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## **Armed Conflict and its impact on civilians and applicable International Humanitarian Law – a Case Study of Manipur**

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### **Abstract**

Manipur had been an independent nation before 1949. There has been an armed conflict situation in Manipur between State and non-state actors and between and among non-state actors. International standard concerning applicable International Humanitarian Law are flagrantly violated by parties to the conflict and blanket impunity has been granted to the State actors in violation of established norms of International Human Rights and Humanitarian Laws. As a result of the armed confrontation many lives mostly civilians have been lost, people are brutally tortured, raped, murdered besides committing innumerable cases of extra judicial execution. Not a single case of prosecution for commission genocide, war crimes and crimes against humanity has been reported. The civilian population and property is the main victim of the hostilities and no reparation so far. In this juncture the mitigation of civilian casualties because of armed conflict situations lays strict implementation and enforcement of applicable provisions of International Humanitarian Law in Manipur. It is found that in compliance to the Constitutional mandate, the Government of India, being a party to the four Geneva Conventions, 1949 should recognize the existence of armed conflicts in Manipur to facilitate enforcement of the said law effectively with a view to mitigating the consequences of protracted armed violence in Manipur. The existing stand of Government of India requires revolutionary reversal and all the guerrillas should also comply with the rules and customs of war.

**Key words:** Armed conflict, civilians, Geneva Convention Act, guerrillas, International Humanitarian Law, State and non-state actors.

### **Introduction**

International Humanitarian Law (IHL) is one of the most powerful tools the international community has at its disposal to ensure the safety and dignity of people in times of war. It seeks to preserve a measure of humanity, with the guiding principle that even in war there are limits.

IHL is the body of international law that seeks, for humanitarian reasons, to regulate war or armed conflict. IHL is founded on the following basic principles:



- distinction (between civilians and combatants; civilian objects and military objectives)
- 'elementary considerations of humanity' (prohibits inflicting unnecessary suffering, injury and destruction) and the so-called "Martens Clause" (in cases not covered by treaties "civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principle of humanity and from the dictates of public conscience)
- military necessity (the use of military force is only justified to the extent that it is necessary to achieve a definite military objective)
- proportionality (the collateral harm must not be "excessive in relating to the concrete and direct military advantage anticipated" when an attack is launched against a military objective)
- independence of *jus in bello* from *jus ad bellum*

Principal sources of IHL are four Geneva Conventions of 1949 supplemented by its two Additional Protocols of 1977 and body of customary laws. India is party to Geneva Conventions and not a party to its Protocols.

### Defining armed conflict

IHL is triggered by the existence of an armed conflict. The most authoritative definition of armed conflict (ICTY, Tadic: 1995) is:

"An armed conflict exists whenever there is resort to armed force between states or *protracted armed violence* between governmental authorities and organized armed groups or between such groups within a State. IHL applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved. Until that moment, IHL continues to apply in the whole territory of the warring States or, in the case of internal conflicts, the whole territory under the control of a party, *whether or not actual combat takes place there.*"

This test was subsequently endorsed by the International Committee of Red Cross (ICRC) and the Rome Statute of International Criminal Court. The ICTY consequently interpreted the term "protracted armed violence" to refer to the "intensity of the conflict". It is pertinent to mention that in *La Tablada* it was held that a mere thirty hours of intense and organized hostilities can be sufficient to justify invoking IHL (IACHR, (1997) para 156) and in *Hamdan* it was insisted to apply minimum standard of IHL even to members of al Qaeda (US SC:2006).

IHL distinguishes two types of armed conflicts, viz. International and Non-international Armed Conflicts. Depending on the type of armed conflict applicable laws are also different.



### **International Armed Conflict (IAC)**

According to common Article 2 to the Geneva Conventions of 1949 (GC) IAC occurs when one or more *States have recourse to armed force against another State*, regardless of the reasons or the intensity of the confrontation. Relevant rules of IHL may be applicable even in the absence of open hostilities. Moreover, no formal declaration of war or recognition of the situation is required.

Apart from regular, inter-state armed conflicts, Additional Protocol I extends the definition of IAC to include armed conflicts in which peoples are *fighting against colonial domination, alien occupation or racist regimes in the exercise of their right to self-determination* (wars of national liberation) (Article 1(4), AP I).

### **Non- international Armed Conflict (NIAC)**

It is a fact that most armed conflicts today are non-international in nature. Two legal sources must be examined in order to determine what a NIAC under the IHL.

