Chapter - III

Adumbration of International Humanitarian Law
in Indian Legal System

3.1 Introduction

Under the international humanitarian law, every State has three obligations. Firstly, obligation to respect, which requires the State, to abstain from doing that which violates, even directly or indirectly, the human rights of its people. Secondly, the obligation to protect, which requires the State and its agents, to take measures, necessary to prevent other individuals or groups from violating or infringing the enjoyment of the right and thirdly, the obligation to fulfill human right, that requires the State, to take measures to ensure each person within its jurisdiction has the opportunities to obtain satisfaction of those needs recognized in the human rights instruments which cannot be achieved by personal effort\(^1\). Generally, the States are trying to observe these obligations by incorporating relevant provisions in their Constitutions or adhering to bilateral treaties or by observing time honoured customary rules. But, during the period of warfare, observance of those obligations ultimately depends on time, place and countries involved.

The Constitution of India, have also made many provisions under Part III and Part IV of the Constitution, under which Government is bound to protect certain basic rights of its people. The Constitution also provide provisions for entering into international agreements, treaties and become party to any international documents by the Government and to enact laws by the parliament for implementing the provisions

of such treaties. This chapter analyses the provisions of Indian Constitution that reflect the obligations of the Government under International Humanitarian Law and how far the Government follows such obligations while enacting laws to her people.

3.2 Humanitarian Principles in pre-independence Indian legal system

The legal system of ancient India was based on ‘Dharma’ that contained principles and moral precepts which aimed at ensuring the welfare of the society by regulating human conduct. In the same way, some humanitarian principles were also prevalent at the time of the war. In pre Vedic period, when Indian society was organized in tribal communities and war was a common phenomenon among communities, in some parts of her, seizure of cattle was an advance warning of an attack, gave civilians and non-combatants time to seek shelter. In Vedic period, the Vedas and Shastras and epics of Ramayana, Mahabharata reflects the existence of war and customs of war. War was categorized into dharma yudhya (righteous war) and adharma yudhya (unrighteous war). In dharma yudhya, the warrior is morally obliged to do his duty without thought of a possible reward\(^2\). It was expressly joined by the sacred laws of Dhamashastra that all belligerent at all times and in all circumstances must adhere to the accepted rules of warfare.

The principle of proportionality was seemed to have existed with regard to the use of weapons. Moreover, copious rules were there relating to the treatment of persons who were not directly involved in the war or who were captured as prisoners of war. Enemy non-combatants, such as charioteers, mahouts (elephant drivers), war musicians or priests, should not be fought with. A panic-stricken foe or an enemy on

the run should not be followed in hot pursuit. Guards at the gates should not be killed. The ancient texts lay great emphasis on the protection of civilians and civilian objects from the adverse impact of warfare. A peaceful citizen walking along a road, or engaged in eating, or who has hidden himself, and all civilians found near the scene of battle should not be harmed\(^3\).

Ashoka represents the earliest incarnation of the principle of non-use of force in international relations that now enshrined in Article 2, Paragraph 4 of the United Nations Charter\(^4\). The principle of prohibition of use of weapons causing unnecessary sufferings, treatment of persons who were no longer taking part in the war, the prisoners of war etc. were also recognized in ancient India. The texts also provide for the protection of civilians and civilian objects from the adverse impact of warfare. Wars were usually fought on plains, away from inhabited areas.

During mediaeval period, the practice of Ranas of Chittor, in Rajasthan, Nagendra Singh cites example of release of Prisoner of Wars (POW). Some treaties conducted at the end of a war contained provisions relating to the repatriation of POW which represented some moral authority of humanitarian law amidst the clash of arms\(^5\). European colonialism in Indian can be considered the Dark Ages. The colonizers refused to apply to Asia and its princes what little international law they had developed in Europe. Jallianwalla Bagh massacre of 1919 is one of example of their inhumane treatment to the Indian. The standard of compliance by the Indian rulers of the colonial era with humanitarian laws was, by and large, better than that British. Chhatrapati Shivaji, the most powerful of the Marathas in the early 17\(^{th}\)


\(^4\) Supra note 3

\(^5\) Ibid
century, respected women, mosques and non-combatants and did not permit the slaughter of human after battle and released with honour the captured enemy officer and men\textsuperscript{6}.

3.3 \textbf{Humanitarian Principles in present Indian legal system}

Being the largest democracy of the world, the Constitution of India confers India’s sovereignty on the people of the country. So, the founding fathers of the Constitution incorporated principles of justice, liberty, equality, fraternity in the very Preamble of the Constitution to protect the dignity of individual. Moreover, the founding fathers of the Indian Constitution while drafting the Constitution of India were very much aware of Universal Declaration Human Rights (UDHR). They included many human rights mentioned in the UDHR in the part III and Part IV of the Constitution, so that principles inserted in the Preamble can be implemented in actual terms. Thus, some of the civil and political and cultural rights of UDHR are found place in the chapter of Fundamental Rights (Part III) of the Constitution and made those rights judicially enforceable. Again, some of the economic and social rights have been included in the chapter of Directive Principles of State Policy (Part IV) and made them judicially not enforceable. But in fact, human dignity cannot be compartmentalized into two categories as legally enforceable and legally unenforceable. If some human rights are recognized, it must necessarily follows the recognition of all human rights, for they are indivisible and interdependent. Denial of judicial relief in the case of violation of some human rights will result in the denial of such relief for all human rights. So, the Supreme Court of India in \textit{State of Kerala vs. N. M. Thomas}\textsuperscript{7}, has made it clear that the Fundamental Rights and Directive

\textsuperscript{6} Supra note 2

\textsuperscript{7} SCC 1976 p. 310
Principles are complementary and supplementary to each other and therefore principles and rights should be harmoniously construed. The harmony and balance between the two is an essential feature of the basic structure of the Constitution of India. All such rights are enforceable against the State and its authorities. Article 12 defines the “State” which includes the Government and Parliament of India and the Government and Legislature of each of the States, and all local or other authorities under the control of the Government.

