



RESEARCH ARTICLE

WOMEN IN CRISIS: VIOLENCE AGAINST WOMEN DURING ARMED CONFLICT SITUATION-
EXPERIENCE FROM NORTH-EAST INDIA

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ABSTRACT

The India's north-east has witnessed active internal armed conflict for decades and several 'special security' laws, particularly the Armed Forces Special Power Act (AFSPA), have bred into the culture of impunity. Women are often portrayed as passive victims during armed conflict situations. Stereotypical essentializing women as victims and men as perpetrators of violence deny each their agency and voice as actors in the process. Sexual violence in armed conflict situation is mostly unreported though widespread. The culture of impunity and social notion of women as the bearer of the honour of the family and society results in culture of silence over the crimes of sexual violence committed during armed conflict situations. It is seen that in the larger frame work of addressing various issues of the conflict, women's concern take a backseat. Consequently, their needs and issues get buried within larger scheme of consideration. Conflict situations puts additional strain on women who get twice as marginalized as well as vulnerable to attacks from the aggressive opposition as women are most often symbolize the honour of the family. Legal procedural aspects together with the social notion of 'honour' have denied women justice for sexual violence. The paper attempts to explore the various dimensions of violations and discriminations suffered by north-east women in armed conflict situations, by using the growing toolkit of international instruments to protect and advance women's human rights. The paper also highlights India's continuing and resounding failure to progressively realize the key women's human rights and to respect women's dignity in armed conflict situations.

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INTRODUCTION

Ever since the British withdrawal from the country, India's north-east has been scarred by sustained separatist insurgencies movements, mass agitations, ethnic riots and heavy handed state response resulting continuous bloodletting in the region. Since independence it has witnessed armed conflict not only between the armed opposition groups and state agencies, but it has also witnessed frequent fighting between different ethnic militias acting in the region. Consequently, the Indian federal government and those governing the states in the north-east have deployed large formation of regular army, federal paramilitary forces and the state armed police for counter insurgency operations. The inevitable militarization of the region and the covert operations has been accompanied by rampant human rights violations due to the unrestrained use of terror by both the parties - the state forces and the non-state actors.

Consequently, the region has often been witnessed of extra-judicial killing, ethnic cleansing, rape and various forms of torture, large scale massacre, followed by a great number of displacement. The most adversely affected sections of the society during and after the armed conflicts are women and children. Conflict and militarism are more likely to create environments that repress and harm women disproportionately as compared to that of men.¹ Surprisingly, gender violations are rarely seriously addressed by human rights campaigns and state protection mechanisms both during and after the armed conflicts. Even during the time of emergency often devalues the rights of women. The paper highlights how often the plight of women and the impact of war on their lives had been ignored. Women are, owing to their position in the society, affected by armed conflict differently than man.

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¹ Gardam, Judith Gail and Charlesworth, Protection of Women in Armed Conflict, Section 2 Gender and Peace Keeping Course manual, p. 124, available at genderandpeacekeeping.org; see also in Human Rights Quarterly, Vol. 22, No. 1, February 2000.

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Their problems resulting from situations of conflict are very often neglected. It is, therefore, important to bring attention to these issues and create awareness to the rights of women have in such circumstances as well as present possible means to improve their situation.

Defining Armed Conflict

Although international and internal armed conflict may differ in various aspects, their impacts on women's lives are similar. Thus, when taking about armed conflict, it is necessary to interpret the term "internal armed conflicts" in its broad sense encompassing situations that are not officially recognized by the respective states, however, which due to their characteristics could be acknowledged as such. Even though, in many cases of internal armed conflict, governments refuse to admit the existence of a conflict situation to avoid the recognition of armed groups in fear of granting these groups legitimacy.² Based on the common Article 3 of the Geneva Conventions 1949 and article 1 of the Additional Protocol II, the ICRC defines internal conflicts as "protracted armed confrontations occurring between governmental armed forces and the forces of one or more armed groups, or between such groups arising on the territory of a State (party to the Geneva Conventions). The armed confrontation must reach a minimum level of intensity and the parties involved in the conflict must show a minimum of organization."³ After reaching a minimum threshold, it is possible to apply this definition to the case of number of armed confrontations happening in India. India does not declare officially any of its conflict situation as internal armed conflict, albeit there are great number of armed groups fighting for decades in different regions of the country.⁴

Since independence, India has experienced several situations of armed conflict within the country. However, Government of India (GOI) does not officially acknowledge the prevalence of any armed conflict within its territory. It is evident from the fact that in 2006, as part of the pre-session question, the Committee on Elimination of all forms of Discrimination against Women (the CEDAW Committee) asked the Government of India to "inform the Committee on how Security Council Resolution 1325 is being implemented in India and how gender perspectives are being mainstreamed in military operations in "disturbed areas and conflict areas."⁵ The Indian government stated that: "The contents of the Security Council Resolution 1325 have been circulated to relevant Ministries in the Government. There are no situations of 'armed conflict' within the territory of India, and hence the Security Council Resolution 1325 relating to Women in Armed Conflict is not applicable to India. The Indian Army has an excellent track record of protecting human rights, and is particularly sensitive to the rights of women and children while carrying out its duties. With regard to the mainstreaming of gender perspectives in 'disturbed areas', the following actions are regularly undertaken...."⁶

² Amnesty International, *Rights and Democracy, Investigating Women's Rights Violations in Armed Conflicts*, 2001.

