Preface

Human rights violation is a global syndrome. Despite fabulous attempts by the international community, the protection of basic rights of people is far from realization for the people of different parts of the world. Many times, Governments of the countries who are responsible for protection of the rights of people, are found to be involving in violation of such rights. This particularly happens, in case of armed conflicts situation, when the Government of the country itself involves in such conflicts.

Common Article 3 to the Geneva Conventions, Additional Protocol II, Customary International Laws provide the basic norms to be followed by the parties involved in an armed conflict. But in most of times, the Governments of the countries do not acknowledge the conflicts going on in their area as armed conflict of non-international (NIAC) nature and thereby deny any obligation that flows from such international documents. Non-state actors to a NIAC also ignore any bindings to any international document to whom the legal Government of that area is a party, as they are fighting against such Government. On many occasions, the parties to conflicts are not aware of such norms.

India, the largest democracy of the world, has been facing insurgency problems, at different parts of her territory, specifically in Jammu and Kashmir and the North-east region. The conflict between the Government and insurgent groups fulfills all the requisites of NIAC. But, the Government of India never ever recognized the problem of NE India as NIAC and thereby denying the application of IHL in this
area. At the same time, the Government has been trying to curb the problem of insurgency by enforcing most draconian law namely the Armed Forces Special Power Act, 1958 for more than 50 years. The Act confers wide power to the Government armed personnel to do anything whatever they want, during an army operation, even to kill on mere suspicion. Legal immunity is provided for any type of human rights violation by any Government armed personnel. Under the umbrella of this Act, human rights violation becomes an agenda of routine life of the innocent civilians of NE India.

Judiciary in India which is very much active for interpreting the fundamental rights of the people of India, is somehow reluctant to adopt the same approach for protecting the human rights of the people of conflict prone areas. While interpreting the National Security Laws applicable in different parts of India, the Supreme Court establishes its role as a mediator between competing claim of national security and fundamental rights, rather than a guardian of fundamental rights.

Under such circumstances, the ultimatum remains before the innocent civilians of NE India to approach to an international organ for protection of their rights. The International Criminal Court having complementary jurisdiction, established by the Rome Statute, 1998 may be a proper platform in this regard, if the Government of India will have sign and ratify the Rome Statute. So, this research work is an attempt to find out the relevance of IHL as well as Rome Statute in the armed conflict situation of NE India and also to provide some suggestions in this aspect.

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