Article 14 of the Constitution of India, provides provisions reflecting the Article 7 of the UDHR\textsuperscript{8}. The Article says that “the State shall not deny to any person equality before the law, or the equal protection of the laws within the territory of India”. Thus, the Article embodies a broad guarantee against arbitrary and irrational state action. The Supreme Court of India in \textit{E. P. Royappa Vs. State of Tamil Nadu}\textsuperscript{9} held that equality is a dynamic concept with many aspects and dimensions and it cannot be ‘cribbed, cabined or confined’ within the traditional and doctrinal limits. Denial of equality is permissible only in case of ‘reasonable classification’. The legislature may enact laws distinguishing, selecting and classifying persons only when such classifications are based on some reasonable ground. Classification must not be arbitrary, artificial and evasive.

Indian citizens are guaranteed the right to speech and expression, peaceable assembly, association, free movement, and residence, although, Parliament may legislate “reasonable restriction” on some of these rights in the interest of the

\textsuperscript{8} Article7 of UDHR says, ‘ All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination’.

\textsuperscript{9} AIR1974SC555
“sovereignty and integrity of India”, “security of the state” or “public order”\textsuperscript{10}. Moreover, the Constitution also authorize suspension of judicial enforcement of these rights during lawful, formally declared periods of emergency\textsuperscript{11}.

In the context of the criminal justice, the Constitution of India, prohibits ex-post facto laws, double jeopardy, and compelled self-incrimination under Article 20. This Article constitutes a limitation on the legislative power of the Parliament or the State Legislature under Article 246 read with the three Legislative Lists contained in the Seventh Schedule to the Constitution\textsuperscript{12}.

In the line of Article 3 of the UDHR, which says for right of life, liberty and security of persons, Constitution of India under Article 21 says that

“no person shall be deprived of life or personal liberty except according to the procedure established by law”.

It means that interference with a person’s life and liberty can be justified only when it is in accordance with the procedure prescribed by a valid law. But, the prescription of some sort of procedure is not enough, the procedure must be right, just and fair and not arbitrary, fanciful or oppressive\textsuperscript{13}. Thus, the Parliament can enact laws that would deprive life and liberty of individual considering these restrictions only. The Supreme Court of India, by adopting a wide interpretation has extended the constitutional guarantee of Article 21 to right to privacy\textsuperscript{14}, and freedom from torture or cruel, inhumane or degrading treatment\textsuperscript{15}. The Court also has recognized a constitutional right to fair criminal trial, including among other elements, the presumption of

\textsuperscript{10} Constitution of India, Article 19.
\textsuperscript{11} Ibid, Article 359.
\textsuperscript{12} A. K. Gopalan Vs. State of Madras, AIR 1950, SC 27
\textsuperscript{13} Maneka Gandhi Vs. Union of India, AIR 1978, SC 597
\textsuperscript{14} Kharak Singh Vs. State of Punjab, (1994) 2SCR 375
\textsuperscript{15} Francis Coralie Mullin Vs. Union Territory of Delhi, AIR 1981, SC746
innocence; independence, impartiality and competence of the judge; adjudication at a convenient and non-prejudicial venue; knowledge by the accused of the accusations; trial of the accused and taking of evidence in his or her presence; cross examination of prosecution witness; and presentation of evidence in defence\textsuperscript{16}. The Constitution also requires a speedy trial, extending from the outset of an investigation through all stages of the criminal process\textsuperscript{17}.

Article 22 of the Constitution provides certain procedural safeguards which must be observed whenever a person is arrested and detained in custody. Any law authorizing arrest and detention of persons must comply with these procedural requirements prescribed under Article 22. Clauses (1) and (2) of Article 22 bestow, a person who has been arrested, with four right, namely-

a. The arrested person should be informed of the grounds of arrest.

b. He has a right to consult and to be defended by legal practitioner.

c. He shall be produced before the nearest magistrate within 24 hours of his arrest.

d. He can be continued in custody only with the authority of the Magistrate.

These principles are inserted in the line of Article 9 of UDHR and Article 9 of ICCPR. Similar principles have also been inserted in the Code of Criminal Procedure of 1973 under Sections 41 to 60.

The Supreme Court of India in the case of \textit{D. K. Basu Vs. State of West Bengal}\textsuperscript{18} has extended the Constitutional procedural guarantee by laying down 11


\textsuperscript{17} Autulya Vs. R. S. Naik, AIR1992, SC1701

\textsuperscript{18} AIR 1997 SCC10
guidelines to be followed in all cases of arrest and detention till legal provisions are made in that behalf as preventive measure. The most important are-

a. Police officer to prepare a memo of arrest at the time of arrest which shall be attested by one member of the family or any respectable person of the locality.

b. The person arrested to be informed of his right to inform someone of his arrest.

c. The arrestee’s right to be examined both at the time of his arrest and within 48 hours after arrest of any minor or major injuries on his body.

d. The copies of all the documents including the memo of arrest and the inspection memo to be forwarded to the concerned Magistrate; and

e. His right to meet his lawyer during investigation.

These guidelines specially mention that failure to comply with them shall apart from rendering the concerning officer liable for departmental action, so also render him liable to be punished for contempt of court and the contempt proceedings may be instituted in the concerned High Court. However, yet no contempt proceeding has been instituted against any police officer in any High Court19.

Clause 3 of Article 22 of the Constitution of India says that, the provisions of Clauses 1 and 2 of Article 22 of the Constitution of India do not apply in case of preventive detention laws enacted by the Parliament or a State Legislature. Preventive Detention is detention without trial, and is a violation of international human rights standard. It is arbitrary. Despite this, our founding fathers had inserted provisions of preventive detention in the very Part relating to Fundamental Rights to face the

emergency like situations. So, our Constitution makers also confirmed that liberty cannot taken away without a law and the law providing for preventive detention should provide, few safeguards as mentioned in Clauses 4 to 7 of the Article 22 which *inter-alia* says that,-

a. That the detune should be given the grounds of detention with reasons in support of the same.

b. That he should be given an opportunity to make representations against his detention.

c. His case should be referred to an Advisory Board, consisting of a sitting Judge and two retired Judge.

d. The advisory Board after going through the papers and hearing the detune will decide whether in its opinion, there is sufficient cause for detention, and if the opinion is in the negative, the detune shall be released forthwith, and that is any case he shall not be detained for more than a period prescribed by a law enacted by the Parliament.

