CHAPTER - IV

Human Rights and the Conflict Transformation in Naga Areas

Discussions on human rights are very much the in-thing these days both nationally and globally. It is increasingly felt that respect for human rights has a deep bearing for effectuating positive peace in conflict situations across the world. Therefore, this chapter is engaged to textualise the discourse of human rights within the situation of Indo-Naga conflict.

The chapter begins by tracing the emergence of the concept and philosophy of human rights from the antecedents in their historical context through the “middle ages” to the “classical liberalism” and “classical conservatism” and to the “group-oriented” human rights philosophy. Moreover, the chapter is discussing India and International Covenants on human rights. The chapter makes use of Galtung’s theory of direct, indirect and cultural violence especially in the context of the application of laws and acts like AFSPA in dealing with the Naga people’s struggle. Besides, perhaps, we may also add psychological violence in our analysis. We have mentioned some of the important cases of human rights violations in Naga areas. The central focus of this chapter is that as long as there is no respect for human rights it will be well nigh impossible for the conflicting parties to find “positive peace”. What is suggested as a way out of the conflict is to go beyond “negative peace” so as to find “positive peace”.

The concepts of “negative peace” and “positive peace” can be explained briefly. “Negative peace” the elimination or reduction of direct violence whereas “positive peace” has a broader agenda of elimination of structural violence.¹ The ceasefire between

and among warring entities is a form of “negative peace”. Efforts to achieve negative peace emphasize: Managing interpersonal and organizational conflict in order to control, contain, and reduce actual and potential violence. Reducing the incidence of war by eliminating the extreme dangers of the war system and limiting war through international crisis management. Preventing war through strategic deterrence and arms control. The concept of “negative peace” addresses immediate symptoms, the conditions of war, and the use and effects of force and weapons. Words and images which reveal the horror of war and its aftermath are often used by writers, artists, and citizen groups in their efforts to stop it.

The “positive peace” places great emphasis on the elimination of exploitation and oppression. ‘Structural violence’ is unintended structure-generated (rather than actor-generated) harm done to human beings. It includes exploitation, alienation, marginalization, poverty, deprivation, misery, etc. and exists when needs for security, freedom, welfare and identity are not being met. With its opposite, “positive peace”, the words that come to mind are ‘harmony’, ‘cooperation’ and ‘integration’. Extreme structural violence can lead to death by denying even the most basic needs such as those for food and shelter. So “negative peace” can be insufficient to protect human life. While death can obviously be caused by deliberate direct violence, it can also be caused by the mere neglect of those needs. “Positive peace” means not ending wars, but also freedom from want, the attainment of justice, the protection of human rights and an absence of exploitation. So, “positive peace” establishes not only social equality and justice, economic equity, protecting citizens from attack, meeting basic human needs but also establishing ecological balance and involves in the elimination of the root causes of war, violence, and injustice and the conscious effort to build a society which reflects these commitments. Positive peace assumes an interconnectedness of all life.

In the context of searching for “positive peace” in Naga areas, the signing of ceasefire between the Government of India (GoI) and the National Socialist Council of

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Nagalim (NSCN) on August 1, 1997, as a step towards political engagement through peaceful means, provided an opportunity to assess human rights questions as far as the damages incurred to social and moral fiber of the Naga people and their society is concerned. The human rights violation of the Naga people through the application of acts, laws etc. by the State has to be placed within the larger political context of human rights and the “positive peace” for conflict transformation in Naga areas.

History and the Philosophy of Human Rights

The root of the philosophy of human rights did not begin with the United Nations’ Universal Declaration of Human Rights on December 10, 1948. Professor Lauterpacht tries to find the sources of human rights in the philosophy of classical Greece, and later on, of the Roman Stoics. Although he admits that the, “notion and the doctrine of natural, inalienable rights of man pre-existent to and higher than the positive law of the State seem to be of more recent usage”, he maintains that “the law of nature itself, unconsciously or by design, was often a cloak concealing the desire to vindicate the rights of man.”

Pericles vividly eulogises in his statement the right to equal justice, the freedom of individual development, and the right to freedom of individual behavior which does not affect social life. In the words of Cicero, “we are born for Justice, and that right is based not upon men’s opinions, but upon Nature,” or that “there is no difference in kind between man and man.”

From the instances of ancient illustration, the principles are generalized into the concept of ‘rights of man’ conceived as a definite species of moral principles, namely, those relating to man’s advantages in his relations with the state and society. The difference between the law of nature and the rights of man does exist. The law of nature

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4 "NOS ad iustitiam esse nabs, neque opinione, sed natura wnatitutum use iw." Cicero, De legibus, I, X, 28. The text and translation according to the Loeb Classical Library, Ibid., p. 360
5 "Nullam dissimilitudinem esse in genere." Ibid., I, X, 30, Ibid., p. 360
expresses what is conceived as ethically right in relation to political institutions. Rights of man are those morally right principles which are claimed from the political institutions for the benefit of the individual. Both instances exemplify the relation of morals and politics, the instance of the rights of man being more limited in range and bearing some specific traits. Thus it can be said that the concept of the 'rights of man' is, in a way, linked with 'law of nature,' which has its origins in antiquity.

Such a statement, however, should not be misunderstood, for it has some important modifications: (a) rights of man are not identical with the law of nature, even if both spheres are materially partially overlapping; (b) rights of man can be consistently referred to without any relation to the 'natural' aspect of the law of nature, for the link is merely between the moral-political aspects of the two concepts; (c) the concepts of the 'law of nature' and of the 'rights of man,' although belonging to the 'universe of discourse' of the ethical-political borderland, stress - in part at least - different points.

Human Rights in Middle Ages

The Magna Carta of 1215\(^6\) explicitly refers to rights and liberties. Rights and liberties are exactly specified and minutely enumerated and defined. The concept of 'rights and liberties', being connected with and based upon the law of nature, become pre-eminently ethical. The principle of 'human rights' was amplified by the political philosophy of John Locke.\(^7\) According to him, 'human rights' is principles of philosophical, and more or less systematic, conception of politics. In his opinion, human rights are principles of right to "life, health, liberty, or possessions. For the purpose of safeguarding these rights, people establish governments and states. The political organization, therefore, is only instrumental for the best possible realization of human


rights. The government is the trustee of the people with the explicit purpose of strengthening and guaranteeing human rights.

Repeatedly referring to lives, liberties, estates, of individuals, Locke’s conception of human rights is mainly individualistic. This concept is conceived as essentially individualistic and inter-individualistic, but not as collectivistic. The point of gravity of the political conception passes from the idea of the corporate state as conceived by the main Greek philosophers to the idea of the individual man.

The principles of rights of man were the effective slogan of the revolutionaries on both sides of the Atlantic, who accorded them the most prominent place in their official documents, such as the Declaration of Independence of 1776, and the Declaration of Rights of Man and Citizen of 1789, later incorporated in the French constitution of 1791. In strict conformity with Locke’s philosophy the institution of government is regarded as instrumental for the benefit of man, for the safeguarding of his rights. This belief is given a prominent place in the Declaration of Independence and in the Declaration of the Rights of Man and Citizen. It is typical that bills of rights were ostentatiously included in American states’ constitution and the French constitution of 1791, thus implying the idea that rights of man are beyond and above the range of competence of government, which by the very definition of constitution had to remain subordinate to them. Paine reflects the beliefs of his age when he analyzes the essential meaning of constitution:

A constitution is a thing antecedent to a government and a government is only the creator of a constitution. The constitution of a country is not the act of its government, but of the people constituting its government.10

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8 John Locke, Treatise, Chapter XIX, para. 221, p. 107, For an extensive analysis of this aspect of Locke’s doctrine, see John Locke’s Political Philosophy by J. W. Bough, Oxford, Clarendon Press, 1950, Chapter VII (entitled “Political Trusteeship”).
9 It is noteworthy, in this connection, to mention that the Declaration of Independence explicitly maintains “That to secure these rights [Life, Liberty and the Pursuit of Happiness], Governments are instituted among Men” and “That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it.” (Quoted from M. Spahr’s Readings in Recent Political Philosophy, Macmillan, New York, 1935, Reprint of 1949, p. 3.) as in Roshwald, Ibid., p. 372
10 Thomas Paine, Rights of Man, p. 36.
It is also the moral sanction of government: "...government without a constitution is power without a right." Having in mind the complete and absolute vindication of a people's and Man's equal rights, any charter or statutory document seemed to Paine but a perversion of a true constitutional declaration of rights; he regarded such a charter as a statement of privileges, which, by their very meaning, while granting rights to some, take rights from others (and are, therefore, unjust):

It is a perversion of terms to say that a charter gives rights. It operates by a contrary effect - that of taking rights away. Rights are inherently in all the inhabitants; but charters, by annulling those rights in the majority, leave the right, by exclusion, in the hands of a few.}

The essence of Paine's view is that rights have to be general and equal with respect to all, as well as safeguarded by a true constitution (which itself is mainly the embodiment of the people's right to political liberty), or else they are not worthy to bear the name of 'rights of man.'

