

Sisters in Crisis: Violence against women under India's Armed Forces Special Powers Act

A legal study

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A number of studies and international legal arguments have been made to challenge the legality of the Armed Forces Special Powers Act – in force across much of India's North and East – by way of India's constitution, and its international human rights obligations. This paper aims to explore the socio-legal and psychological forms of violence to which women are subjected under the Act, directly and indirectly, using the growing toolkit of international instruments to protect and advance women's human rights, and in reference to current feminist legal scholarship. By doing so it aims to highlight India's continuing and resounding failure to progressively realize women's equality in the North and East, and the often invisible forms of gendered harm wrought by this low-profile yet powerfully destructive emergency law, along with and militarization generally.

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Introduction

The women's movement in India's northeast that has emerged in response to the ongoing armed conflict is still confined to "saving the sons of the soil" syndrome. The women of northeast India need to make ourselves understand the issues of war, conflict and peace. We need to understand the different aspects of violence and the militarization of northeast societies so that we can contribute to a solution.

Indian author and activist, Binalakshmi Nepram²

Times of crisis can be empowering for women across the world, as they are pushed to the brink of activism and sometimes, away from their traditional roles.³ Nevertheless current research has established that conflict and militarism are more likely to create environments that repress and harm women disproportionately, compared to men.⁴ In these contexts gendered violations are rarely well addressed by human rights campaigns and state protection mechanisms. In fact during times of crisis, as held by academics such as Diane Otto, emergency rhetoric too often devalues the rights of women. This of course, significantly impedes the advancement now required by the international human rights paradigm.⁵

This has particular consequences for women living in protracted 'cold' states of conflict and authoritarianism. Here, there is little opportunity for change – whether in the form of transitional political reforms, or rights-based interjections by international donors during post-conflict reconstruction. Such women not only suffer sustained economic and social hardships and gendered forms of violence, but also perpetual restriction on their ability to address these violations through the full exercise of their civil and political rights. Patterns of violence and repression become self-perpetuating, and the damage done to individuals roots deep into the social fabric of the country.⁶

Such is the situation in the 'low intensity war' found in states across India's North and East.⁷ Among the 'seven sister' states that are fully or partially governed by the Armed Forces Special Powers Act 1958 (AFSPA; *Appendix I*) – at times in concurrence with other state and national security laws –⁸ two have suffered from draconian emergency rule and militarization for more than 50 years. Although India is a party to most of the major

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³ Gardam and Charlesworth, 2000

⁴ Gardam and Charlesworth, 2000; UN Security Council Resolution 1325 (2000)

⁵ Otto, 2011

⁶ Gardam and Charlesworth, 2000

⁷ The National Alliance of Women (NAWO), 2000

⁸ Such as the Jammu and Kashmir Public Safety Act 1978 and the National Security Act 1980

international human rights treaties, AFSPA breaches these by derogating key human rights,⁹ and by depriving civilians of legal recourse for offences committed by its armed forces.

This culture of militarism and impunity has led to the violent degrading of the women in northern and eastern tribes, many of which have traditionally afforded a strong autonomous position for their female members.¹⁰ This effect has been intensified by the values and prejudices imported by soldiers from other Indian states.

A number of studies and international legal arguments have been made to challenge the legality of AFSPA by way of India's constitution, and its obligations under the United Nations' (UN) International Bill of Human Rights.¹¹ However this paper aims to explore the socio-legal and psychological forms of violence that women are subjected to under the Act, directly and indirectly, via the growing toolkit of international instruments to protect and advance specifically female rights, and referencing current feminist legal scholarship. As a foreground I first briefly gauge how useful such a toolkit could be for campaigners, by looking at the interaction of international law with India's legal system, and will then orient the study with a brief history of AFSPA in the region, its powers, provisions, and the main sources of challenge against it. I will then introduce the instruments and concepts that make up the contemporary normative framework for protection, as understood in international law, before analyzing, as comprehensively as possible in the space available, the ways in which the Act facilitates violence against women.

By doing so I aim to highlight India's continuing and resounding failure to progressively realize women's equality in the North and East, and by doing so, to help invigorate domestic and international debate about the legality of this low-profile yet powerfully destructive emergency law.