India is one of the few countries in the world whose Constitution allows for preventive detention during peace time with wide range of administrative control over individual personal liberty. The range of judicial control in this area is very restricted. There can be no justification for them. All these laws deny bail and provide for confession. During the first and second world war, the British Parliament empowered the Government to pass orders of preventive detention and courts upheld the power on the ground of necessity. But, no power of preventive detention has been exercised by the British Parliament during peacetime. The Indian Constitution, however, recognizes ‘preventive detention’ in normal times also. So, to impose some limitations on the powers of the Central and State governments, safeguards Under
Article 22(4) to 22(7) were made in the Constitution. Dr. Ambedkar explained the significance of these provisions by stating that in the absence of such provision, the Legislature might make any kind of law for preventive detention\textsuperscript{20}.

The Constitution of India recognized the authority of the Supreme Court of India as a guardian of the Constitution. So, every citizen under Article 32 of the Constitution of India can directly approach to the Supreme Court for the purpose of the enforcement of any of the fundamental rights. This right to relief is also a fundamental right. This is in consonance with Article 8 of the Universal Declaration of Human rights. The Legislature in India also cannot enact any law violating the provisions of the Part III of the Constitution of India. The Apex Judiciary in India is conferred, under Article 13 of the Constitution, with the power to declare any law as unconstitutional if the law violates the provisions of Part III of the Constitution.

3.4 Adumbration of International Humanitarian Treaties and Conventions in India

India, as a member state of the United Nations is bound by the UN Charter, which pledges member states to promote and encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language and religion. The founding fathers, while drafting the Constitution of India, has recognized this obligation by incorporating Part III to the Constitution of India. However, there is no explicit provision, in the Constitution of India which regulates the incorporation and status of international law in the Indian legal system. Only the

\textsuperscript{20} Quoted in B. Shiva Rao, \textit{A Study}, 243
Article 51(c) stipulates the States to endeavour to foster respect for international law and treaty obligations in the dealings of organized people with another.\(^{21}\)

This Article is from Part IV of the Constitution which lays down the Directive Principles of State Policy and as such are not enforceable before any Court. It has been address to executives and legislatures of the country. Thus, the Indian Constitutional policy is committed to promote international peace and security and also to foster respect for international law and treaty obligations and to apply these principles in making laws.

Further, India being a follower of the ‘dualist’ school of law in respect of implementation of international law at domestic level, international treaties do not automatically form part of national law. They have to be transformed into domestic level by a legislative act. For that, Article 246 read with entries 13 and 14 of the Union List of the Seventh Schedule empower Parliament to participate in international conferences, associations and other bodies and implementing of decisions made thereto and to legislate in relation to entering into treaties and agreement with foreign countries and implementing of treaties, agreement and conventions with foreign countries respectively. Further, Article 253 says that Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association, or other body notwithstanding anything contrary in the Constitution in respect of distribution of legislative competence between Parliament and State Legislature. In *Ktaer Habib*

\(^{21}\)Article 51(c ) of the Constitution of India says, “The State shall endeavour to foster respect for international law and treaty obligations in the dealings of organized people with another”.
Al Quataifi and Anr. Vs. Union of India and Others\textsuperscript{22} it was held that there is no law in India which specifically obliges the State to enforce or implement the international treaties and convention including the implementation of International Humanitarian Law.

Till date, India has ratified the following international human rights and humanitarian law treaties-

a. Geneva Conventions of 1949 (9\textsuperscript{th} November, 1950)
b. Genocide Convention of 1948 (27\textsuperscript{th} August 1959)
c. International Convention on the Elimination of Racial Discrimination, (3\textsuperscript{rd} December, 1968)
d. International Covenant on Civil and Political Rights (10\textsuperscript{th} April 1979)
e. International Covenant on Economic, Social and Cultural Rights (10 April, 1979)
f. Convention on Rights of Children (December 11, 1992)
g. Convention on Elimination of Discrimination Against Women (9\textsuperscript{th} July 1993)

The Government of India signed the Convention Against Torture (CAT) in 1997 but has not ratified the same, on the ground that existing laws have adequate provisions to prevent torture, in addition to constitutional safeguards. On December 2006, the UN General Assembly unanimously adopted the International Convention for the Protection of All Persons from Enforced Disappearance. India has signed the Convention, but not ratified the same, as in the case of the Convention against Torture.

\textsuperscript{22} MANU/GJ/0433/1998
The Government of India has passed the Geneva Convention Act, 1960 to implement the provisions of Geneva Conventions of 1949 in India. The Act confer jurisdiction on judiciary to try offences under these Conventions, even when committed by foreigner outside India. It also provide punishment for “grave breaches” referred to in Article 50 of the First Geneva Convention and equivalent Articles of the succeeding Conventions, committed by any person within or outside India. The punishment encompasses death or life imprisonment for willful killing of a protected person and imprisonment for 14 years for other offences. But, Section 17 of the Act forbids the courts to take cognizance of any offence under the Act except on a complaint by the Government or of an officer duly authorized. The Act, thereby prevents the application of the Act against the Government or its agencies.

The Supreme Court of India in *Rev. Mons. Sebastian Francisco Xavier Dos Remedios Monteiro vs. the State of Goa* noted the limitation on the Geneva Convention Act of 1960. The Court held that the Act though in force within the entire territory of India, has not been made enforceable against the Government of India neither does it provide for any specific mechanism to give a cause of action to any party for enforcement of the provisions of this Act or to its Schedules. Section 17 of the Act clearly says that the courts can entertain a complain only if it is filed by the Government or an officer of the government specified by notification. So, the aggrieved party can approach the court only through Government. No explicit rights are available to the protected person under the Act and at the same time there is no obligation on the Government of India or the municipal courts for their enforcement.

