CHAPTER IV

ENFORCEMENT OF SECTION 4(a) OF AFSPA: CASE STUDIES

4.1 Relevance of Case Studies

Justice Oliver Wendell Holmes observed that the law is the witness and external deposit of our moral life and that the practice of it tends to make good citizens. But he goes on to observe that if you want to know the law and nothing else, you should look at it from the perspective of a ‘bad man’. ‘Bad man’ symbolizes the common people who have experienced the substance, culture and the enforcement of a law or policy.

Study of extrajudicial execution under section 4 (a) of AFSPA will be incomplete without a proper understanding its enforcement and realistic implementation. For this purpose, extensive field visits were carried out by the researcher from May, 2008 to January 2009 in the states of Assam, Manipur and Nagaland to document cases where section 4(a) of AFSPA was examined. Opinions of civil society members and individuals, armed forces were also collected aiming better understanding of the practical aspects of AFSPA.

4.2 Methodology

Non-doctrinal research methodology of was adopted to study the enforcement of section 4(a) of AFSPA. For this purpose personal interview with both state and non-state actors, lawyers, human rights activists, journalists, academicians and victims or victim’s family were carried out through a pre-set questionnaire (Annexure B) in a strict ethical environment giving full respect to
the respondents and their consent. Whenever possible, interviews were recorded with informed consent of the respondents. Interviews were transcribed and summaries were prepared. Media reports, NGO and government reports, legislations and parliamentary debates etc., was collected to get an in-depth and clear understanding of the enforcement of section 4(a) of AFSPA. Most of the case studies represented in this chapter were personally documented by the investigator while some important cases were collected from different NGO sources and are acknowledged accordingly. For cases of sexual violence, keeping in mind the nature of violence and to respect victim’s privacy, questionnaire was not used and case studies are based on oral statement and supplemented by legal documents wherever available.

4.3 Yardsticks monitored during field study

Case studies involving section 4(a) of AFSPA are presented here to understand the practical implementation of the section and the Act. Section 4(a) of AFSPA is about power to use force to ‘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’ if that officer believes it necessary ‘for the maintenance of public order.’

However, for practical purposes, this section cannot be studied in isolation from other sections of the Act. Hence close observations into the other relevant sections like section 4 (b,c,d), section 5 of the Act, Supreme Courts’ guidelines in the form of “Do’s and Don’ts” (discussed in Chapter II) were taken into account. NPMHR 1997 judgment made the list of ‘Do’s and Don’ts’ binding in a ‘disturbed area’. As per discussion in Chapter II, five situations of cases of
extrajudicial executions taking into account to observe that practical aspects of use of section 4(a) of AFSPA. These are fake encounter killings, custodial deaths, involuntary or enforced disappearances, killing by using excessive force or torture leading to death and sexual violence leading to death. In most of the cases names and other personal details like place of residence, parents name etc are either changed or modified or omitted to protect victim’s identity.

As discussed in Chapter I, that according to article 21 of Indian constitution, no person shall be deprived of his life or personal liberty except according to the procedure established by law’. Article 22(1) and (2) of the constitution guarantees safeguards against arbitrary detention by saying that ‘no person shall be detained in custody without being informed, as soon as may be, of the grounds of such arrest, nor shall be denied the right to consult and to be defended by a legal practitioner of his choice and every person who is arrested and detained in custody shall be produced before the nearest magistrate within 24 hours of such arrest excluding the time necessary for journey’. These provisions are binding in ‘disturbed areas’ as well.

The Supreme Court's observed in the case of Pandit Paramanand Katia versus Union of India and others (1989)¹ that ‘there can be no second opinion that preservation of human life is of paramount importance. That is so on account of the fact that once life is lost, the status quo ante cannot be restored. Whether he be an innocent person or a criminal, liable to punishment under the laws of society, it is the obligation of those who are in charge of the patient to preserve life so that the innocent may be protected and the guilty may be punished’.

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Section 4(a) of AFSPA authorizes 'use of force to the extent of causing death' if the officer is of the opinion that such an action is necessary. Such opinion must be reasonable, fair and honest as pointed out by Review Committee on AFSPA. Case studies would reflect if this interpretation is followed or not.

In NPMHR 1997, Army claimed that 'Do's and Don’ts' are followed by the army. The guidelines prescribed several actions before, during and after a counter insurgency operation. Sample 'Do's and Don’ts' guidelines were taken into account during the field visits for investigation. These are summarized below.

The guidelines provide that as far as possible representatives of local civil administration are to be co-opted during the raids. It specifies that the power to shoot upon can be used only by officers (JCO/WO) and non-commissioned officers in a 'disturbed area' in collaboration with civil authority. The armed forces must act in cooperation with the district administration and not as an independent body. Armed Forces would work in harmony when they deployed in disturbed area. Use of firearms is permitted only after giving due warning in local language and arrest can be made of those who has committed or about to commit cognizable offence. Harassment of innocent civilian or torture is strictly prohibited.

After the operation, the lists of arrests to be made and arrested persons should be handed over to the nearest police station with least possible delay which would mean 2-3 hours extendable to 24 hours or so depending upon particular case. Every delay in handing over the suspects to the nearest police must justified and should be reasonable depending upon the place, time of arrest and the terrain in which such person has been arrested. Armed forces are not to keep anyone in
custody for any longer period than the bare necessity for handing over to the nearest police station and are not to use force except when the arrested person tries to escape.

Medical relief must be ensured 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. Armed forces are also prevented from using excessive force and are directed not to make the arrested person/persons subject to torture while in custody.

List of ‘Don’ts’ aimed to prevent the armed forces from using third degree method of torture for extraction of information or confession. Interrogation by the armed forces is strictly prohibited. Don’t guidelines strictly prohibit tempering of official records and evidences strictly prohibit rape or sexual assault during an operation.

Cases summarized at the end of field visit are presented as follows:

4.5 Fake encounter killings

As discussed in Chapter I, fake encounter killings are direct extrajudicial execution under section 4(a) of AFSPA. The phrase ‘fake encounter’ refers to the extrajudicial execution of a person followed by the official claim that the victim was an insurgent/militant killed in a legitimate military encounter with armed forces or combined security forces. It’s an Indian lexicon that presupposes an armed encounter before killing in order to justify extrajudicial executions. NHRC reported that every second encounter in India is a fake encounter.
The wide prevalence of fake encounter killings has been reported by many human rights organizations from time to time. Media and several NGOs like Human Rights Alert, Manab Adhikar Sangram Samiti, Asian Human Rights Commission (Hong Kong), OMCT, Human Rights Watch, Amnesty International have constantly reported about cases of extrajudicial executions. On February 1, 2010, Delhi based human rights organization Asian Centre for Human Rights (ACHR) informed that in an order by the National Human Rights Commission (NHRC) of India, dated January 28, 2010, directed the State Government of Manipur to report about 111 cases of fake encounters and is not reported to the NHRC till 26 February 2010.4 Manipur recorded the highest cases of extrajudicial killings and also percentage of widows compared to other states in the country stated the Confederation of the Democratic Rights Organisation (CDRO)5.