#### (a) NIACs within the meaning of Common Article 3 of the Geneva Conventions of 1949

Common Article 3 applies to “armed conflicts not of an international character occurring in the territory of one of the High Contracting Parties”. These include armed conflicts in which one or more non-governmental armed groups are involved. Depending on the situation, hostilities may occur between governmental armed forces and non-governmental armed groups or between such groups only.

In order to distinguish an armed conflict, in the meaning of common Article 3, from less serious forms of violence, such as internal disturbances and tensions, riots or acts of banditry, the situation must reach a certain threshold of confrontation. Two criteria are usually used in this regard (ICTY, Tadic:1997, para. 561-568 & Limaj:2005, para.84):

- (1) The hostilities must reach a *minimum level of intensity*. This may be the case, for example, when the hostilities are of a collective character or when the government is obliged to use military force against the insurgents, instead of mere police forces.
- (2) Non-governmental groups involved in the conflict must be considered as “*parties to the conflict*”, meaning that they possess organized armed forces. This means for example that these forces have to be under a *certain command structure* and have the capacity to sustain military operations. (the armed groups in question must reach a minimum level of organization)

In the current state of IHL, the *motives* of the non-governmental groups, for example, to cover only groups endeavoring to achieve a political objective as a further condition of NIAC has no legal basis. (ICTY, Limaj:2005)

#### (b) NIACs in the meaning of Article 1 of Additional Protocol II



A more restrictive definition of NIAC was adopted for the specific purpose of Additional Protocol II. This instrument applies to armed conflicts “which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, *exercise such control over a part of its territory* as to enable them to carry out sustained and concerted military operations and to implement this Protocol” (Article 1(1), AP II). However, this instrument does not apply to wars of national liberation, which are equated with IACs by virtue of Article 1(4) of Additional Protocol I. This definition is narrower than the notion of NIAC under common Article 3.

In practice, it is often difficult to identify situations that meet the criteria of application established by Additional Protocol II. In this context, it must be reminded that Additional Protocol II “develops and supplements” common Article 3 “without modifying its existing conditions of application”. This means that this restrictive definition is relevant for the application of Protocol II only, but does not extend to the law of NIAC in general. The Statute of the International Criminal Court, in its Article 8, para.2 (f), confirms the *existence of a definition of a NIAC not fulfilling the criteria of Protocol II*. Common Article 3 thus preserves its autonomy and covers a larger number of situations.

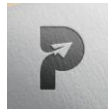
### **Law applicable to NIACs conflicts**

The rules of IHL applicable in situations of NIACs are found in both treaty and customary law. In this regard, *Common Article 3 of the Geneva Conventions of 1949* specifically applies in the case of conflicts “not of an international character”. Common Article 3, which is sometimes referred to as a “treaty in miniature”, stipulates the *minimum protection* that must be afforded to all those who are not, or who are no longer, taking an active part in hostilities, for examples, civilians, members of armed forces of the parties to the conflict who have been captured, are wounded, or surrendered. It provides for humane treatment and non-discriminatory treatment for all such persons, in particular by prohibiting acts of violence to life and person specifically murder, mutilation, cruel treatment and torture, the taking of hostages, and outrages upon personal dignity, in particular humiliating and degrading treatment. It prohibits also the passing of sentences and carrying out of executions without judgment being pronounced by a regular constituted court providing all judicial guarantees recognized as indispensable. Finally, it imposes an obligation on the parties to collect the wounded and sick and to care for them.

The application of the common Article 3 shall not affect the legal status of the Parties to the conflict.

Article 3 is the bedrock of IHL as affirmed by the International Court of Justice (ICJ), recognized within customary law as the *absolute minimum of humanitarian treatment* applicable during armed conflict of any legal qualification. (Nicaragua, ICJ 1986, para. 218) It is considered as a pre-emptory norm of international law from which no derogation is permitted i.e. *jus cogens*.

*Additional Protocol II* (adopted in 1977) supplemented common Article 3, (without modifying its existing conditions of application) which was specifically enacted to apply to certain situations of NIAC; it strengthened protection beyond the minimum standards contained in common Article 3.



Like common Article 3, Additional Protocol II provides the humane and non-discriminatory treatment of all those who are not, or who are no longer, taking part in hostilities. Most of provisions of Protocol II are now considered as a part of *customary IHL* and, thus, *binding on all parties to NIACs*.