The egalitarian spirit in which the rights of man are conceived is linked with and built upon the foundations of a humanistic approach. It is stressed that the rights are those of man qua human being, and not because of his social status; but this human essence of man is not regarded as a degradation of his possible social standing, but as his highest title:

The French constitution says, There shall be no titles; and, of consequence, all that class of equivocal generation which in some countries is called 'aristocracy' and in others 'nobility', is done away, and the peer is exalted into MAN.

The ethical aspect of the concept of 'rights of man' could allow different interpretations. According to Paine, that law has to be established on rational principles,

11 Ibid., p. 159
12 Ibid., pp. 197-8
13 According to Roshwald, This approach can be traced back to those Levellers, who similarly regarded the Magna Carta as "a beggarly thing," and wanted a general, complete and rational institution of rights, Roshwald, Op. cit., p. 375
14 Paine, Rights of Man, p. 46.
the most perfect embodiment of which is constitution (the vanguard of human rights). Paine’s individualism directly, and not unnaturally, leads into universalism:

"Man will not be brought up with the savage idea of considering his species as his enemy, because the accident of birth gave the individuals existence in countries distinguished by different names...."15

As in the case of individualism, so with respect to universalism, Paine’s doctrine cuts, so to say, not only across ‘space’ but also across ‘time’: “The Rights of Man are the rights of all generations of men, and cannot be monopolized by any.”16 Thus the doctrine of rights of man receives with Paine its fully universal character, in a way not conceived even by the Levellers who were precursors of these principles. We have seen that the concept of ‘rights’ has its roots in the heritage of the middle ages, during which, however, the legal conception of rights was not generalized so as to include every human being. The medieval rights remained still privileges.

It is clear that the concept of ‘human rights’ is ethical, human rights being conceived as principles which are right. They are not, however, the totality of moral beliefs, but belong to those morally justified principles which bear directly on the relation of man to politics. More precisely: Rights of Man are those normative principles, having as their object the benefit of the individual, which may not be infringed by the state (although practice may have proved otherwise), or which may be achieved by political means.17 The normative conceptions inherent in the concept of ‘human rights’ are humanistic-individualistic, utilitarian and universalistic. Thus it can be assumed that the concept of ‘human rights’ does not remain neutral with regard to the moral theory to which it has to be attached. Its ‘sympathies’ lie, if not with a definite moral school, then, at least, with those trends which are marked by utilitarianism, individualism and universalism.18

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15 The Rights of Man, pp. 184-5
16 Ibid., p. 184.
17 Ibid., p. 379.
18 Ibid., p. 379.
Another trend in the political philosophy of human rights is that of traditional conservatism. It is rarely articulated today with respect to human rights, because it is in large part a philosophy of unequal rights and privileges, and as such, difficult to defend in an avowedly egalitarian age. Classical conservatism can be said to have originated with Plato, who argued in *The Republic* that all people are not equal, and that the best form of government is therefore not democracy, but the rule of a philosopher-king.

What is central to this philosophy is that rights were reserved only for the most powerful.

There is also another branch of human rights philosophy which might be called "group-oriented," that can be subdivided into two branches, Marxist and nationalist. For Karl Marx, individuals were not independent actors; rather, they were controlled by economic forces, pawns in a relentless class struggle. For Marx, there is a dialectical connection between human beings and the economic forces. In the Marxist view, the liberal emphasis on individual rights is therefore misplaced, a bourgeois form without substance. Instead, rights are conferred by society, and they should belong exclusively to the proletariat (the working class). Such an approach leads automatically to an embrace of socio-economic rights and material equality, with a downplaying of civil and political rights.

The second version of group-oriented rights has a leftist flavour, but is not, strictly speaking, Marxist. It originated instead in the experience of national liberation movements, and places special emphasis on the right to national self-determination and economic development, from which all other rights are then derived. Believers in the human right to national self-determination downplay the individual as well as the social class, although they remain committed to equal rights. Their emphasis is on the rights of a national grouping. For Barash, this approach lay behind the "Universal Declaration of the Rights of Peoples," which grew out of a meeting of highly regarded, non-

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20 Ibid. p. 151
21 Ibid. p. 151
22 Ibid. p. 151
23 Ibid. p. 152
governmental Third World spokespersons in 1976. The first three articles in this thirty-article document read as follows:

1. Every people have the right to existence.
2. Every people have the right to the respect of its national and cultural identity.
3. Every people have the right to retain peaceful possession of its territory and to return to it if it is expelled.

The emphasis on “people’s rights” clearly distinguishes this approach from the Western focus on “individual rights.” Tanzanian president Julius Nyerere was one of the most articulate spokespersons for the nationalist group-oriented point of view:

“For what do we mean when we talk of freedom? First, there is national freedom; that is, the ability of the citizens of Tanzania to determine their own future, and to govern themselves without interference from non-Tanzanians. Second, there is freedom from hunger, disease, and poverty. And third, there is personal freedom for the individual; that is, his right to live in dignity and equality with all others, his right to freedom of speech.”

Human Rights in the Twentieth Century

Internationally, there was very little concern with human rights until recently, after World War II. Despite the Enlightenment, despite capitalism’s emphasis on individual property rights, and despite democracy’s emphasis on individual political rights, as a practical matter, state sovereignty has long superceded human rights. Gradually, however, human rights law developed, initially out of concern for protecting persons during armed conflict. The Geneva Convention of 1864, for example, sought to establish standards for treatment of wounded soldiers and prisoners. The International Committee of the Red Cross is a notable nongovernmental organisation long concerned with international human rights; it was organized by a group of Swiss citizens, involved in the 1864 Geneva Conference....

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24 Ibid. p. 152
26 David P. Barash, 2000, Ibid., p-150
27 Ibid., p. 150
Following World War I, there was widespread recognition that one cause of that conflict has been the denial of national rights within large empires such as Austria's. Hence, human rights received explicit attention from the League of Nations, which emphasized that the rights of minorities must be respected by larger federal governments. Organised, worldwide concern for human rights did not really coalesce until after World War II, perhaps in part as a reaction to devastating denials of rights that occurred in association with that conflict. In the aftermath of the Nazi holocaust most especially, the world's conscience was finally activated- partly out of regret for those who had suffered, and partly, too, out of enlightened self-interest.\textsuperscript{28} In recent decades, the world's people have begun to speak out for themselves and for human rights of every sort. Before we discuss some of the international legal protections, conventions, treaties, human rights justification, violations and the connection between human rights and the positive peace in Naga areas, let us consider the question of what is meant by human rights, and how they have come to be asserted.

**Definitions of Human Rights**

Human rights refer to "the basic rights and freedoms, to which all humans are entitled, often held to include the right to life and liberty, freedom of thought and expression, and equality before the law."\textsuperscript{29} The United Nations Universal Declaration of Human Rights states:

\begin{quote}
"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."
\end{quote}

Human rights are the universal rights of people regardless of jurisdiction or factors, such as ethnicity, age, nationality, sexual orientation or religion. The idea of human rights descended from the philosophical ideas of (natural rights) that are provided

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\textsuperscript{28} Ibid., p. 150
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by God; some recognise virtually no difference between the two and regard both as labels for the same thing while others choose to keep the terms separate to eliminate association with some features traditionally associated with natural rights. It is clear by now that John Locke is perhaps the most important philosopher that developed this theory. It is evident in the United Nations Declaration of Universal Human Rights in 1948, human rights, at least, in the post-war, are conceptualised as based on inherent human dignity, retaining their universal character. This existence, validity and the content of human rights continue to be the subject to debate in philosophy and political science and many other forms as has discussed above. Legally, human rights are defined in international law and covenants, and further, in the domestic laws of many states. However, for many people the doctrine of human rights goes beyond law and forms fundamental moral basis for regulating the contemporary geo-political order. For them they are democratic ideals.