1) Case of Manorama6

Manorama was arrested by personnel of the 17 Assam Rifles personnel in Manipur, after she was picked by them on the early hours on July 11, 2004 from her residence. Troops of the 17 Assam Rifles came to their house around midnight on July 11, 2004 and broke open the door. They issued arrest memo against the arrest to the family. Havildar (General Duty) Suresh Kumar (No. 173355) of the 17th Assam Rifles signed the arrest memo. Rifleman T Lotha (No. 173916) and Rifleman Ajit Singh (No. 173491) signed as witnesses. The arrest memo stated that Manorama Devi was arrested as a suspected member of the Peoples Liberation Army and they recovered nothing from her and that she was healthy at the time of her arrest. However, the bullet ridden body of Manorama carrying marks of sexual assault was found at around 5:00 pm on July 11, 2004 by
the villagers at Keirao Wangkhem Road near Ngariyan Maring Village, about four kilometers from the family's house. The case raised hue and cry among the masses in Manipur. Several cases are sub-judice in this matter.

2) Case of Shyamjei

On May 8th, 2008, wedding ceremony of Inaocha, immediate younger brother of Shyamjei was going on. At about 9-30 am, Shyamjei was chopping fish when two unknown persons came to meet Shyamjei. It appears that Shyamjei was familiar with the two persons. Shyamjei refused to go as the wedding ceremony was about to start. The two persons dressed in civil dress forced him to come with them. An unnumbered van waiting outside the house took Shyamjei into the van along with the two persons and left the place towards Imphal. On 11th May, 2008 a local news paper, Kanglapao, carried a report of the death of Shyamjei in an encounter with JKLI stationed at Ningthoukhong. The encounter took place at Ningthoukhong Kha-Khenon which is about 8 km away from his residence. Local residents informed the family that they have not heard any sound of firing if there was an encounter nearby. The family received the dead body after 5 days. Family refrained from filing case due to fear.

3) Case of Raju

Raju, son of Kaoba and Promodini of Moirang Chengei, Bishenpur district, Manipur was 36 years old. Though his residence is in Moirang, he used to stay with his brother at Churachandpur. His family informed that on January 21, 2008, he was at his brother’s residence in Churachandpur. On that day he went to meet the family of a deceased friend. At 7 pm, army came to his deceased friend’s place and arrested him. Deceased friend’s widow was threatened not to disclose...
about the arrest to anyone. Next day the widow of his friend read in newspaper that Raju is killed in an encounter with Assam Rifle stationed at Churachandpur. Major Mallick arrested him on suspicion that he was a member of KYKL. On January 22, 2008 villagers and family members came to Churanchandpur and held a meeting. Joint Action Committee (JAC) was formed and a decision was taken that the dead body will not be accepted if there is no agreement on inquiry. The dead body was received after postmortem. There were marks of torture using branades, right shoulder was broken and a total of 22 bullet injuries were found in head, hands, chest etc. Raju’s deceased friend’s widow informed that Assam Rifle personnels came in uniform and she was threatened with death if she obstructs the arrest. Army also conducted a search of the house. Till date there is no further progress in the case in terms of investigation.

4) Killing of Jainto Singh and Rajesh Bando, Assam

Jainto Singh Gaur was 28 years old and Rajesh Bando was 30 years old and owned a photocopying shop. Both are residents of Takelibhanga village of Baska district in Assam state. Jainto was also the Vice-President of the All Adviasi Students' Association of Assam (Dumni Anchalic Committee). On November 26, 2008, two persons from the locality, Mr. Phulen Kalita and Mr. Nobojyoti Das, a SULFA member took Jainto and Rajesh to the residence of a lawyer, Mr. Giridhar Choudhury, another SULFA member turned advocate staying at a place called Pathsala, near Takelibhanga village. Under instructions from the lawyer, Jainto and Rajesh went to the army camp manned by the Kumaon Regiment of the Indian Army stationed at Nathkuchi. They came back home after about 11 days accompanied by Army men, collected their dress and
left with the army men. They stayed at the camp for the next 11 days, during which Jainto visited some of his friends. Later they returned to their home and informed the family that the lawyer had informed them that if they allow the army to pose them as cadres of underground militant group, surrendering to the army seeking peace, they will get a monetary compensation and that they could even get a petty job in the army camp. On April 11, 2009, in the evening, someone from the army called both Jainto and Rajesh in their mobile telephone numbers, 9954260521 (Jainto) and 9954750927 (Rajesh). The person asked them to report at the army camp in Tihu. At about 7 am on the next day, Jainto and Rajesh left for the camp. Rajesh carried his cell phone carrying number 9435299571. Since then, the telephone answered switched off and the family failed to contact them even after visiting the army camp. The army authority informed the family that the Rajesh and Jainto didn’t come to the army camp at Tihu. On 28 April, the two families came to know Jainto and Rajesh were killed at a place called Haribhanga Supa by the army an encounter.

The post-mortem examinations of the bodies conducted at Nalbari Civil Hospital. In the meanwhile, the family obtained the dress belonging to the two men from the hospital. When they examined the dress, the family recovered several articles hidden in the dress, including small bits of papers, army canteen vouchers, the remains of the paper packaging of toothpaste, small bits of newspaper and a torn-off shirt collar. Each one of the articles had notes written by the two men explaining their fear and later their conclusion that the army is plotting to kill them. Both families have approached the Guwahati High Court in
September, 2009 requesting the court's intervention in the case as well as for an order directing an impartial investigation in the case.

4.6 Massacres

Para 6 of Guidelines for the conduct of UN inquiries into allegations of massacres, 1995 reads as ‘the term ‘massacre’ is used to indicate the extrajudicial killing of a number of persons’. While these guidelines do not indicate a precise number of victims to qualify the killings as a ‘massacre’, it should be noted that, according to the Special Rapporteur, the term ‘massacre’ should refer to the extrajudicial, summary or arbitrary killing of at least three persons.10


President’s rule under article 356 of the constitution was imposed in Assam on November 27, 1990. Counter insurgency operation nick named as ‘Operation Bajrang; was launched in the state to contain ULFA and its activities. A massacre took place in a small village called Dipila, Darrang district on July 27, 1991. On that day at around 5 pm, a BSF truck with BSF jawans in it was crossing a wooden bridge at Dipila chowk (square). ULFA activist with a timed bomb blew off the bridge. The BSF truck had a narrow escape. Immediately BSF launched a retaliatory operation in Dipila. There was a BSF camp within 200 metres of the wooden bridge. BSF jawans picked up whoever was found in and around the destroyed bridge and asked them to queue. After queuing they were asked to run and then BSF jawans fired indiscriminately from behind. As a result a teacher, labourer, carpenter, and farmer working in and around the bridge lost their lives. This was the first massacre under Operation Bajrang. Those who were killed are: Ganesh Deka, teacher, was teaching in a nearby school; Chandra
Baruah, carpenter, was working in a house; Keshav Deka, farmer, was working in the field; Karuna Kalita, 4th grade worker in handloom and textile office near Dipila; Pramod Kalita, BA was looking his cows in the nearby grazing field.