It expands the protection provided by common Article 3, by including prohibitions on collective punishment, acts of terrorism, rape, enforced prostitution and indecent assault, slavery and pillage. It sets out specific provisions and protections for certain categories of persons such as children, persons deprived of liberty for reasons related to the conflict, persons prosecuted for criminal offences related to the conflict, persons who are wounded, sick and shipwrecked, medical and religious personnel, and the civilian population (attacks on civilian populations, starvation as a methods of combat, and forced displacement are all prohibited).

It is a fact that a limited number of other treaties of humanitarian law, human rights – particularly non-derogable and domestic laws – in the State in which a conflict is taking place are also apply to situations of NIAC. The treaty rules applicable in NIACs are, in fact, rudimentary compared to those applicable in IACs.

#### **Parties bound by humanitarian law in NIACs**

All parties to NIACs - whether *State actors* (and other persons or groups acting in fact on their instructions or under their direction or control) or *armed groups* - are bound by the relevant rules of IHL. Even *States not party to an armed conflict* are required by common Article 1 to Geneva Conventions to neither encourage a party to violate IHL nor to take action that would assist in such violations. Furthermore, common Article 1 is generally interpreted as requiring States not party to an armed conflict to endeavor--- by means of positive action--- to ensure respect for IHL by parties to a conflict.

#### **IHL applicable to (IACs)**

There are over 30 international instruments in force dealing with the law of IACs. The most important among them are:-

- 1949 *Four Geneva Conventions*:
  1. Geneva Convention for the Amelioration of the condition of the wounded and sick in armed forces in the field
  2. Geneva Convention for the Amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea
  3. Geneva Convention relative to the Treatment of prisoners of war
  4. Geneva Convention relative to the Protection of civilian persons in time of war
- Protocol Additional to the Geneva Convention of 12 August 1949, and relative to the Protection of victims of International Armed Conflicts (*Protocol I*).



Other relevant IHL treaties, Human Rights treaties, domestic laws and most importantly *customary IHL* are also simultaneously applicable during IACs.

### **Case Study of Manipur**

Historically, Manipur's existence as an independent kingdom can be traced back around two millennia according to the royal chronicle *Cheitharol Kumpaba*.

It is fact that Manipur was an independent kingdom until it was defeated by the British forces in the Anglo-Manipur War (1891) and became a British protectorate till 1947. Manipur regained her independent on 14 August 1947 after the British left. The Maharaja-in-Council of independent Manipur drafted and then adopted *Manipur State Constitution Act, 1947* and established democratic and secular popular government having the Maharaja as a Constitutional Head akin to the British principle of Parliamentary Sovereignty and Collective Responsibility.<sup>[3] [4]</sup> The State Assembly was inaugurated by the then King Bodha Chandra in October 1948 thereby marking the historic transition from the 2000 year old absolute monarchy to a constitutional monarchy. Probably, Manipur was the first to introduce parliamentary democracy in Southeast Asia. (HRI:2009, 2)

An independent judiciary also existed to safeguard the citizen's fundamental rights and, also, ensure the citizen's duties as well.

Manipur became a part of India through *controversial 1949 Merger Agreement* and accorded Part C State status (even not a full fledged State). Manipur was a Union Territory of India from 1956 and then later a State of India from 1972 (that also after prolong and sustain struggle by the people of Manipur).

### **Armed Conflict situations in Manipur and its implication to civilians**

The indigenous peoples of Manipur (Manipuris) consisting about 36 communities or groups, and they are racially and ethnically akin to the peoples of South East Asia; ethically and culturally are distinct from the rest of mainland India. Popular discontent around the illegal and unconstitutional merger and subsequent state policy of racial discrimination and genocide that fumed resistance movements ever since, and escalated into open armed conflict since late 1970's. The Government of India (GOI) responded by promulgating the colonial, racial and genocidal legislation Armed Forces Special Powers Ordinance on 16 April 1950, and afterward enacted the Armed Forces (Special Powers) Act, 1958 (AFSPA).

Presently, Manipur is one of the highly militarized zones in the world. There are about 350 military installations having around 50 to 60 thousands armed forces of India and roughly one troop for every 15 citizens, a proportion possibly higher than that used in many recognized active war zones (UPR, Manipur: 2007). This armed forces of India belonging to a distinctly different ethnic group with distinctive culture, religion and language from the local indigenous population and they considered that the entire population of Manipur is hostile to them. This is the fundamentally racist position



characterizing the distinctive context of the on-going armed conflict in Manipur (Manipur: CSCHR & UN, 2012, para. 31).