India and international law

Opinion varies on the ability of law to substantively reduce the effects of armed conflict for women on the ground, as observed by Judith Gardam and Hilary Charlesworth. Nevertheless, as they note:

“Law generally serves to reinforce existing societal structures, in this case, discrimination against women. It therefore, at the very least, has a significant symbolic role to play in any improvements for the position of women in armed conflict.”¹²

⁹ Putra, 2008; Forum Asia, 2010

¹⁰ See CPDM 2010, Ch: *Torchbearers of Manipur*

¹¹ South Asia Human Rights Documentary Centre (SAHRDC), 1995; Amnesty International (AI), 2005

¹² Gardam and Charlesworth, 2000, p129, citing Christine Chinkin's *Feminist Interventions into International Law* (1997)

Although India takes the dualist approach to international law, activists can campaign for the incorporation of international standards into national legislation by its parliament, and progressive judges can and have played important interpretive roles in implementing India's international obligations.¹³ Thanks in part to The Bangalore Principles (2000),¹⁴ it is now an accepted rule of judicial construction in India that international conventions be used to interpret and promote constitutional guarantees, as long as they do not substantially conflict with the intended purpose of the constitution (whether domestic legislation directly implementing international provisions has been passed or not).¹⁵ This has been an important development because, as noted by a woman's coalition in India's first shadow report to the UN's Committee for the Convention on the Elimination of Discrimination Against Women (CEDAW), although

“the Constitution contains similar principles to the Women's Convention, the thrust has been *de jure* and not *de facto* realization of rights.”¹⁶

As I will establish, in armed conflict and under AFSPA, this rings particularly true.

At the UN Office of the High Commissioner for Human Rights (OHCHR) the consideration of AFSPA has been confined mostly to the Committee on the Elimination of Racial Discrimination (CERD) and the Human Rights Committee (HRC), with limited reference from the CEDAW Committee and Special Procedures. Although India has not ratified CEDAW's Optional Protocol, the fourth and fifth combined periodic reports are overdue and would be a useful platform, while the Special Rapporteur on violence against women, its causes and consequences, would also prove a valuable ally, should she become seized of the issue. Meanwhile, national action plans for Security Council (SC) Resolution 1325 are being considered by various countries, and have been strengthened by the 'Responsibility to Protect' (R2P) agreement at the World Summit in 2008, which India endorsed.¹⁷ In 1995 India also committed to reviewing national legislation and adopting or strengthening laws to punish state agents who use violence against women, in Beijing at the Fourth United Nations World Conference on Women.¹⁸

It should be noted that, while it will be difficult not to get drawn into explorations of the adequacy of provisions for women in the national framework, or the construction of gender within tribal communities of the North and East, these would take this paper well beyond its intended scope.

¹³ Agarwal (work-in-progress)

¹⁴ As seen in the referral to CEDAW by the judge in *Vishaka v. State of Rajasthan*. According to ECOSOC Resolution 2006/23 “the Bangalore Principles... are complementary to the Basic Principles on the Independence of the Judiciary”.

¹⁵ Global Justice Center, 2007

¹⁶ NAWO, 2000, p.75

¹⁷ Instraw, 2006

¹⁸ AI, 1998

The Armed Forces (Special Powers) Act

To examine the disparities between AFSPA and international human rights standards it will be necessary to give a brief history of emergency law and militarisation in the region. In 1958 the Armed Forces (Assam and Manipur) Special Powers Ordinance was promulgated by the president and applied to the ‘disturbed’ and the largely egalitarian tribal areas of Assam and the Union territory of Manipur, conferring wide-reaching powers on the military and paramilitary. It was passed as a bill by the Houses of Parliament and came on the Statute Book as The Armed Forces (Special Powers) Act, 1958.¹⁹ In a bid to stem secessionist action and ostensibly, control drug trafficking and other border-related crimes, amendments have extended its hold over all ‘seven sister’ states in the North-eastern region: Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura, as well as an equivalent act in Jammu and Kashmir. Since 1972, the power to declare a disturbed area has resided with both the state governors and the central government.²⁰