Human Rights Legislation- Treaties and National Legislation

Where it has been adopted, legislation commonly contains:

a. Security rights that prohibits crimes such as murder/ "enforced" involuntary suicide, massacre, torture and rape;

b. Liberty rights that protect freedom in areas such as belief and religion, association, assembling and movement;

c. Political rights that protect the liberty to participate in politics by expressing themselves, protesting, participating in republic;

d. Due process rights that protect against abuses of legal system such as imprisonment without trial, secret trials and excessive punishments;

e. Equality rights that guarantee equal citizenship, equality before the law and non-discrimination;

f. Welfare rights (also known as economic rights) that require the provision of e.g., education, paid holidays, and protection against severe poverty and starvation; and,

32 Peter John, Rights, Palgrave, Macmillan, 1994, p. 73
Several other pieces of legislations have been introduced at the international level such as Convention on the Prevention and Punishment of the Crime of Genocide entry into force in 1951, Convention against Torture entry into force in 1984, and Convention on the Elimination of all forms of Racial Discrimination entry into force in 1969.

Justification of Human Rights

Several theoretical approaches have been advanced to explain how human rights become part of social expectations. The biological theory considers the comparative reproductive advantage of human social behaviour based on empathy and altruism in the context of natural selection. Other theories hold that human rights codify moral behaviour, which is a human, social product developed by a process of biological and social evolution (associated with Hume) or as a sociological pattern of rule setting (as in the sociological theory of law and the work of Weber). This approach includes the notion of that individuals in a society accepts rules from legitimate authority in exchange for security and economic advantage (as in Rawls).

On the other hand, natural law theories base human rights on the “natural” moral order that derives from religious precepts such as common understandings of justice and the belief that moral behaviour is a set of objective valid prescriptions. Some have used religious texts such as the Bible and Quran to support human rights arguments. However, there are also more secular forms of natural law theory that understand human rights as derivative of the notion of universal human dignity. Yet others have attempted to construct an “interest theory” defense of human rights. For example the philosopher John

Finnis argues that human rights are justifiable on the grounds of their instrumental value in creating the necessary conditions for human well being.\textsuperscript{38} Ultimately, the term “human rights” is often itself an appeal to a transcendent principle, not based on existing legal concepts. The term “humanism” refers to the developing doctrine of such universally applicable values. The term “human rights” has replaced the term “natural rights” in popularity, because the rights are less and less frequently seen as requiring natural law for their existence.\textsuperscript{39}

Violations of Human Rights

Human rights violation is abuse of people in a way that it abuses any fundamental human rights. It is a term used when a government violates national and international laws related to the protection of human rights. According to Universal Declaration of Human Rights, fundamental human rights are violated when, among other things:

a. A certain race, creed, or group is denied recognition as a “person” (Articles 2 and 6);
b. Men and Women are not treated as equal (Article 2);
c. Different racial or religious groups are not treated as equal (Article 2);
d. Life, liberty or security of person is threatened (Article 3);
e. A person is sold as or used as a slave (Article 4);
f. Cruel, inhuman or degrading punishment is used on a person (such as torture or execution) (Article 5, see also Prisoners’ rights);
g. Victims of abuse are denied an effective judicial remedy (Article 8);
h. Punishments are dealt arbitrarily or unilaterally, without a proper and fair trial (Article 11);
i. Arbitrary interference into personal, or private lives by agents of the state (Article 12);
j. Citizens are forbidden to leave or return to their country (Article 13);
k. Freedom of speech or religion is denied (Article 18 and 19);
l. The right to join a trade union is denied (Article 23); and,

\textsuperscript{38} See Articles on Human Rights at www.wikipedia.org
m. Education is denied (Article 26).  

The United Nations is the only international entity with jurisdiction for universal human rights legislation. All UN organs have advisory roles to the Security Council. Articles I clause (3) of Chapter 1 of the United Nations Charters states, "To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." 

Some of the Human Rights organs such as United Nations Human Rights Council, which was earlier called United Nations Human Rights Commission, is involved with investigation into violations of human rights while International Court of Justice is the principal judicial of the UN. 

India and International Covenants on Human Rights

The foundation of the United Nations in 1945 was followed by the independence of India in 1947 which opened up the process of decolonization in Asia and Africa. India in the euphoria of her national independence became an inspired member of the UN whose ideals for protection of rights of man, both the people and the individuals, were shared by India. The UN adopted the following International Instruments of Human Rights:

1. The Universal Declaration of Human Rights with 30 Articles was adopted by the UN on December 10, 1948. India with other member states was a signatory to the Declaration (Vide Resolution No. 217A (III) of December 10, 1948).


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40 Preamble, UN General Assembly’s Universal Declaration of Human Rights on December 10, 1948
41 Charter of the United Nations, Chapter I, Purposes and Principles.
3. The United Nations also adopted the International Covenants on Economic, Social and Cultural Rights on December 16, 1966 which was enforceable in 1976. And,

4. Optional Protocol to International Covenants on Civil and Political Rights was adopted on December 16, 1966 which was enforceable in 1976.42

India had ratified the International Covenants on Civil and Political Rights on April 10, 1979. However, she has not ratified the Optional ICCPR Protocol to which enables the Human Rights Committees set up under Covenant to receive and consider communications from individuals claiming to be victims of human rights violations.43 India as per Article 51 (C) of its Constitution is bound to ‘foster respect for international law and treaty obligations in the dealings of organized peoples with one another.’ The constitutional guarantee of the fundamental rights and commitments to International Covenants have been reinforced by a statute as the Protection of Human Rights Act, 1993 which takes cognizance of ‘Treaties and other international instruments on human rights’ which means by definition the International Covenants on Civil and Political Rights and the International Covenants on Social, Economic and Cultural Rights adopted by the UN General Assembly on December 16, 1966.44

Neither the United Nations Charter nor the Universal Declaration of Human Rights gives a definition of Human Rights. The Constitution of India does not define it though fundamental rights and duties are enumerated. However, according to the Protection of Human Rights Act, 1993, “human rights mean the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in International Covenants which are enforceable by the courts in India.”45 The human rights have two aspects:

1. The Social and Economic rights of the citizens are to be protected by the state as a duty towards its citizens; and,

42 Gangmumei Kamei, 2002, Ibid., pp. 100-101
43 Ibid., p. 101
44 Ibid., p. 101
45 Quoted in Gangmumei Kamei, Ibid., p. 102
2. The Civil and Political rights which are the sine quo non of the human rights are rights of the individuals against the state which it has to guarantee.

The first group of social, economic and cultural rights is incorporated as the Directive Principles of State Policy of the Indian Constitution while the Civil and Political rights are guaranteed and secured not by an ordinary law but by the fundamental law of the land, namely the Constitution, enforceable against the state by the courts. Indian Constitution Article 19 conferred certain positive rights in order to promote the ideal of liberty held out by the Preamble. The six freedoms in this Article are, namely, (a) freedom of speech and expression, (b) freedom of assembly, (c) freedom of association, (d) freedom of movement, (e) freedom of residence and settlement, (f) freedom of profession, occupation, trade or business. The Indian Constitution also groups the Fundamental Rights under six sub-heads. They are as follows:

I. Right to equality
II. Right to freedom
III. Right against exploitation
IV. Right to freedom of religion
V. Cultural and Educational rights
VI. Right to constitutional remedies

The enumerated individual rights or natural rights have been further recognised by the Supreme Court of India by applying the theory of emanation as Fundamental Rights. They are as followed:

I. The Right to privacy
II. The Right to human dignity
III. The Right to travel abroad
IV. The Right against torture, cruel, unusual punishment or degrading treatment

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47 Ibid., p. 85
V. The Right to speedy trial
VI. The Right to free legal aid in criminal trial
VII. The Right against delayed execution
VIII. The Right against custodian violence
IX. The Right to shelter, doctor's assistance, the right to health
X. The Right to a pollution free environment
XI. The Right to education of a child until he attains the age of fourteen
XII. The Freedom of press

The above rights are to be guaranteed and protected by the state in India. In the Naga situation, most of the International and Indian Human Rights have not been made known to the people for a long time until Naga People's Movement for Human Rights was formed in 1978. In the past, talking about the violations of human rights by the Indian and Burmese security forces was the biggest issue due to fear of arrest and imprisonment. Moreover, people were not fully aware of the scope and the value of human rights. People have suffered miserably due to not only the lack of awareness on human rights education but also because of deliberate suppression of the right to expression.