The deployment of the armed forces and the invocation of a dozen of draconian laws notably AFSPA for a longer period, the annual reports placed in the parliament by the Home Minister, GOI about the death of Indian soldiers and guerrillas with facts and figures, unambiguously prove the existence of armed conflicts between the state forces and the liberation guerrillas in Manipur. The Justice Reddy Commission's Report on AFSPA (MHA:2005), and the Supreme Court (SC) of India in *NPMHR* (AIR 1998 SC 431), *PUCL* ((1997) 3 SCC 433), *EEVFAM* (WP (Cri): 2012) cases, Justice J.S. Verma Committee Report (2013), Justice N. Santosh Hedge Commission (SC Appointed Commission: 2013) and many others also directly and indirectly indicates the existence of armed conflicts in Manipur.

It is pertinent to mentioned that in *EEVFAM* case it was observed by the SC:

“There is no denying that Manipur is facing the grave threat of insurgency. It also clear that a number of the insurgent groups are operating there, some of which are heavily armed. These groups indulge in heinous crimes like extortion and killing of people to establish their hegemony.” (There are about 30 extremist organizations in the State out of which six are very powerful and they are armed with sophisticated weapons. Their aim and object is to secede from the Republic of India and to form an independent State of Manipur.)

Many credible global NGOs like Human Rights Watch, Amnesty International, Asian Centre of Human Rights, and Asian Commission of Human Rights also conclude existence of armed conflict in Manipur.

In Manipur two types of armed conflicts exist viz. *IAC* between Government armed forces and non-governmental armed forces (National Liberation Movement) and *NIACs* between non-governmental groups themselves. Even though there is some grey area from the part of GOI to classify the conflict as *IAC*, from this aspect the conflict may be characterized as *NIACs* for proper implementation *IHL*. On the other hand, in the present context of international law definition of liberation movement is very difficult to define and most of the conflicts are generally defined as *secessionist movement*. But the proscribed *UNLF* (United National Liberation Front) and *RPF* (Revolutionary People's Front), consistently maintained that they are striving to defend the “*right to self-determination*” of the peoples of Manipur which had been forcibly annexed by the Indian government and Manipur is Non-self Governing Territory and plebiscite is the ultimate solution (Imphal Free Press, Dec. 17, 2010). The fact is that indigenous Manipuris people do not have full measure of self-government as the polity is not federal and the nominal local government runs at the mercy of the union government.

The Indo-Manipur armed conflict involves more than a dozen non-governmental armed groups (*SATP*) out of which only six groups are declared as proscribed terrorist organizations under the Unlawful Activities (Prevention) Act, 1967 (*UAPA*). This act of declaration by the GOI is nothing but giving *official recognition* to be parties to armed conflict means guerrillas in Manipur. As a result of armed conflict in Manipur during 1992 – January 6, 2013 it is estimated that **5842 deaths** (which includes 2193 civilians who are not taking direct part in hostilities, 966 security forces personnel and



2683 guerrillas) (SATP). Civil society sources and independent local media claim the conflict resulted in 3 to 5 deaths daily in recent years and 10 to 20 thousands deaths over the last two decades (Frank, 2011).

The Chief Minister, O. Ibobi Singh, reportedly said that “since 1980 when Manipur became a disturbed area over 8,000 innocent people and 12,000 members of armed opposition groups and security forces have lost their lives” (Sangai Express, 16 June 2003). Apart from these 2713 cases were registered in Manipur in the last five years attracting the provisions of the UAPA.

The *EEVFAM* case in a very clear term noted:

“For realization of their objective they (armed groups) have been indulging in violent activities, including killing of civilians and members of security forces. It is stated in the counter affidavit that during the period 2000 to October, 2012, 105 policemen, 260 security personnel, and 1214 civilians were killed; the number of injured during the same period is 178 for the policemen, 466 for members of security forces and 1173 for civilians.”

There is no proper documentation of the fact and what data shows is only a fraction of the real casualties. The civilian populations who are not taking direct part in hostilities are main victims of the conflict in Manipur. Given the longevity of the conflict it is likely that overall at least 40,000 people have been killed since 1979 (Ploughshares: Armed Conflict Report, 2010).

Major non-governmental armed groups are to be considered as parties to conflict and they are well organized<sup>[11]</sup> with command structure and also have the capacity to sustain military operations. In this sense, the conflict in Manipur is qualified as armed conflict based on *dual test of intensity and organization* as stipulated by International Tribunals and ICRC (ICRC Opinion Paper, March 2008 ).