Sadan Committee was formed by the government comprising of MLAs and IAS officers and this committee conducted inquiry into the incident of massacre. Sarat Singh and Prafulla Kumar Mahanta visited the place. The Sadan committee reported the abuse of power and killing of innocent persons. According to their recommendation compensation was awarded. All the families received 1 lakh as compensation after one year and the then DC also gave Rs. 5 thousand promptly after the incident as ex-gratia amount.

6) Case of Kakopather massacre

A procession was taken out on February 10, 2006 to condemn the killing of Ajit Mahanta of Kakopather. About 20 thousand people took part the protest march. During the procession protestors became violent towards CRPF who were deployed to maintain law and order. One CRPF person was beaten to death by the protesters. CRPF fired to control the protestors. 9 persons including 6 women were killed in the firing and about 12 became disabled. Those killed are Anindita Munda (23 years), Beauty Gohain (18 years), Kunjalata Moran (19 years), Golap Bailung (70 years), Madhurjya Gohain (25 years), Dipon Moran (19 years), Wahida Ahmed (32 years), Monica Moran (15 years), Pokhili Bora (60 years).

Few other important massacres are still unsolved and accountability is not fixed. These are Oinam Leikai massacre on November 21, 1980, Ukhrul massacres on May 9, 1995, Bashikholong massacre on February 19, 1995, Tonsen Lamkhai massacres on September 3, 2000, Malom massacre on November 2,

4.7 Custodial death and torture leading to death

Custodial torture is mostly responsible for custodial death. Article 1.1 of UN Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 defines torture as, ‘any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity’. The UN Convention provides that the human dignity of the arrestees must be maintained.

Law Commission of India in its 152nd report on custodial torture has expressed concern over the growing incidents of custodial torture including custodial death and termed it an act of abuse of power. The incidence of custody deaths demonstrates more undeniably the brutalisation of the processes of law enforcement by the police and armed forces. A report estimated that each year, more than 1,500 Indian prisoners die within less than a day of being arrested. ACHR reported in its report, ‘Torture in India 2009’ that statistics on ‘deaths in the custody of the armed forces and the India Army under the control of the Central Government are not reported to the NHRC as it does not have jurisdiction
to investigate violations committed by the armed forces under Section 19 of the Human Rights Protection Act, 1993\textsuperscript{17}.

The armed forces acting under section 4(a) of AFSPA are to be regarded as the custodian and guardian of person apprehended and are required to hand over the arrested person to the nearest police station with least possible delay. The duty of the armed forces is only to detain and hand over. Field study reveals that on many occasion they have acted in just the contrary manner and have failed to protect the very basic right to life guaranteed by article 21 of the Constitution.

7) Case of Manorama, described earlier in this Chapter

8) Case of Ojit, discussed in detail in Chapter III

9) Case of Ajit Mahanta\textsuperscript{18} (Read along with Kakopathar massacre)

Ajit Mahanta of Dirak Gosaigaon, PS Pengeri, was picked up by Army jawan in civil dress from Dirak Kakopathar, Assam on February 5, 2006. Next day early morning, Army dumped his dead body in a gunny bag in Dibrugarh Medical College hospital campus. The Army had said Mahanta died when he was trying to escape from their custody. Family together with the villagers refused to accept the dead body. On February 7, finally the villagers accepted the dead body and the last rites were performed on the road. Army and Assam government immediately paid 3 lakh rupees as compensation and a government job the deceased widow. A procession was taken out on February 10, 2006 to condemn the killing. About 20 thousand people took part in the protest march. During the procession protestors became violent towards CRPF who were deployed to maintain law and order. One CRPF person was beaten to death by the protestors. CRPF fired to control the protestors. 9 persons including 6 women were killed in the firing and about 12
became disabled. Tinsukia district of Assam, a military court in July 2006 found two soldiers - Nishant Sharma and Sudip Gurung - guilty of killing Ajit Mahanta. But the sentence was too lenient and was not commensurate with the crime of violation of the right to life. While Nishant Sharma was suspended from his service for one year, Sudip Gurung was sentenced to two months' rigorous military imprisonment.

10) Case of Buddheswar Moran

On May 5th 2007, Buddheswar Moran, 24 years old youth was allegedly extrajudicially killed by the troops of the 5th Jammu & Kashmir Rifles under the Doomdooma police station, Laopatty, Assam. The army claimed he was a ULFA militant possessing arms, ammunition and incriminating documents. However, the villagers informed that Buddheswar was innocent and he was a poor man learning metal welding from the army’s vocational training programme ‘Operation Sadbhavana’, a chowkidar in a private tea estate, and a father of two children. Villagers came out on the streets in protest against the extrajudicial killing and blocked national highways 37 and 52 and to accept the dead body of Buddheswar for his last rites. On May 8, 2007 three days after the killing, Tinsukia district administration officials imposed section 144 of the CrPC at Dholla, Doomdooma and Kakopathar facing stiff public resistance. Four people were killed and several were wounded in clashes between the people and the authorities. On May 9, four days after the killing, the GOC of the 2nd Mountain Division, Major General NC Marwah addressed the media and called the killing of Buddheswar Moran ‘unfortunate’. He assured impartial army inquiry. Results of the inquiry is not known yet.
4.8 Enforced or Involuntary Disappearance

Involuntary disappearance is according to International Convention for the Protection of All Persons from Enforced Disappearance, ‘enforced disappearance’ is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law. Involuntary disappearance is a continuing offence till the whereabouts of the victim is found.

Field visits show that disappearance is preceded by illegal detention. It was observed that instances of involuntary disappearances been much reduced in Nagaland and Manipur after 2000 while it is much prevalent in Assam. In Manipur the State Government has development issuance of arrest memo while arresting a person. Involuntary disappearances can be considered as custodial extrajudicial executions as the custodian authority fails to present the persona of the arrestees. Blatant violation this criteria were reported during the field visits. Several incidences of involuntary disappearances were reported and a few illustrative cases are summarized below.

11) Case of Bhagiram Baruah

Bhagiram Baruah, 56 years old, son of Jayram Barua of Bihubhanga (Ghopa), PO Digirpar, PS Sipajhar, Dist Darrang, Assam was a farmer and he was picked up by the army on September 21, 1999 at 10 pm. He had no affiliation to any political party or any underground organization. Family members informed
that he was picked up on suspicion of hiding heavy arms and ammunition at his residence. On that day Army came back and searched their house at around 2-30 am, dug up some areas in the courtyard in search of arms. No arm was found and Bhagiram was taken in their custody and he disappeared. The family filed case to the Sipajhar police station and enquired about him in nearby two army camps without any satisfactory result. Finally a writ of habeas corpus was filed before the High Court (case no WP (Cri) 59/99). The court ordered judicial inquiry by the district and session judge and found army guilty. Compensation of Rs.1 lakh was given to the family which they received in 2004.

12) Case of Podum Nath22, Assam (also discussed in Chapter V).

