL, it has mostly been agreed upon by the international community to separate it from *jus in bello*. However, in reality, such is hardly the case.

This section explores the connection between the *Bhagavad Gita* and the infamous right to wage war – *jus ad bellum*.¹⁰⁶ The *Bhagavad Gita* or the Song of God is the most significant part of the *Mahabharata*.¹⁰⁷ It is enunciated in Book Six, the *Bhishma Parva*, and is 700 verses in length. It is written in the form of a dialogue between *Arjuna*, the *Pandava* warrior prince, and his guide, mentor and charioteer, the Lord *Krishna*. The scene enunciated is the beginning of the *Dharmayuddha*¹⁰⁸ – the “righteous war”.¹⁰⁹

¹⁰⁵ Surya P. Subedi, “The Concept in Hinduism of ‘Just War’”, *Journal of Conflict and Security Law*, Vol. 8, No. 2, October 2003, pp. 339–361.

¹⁰⁶ Tom Ruys, “The Quest for an Internal *Jus Ad Bellum*: International Law’s Missing Link, Mere Distraction, or Pandora’s Box?”, in Claus Kreß, and Robert Lawless (eds), *Necessity and Proportionality in International Peace and Security Law*, Lieber Studies Series, Oxford Academic, New York, 19 November 2020.

¹⁰⁷ Swami Prabhavananda, *Bhagavad Gita - The Song of God*, Read Books Ltd, 2012.

¹⁰⁸ *Ibid.*

¹⁰⁹ Surya P. Subedi, “The Concept in Hinduism of ‘Just War’”, *Journal of Conflict and Security Law*, Vol. 8, No. 2, October 2003, pp. 338.

In the story, *Arjuna* is devastated by his moral, emotional and personal despair and sees no reason to cause violence and the death of his kin. In essence, he questions what the necessity and validity of war could be, no matter how important the moral reason, at the cost of the destruction, atrocities and lives lost. Perplexed and disillusioned, he seeks *Krishna's* advice on the battlefield of *Kurukshetra* right as they are about to begin. An absence of fulfilling this duty of going to war would lead to ill consequences for both the society at large, and his soul. Within what is overarchingly a book of spiritual lessons, interestingly *Krishna* answers the questions – What are the conditions under which armed conflict is justified? What are the conditions under which resorting to military action is seen as acting within “*Dharma*”? “I would appear in every age for protection of the honest, for destruction of miscreants, and for preservation of *dharma*”.¹¹⁰

Krishna then pauses time and space, shows his true cosmic form, and responds. It is in the *Gita* that the Lord justifies righteous war and urges *Arjuna*, the reluctant warrior, to fulfill his *Dharma* by going into war.¹¹¹ *Krishna* counsels *Arjuna* to perform his duty as a warrior and to uphold the *Dharma* through *Karmayoga* by stating “happy are the warriors to whom such fighting opportunities for dharmic causes come unsought,

¹¹⁰ J. Koller, above note 27, p. 62.

¹¹¹ Alladi Mahadeva Sastry, *The Bhagavad Gita: With the Commentary of Sri Sankaracharya* (trans.), 1997, p. 117.

BG 11.32: “The Supreme Lord said: I am mighty Time, the source of destruction that comes forth to annihilate the worlds. Even without your participation, the warriors arrayed in the opposing army shall cease to exist.”

opening for them doors of the heavenly planets”.¹¹² *Karmayoga* is the law of cause and effect, simply translating to one’s action. One who follows this path must perform righteous actions.¹¹³ Munshi calls it the “noblest of scriptures and the grandest of sages that the world is beginning to recognise”.¹¹⁴ The *Gita* accepts the necessity of war as a last resort but advocates the necessity of minimizing the suffering it brings within this reality.