A. Lanunungsang Ao pointed out from the Nagas perspective that even the churches were silent for many years when the pastors, deacons and other fellow Christians were beaten, arrested, tortured, mishandled and humiliated by Indian armed forces in the Naga areas. Many of these inhuman acts of the security forces have been carried out even inside their churches followed by burning down of the church buildings. Yet, the Nagas could keep silent because of fear and ignorance in the past. Now, the Nagas could be said to be one of the most aware peoples about the human rights issue in the North East. In fact, the Naga People's Movement for Human Rights is one of the first human rights movements in the North East. However, whether the states respect and upholds human rights of the struggling peoples is a debatable matter and subject.

49 A. Lanunungsang Ao, From Phizo to Muivah: The Naga National Question in North East India, Mittal Publications, New Delhi, 2002, p. 121
The Naga national movement, which had adopted peaceful means for political settlement till 1952, shifted to adopting non co-operation, ideological and arms confrontation tactics after the visit of Jawaharlal Nehru and U Nu in 1953 to Kohima. The Indian State responded violently against the intensified Naga national movement for self-determination. Not being able to check the trends of event in the Naga Hills through a political dialogue the GoI decided to crackdown on the Naga National Council (NNC) towards the middle of 1953.

Police action against the NNC and the search of the important Naga villages resulted in and compelled most of the NNC leadership to go underground to engage in armed struggle. Treating the matters primarily as law and order problem, the Assam Government promulgated the Assam Maintenance of Public Order (Autonomous Districts) Act, 1953 and applied it to the entire Naga areas. Assam Chief Minister Bisnuram Medhi alleged that the Naga struggle was led by a handful of leaders who were being instigated by the foreign missionaries. The Assam Disturbed Area Act, 1955, was enforced in January 1956 and Law and Order duties in the Naga Hills were finally handed over to the armed forces.

Following which, the Armed Forces (Assam-Manipur) Special Powers Ordinance was promulgated in May 1958, giving extraordinary statutory powers to security personnel. This Act had its origin in the 1942 ordinance of the British colonial state. On 15th August 1942, at the height of the Quit India movement, the British government stating that it was necessary to confer special powers on certain officers of His Majesty’s armed forces as an emergency had arisen, brought in the Armed Forces (Special Powers) Ordinance, 1942. On September 11, 1958, the Parliament converted the Armed Forces (Assam-Manipur) Special Powers Ordinance into the Armed Forces (Assam and

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Manipur) Special Powers Act. In 1972, the Act was amended as the Armed Forces (Special Powers) Act (AFSPA).\textsuperscript{53} Other repressive central legislations such as the Preventive Detention Act in the 1950s and the Maintenance of Internal Security Act (MISA) in the 1970s, the National Security Act (NSA) which replaced it in the 1980s, the Unlawful Activities (Prevention) Act, 1967, and the now lapsed Terrorist and Destructive Activities (Prevention) Act, (TADA), Nagaland Security Regulation 1962, Joint Directive for Counter Insurgency Operation in Nagaland were also legislated.\textsuperscript{54}

The now lapsed TADA had provided for preventive detention and withholds minimum safeguards for fair trial. Under this Act, the trial of the accused is held in camera, with the onus of the proof of guilt shifted from the prosecution to the accused, whose extrajudicial confession is deemed good enough for admission in the courts. The NSA empowers the authorities with the right to refuse to disclose the facts relating to grounds of detention and to prevent the detainee from having a lawyer to represent his/her case.\textsuperscript{55} The Unlawful Activities (Prevention) Act was enacted by the Parliament in 1967 to confer powers upon the state authorities to deal with activities directed against the integrity and sovereignty of India.\textsuperscript{56}

Under the AFSPA, all security forces are given unrestricted and unaccounted power to carry out their operations, once an area is declared disturbed. Even a non-commissioned officer is granted the right to shoot to kill based on mere suspicion that it is necessary to do so in order to maintain the "public order".\textsuperscript{57} The powers to shoot to kill, arrest and search are given to the army in the pretext of "aiding civil power." Mass arrests, beatings, tortures, forced labour, atrocities, rape and burning of villages became

\textsuperscript{53} Where 'Peace Makers' Have Declared War: Report on Violation of Democratic Rights by Security Forces and the Impact of the Armed Forces (Special Powers) Act on Civilian Lives in the Seven States of the North East, Published by National Campaign Committee against Militarisation and Repeal of Armed Forces (Special powers) Act, April 1997, p.2.
\textsuperscript{55} Kumar Rupesinghe and Khawar Mumtaz, 1996, Op.cit, p. 90
\textsuperscript{56} Jeevan Reddy Committee's Report, 2005, p-29.
\textsuperscript{57} The Armed Forces (Assam and Manipur) Special Powers Act (Amendment Act)-1972 [No. 7 of 1972 (April 5, 1972)]
very frequent once these legislations were enforced.\textsuperscript{58} Such actions of the security forces hardly create a conducive environment for the people to live in peace. In the words of Bhikhu Parekh,

"In order to feel secure, plan their lives and form stable relationships, human beings need a society free from an oppressive climate of terror and total unpredictability...Although different societies entertain different conception of good life and differently define human well-being, the shared human capacities, needs and so forth imply that some constituents of human well-being are common to them all. These include, for example, survival, means of sustenance, physical wholeness, good health, a stable, stimulating and loving environment, access to the cultural resources of their community, freedom from the arbitrary exercise of power, a measure of privacy and control of their lives, and opportunities for self-expression. Like dignity and worth, promotion of these interests is a moral practice we adopt because we have good reasons to believe that human beings should live rather than die, grow into intelligent adults rather than zombies, enjoy health rather than suffer from disease and so forth."\textsuperscript{59}

**Multiculturalism**

In the words of Bhikhu Parekh, multiculturalism is not about difference and identity per se but about those that are embedded in and sustained by culture; that is, a body of beliefs and practices in terms of which a group of people understand themselves and the world and organize their individual and collective lives.\textsuperscript{60} Unlike differences that spring from individual choices, culturally derived differences carry a measure of authority and are patterned and structured by virtue of being embedded in a shared and historically inherited system of meaning and significance. To highlight the distinction between the two kinds of differences, he uses the term diversity to refer to culturally derived differences. Multiculturalism, then, according to Parekh, is about cultural diversity or culturally embedded differences. Since it is possible to welcome other kinds


\textsuperscript{60} Ibid., p.2-3
of differences but not those derived from culture, or vice versa, not all advocates of the politics of recognition need be or, as a matter of historical fact are sympathetic to multiculturalism. Although part of the politics of recognition, multiculturalism is a distinct movement maintaining an ambivalent relationship to it.

For Parekh, though cultural diversity in modern society takes many forms, of which three forms are most common. 61 Gays, Lesbians, miners, fishermen, artists have their own lifestyles which he calls these groups as sub-cultural diversity. His second form of cultural diversity such as, Feminist, Environmentalist etc., is called perspectival diversity. His third form includes the newly arrived immigrants, such long-established communities as Jews, Gypsies and Amish, various religious communities, and such territorially concentrated cultural groups as indigenous peoples, the Basques, the Catalans, the Scots, the Welsh and the Quebecois. He calls this communal diversity.

The term 'multicultural society' and 'multiculturalism' are generally used to refer to a society that exhibits all three and other kinds of diversity, one that displays the last two kinds, or that characterized by only the third kind of diversity. To quote Parekh, "Although all the three usages have their advantages and disadvantages, the third has on balance most to be said for it, and that is how I shall generally use the term." 62 Since the first two kinds of diversity are to be found in most societies throughout history, the first two usages are so wide as to deprive the term of focus and even render it useless. Furthermore, since communal diversity is logically distinct and raises questions that are unique to it, it constitutes a coherent and self-contained object of investigation, and deserves a name specific to it.

In the case of Indo-Naga conflict, the Indian state has been insisting that Naga people also form a part of Indian multicultural society which has not been acceptable to the Nagas. The Nagas have been expressing and maintaining that the Nagas are not a part of Indian multicultural society, instead, the Nagas constitute a distinct political

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61 Ibid., pp. 3-4
62 Ibid., p. 4
community having different cultural roots and heritage. The cultural assertions of both the Indian state and the Nagas are a part of the overall Indo-Naga conflict. The past 60 years have been unfortunate and sad events in the history of relation between India and the Naga people. Several lives have been lost in the process of Army to Army fighting in the Naga areas and other states in the North East. Many Naga civilians have been killed by the both Indian and Burmese security forces. Many wives were left as widows while many husbands have become widowers in addition several orphans and maimed individuals due to tortures, electric shocks, rapes and other inhuman acts treatment meted out to the people during combing operations, regrouping of villages, raids, fake encounters, etc.