³ ICRC. How is the term "Armed Conflict" defined in International Humanitarian Law? Opinion Paper, March 2008. Available at : <http://www.icrc.org/web/eng/siteeng.nsf/html/armed-conflict-article-170308/Sfile/Opinion-paper-armed-conflict.pdg>.

⁴ Sumiran Preet Kaur, *Conflict of Nowhere People*, November, 2009, available at : <http://www.hardnewsmedia.com/2009/11/3351> (last visited June 2016).

⁵ CEDAW; Thirty-seventh session 15 January to 12 February, 2007. Responses to the list of issues and questions for consideration of the combined second and third periodic report of India.

⁶ *Ibid*, Reply to the question.

The Government of India consistently denied any armed conflict in the country and the country has not taken responsibility for addressing the fall out of various violent conflict situations within the country. India does recognise and declare certain areas as 'distributed areas'⁷ and 'insurgency infected areas'. At present, three major areas of conflict in India are Jammu and Kashmir, North-eastern states and central and eastern India where Maoist rebels operate. A large number of armed groups have been fighting for independence, integrating into Pakistan or simply for more autonomy in Jammu and Kashmir since 1989. It is estimated that 47000 to 77000 people have fallen victim to the conflict during this time. North-eastern states, specially Assam, Manipur, Nagaland and Mizoram have experienced separatist groups of insurgency, where more than 40000 people have been killed in the fighting's since 1979. Further the attempts of the Maoist insurgents to take over power in the eastern and central Indian States resulted in at least 6000 people death.⁸

Despite such alarming numbers and wide powers of the military in these areas, owing to special Acts that have been introduced to help defeat the insurgents such as the Armed Forces (Special Powers) Act, 1958, India refrains from proclaiming the regions as armed conflict areas and thereby denies the affected population from the protection of the Geneva Conventions, 1949. The Government of India does not ever use the term "armed conflict", on the international platform, to refer the armed conflict situation within the country. The nature of conflicts in India, particularly in North-east, is extremely complex, such as movements for greater autonomy, right to self-determination or secession, ethnic identity based, communal (caste and religious conflicts) and 'ideological'.⁹ Such conflict situations are highly militarized with the presence of armed forces, government para-military forces and armed insurgent groups.

Violence against women in armed conflict

Violence against women during times of armed conflict is especially horrifying and has been a persistent and widespread practice over centuries. There is almost an unwritten legacy that this is an accepted norm during war.¹⁰ Entrenched discriminatory attitudes and practices, combined with ineffective law enforcement mechanisms as well as generalized cultures of systematic sexual violence perpetuate in armed conflict have seriously affected women. Specially, impunity for sexual violence during armed conflict is still the

⁷ As originally enacted, the powers to declare an area to be a 'disturbed area' was conferred only upon the State governments. In 1972, the Armed Forces (Special Powers) Act, 1958, has been amended and thereby the power was conferred upon Central government. The reason for conferring such a power upon the Central government is stated in the 'Objects and Reasons' appended to the Bill, which reads thus :

"The Armed Forces (Assam and Manipur) Special Powers Act, 1958 empowers only the Governors of Union Territory as 'disturbed'. Keeping in view, the duty of the Union under Article 355 of the Constitution, inter alia, to protect every State against internal disturbance, it is considered desirable that the Central government should also have power to declare areas as 'disturbed', to enable its armed forces to exercise the special power."

⁸ Ranvijay, *Violent Conflict in India : Issues of Contention*, January, 2010, available at : <http://www.monitor.upeace.org/innerpg.cfm? id article = 685> (last visited July, 30, 2016).

⁹ Armed struggles based on left political ideology like those of the Maoists against denial of justice and dignity of tribal and other marginalised people in some parts of the country.

¹⁰ The People's Movement for Human Rights Learning, (PMHRL), *Critical Area of Concern E : Women and Armed Conflict*, available at : <http://www.pdhre.org/passport-ch9.html>. (last visited 30th July, 2016).

norm, sending the message that it is somehow socially acceptable, and thereby perpetuating a culture of tolerance, particularly where peace agreements and / or ceasefires fail to address the issue.”¹¹ Consequently, levels of sexual violence against women and girls have even been increased in the wake of some armed conflicts.¹² The Declaration on the Elimination of Violence against Women (DEVAW) defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.” Violence against women is understood as encompassing but not limited to the following:

- Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
- Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
- Physical, sexual and psychological violence perpetrated or condoned by the State wherever it occurs.”

Women are often caught in between violence from all sides- next to domestic violence they frequently have to face custodial violence as well as threats and mistreatment from militants. The abuse of anti-terrorism legislation and impunity of military forces is infamous. In conflict, men get brutalized and all levels of relationships are determined by the use of force over the other, and consequently all types of violence are perpetrated.¹³ There are number of cases of women raped during search operations, as a form of retaliation against civilians believed to be sympathetic to or directly attached to the militants. No reliable statistics of numbers of rape by security forces exist, as the state prefers to overlook them, rarely take up their investigation and even in fewer times actually punishes the perpetrators.¹⁴ While the government has claimed that inquiries have been ordered on reports of rape and action taken against guilty, the Indian authorities have not made them public any prosecutions or punishments of security personnel in any of these cases. Even when investigations are ordered, they do not result in prosecutions.¹⁵ Sexual violence in armed conflict and its aftermath goes largely unreported. Accurate data are, therefore, not available concerning the full scope of its prevalence of such violence.¹⁶

¹¹ Geneva Academy of International Humanitarian Law and Human Rights, “The Situation of Women’s rights 20 Years after the Vienna World Conference on Human Rights”, Academy In-Brief No. 4, Geneva, June 2014, available at : www.geneva-academy.ch (last visited 30 June, 2016).