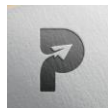
The existence of armed conflict in so called ‘*disturbed areas*’ are also acknowledged by chief of Indian Army (Sangai Express, 17 Jan 2011), Speaker of Manipur Legislative Assembly (Sangai Express, May 5, 2012), the Chief Minister of Manipur (Imphal Free Press, December 24, 2010) and many others including UN Special Rapporteur (Manipur: CSCHR & UN, 2012, para. 31).

It is also fact that some armed groups operating in Manipur are not qualified as parties to the conflict as they failed to fulfil dual test for characterization of the existence of armed conflict viz. the intensity and organization. They may be better characterized as *terrorist or armed gangs* mostly involved in extracting money from the local population rather than in fighting governmental forces.

### **The Armed Forces Special Powers Act, 1958 (AFSPA) in Manipur**

The AFSPA is racist and it is a symbol of racist regime. Although the situation of law and order in other part of India is much more dangerous and disturbed like Maoist affected areas such legislation has not been in force, it only meant for racially or ethically distinct areas of northeast India (NE) and





Jammu and Kashmir. The UN Committee on Elimination of Racial Discrimination (CERD) has also endorsed racial discriminatory nature of the Act.

AFSPA is also a colonial legislation. Its predecessor – the Armed Forces Special Powers Ordinance, 1942 had been enacted in order to *neutralize Quit India Movement*. It was hundred percent a colonial instrument. In short, the Indian Parliament has been acting virtually as Linlithgow- II in the NE region for more than half a century.

The Act was originally enacted as a temporary measure to suppress demands for self-determination in the post independence period in the Naga Hills but in fact large part of the NE is still declared 'disturbed' under the Act and civilian population is still under grip of the military rule. The Act is described as "dated and colonial-era law that breach contemporary international human rights standards" (N Pillay, The People's Chronicle: 2012).

It is seemed that the Act is discriminatory and genocidal legislation. Extra-judicial execution, torture, enforced disappearances, rape, illegal detention, committed against the indigenous Manipuris people with intention to destroy, a national or ethnic or racial or religious group is nothing but genocide. This genocidal Act empowers the armed forces of India to kill with *impunity and immunity*, indigenous Manipuris having distinctive ethnic and racial heritage, and simply transforming the region as a torture-chamber and concentration camp of political dissidents of Delhi regime. And Act itself prima facie discriminatory. Justice Reddy Commission Report also endorsed this aspect very briefly as "the Act ... has become a *symbol of oppression, an object of hate and instrument of discrimination and high-handedness*" (MHA: 2005, 75).

Justice JS Verma Commission adds that " ... brutalities of the armed forces faced by residents in the border areas ..... and conflict areas are causing more alienation" and " ... that impunity for systematic or isolated sexual violence .... is being legitimized by AFSPA ..." (Report on Criminal Law, 2013).

The AFSPA in effect allows the state to override rights in the 'disturbed areas' in a much more intrusive way than would be the case under a state of emergency, since the right to life is in effect suspended, and this is done without the safeguards applicable to states of emergency. A law such as AFSPA has no role to play in a democracy (Heyns, 2012, para. 31) Under the Act even non-commission officers are empowered to shoot at sight and more interestingly de jure impunity is granted to armed forces of India for their criminal act (Sec. 6 of the AFSPA). It means 'extrajudicial executions under the cloak of AFSPA have become virtually a part of state policy'.

The Supreme Court of India (SC) (AIR 1998 SC 431) very surprisingly upheld the Constitutional validity of the Act. Christof Heyns rightly observed that "it is therefore difficult to understand how the SC, which has been so progressive in other areas, also concerning the right to life, could have ruled in 1997 that AFSPA did not violate the Constitution.." (Heyns: 2013). So there no meaning of judicial activism and sacrosanct nature of right to life to the people of Manipur. In short, the SC in spirit had upheld a statute comparable to that of a Nazi statute in post-colonial republic of India and consequently a silent party to the genocide in Manipur (Sanajaoba, 2004, 170).



It seems that all the organs of Govt. of India (GOI) viz. Executive through the machinery of its armed forces, Legislature and Judiciary and national media are collectively act as policy to accomplish their avowed agenda.