It is unfortunate that between 1953 and 1964, it is estimated, one hundred and fifty thousand Nagas were killed and by 1956, there were one hundred thousand army personnel in the Naga areas,\textsuperscript{63} or in the words of B.N. Mullick "there was nearly one security troop to every adult male in the Naga Hills Tuensang Areas."\textsuperscript{64}

The large scale human rights violation due to virtual army rule led the Naga Peoples Movement for Human Rights, People's Union for Democratic Rights Delhi, Human Rights Forum, Manipur among others to filed writ petition in the Supreme Court between 1980-82 challenging the constitutional validity of the Armed Forces (Special Powers) Act, 1958. The Act was challenged on the grounds of being violative of the fundamental rights, right to lives, liberty, equality, freedom of speech and expression, freedom to assemble peaceably, move freely, practice any profession, protection against arbitrary arrest and freedom of religion enshrined in Articles 14, 21, 19, 22, 25 respectively of the Indian Constitution. However, this petition were kept pending by the Supreme Court for long fifteen years, during which periods the violation of rights continued. The case was finally argued in August 1997. The judgment delivered on

\textsuperscript{63} The Nagas: Truth and Hope for Living, Published by NPMHR, Kohima, Nagaland, 2001, p. 29.
\textsuperscript{64} B.N. Mullick, My Years with Nehru 1948-64, op. cit., pp. 313-314.
November 27, 1997 upheld the Act and all its provisions as constitutional save for some cosmetic changes. [Reported as NPMHR vs. Union of India (1997) 7 SCALE210].

The continuance of the AFSPA, has no doubt, created such a environment that, dignity, self-respect, freedom of expression, security of life, privacy, survival, physical wholeness etc. have been gravely threatened in the North East and Kashmir in general and the Nagas in particular. The existing militarisation has not just proved counter-productive but has also contributed in sustaining the cycle of violence devoid of the spirit of human rights. In this context, Johan Galtung will remind us of three forms of violence, such as, “Direct,” “Indirect or Structural” and “Cultural” violence. To this we may add “Psychological warfare” in the context of the Naga situation. Psychological warfare includes such strategy as ‘Win the Heart and Mind’ of the people. “Operation Good Samaritan” which was launched in June 1995 by the Government of India was one of the important indicators of such warfare through welfare in the North East. In the words of Galtung, conflict is much more than what meets the naked eye as ‘trouble’, direct violence. There is also the violence frozen into structures, and the culture that legitimises violence. Direct violence will be in the form of real or threatened military action against other parties whether provoked or not, whether to settle conflict or initiate it. Structural violence or indirect violence comes from the social structure itself-between humans, between sets of humans (societies), between sets of societies (alliances, regions) in the world.

The two major forms of outer structural violence are well known from politics and economics: repression and exploitation. Behind all this is cultural violence: all of it symbolic, in religion and ideology, in language and art, in science and law, in media and education. The function is simple enough: to legitimise direct and structural violence.

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65 An Illusion of Justice: Supreme Court Judgement on the Armed Forces (Special Powers) Act, Published by People’s Union For Democratic Rights, Delhi, May 1998, p. 1.
67 Ibid., p. 16.
69 Ibid. p. 2
In fact we are dealing with violence in culture, in politics and in economics, and then with direct violence. We need a concept broader than violence, and also broader than peace. Power is that concept. Cultural power moves actors by persuading them what is right and wrong; economic power by the carrot method of quid pro quo; military (or 'force' in general) power by the stick method of 'or else'; and political power by producing decisions.\textsuperscript{70}

According to Galtung, direct violence is an event; structural violence is a process with ups and downs; cultural violence is an invariant, a 'permanent', remaining essentially the same for long periods, given the slow transformations of basic culture.\textsuperscript{71} His theory is very relevant in our analysis especially when we deal with the militarisation in the Naga areas and in other areas in the North East and Kashmir where AFSPA and other draconian laws are enforced.

**Important Cases of Human Rights Violations**

Some examples of direct and structural violence committed by the security forces are listed below. Ukhrul District in Manipur has one of the highest numbers of casualties and atrocities. It range from atrocities assaults against women, custodial tortures, killing, kidnappings and disappearances, mass killing, groupings, arson and loot, to violations in religious places, against religious leaders. During March-April 1974, personnel of 95\textsuperscript{th} BSF under Maj. P.B. Prakash and Captain Negy carried out mass tortures and sexual assaults on Ngaprum and Grihang villages.\textsuperscript{72} It was here that Rose (Kumram) in her teens, committed suicide the next day after she was raped in front of her village elders on 4\textsuperscript{th} of March, 1974. At Ukhrul hospital, Ngashingla of Grihang (23) was brought in near dying condition, tortured and raped continuously for three days from 3\textsuperscript{rd} to the 5\textsuperscript{th} of March by the same 95\textsuperscript{th} BSF personnel.\textsuperscript{73} These two villagers were then threatened that if news of the BSF's crimes comes to the knowledge of the general

\textsuperscript{70} Ibid. p. 2
\textsuperscript{71} Ibid. p. 199
\textsuperscript{72} End Army Rule, A Report on the Working of the Armed Forces Special Powers Act in the North East, Published by Committee for the Repeal of the Armed Forces Special Powers Act, Delhi, p. 7 (Appendix II).
\textsuperscript{73} Ibid.
public, the villagers would be wiped out.\textsuperscript{74} It violated freedom of expression and speech guaranteed by the Indian Constitution under Article 19. This is nothing less than the structural violence.

On December 1984, Mr. Esau was pulled out from his home in Ukhrul and tortured to death (his neck was broken) at Tolloi Camp.\textsuperscript{75} Mr. E. P. Winson of Tusom, Ukhrul, "disappeared" after being picked up from his village by the 9\textsuperscript{th} Grenadiers. In October 1987, two boys from Talloi brought to Ukhrul hospital with deep burn injuries after they were roasted in fire at the Talloi Mahar Regiment Camp.\textsuperscript{76} On January 24, 1986, two Army officers killed Luingamla (19) of Ngaimu village inside her home when she resisted rape. Even more grotesque were the killings in Kohima on March 5, 1995. The Rashtriya Rifles (R.R) mistook the sound of tyre burst from their own convey as a bomb attack and began firing indiscriminately in the town. The Assam Rifles and the CRPF who were camped two kilometers away heard the gunshots and also began firing. The firing lasted for more than one hour, resulting in the death of seven innocent civilians including two girls aged 3½ and 8 years old, 22 were also seriously injured which includes 7 minors.\textsuperscript{77} Mortars were used even though using mortars in a civilian area is prohibited under army rules.

During "Operation Bluebird" the Assam Rifles committed gross abuses of human rights against the villagers of Oinam in Senapati district in Manipur in the wake of an attack on an Assam Rifles outpost believed to have been carried out by the NSCN on July 9, 1987. The Amnesty International report\textsuperscript{78} found that more than 300 villagers claimed to have been beaten; the victims include several children and boys of 15 and 16 years old. Pregnant women were also beaten, some aborting afterwards... some torture victims were left for dead...others were reportedly subjected to other forms of torture including inserting chili powder into sensitive part of the body, being given electric

\textsuperscript{74} Ibid.
\textsuperscript{75} Ibid. p.8
\textsuperscript{76} Ibid. p.9
\textsuperscript{78} Report on The Oinam Incident brought out by Amnesty International on October 10, 1990.
shocks by means of a hand operated dynamo... or being buried up to the neck in apparent mock executions.” At least three women say they were raped, one woman by a Commanding Officer (CO). Several other young women were sexually harassed by Assam Rifles officers whose names are known to Amnesty International. One was a captain posted at Ngamju village.