¹² For instance, cases of rape and forced prostitution in Liberia and Sierra Leone increased significantly following conflict in these states. See K. Taylor-Smith et al., ‘Sexual Violence in Post-Conflict Liberia : Survivors and their care’, *Tropical Medicine & International Health*, Vol. 17 (2012), pp. 1356-60.

¹³ Anuradha M. Chenoy, *Resources of Symbols ? Women and Armed Conflicts in India*, in Shrestha, Ava Darshan-Thapa, Rita (ed.), *The Impact of Armed Conflicts on Women in South Asia*, Colombo : Regional Centre for Strategic Studies, 2007.

¹⁴ SAHRDC, *India and CEDAW : Who’s Afraid of Too Much Equality ?* 24 August, 2007, available at : <http://www.hrdc.net/sahrhc> (last visited 30 July 2016).

¹⁵ See, HRLN, *supra* note 12a, p. 25.

¹⁶ For example, A Magisterial inquiry was ordered in the case of five women reportedly raped near Anantnag on December 5, 1991, but the magistrate’s

The history of armed conflict has established that sexual violence is often used as a weapon in conflict and that this can be highly effective – it devastates the victim both physically and psychologically and its shatters communities. Sexual violence is used to intimidate, punish, demoralize, and control victims and their communities. Women are often targeted by hostile groups to dishonour the community as a whole. Rape in war has in most cases little to do with sexual satisfaction. It is perceived as an achievement of power and thus used to humiliate the enemy. North-east region of India has been witnessed to an ongoing low intensity armed conflict for almost more than six decades. While the entire populace of the region continues to suffer, women living in such conditions are most vulnerable. The most critical element of disadvantage suffered by women in such conditions is violence. During the armed conflict, even the state, which is supposed to be a guardian of their lives and rights, poses a threat to them. In ethnic conflict, women and children are easy victims and often the first ones to be killed. Even when they manage to survive from direct physical violence they have to bear heavy economic responsibility. The reason is that the conflict in the north-east region has resulted an increased in female-headed households.¹⁷ Women have had to cope up with these situation without any support from either the state or the society.

The effects of violence on women have different dimensions, including psychological traumas associated with sexual violation and with the loss or disappearance of family members last long after peace returns. The conflict in the region, which has manifested itself as a low-intensity silent war and which in some areas have gone on for decades, has no frontiers, entering every home, neighbourhood and community. Normal social and economic life has been seriously compromised and the impact of the violence and the stress associated with the constant threats and anxieties of living in an atmosphere of unremitting aggression and fear has been substantial. Since many of the men killed or missing, resulted in large-scale migrations to the urban centres by women and this is most v pronounced in the Bodo-dominated areas of Assam.¹⁸ Such is the situation in the ‘low intensity war’ found in states across India’s north-east. Among the ‘seven sister’ states that are fully or particularly governed by the Armed Forces (Special Powers) Act, 1958 (hereinafter AESPA) and national security laws,¹⁹ and the region has been suffering from undeclared draconian emergency rule resulting militarization for more than 60 years. Such culture of militarism and impunity has led to the violent degrading

report has never been submitted. According to the Kashmir Times of January 14, 1993, the State Government has ordered inquiries into 87 incidents of Killings, rape and arson. None has resulted in criminal prosecutions. In seven courts-material held between April 1990 and July 1991 involving incidents of rape, deaths in custody, illegal detention and indiscriminate firing on civilians by army soldiers, only one officer has been dismissed. The most severe punishment for the remaining officers was either a suspended promotion, or marks of “severe displeasure” in their files. See Asia Watch & Physicians for Human Rights, *Rape in Kashmir : A Crime of War*, New York, NY, Human Rights Watch, 1993.

¹⁷ Under-reporting may be due to a single factor or a combination of factors, including insecurity social stigma, cultural taboos, fear of rapisals, economic barriers (for example, in Cote d’Ivoire, an obligatory medical certificate is needed to bring a rape case to court, which costs US\$100), apathy, cultural practices (for example, where the burden of proof falls on the victim) and the perception that the exercise would be pointless due to lack of infrastructure and effective law enforcement mechanisms.

¹⁸ “Women in Armed Conflict Situations – Facilitating the Fulfillment of Government Obligation to Women’s Equality,” A baseline study by North East Network, 1999-2000.

¹⁹ People Movement, *supra* note 10.

treatment of the women in region, many of which traditionally afforded a strong autonomous position for their female members.²⁰ This effect has been intensified by the values and prejudices imported by soldiers from other Indian states.