The only obligation undertaken by the Government of India to respect the

---

23 Protected person under the Act include protected internee defined under Section 2(c ) as “persons protected under the Fourth Convention and interned in India” and protected prisoners of war defined under section 2(e) as “persons protected by the third Geneva Convention”.

24 AIR1970 SC390
Conventions is regarding the treatment of civilian population. The Act is also ambiguous and does not provide for an unambiguous method to move to the municipal court owing to the breach of various provisions of the Act. Moreover, Section 7 of the Act says for predominance of certain domestic laws such as Army Act of 1950, the Air Force Act of 1950 or the Nevi Act of 1957 over this Act in case of court martial in respect to certain civil offences.

On 29th November, 1949 the Government of India has signed the Genocide Convention (Convention on the Prevention and Punishment of the Crime of Genocide 1948) and ratified the same on 27th August 1959. Article 1 of the Convention, defines genocide as the commitment of certain acts with intent to destroy in whole or in part a national, ethnic, racial or religious group as such. Acts constituting genocide are killing, causing serious bodily or mental harm, deliberately inflicting conditions of life calculated to bring about physical destruction in whole or in part, imposing measures intended to prevent birth and forcible transfer of children. The Convention under Article 3 lays down the offences which are punishable under the Convention, namely- genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide, complicity in genocide. Article 4 says that persons committing genocide or any other acts enumerated in Article 3 whether they are constitutionally responsible rulers, public officials or private individuals, are all liable for punishment.

However, the Government of India till date has not enacted any law to give effect to the provisions of Genocide Convention in India. The India Penal Code (IPC) under Section 153(A), provides punishments for promoting enmity between different groups on ground of religion, race, place of birth, residence, language etc. and doing acts prejudicial to maintenance of harmony. Section 295(A) of IPC, provides
punishment for deliberate and malicious acts intended to outrage religious feelings of any class, by insulting its religion or religious beliefs. But, unfortunately, to start prosecution under section 153(A) and 295(A) of IPC requires prior sanction from the Central or the State Government and the Government rarely gives such sanction.

Further, the government of India has ratified this instrument with the reservation of her own that,-

“with reference to Article IX of the Convention, the Government of India for the submission of any dispute in terms of this Article to the jurisdiction of the International Court of Justice, the consent of all the parties to the dispute is required in each case”.

Thus, every communal hatred speech results in large scale violation, usually against the minority communities with no leader, ever being prosecuted or punished in India for such acts. The massacre of Sikhs in Delhi in November 1984 (over 4000 Sikhs were killed), large scale killing of Muslims in Mumbai (1992-93) after the demolition of the Babri Masjid, and worst of all, the Gujarat carnage of 2002 etc. are some of the examples which represents the situation of lawlessness in the country. Recently, radical Sikh groups led by the U. S. based Sikh’s for justice (SFJ) have petitioned the United Nations Human Rights Council in Geneva seeking specially an international investigation into the November 1984 riots as well as the Council’s recognition of the killings as genocide under Article 2 of the United Nations Conventions on Genocide. Stating that Sikhs have exhausted all avenues in seeking justice and redress in India, the Sikh organizations have detailed the 29-years saga of 10 commissions of enquiry into the killings that led nowhere, the relief given by
courts to the accused Congress leaders, and the manner in which the Congress party
has promoted and given them tickets despite the charges they face\textsuperscript{25}.

India is also a State Party to the International Convention on the Elimination
of All Forms of Racial Discrimination (ICERD) since 1968. Regarding this
Convention also India’s ratification is based on the condition that for reference of any
dispute to the International Court of Justice for decision under Article 22 of the said
Convention, the consent of all the parties is necessary in each individual case. Article
1(1) of the ICERD defines “racial discrimination” widely as including-

“any distinction, exclusion, restriction or preference based on race, colour, descent, or
national or ethnic origin which has the purpose or effect of nullifying or impairing the
recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental
freedoms”.

The ICERD further mandates State Parties-

“to amend, rescind or nullify all laws and regulations which have the effect of creating or
perpetuating racial discrimination”\textsuperscript{26}.

The ICERD also makes provision for regular State reports to the Committee
on the Elimination of Racial Discrimination (CERD), which is entrusted with the
power to monitor State Parties’ compliance with the ICERD. This Committee in 2007,
considered India’s combined fifteenth and nineteenth periodic reports and
recommended the Government of India to repeal the Armed Forces Special Power
Act, 1958 and replace it with “a more humane” piece of legislation\textsuperscript{27}. It specifically

\textsuperscript{25} The Hindu, Radical Sikh groups petition UNHRC to recognize 1984 massacre as “genocide”,
Chandigarh, November 3, 2013.

\textsuperscript{26} Article 2(1)(c ) of ICERD

\textsuperscript{27} Committee on the Elimination of Racial Discrimination, Concluding Observations on the combined
fifteenth to nineteenth periodic reports of India, UN Doc. CERD/C/IND/Co/19(5 May 2007), at
para 12.
underlined its concern about the provisions of the Act under which “members of the armed forces may not be prosecuted” without authorization of the Central Government and “have wide power to search and arrest suspects without a warrant or to use force against person...in Manipur and other North-eastern states which are inhabited by tribal peoples”.

India acceded to the International Covenant on Civil and Political Rights in 1979. A number of fundamental human rights incorporated in this Covenant such as the right to life, the right not to tortured or ill- treated, the right to liberty and security, fair trial rights, the right to privacy, and the right to freedom of assembly etc. have already been made available to the people of India under Part III of the Constitution of India. The right to fair trial is also guaranteed in the interpretation of Right to Life and Personal Liberty under Article 21. However, regarding right to “self determination” as inserted in Article 1 of the Covenant, the Government of India has made it clear the said right apply only to the peoples under foreign dominion and that these do not apply to sovereign independent states or to a section of a people or nation which is the essence of national integrity.