The headman of Oinam village was also tortured and reported, “I was called out and interrogated throughout the day repeatedly demanding to restore the lost weapons... along with questions and demands I was beaten by the officers and jawans (soldiers). I was blindfolded my hands tied to a post and were threatened that they would burn me alive or shoot me if I fail to meet their demands... They also indiscriminately attack the villagers- hitting with poles, kicking down and pulling them up by their hair and repeating the kicking and hitting while at the same time abusing... chili powder dissolve in water were rubbed into the nostrils, eyes and soft parts of the body and took sadistic pleasure from the cries of pain by the victims.” During “Operation Bluebird,” the military also forced the villagers of Oinam to work for them and provided them with no compensation. This violates article 8 (3) of the ICCPR which prohibits forced labour. 79 The Assam Rifles “rounded up villagers for forced labour for such tasks as porter service, building new army camps, washing clothes and carrying firewood.” The following is the summary report of the Amnesty International of 1990.

**Oinam Case**

“Oinam is a small village in Senapati district of the state of Manipur, bordering Nagaland state. It is inhabited by Poumai Nagas, who are mostly Christians. On July 9, 1987 a group of armed revolutionary movement believed to belong to the NSCN attacked the Oinam Assam Rifles post, next to Oinam village. The NSCN left with a large quantity of arms and ammunition. Nine soldiers were killed in the attack and three were seriously injured. The Assam Rifles sealed off the area and on July 11 began an extensive combing operation, code named “Operation Bluebird” 80 in an attempt to

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79 SAHRDC, New Delhi, Op.cit., p. 15
80 Report on The Oinam Incident brought out by Amnesty International on October 10, 1990.
recover the arms. Major General Kukrety, Inspector General of the Assam Rifles and General Officer in Command of the Manipur section of the Assam Rifles, supervised the operation, which covered twenty Naga villages including Oinam, Chingmei Khullen, Khongdei Khuinan, Khongdei Shimpung, Lakhmai, Ngamju, Ngari Leishang, Phaibung Khullen, Purul Akutpa, Phuba Thapham, Phubung Xhunou and Thingba Khullen.

Wide scale human rights abuses were reported during the combing operation, including torture and extrajudicial execution. In the course of these operations at least eleven men were killed in the custody of the security forces, apparently after torture. Amnesty International has eye-witness accounts that the eleven men- whose bodies were returned to the village by the Assam Rifles claiming that they had died in “armed encounters” or “while trying to escape”- were first detained by them and tortured until they were hardly able to walk. More than three hundred villagers claimed they were beaten, some of them so severely that their limbs were broken. The victims include several children and boys of 15 and 16 years old. Pregnant women were also beaten, some aborting afterwards. Some torture victims were left for dead, one of whom survived. Others were reportedly subjected to other forms of torture including inserting chili powder into sensitive parts of the body, being given electric shocks by means of a hand operated dynamo (there is no other source of electricity in the villages), or being buried up to the neck in apparent mock executions. The victims included senior villagers and leaders of the community.

According to the headman of Oinam village as mentioned above: “I was called out and interrogated throughout the day repeatedly demanding to restore the lost weapons... along with questions and demands I was beaten by the officers and jawans (soldiers). I was blindfolded my hands tied to a post and were threatened that they would burn me alive or shoot me if I fail to meet their demands... They also indiscriminately attack the villagers- hitting with poles, kicking down and pulling them up by their hair and repeating the kicking and hitting while at the same time abusing... chili powder dissolve in water were rubbed into the nostrils, eyes and soft parts of the body and took sadistic pleasure from the cries of pain by the victims.”
Whole village populations were held in the open or in the churches for up to twelve hours at a time, day after day over a period of several weeks. Villagers were illegally detained without being told the reasons for their arrest. None were brought before a magistrate within 24 hours of the time of arrest, as Indian laws require. No exceptions were made and pregnant women were also detained. Women say they were sexually abused. At least three women say they were raped, one woman by a Commanding Officer (CO). Several other young women were sexually harassed by Assam Rifles officers whose names are known to Amnesty International. One was a captain posted at Ngamju village. Those particularly vulnerable to abuses were women whom the security forces said had relatives in the NSCN.

One victim of rape was a 17-year-old woman from Khongdei Khuman village. The Assam Rifles suspected that her brother was an NSCN member. She said in a sworn statement that she was summoned to the Captain of the Assam Rifles at Lakhmai (where she was at school) in July 1987 and questioned as to whether her brother had visited her. When she said he had not done so, she was accused of lying and threatened with torture if she did not give information about his whereabouts. On August 15, 1987, she was again interrogated and brought before the CO, who was stationed in the army camp set up at Khongdei School. He also asked her whether her brother had come home. When she replied that he had not, she said the CO raped her. In a sworn statement made on February 27, 1988 to the Chief Judicial Magistrate, Imphal, she described:

"...he told the jawan to leave the room and I followed the jawan to the door. Just after the jawan crossed the door the CO closed the door and would not let me leave the room, and got hold of me very rudely. I shivered and at the sight of his cold-blooded anger I struggled to free myself from his hand. He pulled off the shawl I was wearing and continued pulling at my clothes while giving me under suffocating grip. I screamed and shouted for help but no one came to my rescue. The CO in full military dresses pulled out pistol and threatened to shoot me if I scream and cried out for help. He then pulled my hair and pinched my cheeks so hard and finally I was overpowered and the CO raped me. It was most horrifying moment of my life and very painful. I became numb."
The Assam Rifles are accused of retaliating for the attack by the NSCN by burning and dismantling over 125 houses, looting villagers’ grain stores, vegetables plots, domestic goods and livestock. Villagers say they were not allowed to tend their cattle who therefore ate up the paddy crop. As a result, the villagers claimed suffered subsequent severe food shortages. Harassment continued for several months, and even by December 1981 the security forces were reportedly rounding up villagers for forced labour for such tasks as porter service, building new army camps, washing clothes and cutting firewood. The Assam Rifles, according to the villagers of Oinam, forced them and their leaders to sign false affidavits denying all that had taken place under threats of torture. There was one police investigation, but no impartial and independent investigations have been ordered by either the state or central government, despite numerous requests from local organisations and individuals that they do so.

Various organisations have given legal assistance to the villagers who suffered under the combing operation, many of whom are illiterate, and have brought petitions in court on their behalf against the Assam Rifles. Among them are three habeas corpus petitions brought by the Civil Liberties and Human Rights Organisation (CLHRO) and one petition brought by the Manipur Baptists’ Convention, the latter specifically on abuses against women committed during the combing operation. The most comprehensive case was brought on October 5, 1987 by the Naga People’s Movement for Human Rights (NPMHR), which filed a Writ Petition in the Guwahati High Court on behalf of the villagers against the Assam Rifles. On June 6, 1988 the Guwahati High Court directed the Sessions Court at Imphal to record first-hand evidence from the villagers about the offences allegedly committed by the Assam Rifles. The process recording evidence began on August 22, 1988. In January 1990, the Guwahati High Court ordered the Sessions Court in Imphal to limit the number of witnesses appearing for the Assam Rifles (from 700 proposed) to 32 and to finish the examination of witnesses by April 18, 1990. The Imphal Sessions Court concluded its hearings on April 21 1990. Throughout the hearings the security forces have reportedly attempted to intimidate witnesses and their relatives through illegal detention, torture and death.
threats, trying to persuade them to drop the legal action. Consequently, some of the villagers have been too afraid to return to their villages. The security forces have also attempted to discredit these human rights organisations by bringing legal proceedings against some of their members; one lawyer representing the victims has been threatened."

The large scale human-rights violation due to virtual army rule led the Naga Peoples Movement for Human Rights, People's Union for Democratic Rights Delhi, Human Rights Forum, Manipur among others to filed writ petition in the Supreme Court between 1980-82 challenging the constitutional validity of the Armed Forces (Special Power Acts) Act, 1958 was challenged on the grounds of being violative of the fundamental rights, right to lives, liberty, equality, freedom of speech and expression, assemble peaceably, move freely, practice any profession, protection against arbitrary arrest and freedom of religion enshrined in Articles 14, 21, 19, 22, 25 respectively of the Indian Constitution.

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Isak Chishi Swu, Chairman of the NSCN has made several speeches on Human Rights situation and Self-determination of Nagaland in the UNSub-Commission. The UN Commission of Human Rights granted the NSCN to speak during its 54th session from March 16- April 27 1998. As usual Gol attempted to prevent the NSCN from participating in the UN meeting. However, the UN officials turn down its plea.