There are manifold ways in which AFSPA has facilitated violence against women and the most direct link is in the way given to military personnel in making arrests and performing searches in sections 4 and 5, and the lack of adequate binding safeguards. Gross patterns of violence under AFSPA have been acknowledged by CEDAW Committee and recorded by local and international human rights NGOs, involving women being routinely raped, sexually assaulted, beaten or killed in their homes and in public, during military operations.²¹ Furthermore, there have also been many cases recorded by arbitrary detention and forced labour,²² and strong evidence to suggest that women have been tactically targeted during raids.²³

It has been firmly established that the intersection of militarization and violence against women exacerbates structural inequality. It is stated by the center for Women's Global Leadership (CWGL) on the launch of a 2010 campaign against gender violence: "To leave militaristic ways of thinking unchallenged is to leave certain forms of masculinity privileged, to leave global hierarchies of power firmly in place, to grant impunity to wartime perpetrators of violence against women." Where a predominantly more military body is strongly integrated into the political and civic structure of the country, most female participation and representation in government is precluded, and consequently, women-related issues become more politically marginalized than usual.²⁴ Besides, there is evidence that due to ethnic tensions, the national security rhetoric and prejudices of many recruits, where rape is being used as form of collective punishment.²⁵ This impression has been fortified by the comments of superior officers, reported in the media, that rape is 'likely' in any large army.²⁶ During the armed conflict sexual violence can be used as a means of inflicting terror upon the population at large and could devastate communities which otherwise live cohesively in the interior villages. Sexual violence has increasingly been used as a tool of war in the north-east region. There are two major kinds of conflict taking place in this region: intra-ethnic conflicts and conflicts of insurgent groups fought against the state. Earlier, non-state armed groups in the region have had very stringent codes of conduct, for a long time, most cases of

sexual violence resulting from the armed conflict involved state armed forces. However, in the last couple of years have seen an increase in the inter-ethnic violence where rape and sexual assault have been used as a tactic by one ethnic group to 'attack the honour' of another group and to force people to flee their home and communities in fear.²⁷ It has been found that it is a common practice among the security forces (including the police) in counter insurgency operations, to do away with the safeguards accorded to a women by the Criminal Procedure Code when dealing with 'suspects'. Arrests by male security personnel, interrogation in army camps and police stations, torture and sexual abuse, including rape, by male security personnel in custody seems is almost routine.²⁸ There have also been cases of men sexually assaulting women, by stating that they are part of non-state armed groups. For example, on October 20, 2002, a mother of five children was raped by 26 year old Ningthouren, at Kangchup, Imphal (West) District. He claimed he was part of a banned non-state armed group. On January 9, 2003, members of the group caught him and handed him over to the police.²⁹

Impact of Armed Conflict upon Women

The situations of armed conflicts, are accompanied by greater marginalization of women's rights, as both the armed forces and militant groups reinforce patriarchal values. On the one hand, women are exploited by the state agencies, but adequate provisions are not made to safeguard their job security or to cope with the greater economic burden and social and psychological tension on the other hand. Additionally, there is pressure on women from within the community to uphold culture and ethnic identities, which inhibits or obstructs the questioning of gender-biased customary laws and practices.³⁰ Fear and consequences of sexual violence can cause women to retreat from economic activity, where it is an option, and children, specially girls, may be pulled from school due to concerns by mothers of kidnapping or sexual violence, leading to the disadvantage and discrimination that CEDAW obliges states to prevent.³¹

²⁷ SWRC, 2005.

²⁸ The North East Network, Violence against Women in North East India: An Enquiry, A report submitted to the National Commission for Women, New Delhi, 2004, pp. 27, 28.

²⁹ Ibid, p. 29. For example, Krishna Devi, 30 year, on August 1, 1996 in Manipur, while she was tending to cows in the jungle, two persons from the Indian Reserve Battalion, who were undergoing training in the nearby BSF camp, caught her, beat her up severally and the raped her till she fainted. Women's organisations in Manipur put pressure on the police to arrest the culprits. When nothing was done, they themselves caught the perpetrators and handed them over to the police (name has been changed to maintain confidentiality). Both of them were later imprisoned for 10 years after a summary court martial by the Army Court. See Violence Against Women in North East India: An Enquiry, A Report submitted by the North East Network to the National Commission for Women, New Delhi, 2004, p. 28.

In another case, on 16 June 1998, there were army personnel belonging to the 313th Field Regiment of the Indian Army entered the house of Lilabati Baishya at Nalbari, Assam and assaulted her husband and then two soldiers raped her while the third one kept her husband down in the courtyard at gunpoint. The police took up the case with the army authorities. The two accused A. Ramalingam and Y. Gunner Rangiram were court martialled and held guilty of assault and rape. They were stripped of their positions and sentenced to undergo imprisonment. But the army authorities denied any vicarious responsibility for the actions of its personnel since they had not taken place in the course of performance of any official duty. The Gauhati High Court held the higher authorities of the army strictly liable and directed the payment of 1 hundred thousand INR (approx. 2300 USD) as compensation and a few thousand INR as cost of the litigation. See *Lilabati Baishya V. State of Assam & Others*, Decided on 26 March 2004 by the Gauhati High Court.

³⁰ The Telegraph, January 9, 2004

³¹ PDHRE, supra note 10.

²⁰ For example, the National Security Act, 1980.