i) Legal provisions and powers

While Sections 1 to 3 of the Act briefly cover the definition of ‘disturbed’ and the power to declare areas as such, Section 4 is more comprehensive: it affords any member of the armed forces the sweeping power to arrest, without a warrant, “any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence” using any degree of force necessary, including lethal force, and to fire upon or use force “for the maintenance of public order” against persons who are contravening laws in the disturbed areas. It prohibits “the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire-arms, ammunition or explosive substances.” Searches of persons and premises can be made without a warrant, while goods “reasonably suspected to be stolen” can be confiscated, and structures that could be in use by insurgents, destroyed. According to Section 5, anyone arrested by the army must be handed to police, not within a specific time period, but “with least possible delay”. Finally, Section 6 ensures that army personnel are accountable only to internal regulation and punishment, stating: “No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.” This immunity extends to the mandate of the National Human Rights Commission (NHRC), which, according to Section 19 of the Protection of Human Rights Act (PHRA), is not empowered to investigate alleged violations by the armed forces in areas governed by AFSPA.²¹

The few legal challenges made through the courts have generally served to strengthen the Act, and the Supreme Court most recently upheld its constitutionality in 1998.²² The

¹⁹ 11 September, 1958

²⁰ Institute for Defence Studies and Analysis (IDSA), 2004

²¹ It can only seek a report from or make recommendations to the central government, and require that it be informed of action taken on a case within three months.

²² SAHRDC, 1995; IDSA, 2004. See also *Naga People’s Movement of Human Rights v. Union of India*, (1998); *Inderjit Barua v. State of Assam* (1983); *Luithukia v. Rishang Keishing*, (1988)

recommendation to repeal the Act by a state-appointed review committee in 2005 was rejected by India's defense minister.²³ An extensive network of security forces have thus far been deployed under AFSPA to 'aid' civil power;²⁴ among them the Border Security Force (BSF), the National Security Guards (NSG), the Assam Rifles and the Rashtriya Rifles.

What does AFSPA mean for women?

“While bullets, bombs and blades make the headlines, women's bodies remain invisible battlefields.”

–Margot Wallström, U.N. Special Representative on Sexual Violence in Conflict²⁵

iv) Violence against women in international law

The recognition, by international humanitarian, criminal and human rights law, of the ways in which women are affected by violence during armed conflict has greatly expanded the normative international framework for their protection. Key among such provisions are the Geneva Conventions and Protocols, General Recommendation No.19 of CEDAW – the first UN document to acknowledge that women suffer disproportionately from violence because of discrimination – and recent binding SC Resolutions, particularly 1820 (2008), which establishes that rape can be a 'tactic of war' and a war crime, a crime against humanity, or a constitutive act with respect to genocide. Building on this has been work by UN Special Rapporteurs such as those on violence against women, and on torture and other cruel, inhuman or degrading treatment or punishment, and the U.N. Special Representative on Sexual Violence in Conflict, quoted above, who have significantly pushed the boundaries of what such violence is and how it should be responded to.²⁶ The recognition of sexual violence as constituting international crimes in their own right in the Rome Statute of the International Criminal Court and the statutes of the ad hoc international criminal tribunals, has meanwhile led to a significant body of jurisprudence,²⁷ and there is growing consensus that prohibiting rape is fundamental enough to amount to *jus cogens*.²⁸ The spectrum of violence as now understood, ranges from forms of ill-treatment and torture in custody, and physical and mental violence in private and public spheres,²⁹ to economic and social harms, facilitated by restrictions on civil and political rights that reduce the

²³The Times of India, 2009

²⁴ IDSA, 2004

²⁵ Counter Currents, 2010; UN News Centre 2010

²⁶ Report of the Special Rapporteur on violence against women: UN Doc E/CN.4/2006/61; and on torture: UN Doc A/HRC/7/3 (2008)

²⁷ Such as *Prosecutor v. Akayesu* (1998), in which the ICTR recognized rape as a form of genocide.