Further, with reference to Article 9 of the Covenant which says for right to liberty and security of persons, the Government of India clarified the position by stating that this Article shall be so applied as to be in consonance with the provisions of Articles 22(3) to 22(7) of the Constitution of India. Moreover, under the Indian legal system, there is no enforceable right to compensation for persons claiming to be victims of unlawful arrest or detention against the State as required by Article 9(5) of

---

28 According to Article 1(i) of the ICCPR all parties have the right of self-determination by which they can freely determine their political status and freely pursue their economic, social and cultural development.
the Covenant. Regarding Article 13 of the Covenant\(^\text{29}\), the Government reserves its right to apply its law relating to foreigners. With reference Articles 12, 19(3), 21 and 22 of the ICCPR relating to right to personal freedom, the Government of India declares that the provisions of the said Articles shall be so applied as to be in conformity with the provisions of Article 19 of the Constitution of India.

In 1997, the Human Rights Committee, monitoring body for the implementation of the provisions of the International Covenant on Civil and Political Right, examined India’s last periodic report, submitted to the Committee, emphasized that all measures taken by India in order to protect its population against terrorist activities must be in full conformity with its obligation under the ICCPR. The committee in its report reminded India that immunity provisions, such as, those found in the Armed Forces Special Power Act, are incompatible with the right to an effective remedy under international human rights law and the concomitant duty to investigate and prosecute gross human rights violations, such as torture. It expressed, in particular, its concern on the provision of the Act, that prohibits that criminal prosecution or civil proceedings against members of the security and armed forces, acting under special powers, without the sanction of the Central Government. This contributes to a climate of impunity and deprives people of remedies to which they may be entitled in accordance with Article 2 paragraph 3 of the Covenant.

The fourth periodic report of India to the committee pursuant to Article 40 of the ICCPR was due in 2001. It has not yet been submitted, which means that it is overdue by thirteen years at the time of waiting.

\(^{29}\) Article 13 of the ICCPR says that an alien lawfully in the territory of a State Party to the present Covenant may be expelled there from only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designed by the competent authority.
Part IV of the Constitution of India has adumbrated the principles of the International Covenant on the Economic, Social and Cultural Rights (ICESCR) to which India is a party since 10th April 1979. Article 1 of the Covenant providers the “right to self determination”, with regard to which the Government of India maintains the same reservation as that of ICCPR. With reference to Articles 4 and 8 of the ICESCR, the Government of India declares that provisions of the said Articles shall be so applied as to be in conformity with provisions of the Article 19 of the Constitution of India. With respect to Article 7(C) of ICESCR, the Government of India says that the provisions of the said Article shall be so applied as to be in conformity with the provisions of Article 16(4) of the Constitution of India.

The Committee on Economic, Social And Cultural Rights, on its concluding observations issued after considering second to the fifth periodic report of India, on the implementation of provisions of the Covenant, stated that despite the significant role played by the Supreme Court of India in interpreting the Constitution with a view to achieving justifiability of economic, social and cultural rights, the Covenant is not given its full effect in the legal system of the State Party (India) due to the absence of relevant domestic legislation. The Committee notes with concern the lack of progress achieved by the State Party in combating-

a. Persisting de-facto caste based discrimination

b. Widespread and often socially accepted discrimination, harassment and violence against women, schedule castes, schedule tribes, indigenous peoples, the urban poor, informal sector worker, internally displaced persons and religious minorities.

The Committee also observed that despite rapid economic growth achieved under Ninth Plane (1997-2002) and the Tenth Plan (2002-2007), high level of poverty
as well as serious food insecurity and shortage persist in the country, disproportionately affecting the population living in the poorer States and in rural areas, disadvantaged and marginalized groups. The Committee has highlighted the Indian States failure to achieve the full realization of human rights in all fields of socio-economic human rights.\(^\text{30}\)

The government of India, has established the National Human Rights Commission (NHRC), an independent government body by enacting the Protection of Human Rights Act, 1993 as a positive response to the urge of the World Conference on Human Rights, 1993 for strengthening national institutions concerned with promotion and safeguard of human rights. The NHRC is empowered to receive and investigate individual complaints on human rights violations and also monitor and make non-binding recommendations to the government on domestic implementation of international human rights norms, and promote public awareness of human rights standards. To conduct these activities, the NHRC has the power of a civil court, including the ability to compel appearance of witnesses, examine witness on oath, compel discovery and production of documents, and order production of records from courts and government agencies. But, the section 19 of the Act, which provides procedure with respect to the complaints of violation of human rights by armed forces turns the NHRC in a toothless tiger. In this respect, the Act says the NHRC, either on its own motion or on receipt of a petition, may seek a report from the Central Government and on receipt of the report, it may either not proceed with the complain or make its recommendations to the Central Government. Thus, the Act, practically

---

confers no power to the NHRC to look into the matters of human rights violations by
the armed forces of the Government.

India has signed the Convention Against Torture and other Cruel, Inhuman or
Degrading Treatment or Punishment on October 14, 1997. However, the Convention
has not been ratified by the Government of India till date in spite of the
recommendations made by National Human Rights Commission in its annual report
of 1995-96 and 1996-97. Torture has been practiced frequently in India since
independence regardless of the Government in power. The main perpetrators of
torture have been police officers and other law enforcement officers, such as
paramilitary forces and those authorities having the power to obtain and interrogate
persons. It has also apparently been used to punish members of ethnic communities
for their political demands, especially in Jammu and Kashmir, Punjab and North-eastern States of India. The Acts such as POTA and AFSPA etc. are widely seen as
facilitating the use of torture against those who are either suspected of being terrorist
or are simply labeled as terrorist by the police and the army. Moreover the provisions
in the Indian Penal Code, 1860, under sections 330 and 348 penalize acts that can be
considered as torture, with seven and three years of imprisonment respectively if
proven guilty. But the offences attack no particular relevance if the crime is
committed by a police. The Indian Evidence Act, 1872 also does not have any
provisions in dealing with the aspect of torture.