Padum Nath s/o Thaneswar Nath was a teacher by profession and was teaching in a private a school Paschim Darrang Bidyajyoti High School. He was 28 years old, unmarried and was the sole earning member of the family. He along with two other youths of the locality was picked up by the Army on June 4, 1998 at 2 am. Later on all of them were released and Padum was directed to report to the Army camp at 4-30 pm alone and at 4-30 pm he did leave his home for Army camp on his bicycle and since then he disappeared. Family member says that he had no link with any underground organization and was not involved in any unlawful activities. A case was filed before the Darrang Police Station against GPC Eastern Command, C/O 99 APO but no satisfactory action was taken. Padum’s father Thaneswar Nath filed a writ of Habeas Corpus (C.R(HC) 57 of 1998). HC ordered a judicial inquiry by the Session judge, Darrang and the inquiry report to be submitted within 6 months. The Session judge reported that Podum Nath actually left for the army camp in his bi-cycle which he left at a
medicine shop near the camp and also informed the medicine shop keeper that he is going to the army camp. The High Court ordered compensation of Rs. 3 lakh to the family and the family has received the amount.

Several instances of torture, harassment and arbitrary detention were also reported by different human rights organizations and media. Few illustrative cases are as follows.

13) Case of Sonia’s case

Sonia Bibi Chaksaba, 14 year old, daughter of Abdul Latif Chasam is a student of class X. In June 2007, Sonia was studying in their verandah along with her sisters Reshma and Samina. Their uncle’s houses are situated nearby sharing the same courtyard. There were 40-50 soldiers and surrounded the whole area of their house. Soldiers entered their house and opened cupboard and scattered things and took one cell phone and a sim cards and beetle nuts. The total estimate of the damage caused will be about 2500/. They arrested Sonia’s uncle. Sonia demanded arrest memo. Army asked how she knows that an arrest memo is required. Sonia insisted on furnishing an arrest memo. At this point army belonging to 22nd Maratha infantry stationed at Mayang telecom office, hit her with the butt of the gun and injured her ankle. There were six vehicles including two bullet proof vehicles. There was one masked civilian. Total damaged caused till now to the family including the treatment cost will be about 1 lakh rupees. Sonia was admitted in hospital and discharged on June 27, 2007 by RIIMS. The family has spent about Rs.50 thousand for the treatment of all members who got injured. When the family of Sonia went to file a case in the PS, army offered for an extra-court settlement and sent the offer via the police. OC Rajen came for negotiation
and he is a sub-inspector. Army promised to bear the cost of medical treatment. This offer came within 4-5 days of the incident. Rjauddin, a home guard was the mediator of this offer. The family asked for a job for Sonia. Since then they did not come again.

14) Case of Abi Chiru

Abi Chiru, son of Ts. Pasoneng Chiru and mother Rangnishoi, 18-year-old resident of Uran Chiru Village, Senapati District. Abi Chiru is a student of class IX and a farmer by profession. He earns 4-5 thousand in a season. His parents are dependent on his income. He was arrested on 27 January 2008 at around 3:00 pm along with his uncle, Mr. Nungshipa, by personnel of the 24th BN, Assam Rifles stationed at Moreh, when they were trying to enter Moreh Gate No.2, at the Indo-Myanmar border. Both were on the way to Moreh for shopping. He was arrested as suspected member of UNLF or KYKL and detained in the camp of the 24 battalion of Assam Rifles posted at Moreh (a bordering town to Burma/Myanmar). During his detention in an isolated dark room, he was blindfolded, beaten and threatened at gunpoint to admit to be a member of UNLF. He was also threatened to death not to disclose any information about his detention and to report that he had been arrested by the Myanmar Army. He was not allowed to take bath for about 10 days and was not provided proper food. He was released on 20 February 2008 at an isolated place near Moreh. Later he came back home with the help of some villagers.

15) Case of Sobhan Mahanta

Sobhan is a resident of village Bor Dirak Gosiagaon, Kakopathar, Assam. On August 10, 1996 at 12-30 noon, about 5 army persons entered his residence.
Seeing army, neighbours and villagers run away. His three brothers were at home. They were taken to Dibrugarh Thana. They were severely beaten by army. They were released after 65 days. They were arrested on the charges of sheltering ULFA members. Sobhan paid bribe to police and also paid lawyer’s fees. Army continued to patrol their area and came to their residence many times and on August 9, 1996 army came to his house and beat up his father aged 65 years.

4.9 Sexual assault

The term ‘sexual violence’ refers to many different crimes including rape, sexual mutilation, sexual humiliation, forced prostitution, forced pregnancy and forced abortion. These crimes are motivated by a myriad of factors. Sexual violence during conflict is an act of domination, grounded in a complex web of cultural preconceptions, in particular as regards gender roles. It is used to torture and humiliate people, and to punish or humiliate an enemy group or community. CEDAW defines ‘Gender-based violence [as] a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men (General Recommendation No. 19 of CEDAW, 1992).

According to the law in India, it is not required to prove mens rea (Latin term for ‘guilty mind’ is usually one of the necessary elements of a crime) for the crime of sexual assault, only physical sexual contact needs to be proved. Summary Court martial trials are governed by the Army Act of 1950. Civil offences are not triable by court-martial (Section 70 of the Army Act) though a person subject to this Act is triable if the offence is committed (a) while on active service, or (b) at any place outside India, or (c) at a frontier post specified by the Central Government by notification in this behalf.
Courts-martial process is a very restricted procedure and non-transparent. The trial takes place at the vicinity of the Army headquarters. For a victim of sexual violence, this would mean trial at the door of the perpetrator, with the perpetrator’s seniors at the judges’ seat. Not surprisingly the participation of victims in these proceedings is low. The proceedings are totally closed for public scrutiny and the rules of conduct and instruction manuals for military personnel operating in ‘disturbed areas’ under AFSPA are being kept confidential.

Field study shows that extrajudicial executions of females are often committed by the armed forces followed by an act of sexual assault. Sometime the victim is abetted to commit suicide due to social stigma. Such suicide would amount to extrajudicial execution.

16) Case of Manorama, supra
17) Case of Miss Rose

Sexual assault on Miss Rose was the first reported case of sexual assault in Manipur. Rose was a resident of Ngaprum village (now Kumbram village), Ukhrul district, Manipur was gang raped in the house of Mr. R. Khasung in the night on 4 March 1974 by Major Pundir and Captain Nag of the 95 BSF. Rose committed suicide out of shame while the perpetrators went scot-free, due to lack of ‘sufficient evidence’. Activists of local women’s group informed that ‘BSF used to come and stay in peoples house to catch insurgents. Rose was asked to make bed for three jawans in her village house. Villagers used to serve to the BSF jawans whenever they visited village and this service included even ‘supplying’ of girls to the jawans. After she was raped by the three jawans for whom she was making beds, Rose wrote a long letter to her boy friend saying that she is no more eligible
to live a life of dignity. Several drama and skits were prepared by artists to keep her memory alive and showcasing of these dramas were too banned and were not allowed to perform’. Rose committed suicide on 6 March 1974 leaving a suicide note addressed to her boyfriend Mr. Stone of Bungpa village, about 17 miles from Ngaprum Khullen.

18. Case of Lauingamla

Another incident of sexual assault is still fresh in the mind of the women in Ukhrul town. Lauingamla, a 17 years old girl of Ngainga village, Manipur was shot dead by the one Captain Mandir Singh of 25 Madras Regiment on January 24, 1986. She resisted to the attempts of rape but failed to do so. Activists of Thangkhul Shanou Long informed that a case was filed by the local women NGO in the Supreme Court of India and the accused capt. Mandar Singh of 25 Madras regiment was court marshalled in Leimabhong (the army head quarter) in Manipur.