²¹ Campaign for Peace and Democracy (CPDM), Armed Forces Special Powers Act, 1958, Manipur Experience, 2010, available at : <http://www.bannedthought.net/India/Manipur/CPDM/AFSPA-Booklet-CPDM-2010.pdf> (last visited 28 July 2016).

²² See "Fact Finding Mission by Members of Committee Against Violence on Women" in Campaign for Peace and Democracy report 2010 : Concluding observations on India : CEDAW/C/2000/1/CRP.3/Add.4/Rev.1, p. 71.

²³ South Asia Human Rights Documentation Centre, A Study in National Security Tyranny, 1998, available at : <http://www.hrdc.net/sahrdc/resources/armedforces.htm> (last visited 30 July 2016).

²⁴ The National Alliance of Women (NAWO), Alternative NGO report on CEDAW, Initial Submission to the CEDAW Committee, India, January 2000, p. 73, available at : http://www.nawoindia.org/pdf/NGO_Alt_rep.pdf.

²⁵ R. Cook, Reservations to the Convention on the Elimination of All Forms of Discrimination Against Women, Virginia Journal of International Law, vol. 30, 1990, p. 693.

²⁶ Saheli Women's Resource Centre (SWRC), Submission by Saheli Women's Resource Centre for the Repeal of AFSPA, 14 January 2005, available at : <http://npmhr.org/index.php?option=com-content&views=article&id=86:submission-by-Saheli-womens-resource-centre-for-the-repeal-of-afspa&catid=18:npmhr>.

Losing men to violent death, to injury or to fighting cannot only have severely traumatic effects on women, but will leave them to take sole charge of their families and dependents.³² Such women in the north-east often migrate to cities, where they are also vulnerable to exploitation, and figures have shown that trafficking and prostitution increase during armed conflict, which has further ramifications for women's physical and mental wellbeing.³³ Now it has been firmly recognised on an international level, conflict induced violence is not confined to physical acts, but is rather an ever-unfurling series of harmful consequences that secure women within a cycle of subordination and poverty.³⁴ Another serious impact of armed conflict is the conflict induced displacement, which is taking place in the country. There are hundreds of people who are displaced by the ongoing violent conflicts in the region, especially in Assam. There is no law that protects the rights of internally displaced persons in conflict. Women in these situations faced multiple discriminations. Women living in camps for prolonged periods, sometimes over decades, are particularly vulnerable to trafficking and unsafe migration. India does not have any policy on displacement and there are no programmes or policies devised specially for those displaced due to armed conflicts.

Despite the enormous impact of armed conflict on women, they do not play a decisive role in conflict resolution and post-conflict reconstruction. Women are either perceived as victims or as healers, but not induced as decision-makers in the process. While full attention must be given to the victims-survivors, reconstruction and rehabilitation must necessarily take place within a framework of empowerment and equality. Women perceived peace as a condition that is free of any kind of violence in society, and this implies the co-existence of all people with basic human dignity. This conception of peace begins from one's immediate family and goes on to cover the state and finally to the international sphere. In North-east India, there is extremely low participation of women in decision making bodies – where it be the traditional bodies or the modern democratic institutions, such as legislative assemblies – has largely contributed to the impact in the conflict resolution process. However, lack of political will of the members of the Indian Parliament to pass the Women's Reservation Bill has caused a chain reaction of rejection of women's participation in the political process at the State Assembly levels. Additionally, the non-representation of women in these institutions has ushered in "development" that is not "people-centred" or "people friendly". This in turn has aggravated the conflict.³⁵

Violence and Impunity

North-east region of India has well experienced for infamous unaccountable mass rape cases. Justice for victims have faded

over the time lapse and justice is buried by now. For example, Tapasmukh mass rape took place on January 16, 2006 and no prosecution take place till date. A writ petition was filed before the Gauhati High Court on a mass rape in Parbung and Lungthulien in Churemdpur district of Manipur, where 21 tribal women were allegedly raped by members of the UNLF (United National Liberation Front, a militant group of Manipur). The Parbung Police Station had registered as many as 25 different FIRs in connection with the incident. The Rajkhowa Commission of Inquiry was constituted by the Government of Manipur on 21st March, 2006 to determine the facts of the allegations. Some 16 women, including one 24 year old housewife submitted their account before the Commission. The Commission submitted its report on May 30, 2008. However, the report has not made public till date.³⁶

In another case the Assam Rifles raided the Ujanmaidan of Koyali sub-division in 1988 to search for militants. During the operations fourteen tribal women were raped in Purba Gobindabari village under the Chhawmanu Police Station in Dhulai district of Tripura. One woman testified that the security personnel tied her husband and raped her in front of him. The youngest raped was a girl of 12 years. A Special Commission was constituted to investigate the incident of mass rape. Although the Special Commission confirmed the report of rape, no action has been taken so far.³⁷