Book Five of the *Mahabharata*, called the “Book of the Effort”,¹¹⁵ highlights the attempts made to avoid war. Book Six, then, accepts the waging of war as a result of the failure of all means of diplomacy.¹¹⁶ Rosen explains the Hindu Doctrine of Just War as the “four means, which include three methods of diplomacy that attempt to avoid war (the fourth and final alternative)”.¹¹⁷ Therefore, “if one observes the first three of these tactics and cannot find a peaceful solution, then war becomes inevitable, and may even be deemed righteous”.¹¹⁸ He also states that “a righteous war, by this definition, is not religious but based

¹¹² *Ibid.*

¹¹³ *Ibid.*

¹¹⁴ Kanaiyalal M. Munshi, in his foreword to Kamala Subramaniam’s *Mahabharata* (1977).

¹¹⁵ James L. Fitzgerald (ed. and trans.), *The Mahābhārata: Volume 11: The Book of the Women; Volume 12: The Book of Peace, Part One*, Vol. 7, University of Chicago Press, Chicago, IL, 2004.

¹¹⁶ Ganguli, Kisari Mohan (ed. and trans.), *The Mahābhārata: Vol. 1: The Book of Bhishma*, Bharata Press, Calcutta, 1884.

¹¹⁷ S. Subedi, above note 105, pp. 339–61.

¹¹⁸ Robert N. Minor (ed.), “Modern Indian Interpreters of the Bhagavad Gita”, *SUNY Series in Religious Studies*, State University of New York Press, Albany, New York, 1986, p. 3.

on principles of justice and self-defense and is always engaged in as a last resort”.¹¹⁹

In contemporary international law, there are two ways in which “legitimacy” may be derived for an armed conflict to qualify as lawful. The first is an act of self-defense under Article 51 of the UN Charter¹²⁰, and the second is a mandate by the Security Council.¹²¹ Both are often contested as being politically motivated and provide for problematic “just” circumstances of war.¹²² Therefore, and rightfully so, the preferred language over time has shifted from Just War to the lawful use of force.¹²³ This change has a definite element of detaching morality from law.¹²⁴

IHL, as a sub-system of international law, upholds protections during a circumstance (war and armed conflict) that in itself is condemned on humanitarian grounds.¹²⁵ The Korean War, for example, was fought by the UN Command.¹²⁶ It often presents

¹¹⁹ Steven Rosen, “Holy War: Violence and the Bhagavad Gita”, *Indic Heritage Series*, Deepak Heritage Books, Hampton, Virginia, 2002.

¹²⁰ Josef L. Kunz, “Individual and Collective Self-Defense in Article 51 of the Charter of the United Nations”, *American Journal of International Law*, Vol. 41, No. 4, 1947, pp. 872-879.

¹²¹ Stefan Talmon, “The Security Council as World Legislature”, *American Journal of International Law*, Vol. 99, No. 1, 2005, pp. 175–193.

¹²² Jeroen van den Boogaard, “Determining Excessiveness and a Plea for Tilting the Balance towards Humanity”, in *Proportionality in International Humanitarian Law: Refocusing the Balance in Practice*, Cambridge University Press, 2023, pp. 253-282.

¹²³ Martin L. Cook, “Applied Just War Theory: Moral Implications of New Weapons for Air War”, *The Annual of the Society of Christian Ethics*, Vol. 18, 1998, pp. 199–219.

¹²⁴ Hilly Moodrick-Even Khen, “Aidōs and Dikē in International Humanitarian Law: Is IHL a Legal or a Moral System?”, *The Monist*, Vol. 99, No. 1, 2016, pp. 26–39.

¹²⁵ Antoon De Baets, “The View of the Past in International Humanitarian Law (1860–2020)”, *International Review of the Red Cross*, Vol. 104, Nos. 920-921, 2022, pp. 3, 1586-1620.

¹²⁶ *Ibid.*

contradictions in international law as the use of force is customarily recognised as an unlawful practice.¹²⁷ That is not to say that IHL contradicts international law, but that war in itself contradicts international law. To have a law governing an established unlawful exercise,¹²⁸ then, is quite a moral paradox. The teachings of Hinduism share similarities in this nuance as will be highlighted, and therefore are worthwhile to explore.