19. Case of Nandeibam Sanjita Chanu

In another incident Miss Nandeibam Sanjita Chanu (18), resident of Jiribam, Manipur was raped by three personnel of 12 Granadier Rifles at Uchathol, Jiribam, Manipur on 4 October 2003. She was raped on her way to deliver food for her father and brother in law, both working in a rubber farm. She later committed suicide unable to bear the harassment of the Indian army. The Press Information Bureau (defense) in a release shortly after the incident denied of any of its army personnel involved in the rape. The Sanjita Death Inquiry Commission, formed after stern public agitation and investigating the incident has neither made the findings of the inquiry public nor has the army personnel
involved in the rape incident prosecuted till date.

20. Case of Maniki Bezbaruah

A proper investigation into the allegations of sexual violence was simply denied to the victim despite wide media coverage. Maniki Bezbaruah’s provides an exemplary observation. On October 2, 1998 around 8:pm. security personnel entered Maniki’s house during a search operation for ULFA militants in Nalbari, Assam. Male members of the house were all away and Maniki was cooking when security personnel entered her house asking about ULFA militants. Seeing that a room next to the kitchen was locked he ordered them to open it. Maniki asked her sixteen-year-old daughter to open it. As the girl opened the door, the man pushed the girl into the room and tried to sexually molest her. The daughter screamed and Maniki came to rescue her with her three-month-old baby in her arms. The daughter fled but the security personnel pounced on Maniki, threw the three-month-old baby and raped her. Local women groups protested widely against the case. FIR was filed. A counter case accusing her of trying to defame the Indian Army was filed by the Army and arrest warrant was issued against her. Instead of investigating the allegations for sexual assault, police knocked the doors of Maniki’s residence to arrest her for defaming Indian army. She was not arrested due to protest by the local women groups. The family found it safe to withdraw the FIR filed by Maniki.

21. Case of Anima Hazarika

On July 15, 2007, a cordon-and-search operation is conducted in the village next to the Anima’s by army personnel of the 65th Battalion, deployed at Jamia camp, 25 km from the her house in Dibrugarh district of Assam. Upon
conclusion of the operation, a group of eight or nine army men enters her village. It was night and raining heavily. The army personnel divide themselves up in three groups. One group forced their way into the house of the Anima's sister-in-law who lives with her family next door. Later the Anima learns that her sister-in-law has been molested but could 'save herself' (the family collects a gun from the intruders). Another group barged into a house nearby and starts molesting a 16 year old girl. They stop and eventually leave when the girl's elder sister takes out a big kitchen knife ('dao') and threatens 'to cut them to pieces.' The third group came to the Anima's house. The group consisting of three men entered Anima's house forcefully. Two of the men force Anima into the bedroom, while the husband and son are held at gunpoint on the veranda by the third. The two men sexually assaulted her. Subsequently, the third member of the group enters the bedroom and rapes her. The next morning, villagers gathered in protest. The local police station refused to register an FIR regarding the incident. Villagers formed a group and went to DC office at Dibrugah. An FIR is eventually registered with the DC in Dibrugarh. On July 17, Anima underwent a medical exam at Dibrugarh Medical College Hospital after 48 hours of the incident. Later she was informed that the report is negative. Copy of the medical report was denied to her. The State Human Rights Commission orders an inquiry into the incident and state of affairs or outcome required is not known.

22. Case of Arubi Devi

Arubi Devi of Imphal West, Manipur is 50 years old. She is married and had two sons. Two sons are E. Samaijit, 23 years old and E. Tikendrajit, 17 years old. Tikendrajit is studying in class IX. Samarjit left study after the human rights
violation of his mother. Arubi Devi is working as domestic help and earns about Rs.50 per day. She is working under Diana who is the head of an organization for the domestic helps. She has no association with political or underground groups. She was never arrested though visited police stations several times to protest human rights violations of others as Meira Paibis. Her residence changed after the incident. She took shelter in the community hall for 6 months while the villagers rebuilt her house in a piece of land donated from the community.

She was sexually assaulted by two jawans of 2nd Maha Regiment on August 1, 1996. The incident took place in her house in front of her husband and two sons. Her son Samarjit is a disabled person. The two rapists were No 4547559K Havildar Apparao Mariba Wagmawe and No 455111 N Havildar Vithal Domaji Kalane from 2 Maha Regiment of Brigade Commander, Head Quarter 44 Mountain Brigade C/O 99 APO. Both of them are imprisoned for 10 years and also terminated from their job. Her husband is a cook in a blind house. He does not give even a penny to Arubi and wants to divorce her. He ridicules her and throws food at her like one throws food at a dog. Husband also beats her up quite often as she lost her chastity. Local Imas use to protect her and talks to the husband on her behalf. Due to social pressure he couldn’t divorce her. Arubi Devi has filed case before the GHC, Imphal Bench claiming Rs. 10 lakh as compensation (WP © No 549 of 2003).

Several instances of mass rape cases have been reported by the media and most of these cases are still pending to meet the ends of justice.
23. Tapaimukh Mass rape case

This mass rape case took place on January 16, 2006. A writ was placed before GHC on rape case Parbung and Lungthulien in Churachandpur district of Manipur, India bordering Myanmar. 21 Hmar (a tribe) women were allegedly raped by members of UNLF and KCP. Parbung Police Station had registered as many as 25 different FIRs in connection with the incident. The Rajkhowa Commission of Inquiry was constituted by the Government of Manipur under Commission of Inquiry Act 1952 on March 21, 2006 to determine the facts of the allegations of causing serious injury to many villagers and molestation and rape of young girls belonging to Lungthulien village and surrounding areas under Parbung police station on January 16, 2006 by non-state actors and to fix responsibility. 16 women, including one 24 year old housewife deposed and narrated their account before the Commission. The Commission submitted its report on May 30, 2008. The report is not made public till date.

24. Ujanmaidan rape case

The Assam Rifles raided the Ujanmaidan of Koyai sub-division in 1988 to search for the militants. During this operation 14 tribal women were raped in Purba Gobindabari village under Chhawmanu police station in Dhalai district of Tripura. One woman informed that security personnel tied her husband and raped her in front of him. The youngest raped was a girl of 12 years. Special Commission was constituted to investigate into this incident of mass rape. According to parliamentary discussions the special commission confirmed the report of rape. No action has been taken so far.
Similarly, there will be few people who could remember the Barpeta rape case. What happened in this case was that on May 11, 1991 Police Battalion and Central Security forces conducted a ‘search operation’ in Baghmara and Agrungguri villages of Barpeta districts in Assam and sexually assaulted at least 37 women. No investigation, no prosecution took place.

4.10 Human Rights abuses by Non-state actors or armed opposition groups

One of the more complex issues in contemporary human rights discourse concerns killings by non-state actors. The fact that this category is not readily susceptible of a clear definition increases the complexity. However, in armed conflict of non-international in nature, both state and non-state actors are accountable for human rights abuses and for killings. Earlier it has been pointed out that common article 3 has relevance in the situation of armed conflict in north east India.