It is also seemed that the fact of racial, discriminatory and genocidal policy of GOI is also very clear from the fact that the GOI has repealed the Terrorist and Disruptive Activities (Prevention) Act, 1985 and the Prevention of Terrorism Act, 2002 and not the black law AFSPA. The promulgation of the repressive colonial law leads to no other conclusion than that colonialism exists in the NE region. If colonialism exists, liberation movements logically follow. The insurgency situation in the NE has been worsened since the AFSPA has been imposed in the 1950s. The insurgent groups have greatly increased. Their cadres, weapons, tactical capabilities have expanded and improved immensely. In this regard, Sanajaoba (2007:139) has aptly commented that no civilized jurisprudence would justify this additional empowerment given to the armed forces to kill its own citizens. 1997 judgment of apex court has run a short of juristic ammunitions and the verdict borders on the extreme edge of technical formalism of the crudest positivist kind.

GOI's persistent refusal to repeal the Act even though with strong worded recommendations poured from UN human rights bodies, Treaties Monitoring bodies including HRC, CERD; observations by many international rapporteurs, credible international human rights NGOs and its own created commissions clearly shows the colonial mindset of the GOI.

The governmental armed forces too are victims of AFSPA because of retaliation and communal tendency arising from genocide, torture and other inhuman acts committed by them. The simple logic is that "Violence and genocide often arise from racial and ethnic discrimination. Discrimination can easily lead to racially and ethnically motivated violence, which in turn, may escalate into genocide."

This state policy of genocide, extreme persecution coupled by oppression and cycle of legal impunity as a result of AFSPA prove that the existing GOI is racist regime and fighting the regime can be justified under the principle of '*Carence de Souverainete*' and that oppressed peoples want to exercise their state right for reversion to sovereign status that existed before the annexation.

### **Breach of IHL in Indo-Manipur armed conflict and its relative impact on civilians**

From the very moment of merger of Manipur to Indian Union till now many lives including civilians have loss, people are brutally tortured, murdered, many cases of enforced disappearance, arbitrarily arrested, and women are mercilessly rape and gang rape besides committing innumerable cases of extra judicial execution in the name of counter insurgency.

On the other hand non-governmental armed groups are also violating even the minimum rules of IHL and they are also incurred individual and command responsibility just like governmental armed forces for violation of laws and custom of war. Consequently, the civilian population is between 'a



rock and hard place' as they have become a target for state and non-state armed actors alike. CM of Manipur acknowledging the conflict situations in Manipur once stated that "as everyone knows that deteriorating situations is a nadir today with insurgents going beyond their Code of Conducts indulging in unwanted killings, kidnappings, extortions, lootings and fake encounters killings etc" (Imphal Free Press, December 24, 2010).

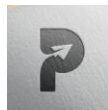
### **Some Cases fragrant violation of IHL in Manipur**

It is not possible to highlight all the cases of alleged grave breach of Geneva Conventions of 1949, Genocide, Crimes against humanity, War Crimes, Serious violations of article 3 common to the four Geneva Conventions of 1949 and others serious violations of laws and customs of war committed in Manipur since 1970s – the timeline for existence of armed conflict in Manipur. Above all there is no proper documentation of such cases; in this regard some selected alleged fragrant violation of IHL incidents are referred here for ready reference and due acknowledgment of seriousness of the matter.

- 1528 cases extrajudicial execution including 33 women and 98 children by governmental armed forces since January 1979 till May 2012 (CSCHR & UN:2013)
- 5912 killed in insurgency related incidents in Manipur during 1992 – 2014 among them 2216 were civilians (MHA, GOI/SATP)
- 44 cases of torture (documented by HRLN, Manipur)
- 1133 cases of illegal detention and arrest by the governmental armed forces during January 2008 to December 2008 and 1119 from January 2009 to December 2009 (HRI, Report: 2009)
- 190 and 142 cases of number of people killed by the unidentified persons and non-state actors during January 2008 to December 2008 and January 2009 to December 2009 (HRI: 2009).
- 16 cases of enforced disappearances from 1980 to 1999 (HRI: 2009) and 4 more cases of enforced disappearances during 2010 & 2011 (HRA: 2011) but FIDAM (2015) says 21 cases during 1980 to 2011
- 12 cases of Massacres that resulted 110 dead including Malom Killing of 2000, RMC Hospital Killing of 1996, Tera Bazar Killing of 1993, Oinam Village, Senapati Killing of 1987 and Heirangoithong Killing of 1984 (HRI:2009).
- 10 cases of rape including Th. Manarama (Bamon Kampu) of 2001, Ningthoujam ongbi Ahanjoubi (Takyenthongbal) of 1996, and Miss Rose (Ngapurum Khullen, Ukhrul) of 1974 (HRI:2009).