Just War theorists who advocate for justifications of advancing aggression have upon themselves the onus of providing a clear consensus of what exactly constitutes a “just” cause.¹²⁹ As a result, given the quest for legal backing that States strive to fall back on after committing all atrocities, in the aftermath wherein justifying the preconditions of the aggression becomes important, self-defense is considered the safe option.¹³⁰ It can be said that “aggressive war is only permissible if its purpose is to retaliate against a wrong already committed”.¹³¹ States frequently interpret this to fulfill their political purposes and establish a form of “righteousness” in their conduct. The case against Ukraine by the Russian Federation in the International Court of Justice is a perfect example of an attempt made by a State to circumvent duties arising under international law for illegal aggression by drawing a veil of “just cause for just war” on their gross violations of IHL,

¹²⁷ *Ibid*, p. 26.

¹²⁸ Jeroen van den Boogaard, *Proportionality in International Humanitarian Law: Refocusing the Balance in Practice*, Cambridge University Press, 2023.

¹²⁹ James Pattinson, "The Ethics of Diplomatic Criticism: The Responsibility to Protect, Just War Theory, and Presumptive Last Resort", *European Journal of International Relations*, Vol. 21, No. 4.

¹³⁰ Ian Brownlie, *International Law and the Use of Force by States*, 1963, p. 118.

¹³¹ *Ibid*.

human rights and the basic governing principles of the United Nations Charter as provided under Article 2(4).¹³²

An interpretation by Chattopadhyay describes the relationship between acting on the philosophy of *Dharma* or a lack thereof, to aggression and use of force by States.¹³³ He compares self-preservation and protection¹³⁴ from this kind of aggression as the only justified form of force, following *Dharma*. The *Mahabharata*, however, allowed for wars of conquest to be justifiable as well. In this manner, the teachings of the *Gita* are in line with Article 51 of the United Nations Charter affirming the “inherent right of self-defense” as the legal means of resorting to force. However, there is no exclusivity of *jus ad bellum* from *jus in bello*. Adding to Moseley’s idea¹³⁵, the overlapping occurs in legal morality and guidelines of the proportionality of the war and the conduct in war. These connections are all in the foreground of the *Gita*.

The bridge lacking between *jus ad bellum* and *jus in bello* in IHL is one that the *Gita* profoundly attempts to mend. Essentially, all rules of war mentioned in the *Mahabharata*, morality, humanity and ethical conduct were to be non-negotiable and upheld by the warriors. *Krishna’s* actions which will be addressed in a later section, however, showed some exception to this rule although not completely. Not only to fight a “Just War”, but to supplant the

¹³² *Ibid*, p. 119.

¹³³ M. Kosuta, above note 11, pp. 186-200.

¹³⁴ Bankimchandra Chattopadhyay, *The Principle of Dharma*, Gangchil, pp. 90-91.

¹³⁵ Alexander Moseley and Richard Norman (eds), *Human Rights and Military Intervention*, Ashgate, 2001.

war with “Just Actions”. Scholars mostly agree¹³⁶ that there exists a lacuna between the practice of human rights law and IHL.¹³⁷ As arguably one of the earliest incarnations connecting *jus ad bellum* and *jus in bello*, the words of the *Gita* in connection to the *Mahabharata* stand to attempt to fill this lacuna.

However, even the Epic universally known for placing morality in conduct and humanity above all fell prey to the realities of war.

5. Even God Cannot Waver

“The dance between idealistic and pragmatic approaches to battle has been well rehearsed”,¹³⁸ state Balkaran and Dorn when concluding the relationship between combat ethics and the considerable gap in the actual behavior on which the rules are predicated in the *Mahabharata*.

Book Ten, the “Book of the Night Massacre”, showcases many rules of *Dharmayuddha* being broken when an attack is conducted by the *Kauravas* during the final night.¹³⁹ This is the last night in the gradual diminishing of morality resulting in breaches of military laws.¹⁴⁰ There is a breach of *Dharma* in the very Epic

¹³⁶ Anthony Cassimatis, “International Humanitarian Law, International Human Rights Law, and Fragmentation of International Law,” *International and Comparative Law Quarterly*, Vol. 56, 2007, p. 623; Christine Byron, “A Blurring of the Boundaries: The Application of International Humanitarian Law by Human Rights Bodies”, 47 *Virginia Journal of International Law*, Vol. 47, No. 839, 2006–2007.