²⁸ Global Justice Center, 2007

²⁹ Report of the UN Special Rapporteur on torture: UN Doc. A/HRC/7/3 (2008).

ability of women to pursue redress, and foster an environment of impunity. All are now considered interlinked components of a structural barrier to women's equality, as outlined in CEDAW.³⁰ International provisions therefore emphasise the positive obligations of the state to both protect women and ensure their advancement by comprehensively tackling such forms of violence, and shape the expectations and recommendations of international treaty-monitoring bodies such as the CEDAW Committee.

v) Violence, impunity and access to justice in the North and East

There are manifold ways in which AFSPA has facilitated acts of violence against women as framed above, but perhaps the most direct link is in the leeway given to military personnel in making arrests and performing searches in Sections 4 and 5, and the lack of adequate binding or implemented safeguards. Gross patterns of violence under AFSPA have been acknowledged by CEDAW 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.³¹ There have also been many cases recorded of arbitrary detention and forced labour,³² and strong evidence to suggest that women have been tactically targeted during raids.³³

The failings of the Indian government in this respect are most evident in the rudimentary 'Dos and Don'ts' (*Appendix II*) which allegedly govern the conduct of military personnel under AFSPA. These direct only a few sparse provisions to the treatment of women, which are alarmingly inadequate in comparison to international best practice.³⁴ The disparity exposes both the state's lack of will to protect women, and to understand what would constitute such protection. The 'Dos and Don'ts' have enjoyed little public awareness, even after they became binding in 1998,³⁵ and campaigns to have them expanded on or implemented have not been successful.³⁶ Meanwhile according to human rights organizations such as the Saheli Women's Resource Centre (SWRC) in Delhi, 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 or East, further discouraging civilians from legal action and strengthening an environment of impunity.³⁷

³⁰ Oette, 2011

³¹ 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/I/CRP.3/Add.4/Rev.1, p71

³² SAHRDC 1998

³³ NAWO, 2000, p73; SAHRDC, 1998; SWRC, 2005; Kangla Online, 2010, 'Tangkhul women...'

³⁴ *Declaration on the Protection of Women and Children in Emergency and Armed Conflict*, 1974; or SC Resolution 1820 p3: "Demands that all parties to armed conflict immediately take appropriate measures to protect civilians, including women and girls, from all forms of sexual violence, which could include, inter alia, enforcing appropriate military disciplinary measures and upholding the principle of command responsibility, training troops on the categorical prohibition of all forms of sexual violence against civilians, debunking myths that fuel sexual violence, vetting armed and security forces to take into account past actions of rape and other forms of sexual violence."

³⁵ *Naga People's Movement of Human Rights v. Union of India*

³⁶ Such as recommendations in the NHRC's Annual Report 1997-98.

³⁷ SWRC, 2005, Asian Human Rights Commission (AHRC) 2010, and thanks to discussion with Bijo Francis of the AHRC South Asia Desk

The implications of such impunity for women have been roundly considered in scholarship and consistently raised on international platforms in binding international legal doctrine, such as SC Resolution 1820.³⁸ In 1997 the HRC 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.”³⁹

Such requests were largely in response to AFSPA’s Section 6, which remains the greatest source of impunity in the region.⁴⁰ Although 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 murder,⁴¹ the statute creates the framework for misinterpretation, and police and even the judiciary regularly instruct victims to seek permission from the central government in Delhi in order to initiate prosecutions against military personnel.

This provision affects women disproportionately to men.⁴² As highlighted regularly by the CEDAW Committee, a litany of obstacles already blocks the way for many women who wish to access justice, among them, lower grades of education and the ‘double burden’ of economic dependence and heavy domestic responsibilities,⁴³ along with their vulnerabilities in predominantly male environments such as courts and police stations.⁴⁴ 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;⁴⁵ and concerns have been issued in the past about the capacity of the Indian judiciary to handle such cases appropriately.⁴⁶

Yet to access the court at the higher levels involves severe logistical challenges and security risks. These may have been occasionally overcome by women such as Parveena Ahanger, who filed a habeas corpus petition in the Jammu and Kashmir High Court in her bid to bring the soldiers who allegedly murdered her teenage son in 1990 to account. Yet justice remains unlikely. Ahanger was refused sanction by the Federal Home Ministry due to an

³⁸ Also SC Resolution 1325; the 2005 UN World Summit Outcome Document; CEDAW General Recommendation 19; Oette, 2011, and Urban Walker 2009. For jurisprudence of the CEDAW Committee positive obligations, see *Ms. A.T. v. Hungary*, UN Doc. CEDAW/C/36/D/2004

³⁹ UN Doc. A/52/40, 1997; CEDAW/C/2000/I/CRP.3/Add.4/Rev.1, p72

⁴⁰ SAHRDC, 1998

⁴¹ Thanks to a discussion with Bijo Francis

⁴² SC Resolution 1325 (11) notably stresses the need to exclude violent crimes against women from amnesty provisions.