Another example is Miss. Irom Sharmila Chanu, who has been on a fast-untodeath for six years now in protest against the continuance of AFSPA— and Manorama Devi, who was allegedly raped before being shot dead, while she was in the custody of

Assam Rifles on July 11, 2004.\textsuperscript{82} Following the Ujanmaidan case in Tripura (1988) where 14 tribal women were gang raped by jawans of the 27 Assam Rifles, local action and petitions to the government failed to open any doors of justice.\textsuperscript{83}

In one important case, which the National Human Rights Commission had pursued since 1997, when a complain was received from the tribal Kuki Movement for Human Rights, alleging that a person (Changsam) had been kidnapped and subsequently murdered on 7 March 1997 by personnel of 32 Rashtriya Rifles in Churachandpur district of Manipur.\textsuperscript{84} The Commission concluded that the injuries caused to the deceased appeared to have been the result of close range firing on a vital part of the body, rather than the result of close-firing in the dark when the deceased supposedly attempted to escape from the custody of the army. Upon considering the response received from the Ministry of Defence, the Commission concluded on 8 August 2002 that a sum of Rs. 1,00,000 be paid to the next-of-kin of Changsam as monetary relief and issued a directive to that effect.\textsuperscript{85}

The AFSPA does not allow any space to redress the grievances of the victim’s especially women and innocents because military court marshal cannot be approach. The statistical data pertaining to custodial abuse and violence are conspicuously not included in the official \textit{Crime in India} reports. However, according to data available with the National Human Rights Commission (NHRC)\textsuperscript{86}, as many as 1,305 custodial deaths, which included 165 in police custody and 1,140 in judicial custody, were reported from various states and Union Territories during 2001-02.

An analysis of some 5,500 cases of custodial deaths during 1993-2002 by the NHRC indicates that about 80 percent of the death that occurred in judicial custody were attributable to causes such as illness and old age, while the remaining 20 per cent

\textsuperscript{82} \textit{Tehelka}, February 24, 2007
\textsuperscript{84} NHRC, Annual Report, 2002-2003, p.54.
\textsuperscript{85} Ibid.
\textsuperscript{86} National Human Rights Commission, Annual Report, 2001-02, p. 372.
occurred for a variety of reasons including, in certain cases, illness aggravated by medical negligence, violence between prisoners, or suicide. All these, according to the Commission, “point to the great need for the better maintenance and running of prisons, better trained and more committed staff, including medical staff and an improvement in the capacity of prisons to deal with mental illness and morbidity among inmates”87. Custodial deaths apart, the Commission also received 473 cases in respect of death in fake encounters from 1997-98 to 2001-02 including 113 such cases during 2001-2002. 88

The issue pertaining to the Armed Forces (Special Powers) Act had been raised in the Lok Sabha as early as 1958. The argument raised against the Act was that it must be done away with as it is incompatible with the democratic aspiration of the people. Manipur MP Shri L. Achaw Singh argued against the bill, “This is a black law... How can we imagine that these military officers should be allowed to shoot to kill without warrant arrest and search? This is a lawless law. 89 Manipur hill MP Rungsung Suisa argued against the AFSPA, “All these Ordinances and sending of Armed Forces will not solve the problem.”90 MP Sri Warior (Trichur) opposed the bill, “The whole of Assam and Manipur is going to come under Martial law though the Martial Law and an emergency are not declared.”91

In the same vein, MP Sri Mahanty opposed the bill, “What I am trying to submit is that this is a martial law... It is being sought to be introduced in this House as a most innocuous measure.”92 He further argued, “...But, we do not want a free India with barbed wires and concentration camps, where the Havildars can shoot at sight any man.”93 However, majoritarianism of the ruling Congress got the bill passed without elaborate debate in the parliament in just two hours. MPs opposed the invocation of unproclaimed emergency through the backdoor. MP Mahanty opposed the bill, “It has to be conceded that there are enough materials to show that there is an emergency. But the

87 Ibid., Para 4.31, p. 33
88 Ibid., pp. 364-65
89 Lok Sabha Debates, Vol., XVIII,1958, p. 1441.
90 Ibid. p. 1447.
91 Ibid. p.1434.
92 Ibid. p. 1424.
93 Ibid. p. 1426.
emergency provisions of the Constitution have been invoked without the President declaring an Emergency.”

In similar vein, MP Dr Krishnaswami opposed the bill, “This is a state of affairs that can be brought about only by a Proclamation of Emergency promulgated under article 352 of the Constitution. The Bill seeks to circumvent these provisions and attempts to usurp the powers of the state not warranted by the Constitution.” He further argued, “I suggest, here, the unconstitutionality is so patent that we are justified in requesting the Chair to rule that the measure is ultra vires.”

The recent decades witnessed an intensification of the anti-Armed Forces (Special Power) Act in North East, culminating in India’s Prime Minister assurance of amending the Act to make it “more humane”. The National Human Right Commission of India had long back recommended the repeal of the AFSPA and the enlightened world public opinion stands for the repeal. The Justice Jeevan Reddy Committee that was constituted in 2004 under the Chairmanship of Justice B.P. Jeevan Reddy, former Judge of the Supreme Court, (vide Ministry of Home Affairs Office Order No. 11011/97/2004) to review the working of the Armed Forces (Special Power) Act in the North East submitted its final report on June 6, 2005 has recommended for the repeal of the Act.

The term of reference for the Committee are as follows: “Keeping in view the legitimate concern of the people of North Eastern region, the need to foster Human Right, keeping in perspective the imperative of security and maintenance of public order to review the provision of the Armed Forces (Special Power) Act, 1958 and as amended in 1972 and to advice the Govt. of India whether

(i) To amend the provision of the Act to bring them in consonance with the obligation of the Government toward protection of Human Right.

Or

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94 Ibid. p. 1401.
95 Ibid. p. 1409.
96 The Hindu, 10 December 2004.
97 Seminar Organized by NHRC, NHRC Stood for the Repeal of AFSPA, New Delhi,1997
ii) *Replace the Act with a more human legislation.*

The Committee while recommending for repeal observed that the Act is a "symbol of oppression, an object of hate, an instrument of high-handedness and discrimination." It balances this recommendation by noting that "the overwhelming desire of the overwhelming majority" of people in the North-East is that "the Army should remain [though the Act should go]." However, it is also deeply concerned that the repeal of the ARSPA in its proposed form would be, in the words of a leading Indian human rights lawyer, a "fake repeal" in that the Committee saw fit to recommend replacing the AFSPA with a new chapter to be added to another 'special powers' law, the Unlawful Activities (Prevention) Act, 1967 (UAPA) in order to enable armed forces' intervention "to quell internal disturbance".

Amnesty International believes that the Committee's recommendation to reintroduce some of the powers of the forces currently under the AFSPA in the UAPA would simply transfer draconian powers from one piece of legislation to another and will not change the way those living in regions where the AFSPA is currently implemented feel, since it is highly likely that the UAPA will still be applied more heavily in these areas, resulting in the same "feeling of discrimination". As one legal expert commented, it appears the Committee has approached the problems associated with the AFSPA from the angle of "what the Committee considers an acceptable formula for continuing the powers, and the use of those powers, that have become entrenched in, and because of the AFSPA" rather than addressing the questions of how the AFSPA facilitates human rights violations and fosters impunity. The Act is still in operation in the North East and Kashmir.

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100 Ibid.
105 Comments received from Dr. Usha Ramanathan, 7 November 2006.
The aforementioned discussion of the direct and indirect violence committed by the security forces against the civilians has not only violated the Indian Constitution but also has violated the Universal Declaration of Human Rights (the "UDHR"), the International Covenants on Civil and Political Rights (the "ICCPR"), the Covenants Against Torture, the UN Body of Principles for Protection of All Persons Under any form of Detention, and the UN Principles on Effective Prevention and Investigation of Extra-legal and summary executions.106 The greatest outrage of the AFSPA under both Indian and International law is the violation of the right to life. Experts in the UN Human Rights Committee, which met in Geneva in March 1991, were categorical that the Armed Forces (Special Powers) Act is violative of several Articles in the International Covenant on Civil and Political Rights as well as of the Indian Constitution.