Conceptually, non-state actors belong to a very broad realm. The realm includes macro-level institutions, groups of people associated on the basis of some limited but common objectives, various civil society formations, armed groups, national and international entities, including corporations, philanthropic, cultural, educational, and human rights organizations.

Caroline Holmqvist, a conflict management expert from Sweden, defines non-state actors as armed groups that operate beyond state control. The definition includes:

1. Rebel opposition groups (groups with a stated incompatibility with the established governments);
2. Local militias (organized along markers of identity, real or imagined such as ethnicity, religion, language, or on the basis of political manifestos);

3. Vigilantes;

4. Warlords;

5. Civil defense forces and paramilitary groups (when such are clearly beyond state control);

6. Private companies that provide military and security services to State or non-State actors.

UN Special Rapporteur on Extrajudicial, Arbitrary and Summary Execution, Philip Alston in his report listed and defined four types of non-State actor:

1. Groups which, although not government officials as such, nonetheless operate at the behest of the Government, or with its knowledge or acquiescence, and as a result are not subject to effective investigation, prosecution, or punishment. Examples: paramilitary groups, militias, death squads, and irregulars.

2. Private contractors or consultants who, although not government officials in any way, are nonetheless exercising functions which would otherwise have been carried out by the State. Examples: privatized prison management, law enforcement, interrogation, etc.

3. Private criminal acts insofar as the State has failed to take all appropriate measures to deter, prevent and punish the perpetrators as well as to address any attitudes or conditions within society which encourage or facilitate such crimes. Examples: honour killings, killings directed at groups such as homosexuals and
members of minority groups, sustained attacks on trade unionists, so-called social cleansing of ‘undesirable’ elements, and repeated attacks on professional groups.

4. Armed opposition groups, especially those that exercise significant control over territory and population and have identifiable political structures.

UN Special Rapporteur on Extrajudicial, Arbitrary and Summary Execution, Philip Alston in the same report is of the opinion that ‘the isolated killing of individuals will constitute a simple crime and not give rise to any governmental responsibility. But once a pattern becomes clear in which the response of the government is clearly inadequate, its responsibility under international human rights law becomes applicable. Through its inaction the government confers a degree of impunity upon the killers. He further elaborated states obligation by explaining the relevance of the concept of ‘due diligence’. This term most frequently used in international legal instruments to characterize the State’s obligations in such contexts. Its substance was formulated in considerable detail more than 25 years ago in a report to the General Assembly by Abdoulaye Dieye of Senegal in his capacity as an expert in relation to the situation in Chile.

He examined in depth the responsibility of States for acts such as disappearances which are not committed by government officials or their agents. He observed that a State is responsible in international law for a range of acts or omissions in relation to disappearances if, inter alia, the authorities do not react promptly to reliable reports, the relevant legal remedies are ineffective or non-existent, the State does not act to clarify the situation in the face of reliable evidence, or it takes no action to establish individual responsibility within the
national framework. This approach was later endorsed by the Inter-American Court of Human Rights in a landmark case almost a decade later and the concept of ‘due diligence’ has since been further developed in a variety of United Nations contexts.

Amnesty International refers to the killings perpetrated by non-state actors as deliberate and arbitrary killings, while killings perpetrated by the states are referred to as extrajudicial executions. It also uses the expression ‘human rights abuses’ to refer killings by the armed groups (rather than 'human rights violations', which are reserved for acts committed by the states). Accountability of the non-state actors (armed opposition groups) cannot be overlooked as common article 3 of Geneva Conventions, applicable in non-international armed conflict situation, clearly spelled out the obligations of all parties in a conflict.

The internal armed conflict in NES satisfies the definitions of ‘armed conflict’ and hence the accountability for human rights abuses and violation of right to live is applicable to the non-state actors as well. International Humanitarian Laws especially common article 3 is applicable in this situation. Government of India enacted the Geneva Conventions Act 1960 in order to meet its obligation due to ratification of the Geneva Conventions 1949. However, the Act is not in at parity with the commitments spelled out in the Geneva Conventions of 1949 and failed to ensure accountability of the non-state actors as per Common article 3 of the Conventions.

It has been noticed that the non-state actors in NES, often engage in purely criminal activities. Increasingly, the activities of the armed opposition groups in the North East, Jammu and Kashmir, Punjab, and parts of Andhra
Pradesh have become virtually indistinguishable from those of criminals. Though legal documents establishing the accountability of the armed opposition groups for committing arbitrary killings are scanty, civil society organizations have been constantly addressing their accountability. International human rights organisations such as Amnesty International (AI) and Human Rights Watch (HRW) already have begun to address the issues regarding violence by armed opposition groups. Amnesty International defines opposition groups as 'groups in opposition to the governments that have acquired the characteristics of the governments.' Armed opposition groups are duty bound to follow common article 3 of Geneva Conventions due to its recognition as customary laws.

4.10. Some instances of killings by armed opposition groups

25. Arbitrary killing of Langu Easter alias Ruhi and Pashel Snowy alias Julie

Chandel District, Manipur

Two women from Anal community was gun downed by insurgents belonging to PULF People’s United Liberation Front) on March 21, 2008 evening. Bodies of Langu Easter alias Ruhi (30) d/o (L) Angnu of Charong village and Pashel Snowy alias Julie (27) d/o Pashel Angsung of Anal Khunou were recovered from Khekman Wangma Taba Oinam Leikai in Thoubal district. Charong and Anal Khunou villages lie under Chakpikarong Police station. Media reports says (Imphal Free Press) quoting informed sources, Ruhi and Julie were brought to the incident site in motor cycles by about 6/7 unidentified persons before being done to death. A bag containing some clothes and an identity card issued to a Jawan of 4 IRB - Md Tamol (35) of Keirao Makting Makha Leikai were recovered from near Julie's body.
4.10.ii Forceful child recruitment in Manipur by non-state actors

Children are mostly recruited from the families that are not socio-economically sound. In some cases children were assured of expensive gifts like cell phones and other electronic items.

26. Case of Ak Ajay, Dist Thoubal, Manipur

Ajay is 13 years old and is studying in class VIII at Thanjeng Ningthou Flower School. On Sunday July 6, 2008 evening he was fishing in the drain water outside their residence. Two persons came to meet him in a bicycle and Ajay went with them. Since then he was missing. Later, Ajay’s father came to know from the father of another kidnapped boy Bipinchandra that PREPAK (GS), a militant group from Manipur is responsible for the kidnapping.

27. Case of Ak Bipinchandra, 13 years, Thoubal District, Manipur

Bipinchandra is a student of class – VIII in Catholic English School situated near Manipur University. Bipinchandra went out to play football nearby and went missing since then. Parents of both Ajay and Bipinchandra went to Myanmar and met two men, one being Sunil, a PREPAK cadre. Sunil informed the parents that the children came at their own will and PREPAK (GS) did not force them.

28. Ningombam Sharda @Ibama, PS Singjemai, Manipur

Sharda is 13 years old and a student of class XI of Inaobam Marak H.A Girls High School. On July 13, 2008, Sunday at around 11 am, one of Sharda’s classmates Monica called her and she is missing since then. Another girl named Jenebi of the same locality and same school and class is also missing from the same day. Sharda’s parents came to know about her recruitment by the militants
only when they saw her in TV on July 19, 2008 evening during news telecasted by local cable channel ISTV. She was found in the camp of PREPAK( GS) in Chandel district of Manipur.