⁴³ CEDAW General Recommendation 23, p11

⁴⁴ CEDAW/C/IND/CO/SP.1, 2010, p21; A/HRC/7/3, 2008, p61

⁴⁵ Manjoo, Kwaka, Onyeka, forthcoming (2011); Urban Walker, 2009; SWRC, 2005

⁴⁶ See concluding observations: CEDAW/C/IND/CO/SP.1, 2010, p21 for concerns about “gender sensitivity, hostile behaviour and lack of impartiality on the part of some public prosecutors and judges in the trial courts.” Also see recommendations in concluding observations: CEDAW/C/2000/I/CRP.3/Add.4/Rev.1, p73

allegedly insufficient investigation, and when Amnesty International (AI) last reported on her case in 2005, her High Court petition challenging the denial had been pending for five years.⁴⁷ Neither did she have a precedent to encourage her: in the same report AI claims that it could not find evidence that any application to the Central Government had succeeded in allowing the trial of a member of the armed forces in Jammu and Kashmir.

Alternative options are no more encouraging. 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.⁴⁸ They are also resource-intensive for complainants, which again constitutes extra barriers for many women.⁴⁹ 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 – contested writ appeals filed by the Assam Rifles, which had challenged its legality in a high court using Section 6.⁵⁰ As of early January 2011 the central government had not moved to act. Both the framework 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 and facilitating their positions as easy targets for violence.⁵¹

Contexts of conflict and militarization have also been tied to flourishing rates of domestic violence, locally and internationally,⁵² yet as explored further below, the problem is often neglected as an 'woman's issue'. During an event to celebrate International Women's Day 2010 in Manipur, one speaker observed that there remains a lack of local education and understanding on the causal links between violence against women and "the failure to maintain gender management in a family."⁵³ While the national Protection of Women from Domestic Violence Act was enacted in 2005, its effect has been inconsistent; the CEDAW Committee and local groups have issued concerns that implementing mechanisms remain absent from various territories, the tribal regions among them.⁵⁴ The understanding of domestic and sexual forms of violence as torture or ill treatment has been developed by international treaty bodies, and has great potential for further study in this context.⁵⁵

⁴⁷ AI, 2005

⁴⁸ According to one Manipuri media outlet, Hueiyen Lanpao (2010), of a total of 1511 cases taken against the army and the Assam Rifles in the last 20 years, 2.32% were ruled to be true

⁴⁹ AI, 2005

⁵⁰ Manipur Online, 2010; Sangai Express, 2011

⁵¹ As directed for example, by HRC Resolution 14//12, 2010; GA Res 48/104, Art 4c; and the report of the Special Rapporteur on Violence against Women, UN Doc. E/CN.4/2006/61

⁵² Ward, 2002

⁵³ Kangla Online, 2010, 'Manipur still unable to control gender violence...'

⁵⁴ Concluding observations on India: CEDAW/C/IND/CO/3 (2007); India Today, 2010

⁵⁵ See HRC General Comment No. 28 (2000) on article 3, p11; UN Doc. A/HRC/7/3, 008, or *V.L. v. Switzerland*, UN Doc. CAT/C/37/D/262/2005, para.8.10.

vi) *Militarization and violence against women*

It has been firmly established that the intersection of militarization and violence against women exacerbates structural inequality. As noted 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.”