The Government of India, under the customary International Law is bound to
prohibit torture or racial discrimination, full protection of the rights to life, the rights
to liberty and security and the right to an effective remedy. In Gramophone Co. of
India Ltd. Vs. Birendra Bahadur Pandey31 the Supreme Court of India held the

31 1984 AIR 667
comity of Nations require that Rules of International law may be accommodated in the Municipal law even without express legislative sanction, provided they do not run into such conflict with Acts of Parliament. But, when they do run into such conflict, the sovereignty and the integrity of Republic and the supremacy of the constituted legislatures in making the laws may not be subjected to external rules except to the extent legitimately accepted by constituted legislature themselves. The doctrine of incorporation recognizes the position that, the rules of international laws incorporated into national law and considered to be part of the national law, unless they are in conflict with an Act of Parliament. In Apparel Export vs. A. K. Chopra\textsuperscript{32}, the Supreme Court held that in cases involving violation of human rights, the courts must ever remain alive to the international instruments and conventions and apply the same to a given case where there is no inconsistency between the international norms and domestic law occupying the field.

Thus, the Government of India, though, has been becoming party to many international human rights and humanitarian law documents, to show its intention to promote and protect human rights of her people, such instruments are not implemented in India in true sense. Thereby, human rights are far from realization for the people of many parts of the country. India has also failed to submit periodic reports timely. This practice of the Government also indicates Government’s failure to fulfill norms under international law.

3.5 AFSPA in light of Humanitarian Laws

India’s struggle to combat insurgency problems in different parts of her, has been started with one of the most draconian laws, the Armed Forces Special Power Act, 1958 (AFSPA) which is still in force in large part of the North East India and

\textsuperscript{32}AIR1999 SC625
Jammu and Kashmir. The Act was modeled on the British India Armed Forces (Special Power) Ordinance, 1942, a colonial legislation put in place to subdue the ‘Quit India Movement’. After Independence, the Government of India enacted this Act to deal with the turbulent situation in the North East India and subsequently, in 1990, the Act was extended to Jammu and Kashmir.

Under section 3 of the Act, the Governor of the State, or the Administrator of the Union Territory, or the Central Government can declare the whole or any part of a State or Union territory as ‘disturbed area’ if either of them as the case may be, is of the opinion that such areas are in such a disturbed or dangerous condition that the use of Armed Forces in aid of civil power is necessary. In the original version of the Act, only the State Government had the power to declare an area as disturbed. This was consistent with Article 246 of the Constitution of India to be read with “public order” in the entry 1 of the State List of Seven Schedule. But, the 1972 amendments to the AFSPA took away the power from the State Government and its Legislative Assembly and handed it over to an appointee of the Central Government. This is despite the fact that the President can proclaim emergency under Article 356 of the Constitution of India.

Section 4 of the AFSPA empowers security forces to arrest and enter property without warrant, and they can shoot to anybody without any justification.

33 Section 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 aching in contravention of any law and 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 utilized as a hide out by armed gangs or absconders wanted for any offence;
Clause (a) of the above Section permits use of lethal force even to cause death of anyone within a disturbed area by applying personal discretion of the military officer concerned. The officer requires no permission from superiors, is not answerable to anyone. There is no discernable limitation or safeguards in the Act, that aimed at the prevention of abuse of discretion by the military officer involved in maintaining order. Moreover, there is nothing in the Act as to how a warning should be given before lethal force is used and which measures should be taken by the military officers involved to satisfy themselves that those warnings are received and understood by all parties concerned. The Act also silent regarding any automatic notification of cases in which lethal force would be used. Neither the Act itself nor any other legislation in India, provide any mechanism that ensure prompt, independent, effective investigations into all cases of use of lethal force, especially those which led to death or severe injury. This provision is directly incompatible with Article 6 of the ICCPR which provides right to life in the words that, “Every human being has the inherent right to life. No one shall be arbitrarily deprived of his (or her) life.”

Provisions of Clauses (c) and (d) of Section 4 of the Act which authorize arrest and detention of individual without providing any safeguards against arbitrary detention, is contrary to the State’s obligation to adopt legislative measures aimed at

(c )Any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the Armed Forces may, in a disturbed area, arrest, without 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 and may use such force as may be necessary to effect the arrest;

(d)Any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the Armed Forces may, in disturbed area, enter and search without warrant any premises to make any such arrest as aforesaid or to recover any person believed to be wrongly restrained or confined or any property or any arms, ammunition or explosive substance believed to be unlawfully kept in such premises: and may for that purpose use such force as may be necessary.
preventing torture. A person arrested by the military is not only prohibited from having any contact with the outside world (held *incommunicado*), there is also no procedure in place to acknowledge the fact of his/her detention. This regime therefore effectively amounts to sanctioning “secret detention”\(^{34}\). Arrest and detention of any person is permitted by the Act with no information provided to the arrestee or detainee, with no possibility of independent review of the lawfulness of such detention and no statutory right to receive compensation if the detention is unlawful, is in violation of all paragraphs of the Article 9 of ICCPR\(^{35}\).

These provisions are also incompatible with Article 7 of the ICCPR which provides that, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. Secret detention usually used to facilitate torture or cruel, inhumane and degrading treatment. The Human Rights Committee has also recognized that prolonged *incommunicado* detention may amount to inhumane (or torture, depending on the circumstances) within the meaning of Article 7 of ICCPR\(^{36}\).

\(^{34}\) Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism and on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Working Groups on Arbitrary Detention and on Enforced or Involuntary Disappearance, Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism, Un Doc. A/HRC/13/42/(19 February 2010) at para 8.

\(^{35}\) Article 9 of the ICCPR says that- 1. Every one has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his (or her) liberty except on such grounds and in accordance with such procedure as are established by law. 2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his (or her) arrest and shall be promptly informed of any charges against him (or her). 3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release as.... 4. Anyone who is deprived of his (or her) liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his (or her) detention and order his (or her) release if the detention is not lawful. 5. Anyone who has been the victims of unlawful arrest or detention shall have an enforceable right to compensation.