29. Longjam Jenebi@ Chancha\textsuperscript{54} PS Singjemai, Manipur

On July 13, 2008 around 8 am Jenebi went to her music teacher Uttam to take music lessons. She did not return home. Music teacher informed that she left her harmonium there and did not come back to collect it. On July 19, 2008 Jenebi appeared on ISTV evening news along with other child soldiers in the camp of PREPAK( GS) in Chandel district of Manipur.

4.10.iii Secret killings in Assam

Another specific kind of extrajudicial executions, popularly known as ‘Secret killing’, carried out in the state of Assam in between 1998 to 2001 where non-state actors as surrendered militants called SULFA members were actively involved. Such executions range in between 400 to 1000. Basically close relatives of ULFA activists were targeted who failed to persuade the ULFA leaders to come back to the mainstream and surrender before the government.

Three Inquiry Commissions were established to investigate the cases of secret killings under Commission of Inquiry Act, 1952. Meera Sharma Commission constituted on July 1, 2003. Meera Sharma resigned on October 18, 2003. J.N Sharma Commission constituted on November 4, 2003 to look into 11 cases of secret killings as well as any other matter related to or relevant to the purpose of this inquiry. Submitted his report to the government but not accepted as the commission could not detect the perpetrators and motive behind the killings of ULFA families. Report was presented to the Assembly along with the KN

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Saikia report. K.N Saikia Commission constituted on November 3, 2005 and submitted the report in four parts to the government and the report were presented before the Assembly on November 15, 2007. KN Saikia report investigated 35 cases of secret killings. About 5-6 cases were not investigated as the time period allotted for the commission came to an end and KN Saikia did not go for an extension as it might project as monetary benefit for KN Saikia.

*Modus operandi* of secret killing: Most of the killings occurred at dead of night, the masked assailants armed with sophisticated weapons with prohibited bore (usually used by state security personnels) visit the family, invariably spoke in Assamese to wake up the victims. Maruti gypsies, TATA Sumo and van were used to transportation. Forensic/ballistic examinations of exhibits were mostly avoided or unduly delayed, and the investigation ultimately fizzled out. ‘There was police patrolling in the crime areas prior to and after, but not during the killings’, the report said. The report reflects close nexus between SULFA and government, and SULFAs being termed as an extra-constitutional authority and used as executioners in this ULFOCIDE.


On September 16, 1999, at midnight, Ananta was his home in Kalitakuchi, Hajo, Kamrup district. Armed masked assailants called his brother’s name and finally got hold of Ananta Kalita. He was forcefully boarded in a Tata sumo. He was blindfolded in the sumo car and rushed towards Guwahati. He was brought in a hillock somewhere near Guwahati and was illegally confined inside a spilt bamboo house for two days. On September 18, at 12 midnight he was taken to a
hill top by the secret killers and shot at his head. He fall down and remained unconscious for a day. With the help of a truck driver, he reached AJYCP office in Guwahati. He survived and became the witness of this heinous crime. Annata Kalita was associated with Assam Jatiyatabadi Chatra Yuva Parishad and hence he was targeted.

31. Case of Khagen Barman58 (Hajo PS case number 40/2000)

Khagen Barman son of Ganesh Barman and mother Nilima Barman was about 22 years old and was a farmer. A land dispute was going on where he and his father was cultivating. On March 17, 2000, Khagen was watching TV and at around 7-15 pm, armed personnel in uniforms, some of them masked came to their house and asked for Khagen Barman. Khagen came out of the house where he was watching TV along with a friend Madhav and identified himself. Police and armed personals asked the family members to go into their rooms and pushed them into one house and locked from outside. Khagen was taken behind another house sharing the same courtyard and was shot to death. They put the dead body in the jute bag and left the place. Later on the body was handed over to the family in the police station.

32. Secret killing of Ratul Deka59

This is another unreported case of secret killing. Ratul Deka was the son of Late Sarat Deka and mother Anna Deka. Ratul was 27 years old and appeared BA third year. He was the only brother of three sisters. He was associated with AASU as cultural adviser and was also a sympathizer of ULFA. Dipen Thakuria, an ULFA activist from nearby village was a friend and was well known in the locality. Ratul had two sisters and was unemployed. He was a part time tutor for
primary school students and was earning about 500/ per month. On December 19, 1998 Ratul went to Guwahati for the pension work of his father and informed the family that he might stay back in Guwahati if the work is not finished. That night he stayed with Nobo Mishra from Borbhita village, Belsor, Nalbari. Nobo is a family friend and was working in a shop in Guwahati. On the 20th morning Ratul told Nobo that he will leave Nobo and go to his Uncle’s place and left the place. After that Nobo doesn’t know where he went. Nothing about Ratul was heard after that. On December 22, 1998 the family came to know from newspaper that his dead body had been found along with the dead body of Dipen Thakuria below a bridge in Ghograpara, near Nalbari. Assamese newspaper Pratidin December 23, 1998 and Agradoot dated January 22, 1998 carried report of his death by the secret killers. No investigation or prosecution took place. No compensation was received by the family.

4.10.iv Targeting civilians by the AOGS

The armed opposition groups (AOGs) were responsible for gross violations of international humanitarian laws especially by targeting the civilians through explosive devices. As per records of the State Government, as many as 191 persons were killed and 1,276 were injured in bomb blasts triggered off by alleged AOGs in the State from the year 2001 to June 2006 and as many as 1,536 civilians were killed in armed conflict-related violence during the same period.

4.11 To sum up

From the above case studies it is evident that armed forces being empowered with section 4 (a) of AFSPA constantly violated the Dos and Don’ts guidelines declared as binding by the Supreme Court in NPMHR case in 1997.
Armed forces abused powers under this section and tortured, executed, caused involuntary and enforced disappearance of innocent civilians including women and children, militants including suspected militants and their family members. Motivations for such actions vary from case to case. Generally, suspicion of providing shelter to militants, hiding arms and ammunitions, suspected militants, influence of local vendettas, mistaken identity, suspicion of collaboration with militants etc. It was observed during the field visits that

a. Extrajudicial executions are rampant. Lawyers, journalists are of the opinion that 'every execution during encounters is a fake or staged execution'. The lexicon 'fake encounter deaths' are often used by the media and human rights activists to specify extrajudicial executions. In between 2008 - 2010, the civil society in Manipur reported of 668 extrajudicial executions (Human Rights Alert, Manipur). In 2011, 32 persons were killed in Assam by the militants, while, 87 persons were killed by security forces (The Assam Tribune, July 12, 2012).

b. Prosecution under the Criminal Procedure Code arises after registering a case with the police. But the local police usually discourage the victim from registering a case, for the police have a notion that they have no power to investigate into the conduct of the armed forces. Legal positions apart, the police are too hesitant of offending the army.

c. Even if the police file a charge sheet against guilty army personnel after due investigations, getting prosecution sanction from the Central Government is a long and costly procedural hurdle. Assuming that the Central Government finally gives the sanction, the victim is pitted against the resources of the armed forces
for another legal battle, as the judgment says ‘refusing or granting sanction should be subjected to judicial review’.