On one level, when a predominantly male military body is strongly integrated into the political and civic structure of a country, most female participation and representation in government is precluded, and women-related issues become more politically marginalised than usual.⁵⁶ In the North and East this influence has been more extreme still, since there is evidence that due to ethnic tensions, the national security rhetoric and prejudices of many recruits (who often hail from other provinces nearby in which women are culturally more subordinated), rape is being used as form of collective punishment.⁵⁷ This impression has been fortified by nonchalant comments of superior officers, reported in the media, that rape is ‘likely’ in any large army.⁵⁸

The South Asian woman's body as a site of conflict and the intricate relationship between ‘military values, love and desire for the nation-state’ and gender ideology, has been evocatively rendered in a 2008 essay by Pakistani sociologist, Rubina Saigol who emphasises that:

“Militarisation, in a wider and more comprehensive sense, entails the effects of militaristic thinking on an entire society... violence and ideas of combat, battle, fighting, blood, martyrdom, victory, defeat, heroes and traitors become a part of everyday life even in civilian matters.”

More recently Diane Otto, channelling Hilary Charlesworth, has also explored the way that a language of exception combines with an inflated ‘macho’ hero response to produce cultures of “short term, quick-fix and ‘truncated’ ways of thinking that simplify the ‘facts’, dismiss analytical and critical perspectives, and silence the larger picture of everyday structural inequalities and injustices.” In the North and East for example, violence spiked when the armed forces began to be issued with ‘gallantry awards’,⁵⁹ and according to one Indian human rights lawyer, the misogynist values brought into the North and East by outside recruits are now influencing the conduct of civil servants, thanks to a blend of intimidation and opportunism; this has extended, he says, to the judiciary.⁶⁰

⁵⁶ Cook, 1990, p693

⁵⁷ SWRC 2005; and with thanks to discussion with Bijo Francis, AHRC

⁵⁸ SWRC 2005

⁵⁹ Time Magazine, 2009

⁶⁰ From a discussion with Bijo Francis, AHRC

Women in the North and East have responded to this threat with bravery and dynamism; many making defiant use of their bodies. For example, Manipur's Irom Sharmila is now into her eleventh year of hunger striking against the AFSPA, while in 2004 twelve women memorably stripped naked outside a military headquarters wielding signs that read 'Indian Army, Rape Us'. Yet women here have not been unaffected by the male-centric mindset. As highlighted by Binalakshmi Nepram in the introductory quote to this paper, most are likely to seek attention for violations of the rights of the men in their families.⁶¹ Indeed in almost any context of conflict, to lobby for women's rights specifically – if not in relation to direct acts of violence – can invite charges of disloyalty, even sedition, from all sides.⁶²

Such violence carries a litany of socio-economic repercussions. The protection of women from exploitation relies on advances in female land tenure, health, education and employment, among other aspects, which can all be negatively impacted by armed conflict. As reported by the SWRC in a submission to a 2005 AFSPA review committee:

“Daily life has been routinely affected by the arbitrary house searches, body searches, questioning, threats and harassment of all sorts... For entire families [this has] a severe impact on their sense of safety and the freedom of mobility – which in turn has had a direct impact on their livelihoods, their safety in fields, their access to forest/forest produce and their ability to receive medical care... The psychological impact of such militarisation has been immeasurable.”⁶³

The fear and the consequences of sexual violence for example, can cause women to retreat from economic activity, where it is an option, and children, especially 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.⁶⁴ Losing men to violent death, to injury or to fighting can not only have severely traumatic effects on women, but will leave them to take sole charge of their families and dependents, sometimes in the context of internal displacement, which brings with it a further string of harms and hazards.⁶⁵ Such women from tribes in the North and East often migrate to cities, where they are also vulnerable to exploitation; figures have shown that trafficking and prostitution increase during conflict, which has further ramifications for women's physical and mental wellbeing.⁶⁶ As is now comprehensively recognized 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. To bring such understanding to the North and East, will be to hold the state more soundly accountable.

⁶¹ Also see Rubio-Marin, 2009

⁶² Thanks to a discussion with Diane Otto

⁶³ SWRC, 2005

⁶⁴ UN Chronicle, 2010; NAWO 2000

⁶⁵ Beijing Platform for Action Outcome Document, p 133, 135, 139; Urban Walker, 2009

⁶⁶ NAWO, 2000; Asia Pacific Forum on Women, Law and Development (APWLD), 2008

Conclusion

The conflict governed by AFSPA is a complex battle between state and non-state, and tribal and non-tribal persons, over issues of development, autonomy, ideology, disenfranchisement and crime, in which tens of thousands have died violently over the course of the conflict,⁶⁷ and in which perhaps its only linear aspect has been its focus on men. As noted by Otto, feminist ideas can help broaden and equalize the geographies of these complex histories, and recognize new forms of struggle against domination. Women must be allowed their place within this narrative, and the use of women-specific human rights instrument found in international law can only help such a narrative develop.