- Displacement of about 50 villagers from Barak circle (which comprised of eight villages) who were forced to flee fearing persecution by the security forces during “Operation Tornado” launched on 27 October 2005. Several houses were reportedly damaged in the operation. A team of MHRC visited the displaced camping at a relief camp at a town hall in Jiribam district (The Telegraph, 1 November 2005).
- Wilful killing of thousands of civilians who are not taking direct part in hostilities by both parties to the conflict.
- Recruitment of child soldiers by non-governmental forces (Child Soldier Global Report 2008).
- 79 non-local who are not taking direct part in hostilities were killed by non-governmental forces and 26 were injured during 2001 to 2011 (SATP)
- During 2000- 2014 (till Feb.1), 436 cases of bomb explosions mostly in civilian areas claimed 114 lives and 535 injured mostly civilians by parties to the conflict (SATP).
- Use of civilians as forced labour and human shield by the parties to the conflict in Manipur
- Death of a civilian identified as Jaikalung in an encounter that took place between a combined force of suspected ZUF, NSCK-K on one side and NSCN-IM cadres on the other at Tamenglong district headquarters on 2<sup>nd</sup> October 2012.
- Raping of two girl students in the night of Oct 5, 2012 by cadres of the Zeliangrong United Front (ZUF) at Khoupum area of Tamenglong district.
- In 1990s ethnic cauldron where more than 900 ‘innocent Kukis including children, pregnant women, aged persons were slaughtered’ by the NSCN –IM cadres and their collaborators. In a single day on September 13, 1993 altogether 104 Kukis were killed. Around 360 villages were also uprooted and around one lakh Kukis were displaced in the 1990s ‘ethnic cleansing’ by the NSCN –IM.
- NSCN troops had killed 9 AR personnel and inflicted injury to three personnel on July 9, 1987 at the AR Post near Oinam Village in Senapati district. Post the attack, the AR personnel launched the operation and had allegedly burnt down over a hundred houses, six schools and 10 Churches in the thirty Naga villages. Properties worth of 50, 75,000 were allegedly destroyed from seven villages. Three women were reportedly raped, five women allegedly molested and around 300 persons were tortured by the AR apart from killing 27 persons at different locations on different occasions in Senapati district. Oinam carnage of July 9, 1987 - SDC N Surendra who collected hard evidence of the Indian military personnel’s atrocities at Oinam was picked up allegedly by Assam Rifles from the road and killed but his corpse was never found (The Sangai Express;11, 2012).
- In February 2009, Kasom Khulle SDO Dr ThingnamKishan and his two subordinate staff – Token and Rajen were abducted by NSCN-IM from Urkhrul and they were murdered and abandoned in the most savage manner at Lukhrabi Thong, Senapati District.
- Fact encounter case of three armed militant viz. Laishram Nobin, N. Ingocha and I. Rosan by 23 Assam Rifles near Chadong Tangkhul village under Litan police station in Urkhrul district on 9<sup>th</sup> May 2012. It was alleged that Gobi along with two were handed over to one Major Hauman, post commander of 23 AR posted at Nongdam Kukikhul, along with arms for surrendering to the Government of Manipur by his father, but they were killed in a fake



encounter and their dead bodies deposited at the morgue of Regional Medical Institute of Medical Science (RIMS).

- Two persons, including the State Secretary of Zeliangrong Students' Union, Manipur (ZSUM) Chunthuigai Kamei have been shot dead by alleged NSCN-IM at Tamenglong district area on 16<sup>th</sup> August 2012. Both died on the spot when a group of NSCN-IM with sophisticated weapons opened fire while they were inside a house. In 24 Mile near Longkao (Nungkao) village, under Tousem police station.
- In Manipur, counter-insurgency operations by the Indian Army against local groups along the border with Burma (Myanmar), as well as ethnic clashes, have resulted in the displacement of at least 6000 people from the Hmar and Paite ethnic groups like IDPs elsewhere in the NE, they are also reported to live in deplorable conditions, lacking food, medicines, warm clothes and other essential commodities (Monika: 2009, 36).
- August 20, 2006: Two civilians are killed, while four others sustained injuries when a group of ZRA cadres opened fire towards a crowded church targeting a patrol party of the AR at Vengnuom in the Churachandpur district (SATP).
- The incident of molestation of more than 20 women allegedly by the UNLF and KCP militants at Parbung and Lungthulie under Tipaimukh sub-division in the Churachandpur district in January 2006 (SATP).

### **Conclusion and Major Recommendations**

It is found that in this mist of the ongoing armed confrontation between state and non-state actors and between and among non-state actors, the civilian population remains between 'a rock hard place' as they have often become the sole target for both the parties.