¹³⁷ Francois Bugnion, “Customary International Humanitarian Law”, *ISIL Yearbook of International Humanitarian and Refugee Law*, Vol. 7, 2004.

¹³⁸ Raj Balkaran and A. Walter Dorn, above note 12, p. 5.

¹³⁹ See generally W.J. Johnson, *The Sauptikaparvan of the Mahabharata: The Massacre at Night*, Oxford Publications, 7 April 2010.

¹⁴⁰ *Ibid.*

that propounds and spreads the idea of it. Although killing combatants in their sleep is not disallowed in IHL, it is prohibited in the *Mahabharata*. Therefore, the link to IHL here is more directed at the reality of its shortcomings in the face of foul play by States – displaying illegal means that shatter notions of justice across *jus ad bellum* and *jus in bello*.

The *Mahabharata* and the *Bhagavad Gita* place *Dharma* above everything. Despite this, both the “righteous” *Pandavas* and the “unjust” *Kauravas*, and even Lord *Krishna* himself, indulged in the unfair means of *Kutayuddha*. Despite the clear scripture outlining just military conduct, despite the need to adhere to *Dharma* for a peaceful afterlife, all sides resorted to unlawful means in certain cases towards the end of the battle. This does not reduce the credibility of the Epic concerning the rules and knowledge of conduct it aims to impart. Indeed, in the view of the current author, it makes the Epic even more human. In the *Mahabharata*, the *Lord Krishna* is put in a position where he falters too. The most intriguing step the Epic takes is that he too, is punished for this conduct.

The superstition related to the *Mahabharata*, owing to its intensity, is that it is forbidden to keep or read the text in one’s home, as doing so will almost certainly result in conflict within the household. The *Gita* on the other hand, although born out of the same story, blesses the home of the reader and keeper and brings good fortune and *Karma*. It would seem strange that the fruit of the *Mahabharata*, given the context of it being narrated to persuade *Arjuna* to fulfill the *Dharma* of participating in a war, is also the sacred text that governs the religion. However, after an exploration of the above-mentioned parts of the Epic, it is no

longer strange. It is an ode to life and spiritual forces within all people. It is also the truth of the politics and realities of war, the inevitable nature of it, and the legal rules that are necessary to govern it regardless. “Progressive accounts of IHL use the past to mark how bad things used to be, and how better they are now. The past is a stool on which the present elevates itself”.¹⁴¹ However, in contrast, the Epic can set the standard high for IHL.¹⁴² The *Mahabharata* has instances where *Krishna* himself not only falters but is also punished.

Lord Krishna’s “divine intervention” has been questioned on many accounts. The *Mahabharata* recounts that even *Krishna* was punished for both the idea of war, and wavering from its rules. The instance is beautifully told by Nandy¹⁴³, in the framing of an introduction elsewhere¹⁴⁴, as he re-narrated one of the final scenes of the war when Lord Krishna himself intervenes and leads one of the *Pandavas* to victory despite the duel going in favor of the *Kaurava* he was fighting against. One day, *Duryodhana* goes to a pond and sits underwater to deal with anguish, pondering on an incoming potential defeat. *Krishna* tells *Bhim* (a *Pandava*) to use this timing to his advantage and lure *Duryodhana* out of the pond to engage in a fight. In this way, the scene is set for the final duel. In a fit of rage, *Duryodhana* is almost about to defeat *Bhim* when *Krishna* intervenes and reminds *Bhim* of a vow he had once taken

¹⁴¹ Heike Krieger, Pablo Kalmanovitz, Eliav Lieblich, and Rebecca Mignot-Mahdavi (eds), *Yearbook of International Humanitarian Law, Volume 24 (2021): Cultures of International Humanitarian Law*, Springer Nature, 2023.