Section 5 of the Act, states that any arrested person can be handed over to the officer-in-charge of the nearest police station, “with the least possible delay.” What constitute “least possible delay” is nowhere described in the Act. This provision is incompatible with the requirements of Article 9(3)\textsuperscript{37} and with the hebeas corpus guarantee of Article 9(4)\textsuperscript{38} of ICCPR.

Section 6 of the Act, eliminates any prosecution of armed forces personnel by providing that, “No prosecution, suit or other legal proceedings 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 powers conferred by this Act”. This immunity provision makes it impossible to investigate and prosecute perpetrators of serious human rights violations, including torture. This law is itself in breach of Article 2(3) of the ICCPR\textsuperscript{39}. This contributes to a climate of impunity and deprives those individuals who are on India’s territory and within India’s jurisdiction of remedies to which they are entitled in accordance with Article 2(3) of the ICCPR\textsuperscript{40}.

Thus, Act has facilitated grave human rights abuses, including extra-judicial execution, arbitrary killing, torture, cruel, inhuman and degrading treatment, enforced

\textsuperscript{37} Article 9(3) of ICCPR says “Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.”

\textsuperscript{38} Article 9(4) of ICCPR says, “Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

\textsuperscript{39} Article 2(3) of ICCPR says, “Each State Party to the present Covenant undertakes (a) to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) to ensure that the competent authorities shall enforce such remedies where granted”.

disappearance, rape by bestowing sweeping powers on the armed force. Under the umbrella of immunity provision extra-judicial executions of innocent civilians and commission of other forms of naked human rights violations become a part of life of the people in the North East India for more than 50 years. Yet, the Supreme Court of India, in the case of *Naga Peoples’ Movement of Human Rights vs. Union of India*\(^{41}\) ruled that the Act is constitutional by holding that

“The powers conferred under clauses (a) to (d) of Section 4 and section 5 of the Central Act on the officers of the armed forces, including a Non-Commissioned Officer, are not arbitrary and unreasonable and are not violative of the provisions of Articles 14, 19 or 21 of the Constitution...While exercising the powers conferred under Section 4(a) of the Central Act, the officer in the armed forces shall use minimal force required for effective action against the person/persons acting in contravention of the prohibitory order.”

### 3.6 Report of Different Committee/ Office

#### 3.6.1 National Level

In 2004, the Government of India for the first time appointed a five members committee under the chairmanship of former Chief Justice B. P. Jeevan Reddy J. to review the Armed Forces Special Power Act. The Government adopted this step to face the prolonged, sustained mass agitation in Manipur in 2004 following the very controversial gang rape and extrajudicial execution of Manorama Devi by Assam Rifles. The Committee considered various views, opinions and suggestions put forward by representatives of organizations and individuals who appeared before the Committee and also representations made by the concerned departments of the governments, security agencies and other organizations and individuals and prepared 147 page report and submitted to the Government in June 2005. In its report, the Committee, pointed out that, the deployment of armed forces for the said purposes

---

\(^{41}\) 1998 AIR 431
should be undertaken with great care and circumspection. The report clearly expressed that the Act “has become a symbol of oppression, an object of hate and an instrument of discrimination and high-handedness,” and should be withdrawn. Finally, the Committee has made two major recommendations—

1. Total repeal of the AFSPA.

2. To recommend insertion of appropriate provisions in the Unlawful Activities (Prevention) Act, 1967 (as amended in the year 2004)—which is a cognate enactment as pointed out in Chapter III Part II of this Report instead of suggesting a new piece of legislation.42

The Committee observes that insurgency situation in the north-east has worsen since the AFSPA has been applied in the area. The insurgent groups have greatly increased. Their cadres, weapons, tactical capabilities have expanded and improved immediately. Apparently, the black law has acted as surrogate mother of increasingly proliferating belligerency and insurgency. Nevertheless, the Government of India, has so long been ignored the recommendations of the Committee, with AFSPA still in continuance in the North East India and Jammu and Kashmir too.

The Government of India in December 2012, appointed another three members Committee headed by Jagdish Sharan Verma, a retired Supreme Court Judge, to review laws against sexual assault. The Committee released its report in January 2013, whereby, it stated that, legal protection for women in conflict areas was often neglected, and emphasized that women in conflict areas were entitled to the security and dignity afforded to citizens elsewhere in the country. Thus, the Committee recommended that the sexual violence against women by members of the

42 Jeevan Reddy Committee Report, Ministry of Home Affairs 2005, Pg 73
armed forces should be brought under the purview of ordinary criminal law. The Committee also recommended an amendment to the AFSPA to remove the requirement of the prior sanction from the central government for prosecuting security personnel for certain crimes involving violence against women. Following the Committee’s recommendations, new laws on violence against women were passed in April 2013. These included an amendment to the Code of Criminal Procedure which removed the need for prior sanction for prosecuting government officials for certain crimes involving violence against women, including rape, sexual assault, sexual harassment, voyeurism and stalking. However, a similar amendment to the AFSPA that was proposed by the Committee was ignored.

3.6.2 International level

At the international level also, the Government of India has been facing many criticism due to the AFSPA. On March 23, 2009, UN Commissioner for Human Rights, Navanethem Pillay asked India to repeal the AFSPA. She termed the law as “dated and colonial-era law that breach contemporary international human rights standards”. Unfortunately, the then Attorney General of India responded that the AFSPA is a necessary measure to prevent the secession of North-Eastern states. He said that a response to the agitation for secession in the North East had to be done on a “war footing”. He argued that the Indian Constitution, in article 355, made it the duty of the Central Government to protect the States from internal disturbance and that there is no duty under international law to allow secession.

