

Recognizing violent encounters in North East India as internal armed conflict – the way forward to curb human rights violations?

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The Non-State Armed Groups in North East India have been consistently engaged in hostilities with the Indian armed forces, resulting in a myriad of human rights violations by both sides. In a span of 15 years (2000 to 2015), North East India has witnessed over twelve thousand casualties out of which [more than five thousand are civilians](#). Though the number of casualties has been on a decline since 2015, human rights violations are still prevalent in the area. These violations ranged from instances where the Indian army used [civilians as human shields](#) to instances where the insurgent groups [recruited and deployed child soldiers](#). Additionally, most of the [Non-State Armed Groups active in these areas are organized groups](#) as evidenced by a proper hierarchical command structure, well-structured agendas and tactics, access to funding and sophisticated weapons.

This article argues that the current legal response to these violent encounters under the domestic legal framework leads to severe human rights violations, and as the armed conflicts in North East India fulfil the definition of 'internal armed conflicts' under the Additional Protocol II (AP II) to the 1949 Geneva Conventions, India is urged to ratify the AP II in order to ensure sufficient protection, in particular for civilians, under international humanitarian law.

Applicability of IHL in non-international armed conflicts and the concerns of states

Even in Non-International Armed Conflicts (NIACs), civilians and persons not playing any active part in the conflict are entitled to protection and dignified treatment under IHL as per *Common Article 3 of the Geneva Conventions, 1949* and the Additional Protocol II (AP II), 1977. AP II was perceived as a threat to the sovereignty of States, which resulted in its ratification by only 168 countries as against the 196 countries that ratified the Geneva Conventions. Countries such as Israel, Iran, Pakistan, Iraq, USA and India are among the countries which did not ratify this protocol.

It is notable that *Article 3* of AP II itself calls for non-intervention, as it prohibits the States from invoking the Articles of the Protocol to the detriment of sovereignty of a State and that they should instead strive to defend it. Evidently, the Protocol tries to strike a balance between humanitarian aims and the fears over weakening the sovereignty of States.

In such a scenario, non-ratification of the Protocol can essentially mean either of the two things: One, that the States do not intend to extend protection either to the civilians and/or to the individuals of Non-State Armed Groups in a NIAC. Two, that the domestic legal framework is deemed adequate to protect their rights. However, as is explained in the following section, the domestic framework in India is not adequate to protect the rights of civilians and thus, non-implementation of AP II only points at India's reluctance to safeguard their rights.

Labelling the conflict in North East India as mere internal disturbance – a strategy for the justification of severe human rights violations

The drafters of the Protocol were careful enough to set a minimum threshold for the identification of NIACs covered by the AP II by excluding situations of internal disturbances and tensions. Internal disturbances and tensions are defined under *Article 1 of the AP II* as “riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.”

It is necessary to distinguish between internal disturbances/tensions and internal armed conflicts as only domestic laws and human rights law are applicable to the former case while even IHL is applicable to the latter case. While the protection offered by IHL in international armed conflicts was initially much more comprehensive when compared to that offered in cases of internal armed conflicts, the ICRC study on customary IHL establishes that this difference has reduced considerably. Nearly [136 of the 161 customary IHL rules](#) are applicable even to the internal armed conflicts. Customary IHL rules provide an additional layer of protection to the civilians in internal armed conflicts but India still flouts these rules. Acceding to AP II will not only be binding on India and also has the potential to pave the path to adhere to customary IHL rules as well.

India has long maintained that conflicts within the territory of the State, except those of liberation movements, must be resolved by the State itself [without any intervention from other States](#) and through the domestic legal framework only. Most important of such domestic legislations is the infamous Armed Forces (Special Powers) Act [AFSPA] which gives extensive powers to the armed forces to search, destroy property, arrest and kill individuals without any warrant if they consider it to be necessary to maintain law and order in the area. It has been in effect in numerous North-Eastern States for decades, even though the Act specifically states that it can be implemented only in states/parts of states which can be identified as “disturbed areas”. The AFSPA does not define what “disturbed areas” are, however the Disturbed Areas Act (1976) defines it as “any area within a State with extensive disturbance of the public peace and tranquility, by reason of differences or disputes between members of different religious, racial, language or regional groups or castes or communities”.

As opposed to the definition of disturbed areas, AFSPA has been implemented in various North Eastern states in order to suppress the movements like the Naga Separationist movement, Mizo National Front Uprising etc. The armed conflicts in these states were not so much between various communities but between various insurgent groups and the Indian armed forces that either demand to be separated

from the Indian Union or regional autonomy. The extensive powers granted by AFSPA circumvents the fundamental right to life granted under *Article 21 of the Constitution of India* as it endangers the lives of civilians as well. Therefore, the AFSPA has to be repealed immediately to ensure that the blatant human rights violations committed by the armed forces are not protected under domestic law anymore.

Internal Armed conflicts or Internal Disturbances under AP II?

In order to be classified as an internal armed conflict under [Art 1 of AP II](#), the involved Non-State Armed Group/s must exercise a responsible command (organised), have sustained and concerted military action and must have the ability to implement the Protocol. As described in the introduction, many Non-State Armed Groups in North-East India fulfil this criteria which further justifies the need to appropriately identify the ongoing conflicts as internal armed conflicts rather than classifying them as mere internal disturbances.

Initially, India was against acceding to AP II as it was not willing to even accept the classification of Non-International Armed Conflicts and insisted that such situations should be handled with the help of domestic laws only. However, [this stance has since changed](#) considering that India became party to international treaties such as the Convention on Certain Conventional Weapons, 1980 which relates to Non-International Armed Conflicts. Considering that India no longer has any valid reason to not accede to AP II, as was established by an [expert committee](#) constituted by Indian Society of International Law, India should no longer refrain from acceding to this protocol.

Acceding to AP II can provide comprehensive protection of human rights of civilians in NIACs. It will not only ensure that the Indian armed forces don't flout the principles of IHL during NIACs but will also [create a moral obligation](#) on the Non-State Armed Groups to adhere to the principles of IHL. The obligations arising out of implementing AP II can be banked upon to further convince the Indian legislators about the necessity of developing a comprehensive set of norms for safeguarding the human rights of civilians specifically during NIACs.

Conclusion

While the decline in the number of casualties due to these conflicts in India in the recent years can be considered to be a positive development, the fact that many casualties and human rights violations go unreported cannot be denied. Considering that these armed conflicts in the North Eastern states fulfil the required criteria to be a NIAC under the ambit of the AP II, it is high time that the Government of India recognizes them as NIAC and not as mere internal disturbances. To label these internal armed conflicts as mere "disturbances" is nothing but a misnomer.

Duly recognizing these conflicts as internal armed conflicts coupled with the repeal of AFSPA, will be of significant importance at multiple levels. One, it will be perceived as the Indian government acknowledging the gravity of the situation at the ground level. Two, it will curb the human right violations perpetuated by the armed forces

under the garb of AFSPA. Three, it will be an instrumental step towards acceding to AP II. Regardless, at least the basic human rights of civilians must be protected in accordance with Common Article 3 of the Geneva Conventions, 1949 as India has already ratified it. It is worth pointing out that the Non-State Armed Group *The Peoples Liberation Army of Manipur* has signed the deed [to comply with the Common Article 3](#) and even the *National Socialist council of Nagaland* has [signed the deed to comply](#) with International Humanitarian Law. The Indian Government should follow suit, and apart from ratifying AP II, issue strict guidelines to the armed force personnel and provide them with adequate training to ensure that they adhere to the standards laid down in IHL.

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