The women of the North and East themselves give much cause for hope. Dynamic, traditionally autonomous, vocal and brave, they have continued to gather and rally amid 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.⁶⁸ As noted by Australian Aboriginal scholar and activist Marcia Langton,⁶⁹ there lies opportunity in crisis: to uncover systematic inequalities, to tackle long term structural change, and to pursue full participation in the peace-building process, even if, currently, no peace appears to be in sight.

Yet one can't simply march into such a context with CEDAW and high hopes. The women of the North and East will likely wish to translate these internationally-nurtured norms and concepts in order to apply them meaningfully to their own sites of struggle. Yet the understanding that disadvantage and injustice cannot be separated from issues of gender inequality and violence against women, will make for a strong new chapter of contribution and change in the region.

⁶⁷ AI, 2005

⁶⁸ Notably the Beijing Platform for Action, 2005, SC Resolution 1325, 2000 and CEDAW General Recommendation 23, 1997

⁶⁹ Cited in Otto, 2011

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Appendix 1:

Armed Forces (Special Powers) Act, 1958

An Act to enable certain special powers to be conferred upon members of the armed forces in disturbed areas in the State of Assam and the Union Territory of Manipur.

Be it enacted by Parliament in the Ninth Year of the Republic of India as follows:

1. (i) This Act may be called [The Armed Forces (Assam and Manipur) Special Powers Act, 1958].

(ii) It extends to the whole of the State of Assam and the Union Territory of Manipur.

2. In this Act, unless the context otherwise requires:

(a) "armed forces" means the military forces and the air forces of the Union so operating

(b) "disturbed area" means an area which is for the time being declared by notification under section 3, to be a disturbed area;

(c) all other words and expressions used herein, but not defined and defined in the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950) shall have meanings respectively assigned to them in those Acts.

3. If the Governor of Assam or the Chief Commissioner of Manipur is of the opinion that the whole or any part of the State of Assam or the Union Territory of Manipur, as the case may be, is in such a disturbed or dangerous condition that the use of armed forces in aid of the civil powers is necessary, he may, by notification in the Official Gazette, declare the whole or any part of the State or Union territory to be a disturbed area.

4. Any commissioned officer, warrant officer, non commissioned officer or any other person of equivalent rank in the Armed Forces may, in a disturbed area,

(a) if he is of opinion that it is necessary so to do for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire-arms, ammunition or explosive substances;

(b) if he is of opinion that it is necessary so to do, destroy any arms dump, prepared or fortified position or shelter from which armed attacks are made or are likely to be made or are attempted to be made, or any structure used as a training camp for armed volunteers or utilised as a hide-out by armed gangs or absconders wanted for any offence;

(c) arrest, without warrant, any person who has committed a cognisable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognisable offence and may use such force as may be necessary to effect the arrest;

(d) enter and search without warrant any premises to make any such arrest as aforesaid or to recover any person believed to be wrongfully restrained or any arms, ammunition or explosive substances believed to be unlawfully kept in such premises and may for that purpose use such force as may be necessary.

5. Any person arrested and taken into custody under this Act shall be made over to the officer-in-charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest.

6. No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.

7. (1) The Armed Forces (Assam and Manipur) Special Powers Ordinance 1958 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have done or taken under this Act, as if this Act had commenced on the 22nd day of May, 1958.

Source: Amnesty International (AI), *India: Briefing on the Armed Forces (Special Powers) Act, 1958*, AI Index: ASA 20/025/2005, 9 May 2005.

Appendix 2:

List of Dos & Don'ts as directed by the Supreme Court in *Naga People's Movement of Human Rights v Union of India* [1997] ICHRL 117 (27 November 1997).