In 2011, Margart Sekaggya, Special Rapporteur of United Nations on the situations of Human Rights defenders, after her mission to India from 10 to 21 January 2011, reported that most of the human rights violations reported to her, prior, during and after her visits, are reportedly attributed to law enforcement authorities, in
particular the police. The Police reform does not seem to be a reality in the whole country as the implementation at the state level is reportedly quite weak. She further reiterated that some instances of serious human rights abuses by armed groups against human rights defenders were also reported to her. Impunity for such violations was reported as a chronic problem, and defenders and their communities were often caught in between during the fight between security forces and armed groups, targeted or killed for allegedly taking the “wrong side”. In her recommendations to the Government of India *inter-alia* asked to repeal the National Security Act, Armed Forces Special Power Act, the Jammu and Kashmir Public Safety Act. She also asked for review of the other legislations in the light of international human rights standards. The Special Rapporteur further recommended for review of the functioning of National Human Rights Commission with a view to strengthening it *inter-alia*, increasing its capacity to improve its case-handling function; ...and establishing an independent committee in charge of investigating allegations of violations by State agents. Further, she recommended for amendment of the Protection of Human Rights Act as necessary in full and meaningful consultation with civil society.\(^43\)

UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions (SR EJE), Christof Heyns on his report released in 30\(^{st}\) March 2012 after concluding his 12 days fact finding mission to examine situations of extrajudicial, summary or arbitrary executions in India, reiterated that in India retaining a law such as AFSPA runs counter to the principles of democracy and human rights and its repeal will bring domestic law more in line with international standards, and send a strong message that

the Government is committed to respect the right to life of all people in the country. Releasing his report on the main findings of his official visit to India in March 2012, Heyns highlighted that the AFSPA has become a “symbol of excessive state power” and “has no role to play in a democracy”\textsuperscript{44}.

Accountability, he said, is circumvented by invoking AFSPA’s requirement of obtaining prior sanction from the Central Government before any civil prosecutions can be initiated against armed forces personnel. Immunity provisions in the Act effectively blocks any prosecution of members of the armed forces as revels the RTI applications. He further reiterated that despite constitutional guarantees and a robust human rights jurisprudence, extrajudicial killings continue in India and it is a matter of serious concern. Statutory guidelines laid down by the Supreme Court, many of which have been incorporated through amendments in the Code of Criminal Procedure are not sufficiently complied with. India should ratify a number of international treaties, including the Convention Against Torture and the International convention for the protection of All persons from Enforced Disappearance\textsuperscript{45}.

From 22\textsuperscript{nd} April to 1\textsuperscript{st} May 2013, Ms. Rashida Manjoo the UN Special Rappoteur on violence against women, its Causes and Consequences, visited India for the first time, expresses great concern about the sexual violence committed in the conflict prone areas of India. She held that in such areas, sexual violence are occurring at the hands of both State and non-state actors. The information received by her revels that the Armed Forces Special Power Act and Armed Forces (Jammu and Kashmir) Special Power Act has mostly resulted in impunity for human rights violations. The law protects the armed forces from effective prosecution in non-

\textsuperscript{44} UN Special Rapporteur urges India to repeal AFSPA, 30 March,2012, available at \url{www.rediff.com} last visited on 30 June 2012

\textsuperscript{45} Supra note 34
military courts for human rights violations committed against civilian women among others and it allows for the overriding of the due process rights. Furthermore, she said, from the testimonies received, it was clear that the interpretation and implementation of this Act, is eroding fundamental rights and freedoms - including freedom of movement, association and peaceful assembly, safety and security, dignity and bodily integrity, rights for women, in Jammu & Kashmir and in the North-Eastern States. Unfortunately, in the interests of State security, peaceful and legitimate protests often elicit a military response, which is resulting in both a culture of fear and of resistance within these societies.

She also expressed deep concern on forms of human rights violations such as disappearances of young women, including exposure to sexual abuse, exploitation or trafficking of women in the conflict prone areas. More generally, many tribal and indigenous women in the region are subjected to continued abuse, ill-treatment and acts of physical and sexual violence. They are denied access to healthcare and other necessary resources, due to the frequency of curfews and blockades imposed on citizens. Moreover, the chronic underdevelopment prevalent in the region, coupled with frequent economic blockades, is having an impact on the overall cost of essential items, and is exacerbating the already vulnerable situation of women and children living in the region. The Special Rapporteur on her report recommended for repeal of the Armed Forces (Special Powers) Act, the Public Safety Act and the National Security Act, and the Armed Forces (Jammu & Kashmir) Special Powers Act.

perpetuates impunity, and is widely used against Human Rights Defenders (SR HRD)\textsuperscript{47}.

3.7 Concluding Remarks

An analysis of the above study, reveals that despite India’s widespread concern for development of the international human rights law, such rights are far from realization for the people of many parts of her. The Government of India, from time to time has been enacting many draconian laws to face insurgency like situations, which do not comply with international standard of human rights and humanitarian principles. Equality as provided in the Constitution of India, bears no meaning for the people of those areas where Acts like AFSPA has been in force for more than fifty years. Rights of the people of such areas have been violated both in the hands of insurgents groups and the government armed forces. There is nobody to hear their voice.

It is noteworthy to mention here, the statement of Mr. P. Chidambram, Union Minister, on February 6, 2013 at the Institute of Defence Studies, whereby he stated that Government cannot move forward to amend the AFSPA, because there is no consensus as the army officials do not want any amendment in the Act and consider it “absolutely essential” to combat insurgency in the country and protect the borders. Such statement of a responsible Union Minister brings a questions that, who rules India-elected representatives or the army. It is a shame on Indian democracy.

India being a country beset with insurgency problems of various degree national security laws are indispensable to maintain the sovereignty and integrity of the country. But, the same time the Government of India cannot turn a blind eye to her

\textsuperscript{47} Ibid
obligation under international law to protect the rights of its people. The Government of India should ratify the international treaties, like Convention Against Torture and the International Convention for the protection of All persons from Enforced Disappearance. The Government of India should sign and ratify the Additional Protocol II to the Geneva Conventions applicable to the non-international armed conflicts situation and also the Rome Treaty of 1998 by which the International Criminal Court has been established.

Lastly, accountability is the pillar of a democracy. But, in India armed personnel are not accountable for whatever they have done during an army operation. So, the Government of India should act on the recommendations of different committee constituted by her and repeal the immunity provisions provided in the AFSPA and in other laws, to the man in uniform and make them accountable and responsible within the parameters of law.