Another example can be found in Assam, where in 1991 police personnel and security forces allegedly sexually assaulted 37 women in the Barpeta district. No investigation or prosecution has taken place in this incident.³⁸ The human rights organizations, such as Saheli Women's Resource Centre (SWRC) in Delhi, state that violations of the nationally applicable Criminal Procedure Code, which includes better minimum safeguards for women suspects, have not been taken up or acknowledged by the courts in the North-east, further discouraging civilians from taking legal action which strengthened an environment for impunity.³⁹ The implications of such impunity for women have been repeatedly considered and consistently raised on international platforms in binding international legal doctrine, such as Security Council Resolution 1820.⁴⁰ In 1997 the Human Rights Commission issued specific concerns over the 'climate of impunity' provided by AFSPA, while in its 2007 response to India's periodic report, the CEDAW Committee finally recommended a review of the Act: "So that special powers given to the security forces do not prevent the investigation and prosecution of acts of violence against women in conflict areas and during detention and arrest."⁴¹ Such requests were largely in response to AFSPA's section 6, which remains responsible for enjoying impunity in the region.⁴² Even though legal commentators have observed that the statutory protection given to soldiers in section 6 is restricted to acts committed in the discharge of their duty, and should not cover crimes such as rape and

³² UN Chronicle, Sexual Violence as a War Tactic-Security Council Resolution 1888 : Next Steps (Anne-Marie Goetz and Rob Jenkins), 2010, available at : http://www.un.org/wcm/content/site/chronicle/home/achieve/issues2010/empoweringwomen/sexualviolence_warta_clicser1888?print=1.

³³ General Assembly, Outcome document of the Beijing Declaration and Platform for Action (Fourth United Nations World Conference on Women), 2005, pp. 133, 135, 139.

³⁴ The National Alliance for women (NAWO), Alternative NGO report on CEDAW, Initial Submission to the CEDAW Committee, India, January 2000, available at : <http://www.nawoindia.org/pdf/NGO-Alt-rep.pdf>.

³⁵ Jo Baker, Sisters in Crisis : Violence against Women under India's Armed Forces Special Powers Act,

³⁶ PDHRE, supra note 10.

³⁷ Women's International League for Peace & Freedom, Caught Between Arms : The State of Women's Rights in India, Shadow Report to CEDAW 58th Session, WILPF, India, July 2014, p. 5.

³⁸ Ibid, pp. 5-6

³⁹ Ibid, p.6.

⁴⁰ SWRC, 2005, Asian Human Rights Commission (AHR) 2010.

⁴¹ See also S.C. Resolution 1325; the 2005 UN World Summit Outcome Document; CEDAW General Recommendation positive obligations, see *Ms. A.T. v. Hungary*, UN Doc. CEDAW/C/36/D/2004.

⁴² UN Doc. A/52/40, 1997; CEDAW/C/2000/1CRP.3/Add.4/Rev. 1, p. 72.

murder,⁴³ the statute creates the framework for misinterpretation and the police, even the judiciary regularly instruct victims to seek permission from the Central Government in order to initiate prosecutions against military personnel.⁴⁴ The provision adversely affects women much more than that of men.⁴⁵ The CEDAW Committee regularly reiterated that a litany of obstacles already blocks the way for many women who wish to access justice, among them, lower grade of education, and the 'double burden' of economic dependence and heavy domestic responsibilities,⁴⁶ along with their vulnerabilities in predominantly male environments such as courts and police stations.⁴⁷ Violations of a sexual nature, which predominantly occur against women, suffer from gross underreporting due to the fear felt by victims, a lack of institutional protection, and the attached social stigma,⁴⁸ and concerns have been issued in the past about the capacity of the Indian judiciary to handle such cases appropriately.⁴⁹

Additionally, other measures, including internal inquiries under the Army Act, or ad-hoc commissions of inquiries ordered by the State, have been criticized as being inconsistent, opaque, slow, and prone to failure.⁵⁰ For instance, a Commission of Inquiry report into the gang rape and murder of Thangjam Manorama, completed in 2004 was finally placed before the State Cabinet in 2010, after Manorama's mother and younger brother facing intimidation due to contested writ appeals filed by the Assam Rifles, which had challenged its legality in the Gauhati High Court using section 6 of AFSPA.⁵¹ The Central Government also had not moved to act. Consequently, because of AFSPA and the persistent failure of the state to act with due diligence has made it liable under international law for perpetuating discrimination against women facilitating their positions as easy targets for violence.⁵²

The Prohibition of Sexual Violence in Armed Conflict Situation under International Law

Sexual violence in armed conflict is prohibited under international humanitarian law, although mainly through the use of rather archaic and discriminatory reference to 'honour'

⁴³ SAHRDC, 1998.

⁴⁴ Bijo Francis of the AHRC, South Asia Desk.

⁴⁵ Baker, *Sisters in Crisis*, supra note 36.

⁴⁶ SC Resolution 1325 (11) notably stresses the need to exclude violent crimes against women from amnesty provisions.

⁴⁷ CEDAW General Recommendation 23, p. 11.

⁴⁸ CEDAW/C/IND/CO/SP.1, 2010, p. 21; A/HRC/7/31, 2008, p. 61.

⁴⁹ Margaret urban Walker, *Gender and Violence in Focus*, in Ruth Rubio-Marin (ed.), *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (Cambridge University Press, 2009); Saheli Women's Resource Centre (SWRC), Submission by Saheli Women's Resource Centre for the Repeal of AFSPA, 14 January, 2005, available at : <http://nmpmr.org/index.php?option=comcontent&view=article&id=86:submission-by-Saheli-Womens-resource-centre-for-the-repeal-of-afspa&catid=18:nmpmr>.