DOS

1. Action before Operation

(a) Act only in the area declared 'Disturbed Area' under Section 3 of the Act

(b) Power to open fire using force or arrest is to be exercised under this Act only by an officer/JCO/WO and NCO

(c) Before launching any raid/search, definite information about the activity to be obtained from the local civil authorities

(d) As far as possible coopt representative of local civil administration during the raid.

2. Action during Operation

(a) In case of necessity of opening fire and using any force against the suspect or any person acting in contravention of law and order, ascertain first that it is essential for maintenance of public order. Open fire only after due warning

(b) Arrest only those who have committed cognizable offence or who are about to Commit cognizable offence or against whom a reasonable ground exists to prove that they have committed or are about to commit cognizable offence

(c) Ensure that troops under command do not harass innocent people, destroy property of the public or unnecessarily enter into the house/dwelling of people not connected with any unlawful activities

(d) Ensure that women are not searched/arrested without the presence of female police. In fact women should be searched by female police only.

3. Action after Operation

(a) After arrest prepare a list of the persons so arrested

(b) Hand over the arrested persons to the nearest police station with least possible delay

(c) While handing over to the police a report should accompany with detailed circumstances occasioning the arrest

(d) Every delay in handing over the suspects to the police must be justified and should be reasonable depending upon the place, time of arrest and the terrain in which such person has been arrested. Least possible delay may be 2-3 hours extendable to 24 hours or so depending upon a particular case

(e) After raid make out a list of all arms, ammunition or any other incriminating material/document taken into possession.

(f) All such arms, ammunition, stores etc. should be handed over to the police station along with the seizure memo

- (g) Obtain receipt of persons and arms/ammunition, stores etc. so handed over to the police
- (h) Make record of the area where operation is launched having the date and time and the persons participating in such raid
- (i) Make a record of the commander and other officers/JCOs/NCOs forming part of such force
- (k) [sic] Ensure medical relief to any person injured during the encounter, if any person dies in the encounter his dead body be handed over immediately to the police along with the details leading to such death

4. Dealing with civil court

- (a) Directions of the High Court/Supreme Court should be promptly attended to
- (b) Whenever summoned by the courts, decorum of the court must be maintained and proper respect paid
- (c) Answer questions of the court politely and with dignity
- (d) Maintain detailed record of the entire operation correctly and explicitly.

DON'TS

1. Do not keep a person under custody for any period longer than the bare necessity for handing over to the nearest police station
2. Do not use any force after having arrested a person except when he is trying to escape
3. Do not use third-degree methods to extract information or to extract confession or other involvement in unlawful activities
4. After arrest of a person by the member of the armed forces, he shall not be interrogated by the member of the armed force
5. Do not release the person directly after apprehending on your own. If any person is to be released, he must be released through civil authorities
6. Do not tamper with official records
7. The armed forces shall not take back a person after he is handed over to civil police.

List of Dos and Don'ts while providing aid to civil authority

DOS

1. Act in closest possible communication with civil authorities throughout
2. Maintain inter-communication if possible by telephone/radio
3. Get the permission/requisition from the Magistrate when present
4. Use little force and do as little injury to person and property as may be consistent with attainment of objective in view
5. In case you decide to open fire
 - (a) Give warning in local language that fire will be effective
 - (b) Attract attention before firing by bugle or other means
 - (c) Distribute your men in fire units with specified Commanders
 - (d) Control fire by issuing personal orders
 - (e) Note number of rounds fired
 - (f) Aim at the front of crowd actually rioting or inciting to riot or at conspicuous ringleaders, i.e., do not fire into the thick of the crowd at the back
 - (g) Aim low and shoot for effect
 - (h) Keep Light Machine Gun and Medium Gun in reserve
 - (i) Cease firing immediately once the object has been attained
 - (j) Take immediate steps to secure wounded
6. Maintain cordial relations with civilian authorities and paramilitary forces
7. Ensure high standard of discipline

DON'TS

8. Do not use excessive force
9. Do not get involved in hand-to-hand struggle with the mob
10. Do not ill-treat anyone, in particular, women and children
11. No harassment of civilians
12. No torture
13. No communal bias while dealing with civilians
14. No meddling in civilian administration affairs
15. No Military disgrace by loss/surrender of weapons
16. Do not accept presents, donations and rewards
17. Avoid indiscriminate firing.