Section 4(a) Violates Articles 6 (1), which inter-alia, states, "no one shall be arbitrarily deprived of his life".107 Similarly, under section 4 (a) of the AFSPA, which grants armed forces personnel the power to shoot to kill, the constitutional right to life or personal liberty under Article 21 of the Indian Constitution is violated.108 The AFSPA also violates Article 7 of the ICCPR which prohibits torture. On many occasions numbers of civilians were torture by the security forces in the North East and Kashmir. In the words of Nandita Haksar, human rights activist and advocate of Indian Supreme Court, "The Operation of the AFSPA of 1958 inevitably results in violation of Articles 1, 2, 4, 6, 7, 8 (3), 9, 14, and 17 of the ICCPR to which the Indian Government is a party."109 Article 9 of the ICCPR guarantees liberty and security of person, and the AFSPA violates all five sub-parts of this right. Article 26 of the ICCPR, like Article 14 of the Indian Constitution guarantees equal protection for all persons before the law. The AFSPA violates this right because the inhabitants of the North East do not have equal protection before the law. They live under virtual but undeclared state of emergency and are given no remedy for the injustices they suffer at the hands of the military. Inhabitants

of the rest of the country, with the exception of Punjab and Kashmir are not subject to this law.\textsuperscript{110} Under section 4(c) of the AFSPA a person can be arrested on a mere suspicion by the armed forces without a warrant which is violative of the preventive detention sections of article 22.

In Galtung's understanding, "a violent structure leaves marks not only on the human body but also on the mind and the spirit. He talks of four terms that can be seen as parts of exploitation or as reinforcing components in the structure. They function by impeding consciousness formation and mobilisation, two conditions for effective struggle against exploitation. Penetration, implanting the topdog inside the underdog so to speak, combined with segmentation, giving the underdog only a very partial view of what goes on, will do the first job. And marginalization, keeping the underdogs on the outside, combined with fragmentation; keeping the underdogs away from each other, will do the second job.... In short, exploitation and repression go hand in hand, as violence, though they are not identical."\textsuperscript{111}

This form of violence is also being faced by the North East and Kashmiri people in general and the Nagas in particular. It is a fact that Nagas have been fragmented due to the states' boundaries. Due to the fragmentation of their land through boundaries, Nagas in Arunachal Pradesh, Assam and Manipur has been and is enduring the hardship of marginalization.

Article 371 A of the Constitution of India did not bring the unification of all Nagas. Instead, it has deepened the marginalization and alienation of the Naga people who are not part of it. This particular Article of the Constitution has treated unequally to the same people. This Article recognised only 16 tribes as Nagas whereas there are 25 Naga tribes in Manipur (18 Naga tribes), Arunachal Pradesh (5 Naga tribes) and Assam (2 Naga tribes). It is pertinent to point out here that accommodating only 16 Naga tribes in the creation of Nagaland state while leaving out 24 Naga tribes of Assam, Arunachal

\textsuperscript{110} SAHRDC, Op.cit., p. 15
Pradesh and Manipur is a structurally induced violence because it violates Article 14 of the Indian Constitution. Unequal treatment of law to the same people cannot be justified under any circumstances. This is against the spirit of 9-point agreement and the sixteen-point agreement which has clearly stated for unification of all Naga areas. This contradiction has created a situation where the Minority communities are confronted with dominant internal cultural colonialism.

Due to scattered nature of their existence across different states, there is disturbance in their oneness culturally, socially, economically and politically. As they are in the peripheries of Assam, Arunachal Pradesh and Manipur, they are dominated by the majority communities. The byproduct of such federal arrangement naturally resulted into divide and rule policy everywhere. For example, Nagas in Manipur are imposed of majoritarian's language. States apparatuses are controlled by the majority communities not to mention of Media biasness. Educational systems are incompatible with all the language groups as it is made in the interest of the majority. As a result, there is power imbalance among the people. Moreover, there has been continuing economic exploitation against the people who are in the peripheries. It is a matter of fact that, infrastructure development is almost absence in the hill districts. For example, the pathetic road conditions which connect the hill districts with the capital of the states. Apart from the pathetic road conditions, what is more worrisome for the people is the virtual absence of inter-district roads connection. Villagers are not getting enough supply of water and electricity because the states have sold these services to other states for profits.

Owing to the abovementioned state's violence through the enforcement of unprecedented draconian laws and forces, many revolutionary groups, underground organisations etc. burgeoned along with the Naga independent movement in the North East. In the long process of the struggle against bigger forces, in dire attempt to subsist nationalist groups of the North East, on all fronts of attack and counter-attack to the laws and forces, direct violence were perpetrated. For Galtung, "much direct violence can be traced back to vertical structural violence, such as exploitation and repression, for
liberation, or to prevent liberation. In the background is cultural violence legitimising both the structural violence and direct violence to undo it and to maintain it. The prognosis is bad: violence breeds violence; partly through the simple mechanisms of revenge, and partly because acts of violence are utilized to cancel any bad conscience arising from one’s own use of violence.”

Some examples of direct violence committed by certain underground groups are such as, the twin bomb blasts that rocked Dimapur railway station and the Hong Kong market in Nagaland state on October 1, 2005 killing at least 28 people and injuring 100 people. The twin blasts is an indicative of an unpeaceful relationship between the conflicting parties. The internal clash among the Naga factions is also an example of an unpeaceful relationship in the Naga society. In this internal clash several lives have been lost which is not conducive to peaceful environment. This is a byproduct of the historical passage of time and space. This clash is one of the hurdles for reconciliation and forgiveness which is inevitable for any society. Several attempts have been made for reconciliation by the Naga civil societies and other individuals in the course of the politico-historical process. However, it has not been successful so far. This can be said as one of the weakness of the Nagas in general.

**Conflict Transformation through Positive Peace**

It is high time that such incompatibilities and contradictions are rooted out in the interest of the spirit and value of the rule of law, equality, liberty and democracy. It is an unending story which one can go on and on. But now let us come back to the focal point as to how we can move away from the present bizarre condition to creative and imaginative situation. What is needed is the transformation of the system that has brought this human rights situation and near collapse of the system itself. What we need is not only “negative peace” in the context of the peace process but we also need to create a condition where “positive peace” is generated for the conflict to be transformed peacefully.

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The need to go beyond "Negative peace" to "Positive peace" was advocated by Galtung. Primarily as a response to the work of Galtung, the central concern of peace research for many researchers moved from direct violence and its elimination or reduction (negative peace) to the broader agenda that also includes structural violence and its elimination (positive peace). The broader and increasingly popular school of peace research—major peace studies texts now routinely starts off with discussions about the meaning of peace, strongly influenced by the concepts formulated by Galtung—places great emphasis on the elimination of exploitation and oppression. According to Galtung the opposite of violent structures which keep apart who want to be together, and keep together who want to be apart, is "positive peace," the words that come to mind are 'harmony', 'cooperation' and 'integration'.

The best approach to conflict resolution and transformation for Kevin Clements occurs when violence ceases and/or is expressed in non-violent ways, and when the original structural sources of the conflict (economic, social, political, military, and cultural) are changed in some ways. The propensity for violence is diminished by democratization, demilitarization, de-alignment, socio-economic development, and expansion of human rights, humanitarian law, and socio-cultural openness. According to Ranabir Samaddar, peace studies are based on three principles. One, they are informed by an awareness of human rights and justice. Two, they are concerned with effective changes in perceptions. Three, they are intended to enlarge awareness of social reality where strength is employed to maintain or enhance power at the expense of the weak. As such human rights and peace are inextricably connected. For Barash, the denial

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117 Kevin Clements, in Tongeren, Veen, and Verhoeven, 2002, pp. 82-83
of human rights is itself a denial of peace. A world in which there is no armed conflict, but in which fundamental human rights are thwarted, could not in any meaningful sense be considered peaceful. Pope John Paul II explicitly linked human rights and war when he says:

"The Universal Declaration of Human Rights has struck a real blow against the many deep roots of war since the spirit of war in its basic primordial meaning springs up... where the inalienable rights of men are violated. This is a new and deeply relevant vision of the cause of peace. One that goes deeper and is more radical."

We can rightly summarize by saying that violations of human rights seldom help the conflicting parties for positive transformation of conflict. It may be noted that all forms of violence has to be done away with by all parties to create a conducive environment for peaceful political solution of the problem. It is pertinent to mention that democracy, human rights, peace with justice are all interconnected for which the conflicting parties should work cooperatively to achieve these values and principles. Protections of human rights not only open up ways for “positive peace” but also enhance the values of democracy and the rule of law. The endeavour towards this vision should be continuous and enduring one. Positive peace has to be waged. It should be a revolution in the history because justice, fairness and freedom are not just words, they are perspectives. It's about change, a revolutionary change of the system heralding deepening democratic structures wherein people's aspirations are fully expressed, accommodated and fulfilled.

120 Pope made this statement in the United Nations, Quoted in Barash, Ibid., pp. 155-156