⁵⁰ See concluding observations: CEDAW/C/IND/CO/SP.1, 2010, p. 21 for concerns about "gender sensitivity, hostile behaviour and lack of impartiality on the part of some public prosecutors and judges in the trial courts". See also recommendations in concluding observations : CEDAW/C/2000/1/CRP.3/Add.4/Rev.1, p. 73.

⁵¹ According to one Manipuri media outlet, Huiye Lanpao (2010), of a total of 1511 cases taken against the army and the Assam Rifles in the last 20 year, 2.32 percent were ruled to be true.

⁵² Manipur Online, HC Verdict Energizes Manorama's Family, 7 September, 2010, India, available at : <http://manipuronline.com/headlines/hc-verdict-energizes-manoramas-family-pushes-for-fit-penalty-no-more-mha-caveat-ball-in-stae-governments-court/2010/09/07>, Sangai Express, Inaction or Manorama case flayed, 11 January, 2011, India, available at : <http://www.thesangaiexpress.com/fullstory.php?newsid=2815>.

and 'special protection' that fail to recognize women as right-holders, feeding instead the stereotype that women are weaker than their male counterparts and thereby perpetuating discriminatory attitudes.⁵³ It was not until the 1977 Additional Protocol II, which governs non-international armed conflict, Article 4 (2) contains fundamental guarantees that prohibits 'Violence to the life, health and physical and mental well-being of persons'; cruel treatment such as torture (and mutilation); and 'outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prosecution and any form of assault.'⁵⁴ Rape and other forms of sexual violence are also prohibited under customary international law in both international and non-international armed conflict.⁵⁵ Further rape is punishable as a war crime in non-international armed conflict as a serious violation of common article 3 of Geneva Convention. Besides, despite not being expressly listed, rape and 'any other attack on women's dignity' constitute a grave breach of the Geneva Conventions when committed in an international armed conflict against prohibited persons and as such invoke states' obligations to exercise universal jurisdiction over such offences.⁵⁶ The UN Security Council Resolution on War, Peace and Security 1325 adopted in 2000 called for the respect of human rights of women and urged states to refrain from granting impunity, including those relating to sexual violence against women.⁵⁷ Further, Security Council Resolutions, such as Resolution 1820 (2008), Resolution 1888 (2009), and Resolution 1889 (2009) have emphasised mainly on condemning sexual violence during armed conflict,

The establishment of the International Criminal Court through the adoption of the Rome Statute of the International Criminal Court represent a major breakthrough in the understanding and prosecution of sexual crimes committed during conflicts, since many serious crimes were given recognition for the first time as crimes against humanity and war crimes.⁵⁸ They include rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation as well as other forms of sexual violence.⁵⁹ Besides, advancements in this direction were also made through the work of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR).⁶⁰ The legal protection of women in India is not satisfactory.⁶¹ It is a party to the two binding documents: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). However, it has not signed the optional protocol to the ICCPR which enables individuals to complain to the Human Rights Committee about violations of rights incorporated in the

⁵³ Article 27 of the Fourth Geneva Convention 1949, provides for the protection of women's 'honour'. Further, as directed by HRC Resolution 14/12, 2010; GA Res. 48/104, Article 4C; and the report of the Special Rapporteur on Violence against Women, UN Doc. E/CN.4/2006/61.

⁵⁴ Article 27 of the 1977 Additional Protocol I refers to women as needing 'special respect' and protection, placing sexual violence in a protection framework rather than a prohibition.

⁵⁵ 1977 Additional Protocol II, Article 42 (2) (a) and (b).

⁵⁶ Rule 93 of the ICRC CIHL Study.

⁵⁷ ICRC, Update on Aide-Memoire of 3 December 1992; T. Meron, 'Rape as a crime under international humanitarian law', *American Journal of International Law*, Vol. 87, 1993, p. 427.

⁵⁸ HRLN, *Women Rights in Conflict Zones*, supra note 13, p. 14. See UN SC S/RES/1325 (2000), 31 October, 2000.

⁵⁹ HRLN, *ibid*.

⁶⁰ The Rome Statute of the International Criminal Court, 1998, Articles 7 and 8.

⁶¹ See HRLN, supra note 13, pp. 15-18.

covenant. India has been consistently overlooked the several provisions of the binding covenants.⁶² For example, Article 4 of the ICCPR forbids the Government of India to deprive of life of persons and citizens even in the most formidable situation of public emergency. Public emergency has not been officially proclaimed as required by the binding conventions in the north-east region of India for more than half of the century; accountability of all the state agencies to the Parliament for all the acts and omissions in the region conducted during the officially proclaimed public emergency has been abdicated unlawfully, and the United Nations has not been notified for the government actions.⁶³

While ratifying the Conventions India expressed its reservation to Article 9 of the ICCPR relating to preventive detention. Fulfillment of other rights embodied in articles 12, 19 (3), 21 and 22 of the ICCPR (the right to freedom of movement, the right to permissible curbs on freedom of speech the right to assembly and association), are also restricted.⁶⁴ In addition, India has not ratified other key international human rights documents, including UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984. India is party to the 1949 Geneva Conventions but not the 1977 Additional Protocols. Therefore, the Additional Protocol II concerning internal conflicts is not applicable in India. Such situation together with the fact that India does not recognise its conflict zones officially makes it difficult for humanitarian organisations – such as ICRC, to operate.⁶⁵ Furthermore, India has not ratified the Rome Statute of the International Criminal Court, 1998. Instead, it signed a bilateral non-extradition treaty with the USA⁶⁶ regarding the perpetrators who would be committed the crime within the jurisdiction of the International Criminal Court. Additionally, there are several anti-terrorism and preventive detention laws⁶⁷ which have been widely criticised for violating the fundamental rights of the Indian people. Unlike the Prevention of Terrorist Activities Act of 2001, which has been repealed after widespread criticism, the Armed Forces (Special Powers) Act of 1958 is still applicable in many areas of the country.