¹⁴² Torkel Brekke, “Between Prudence and Heroism”, in Torkel Brekke (ed.), *The Ethics of War in Asian Civilizations*, Routledge, London, 2006, pp. 137–138.

¹⁴³ Ashis Nandy, “The Other Within: The Strange Case of Radhabinod Pal’s Judgment on Culpability”, *New Literary History*, Vol. 23, No. 1, 1992, pp. 45-67.

¹⁴⁴ *Ibid.*

to break *Duryodhana's* thighs. However, according to the rules, in a mace fight (which was their weapon of choice), warriors are not allowed to hit below the belt. *Krishna* knew it was the only way to kill him as it was the only part of his body unprotected by his mother's spiritual spell of invincibility. On the verge of death, *Duryodhana* (a *Kaurava*) "delivers a majestic admonition to *Krishna* for participating in dishonorable conduct in war".¹⁴⁵ *Duryodhana* dies a slow death, though arguably and visibly for the greater good because of his unjust actions, but lamenting solely on *Dharma* and the rules of war, he too is awarded a punishment given to *Krishna* for initiating the wrongful conduct of swaying from the rules.

The conclusion Nandy draws is that the moral codes of battles are not to be contextualised, and possibly forgiven on that front. Moral past and reasons are not relevant to conduct that is forbidden to be swayed from. "In such a world the rules of combat have priority of the demands of vengeance. For only such rules can boast of moral constancy in a world of the imperfectly moral and the imperfectly immoral".¹⁴⁶ By stating this, he highlights what is essential for this article too – "In Indian epics, no one is all-perfect".¹⁴⁷ By doing so, we realise that not even a god (*Vishnu* in the avatar form of *Krishna*) can waver from rules, and if he does, he will also be punished. His punishment, a curse from *Duryodhana's* mother the Queen, was that he and all his following

¹⁴⁵ *Ibid.*

¹⁴⁶ *Ibid.*

¹⁴⁷ Briony Hill, "Reason and lovelessness: Tagore, war crimes, and Justice Pal", in *Indo-Australian Relations*, Routledge, 2017, pp. 59-74.

generations would die and he would mourn the death of his children and the end of his dynasty.¹⁴⁸

Conclusion

This article drew parallels between IHL and the ethics of warfare in the *Mahabharata*, the *Bhagavad Gita*, and *Dharma: jus in bello* as recorded in the *Mahabharata*, *jus ad bellum* as preached in the *Bhagavad Gita*, and an exploration of their co-existence. It becomes strikingly visible that the resemblance between the ancient and modern is not only of normative similarities of the laws but of two other realities. The first is that even an ancient Epic, one that supposedly justified “Just War”, preached strict humanization and morality while performing military duties taking place at the cost of war. IHL, on the other hand, better recognises the illegality of war but still sanctions some form of collateral damage. The second, is the effect of the realities of war on the implementation of these rules, regardless of the nature of their interpretation and the strictness of the morality attached to their application.

“The laws of war are probably as old as war itself.”¹⁴⁹ – It is claimed by many that IHL made wars more humane as if it were not a part of traditional old wisdom to do so.¹⁵⁰ While this may be true for the European context,¹⁵¹ it is not for Hinduism. The *Mahabharata* thereby becomes an important place to learn and ponder about many nuanced aspects of IHL as we know them. As

¹⁴⁸ Pushkarprabhat D. Saxena, “The Curse of Gandhari”, *Medium*, 22 December 2021, available at:

<https://medium.com/thehindumythology/the-curse-of-gandhari-96a92b7cd004>.

¹⁴⁹ S. Subedi, above note 105, pg 166-200.

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*

such, the teachings of Hindu philosophy in comparison to IHL deserve a more detailed study, as this article attempts to do.

In wartime, everyone falters at some point, even the supposed “righteous”. This includes victims of aggression, belligerents who earnestly want to apply IHL, and humanitarian interveners driven by genuine intentions. What reclaims the sanctity of the intentions of IHL does not rest in the fact that they never waver, because they do. The moral of the story lies in the importance of holding accountability even if they do – even *Lord Krishna* was.