d. Dos and Don’ts guidelines are not followed and at times, the security forces are not aware of its existence. Many times arrests are made without issuing arrest memo.

e. Armed forces don’t share information with local authorities/administration information about counter insurgency operations fearing leakage of information. Thus violating the norm that armed forces are acting in ‘in aid to the civil authority’. Instances of tussle between army and police were also reported.

f. Process of compensation is slow and almost nonexistent in most of the cases.

g. Existence of AFSPA for a prolonged time has reinforced perception that armed forces cannot be punished at all as they are ‘occupied force’.

h. Human Rights Commission is in force only in Assam and Manipur and has legal and financial constrains to carry out investigations into allegations of human rights violations.

i. Militants groups are powerful in certain part and controlling territory.

j. There is fear psychosis prevailing among the civilians in general and this fear is from both state and non-state actors.

k. Access to justice is denied in many cases due to length process of legal procedures like seeking ‘prior sanction’ etc.

l. There is general understanding that even the commandos of police can assume the same power under AFSPA and human rights activists too alleged the wide misuse of power by police acting in cooperation with army.
m. Wide protests against AFSPA are prevalent in Assam, Manipur and AFSPA is projected as a weapon of oppression and alienation.

n. Mental trauma together with uncertainty is prevalent in the society and trauma to the families in cases of extrajudicial execution is very high.

o. Nexus between the militants and politicians are too observed as well as reported in media.

p. Wide spread extortion and kidnapping by non state forces are structured and has turned into a daily phenomenon.

Other observations: it was observed that officials belonging to armed forces were reluctant to talk about the cases involving human rights violations and cited Officials Secret Act 1923 as a reason for such reluctance. While right to information Act 2005 overrides the Official Secret Act, still the matter of transparency in cases of human rights violation is a far cry.

There are few limitations for the field study. Case studies were carried out in a conflict environment and many a times the respondents were either traumatized or not open to give full details of the situation and their experiences. Time constrains and limited resources for field visits were another important limitation for the study. Proper documentations of the systematic violations were also not available for reference in several occasions. Nonetheless, the cases presented here clearly prove that extrajudicial executions are committed under section 4(a) of AFSPA violating ‘Do’s and Don’ts’ framed in NPMHR 1997 and other orders passed by the judiciary from time to time.
Notes and References:

1. (1989) 4 SCC 286

2. Luithukia vs. Rishang Keishing, (1988) 2 GLR 159


6. source: personal interview with the family of the victim

7. source: personal interview with the family of the victim

8. source: personal interview with the family of the victim

9. source: personal interview with the family of the victim
10 Guidelines for the conduct of UN inquiries into allegations of massacres - 1995

-DPI/1710 – 2, available at
http://www.icrc.org/ihl.nsf/32db2800384e72adc12569dd00505ac6/bc59eeb0a98f3332c1256b02002948d6!OpenDocument as on October 12, 2010

11 source: personal interview with the families of the victims

12 source: personal interview with the families of the victims

13 Cases under these two category are clubbed together for easy presentation


15 Ramanathan, Usha, *Human Rights in India*, available at
http://www.ieilrc.org/content/w0103.pdf as on October 30, 2010

16 *India's deaths in custody reach 1,500 a year*, available at

17 ACHR, *Torture in India 2009*, available at
http://www.achrweb.org/reports/india/torture2009.pdf as on October 31, 2010

18 source: personal interview with the family of the victim

19 South Asian Analysis, available at
http://www.southasiaanalysis.org/95papers18%5Cpaper1733.html as on September 28, 2008.

20 Interview with the residents of Kakopathar, Assam on July 18, 2008

21 Source: personal interview with the family of the victim
Sources: personal interview with the family of the victim and High Court case no: writ of Habeas Corpus - Thaneswar Nath vs. Union of India, C.R (HC) 57 of 1998.

Source: personal interview with the family of the victim

Source: personal interview with the family of the victim

Source: personal interview with the family of the victim

Most of the victims of sexual assault are unwilling to talk about the incident while some victims are skeptical about justice for their case. A few victims who spoke about their experiences are now reluctant to talk about their ordeal due to denial of justice.


ibid

Full text can be accessed at http://www.unhcr.org/refworld/docid/453882a422.html as on December 27, 2011

SAHDC, A Study in National Security Tyranny’, supra

Source personal interview with women’s groups and NGOs in Manipur

Personal interview with local women’s group in Manipur

Personal interview with women’s group and media sources

Source: personal interview with the victim
35 Goswami, Sreekala, Goswami, 2005, ‘Women in armed conflict situation’, study by North East Network, 2005

36 Interview with Maniki Bezbaruah and her family on June 28, 2008 at Nalbari, Assam.

37 Source: personal interview with the family of the victim

38 Source: personal interview with the family of the victim

39 Personal interview with activists dealing with the case.

40 Source: Personal visit to Ujanmaidan, Tripura

41 ‘How long can India occupy North East?’, available at http://fateh.sikhnet.com/Sikhnet/discussion.nsf/ca32680024ff68b487256a08007e868/78c8a7e0db9049578725665e007e02e8!OpenDocument as on March 30, 2012

42 Sadin, weekly, Assamese, May 11, 1991


45 ibid


48 According to Home Ministry report 2011, 79 armed groups including their factions are currently active in North East India, particularly in Assam, Manipur, Meghalaya and Tripura. Some of these are: Assam - United Liberation Front of Assam (ULFA) and National Democratic Front of Bodoland (NDFB); Manipur - People's Liberation Army (PLA), United Liberation Front (UNLF), People's Revolutionary Party of Kangleipak (PREPAK), Kangleipak Communist Party, Kanglei Yaol Kanba Lup (KYKL), Manipur People's Liberation Front (MPLF), and Revolutionary People's Front (RPF); Meghalaya - Achik National Volunteer Council (ANVC) and Hynniewtrep National Liberation Council (HNLC); Tripura - All Tripura Tiger Force (ATTF) and National Liberation Front of Tripura (NLFT); Nagaland: Nationalist Socialist Council of Nagaland (Isak Muivah)-[NSCN(IM)] and Nationalist Socialist Council of Nagaland (Khaplang)-[NSCN(K)]. On March 30, 2010, it was reported in The Assam Tribune that seven militant groups are active in Assam and these active militant groups are the United Liberation Front of Asom (ULFA, 875 members), anti-talk faction of the NDFB (225 members), AANLA (30 members), Kuki Revolutionary Army (40 members), Hmar People's Convention (50 members), Muslim United Liberation Tigers of Assam (110 members) and Assam unit of the Harkat ul Mujahideen (45 members).

Persons interviewed: The family of Snowy, All Tribal Women Organization (ATWO) activists- Ms. Moikham, co-coordinator of ATWO, Dr, Gina Shangkham, Reberphson, social activist

51 Source: personal interview with the family of the victim

52 Source: personal interview with the family of the victim

53 Source: personal interview with the family of the victim

54 Source: personal interview with the family of the victim

55 Source: personal interview


57 Source: personal interview with the survivor

58 Source: personal interview with the family of the victim

59 Source: personal interview with the family of the victim