Conclusion

In north-east India, armed violence has taken its toll on the very notion of “normal civilian life” and led to innumerable instances of violations committed against civilian populations particularly women by both agents of the state and non-state actors. In most operations, be they cordon and search, combing arrests, searches, or interrogation, the armed forces have, under the aegis of the AFSPA done away with the basic, minimal safeguards accorded to women suspects by the Criminal Procedure Code as well as the Supreme Court directives.⁶⁸ The use of gendered and sexualised violence, including torture through gang and collective rape and mutilation and murder was continuous and contiguous and not isolated in terms of ideology or history as a call for systematic approach that views violence as process.

⁶² Ibid, p. 18.

⁶³ Naorem Sanajaoba, Human Rights in armed conflict areas, Standard setting and binding obligations, Sangai Express, May 2006.

⁶⁴ Ibid.

⁶⁵ South Asia Human Rights Documentation Centre, Human Rights & Human Rights Instruments in India.

⁶⁶ HRLN, supra note 13, p. 19.

⁶⁷ See http://www.ad-geneva.ch/RULAC/international-treaties.php?id_state=107 (last visited 30 June, 2016).

⁶⁸ Such as the Preventive Detention Act, 1950, Defence of India Act, 1962; the Maintenance of Internal Security Act, 1971; National Security Act, 1980; the Terrorist and Disruptive Activities (Prevention) Act, 1985, etc.

India goes by a narrow definition of the term armed conflict and thereby evade international obligations. The conflict governed by AFSPA is a complex battle between state and non-state actors, and tribal and non-tribal persons, over issues of development, ideology, autonomy and crime, in which approximately tens of thousands have died violently over the course of the conflict.⁶⁹ In such a situation, it is crucial to expand governments accountability on protecting women's human rights in conflict situations. Strategies need to be worked out to include ways of bringing those governments, who do not want to use the term armed conflict to refer to the situations where there are ongoing conflicts, use of arms by state or non-state actors, and use of excessive state military power. Women are adversely affected by the conflict situation, and the State has an obligation to uphold and protect the human rights of people of the country.

The women of the north-east India are dynamic, traditionally autonomous, vocal and brave. They have continued to gather and rally aimed an intensifying climate of gender-specific intimidation, violence and humiliation. It now remains for the state to not only protect these progressive attitudes from erosion by rampant militarization, but to encourage and facilitate women's involvement in line with emerging international norms on governance and peacemaking.⁷⁰ The women of the north-east region of India will likely wish to translate the internationally-nurtured norms and concepts in order to apply them meaningfully to their own sites of struggle. However, disadvantage and injustice cannot be separate from issues of gender inequality and violence against women, will make for a strong new chapter of contribution and change in the region.

Recommendations

From the above discussion, it is clear that serious efforts are necessary to improve the situation of women during armed conflict situation.

As the problem faced by women in armed conflict situations are very closely intertwined with their position in times of peace, it is essential that the latter is addressed simultaneously. The social status of women must be uplifted not only in law but mainly in daily life.

Efforts must be made to bring into justice the perpetrators responsible for commission of serious crimes and to end the ongoing culture of impunity. Further, awareness must be raised among them and in the society about their rights and needs.

- Criminalize all forms of violence against women (custodial, sexual violence, trafficking etc.) under national laws with strong punitive measures;
- Exclude crimes of sexual violence from amnesty accords.
- Sensitize law enforcement officials, judges, police and armed forces, about crimes against women;

⁶⁹ Manipur Women Group Survivors Network & Control Arms Foundation of India, Spotlight on Women : Ending Violence Against Women in Armed Conflict Areas, available at : <http://epao.net/epSubPageExtractor.asp?src=features>. Spotlight On Women. Ending Violence Against Women in Armed Conflict Areas, (last visited 30 July, 2016).

⁷⁰ Amnesty International (AI), India : Briefing on the Armed Forces (Special Powers) Act, 1958, AI Index : ASA 20/025/2005, May, 9, 2005, available at : <http://www.amnesty.org/en/library/asset/ASA20/025/2005/en/41fc59d2-d4e1-11dd-8a23-d58a49c0d652/asa200252005en.html>. (last visited 30 July, 2016).

- Emphasise the prohibition of sexual violence in military codes and training manuals of police officers, military and paramilitary groups and peacekeeping forces;
- Carry out fast and effective investigations of rape, prosecute all security personnel in civilian courts and to give punishment not lower than under civilian law;
- Protect medical workers examining victims of sexual and custodial violence.
- Support women groups as means for dissemination of knowledge on women rights and an important part of rehabilitation programmes for victims of violence.