It is also found that the only way to mitigate the effects of the armed conflict in any part of the world including Manipur is to apply by both parties in hostilities the relevant provisions of IHL. GOI is no option but to repeal racial, discriminatory and genocidal legislation like AFSPA so that GOI may show its face to the world at least that the government is not racist and may also a strong point in support of them that those fighting going on is not against racist regime in the exercise of Manipuris' right of self-determination, as enshrined in the Charter of the United Nations and Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations and thereby denying granting of Prisoners of War status to guerrillas fighting for independence.

It is further found that Manipur has been the tradition of implementing IHL through ages. In the historic past, when Manipur was still under the division of many principalities like Meitei, Moirang, Khuman, Heireng Khungja, Khendre, Chaireng, etc., there was a strong tradition of organizing bouts of mutual fights among the individuals or chiefs. There is a very old manuscript written in Meitei script called *Chainarol*. (Human Rights Alert: 2012) The manuscript chronicles records of seventeen such bouts of mutual fight and all the fundamental principles of IHL were found in it. *Saturol Lanturool Sapharol Lanpharol*, an ancient manuscript of the Meiteis, elaborates the rules and laws of a warrior had to follow when he is in a combative situation. Valiant heroes and warriors of the past who had



successfully fought many battles and captured or killed ferocious wild animals were strict disciplinarians who followed the traditional laws and codes of conduct without any breach. Another ancient manuscript called *Takhel Ngamb* details the kinds of foes who should not be killed although fallen at the hands of victor. It records that a foe who has fled from the battlefield or who has disarmed himself should not be killed. A foe who has taken refuge on the top of a tree or who has dipped and taken refuge under water shall not be killed. Further, a foe who pleads for life biting a handful of grass or one who pleads with folded hands shall not be killed. Again, one who is stripped of his clothes or one who is apparently scared of confrontation shall not be killed.

In this regard, it is found that presently, one armed non-governmental organization engaged in the conflict with the Indian government, the Revolutionary People's Front (RPF) and its armed wing the People's Liberation Army (PLA) voluntarily declared to abide by the Common Article 3 of the Geneva Conventions in 1997 (SATP).

So, in compliance to the mandate of the Constitution of India, the GOI, being a party to the Geneva Conventions should recognize the existence of armed conflicts in Manipur to facilitate implementation and enforcement of IHL effectively with a view to mitigating the consequences of armed conflicts and punish the perpetrators of IHL in Manipur. In this regard, the existing stand of the GOI requires revolutionary reversal and all the guerrillas should also comply with the rules and customs of war. Moreover, whatever happening in Manipur particularly military massacres, cold-blooded murdered both by governmental and non-governmental forces, torture is due to the non-declaration of a situation of armed conflict else commander and individual will be responsible for their very responsible for their criminal act under IHL and automatically will deterrent effect.

In this regard, IHL is the only way available to ferret out workable device to put an end to impunity for grave breach of Geneva Conventions including Common Article 3 so that those persons whether belongs to armed forces of GOI or non-governmental forces must be personally liable and also accrue command responsibility and be punished for the grave and other breaches of Geneva Conventions and other related serious violations of laws and custom of war by establishing International Criminal Tribunal for Manipur, or prosecution under International Criminal Court (ICC) or National Court having jurisdiction to try violation of grave breach of Geneva Conventions and Additional Protocols and other serious violations of laws and customs of war by suitable amendment to existing the Geneva Conventions Act, 1960. GOI must not isolate itself from ICC Statute and it is high time to sign and ratify the same for cause of humanity.

It high time to stop recruitment of child soldier by the non-governmental armed forces immediately as it violates IHL and International Human Rights Law particularly Convention on the Rights of Child, 1989 and its Optional Protocol on the Involvement of Children in Armed Conflict, 2000 and those recruited child soldiers must be properly rehabilitated as per appropriate provisions of Convention on Rights of Child.



Perpetrators of IHL must be booked and try by International Tribunal preferably by ICC and the GOI must give free access by ICRC in Manipur. Last but not the least, GOI must sign and ratify - two Additional Protocols to the Geneva Conventions of 1977, ILO Convention No.138, and ICC Statute.

Only workable mechanism in this critical juncture is implementation of International Humanitarian Law in Manipur and thereby development activities will not be hampered. For humanitarian reasons, IHL restrict the rights of the parties to the conflict to use the methods and means of warfare of their choice, and protect people and property affected or liable to be affected by the conflict.

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