CHAPTER 4

OPERATION OF LEGAL MEASURES AND REGULATORY MECHANISMS FOR WOMEN IN NALBARI DISTRICT
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"..It is time to break through the walls of silence, and make legal norms a reality in women's lives."

- U.N.Secretary-General Ban Ki-moon

This chapter explores the existing support of legal means and regulatory mechanisms for women in the vulnerable pockets of Nalbari. It is trying to explore various preventive measures operating in the conflict prone areas of Nalbari from two different angles-Individual and societal. Existing international initiatives for the women in conflict, initiatives of central government along with those of government of Assam on various welfare measures related to women and members of the banned militant groups such as United Liberation Front of Assam (ULFA) and National Democratic Front of Bodoland (NDFB), along with many other minor organizations of Nalbari region. Initiative of Assam police for vulnerable pockets of Nalbari such as Baraliapar and Lakhipar, have also been critically discussed. The role of legal means as redresser mechanism for wives of extremists and women cadres caught in Nalbari after 'Operation All Clear' 2003 has also been analysed along with their petitions. The legitimisation of various repressive laws and their judicial sanction based on similar lines are also being questioned. Whether by introducing these mechanisms, there has been a shift in the ground reality or the lives of women in Nalbari is one of the

pertinent questions that have been discussed throughout this chapter. The lacunae in the existing justice system and importance of transitional justice along with gender justice system are being stressed upon.

4.1 Gender, Rights and Role of the State:
The relationship of women vis-à-vis the State is quite complex. Feminist theorists have established a rich tradition of scholarship analyzing the gendered dimensions of nation state rule in a variety of national contexts. State is a term reserved to the machinery for control and administration of a given territory, source of citizenship and rights. It is also the agency with sole legitimate use of force.²

Susan Moller Okin refers to gender as social institutionalization of sexual difference.³ Scholarship on welfare state has revealed the multiple ways in which policies shape employment opportunities, family practices and state society relations differently for men and women.⁴ Gender roles have also been shown to take on deep meanings that go beyond structural issues of division of labour or entitlement to resources⁵.

Radical feminists believe that the power of the state is a reflection of the patriarchal nature of society. They question the idea of the basic neutrality of the state, for they view the state as a reflection of patriarchal values in

⁵ Ibid., p.424.
society. Catherine Mackinnon has argued that in a liberal state, it is through law that women’s subordination and silence are maintained.6

Amongst the consequences of gendered state rule has been the creation of different and uneven opportunities for women and men in the public sphere. In addition, because the state’s policies work through multiple levels of subjectivity, they bring ethno racial and class hierarchies into play and ironically, help to create identities through which individuals can articulate challenges and demands against the state.7

If we analyse gendered dimension of citizenship rights, same framework that has been mentioned above could be seen. Feminists of all strands have criticized the dominant conceptions of citizenship on two counts: First, citizenship is gender blind. By focusing on uniform and equal application, it fails to take cognizance of the fact that modern societies are steeped in patriarchal traditions, which make for male domination and privileges. Equality in such conditions remains a facade8.

Secondly, historical conceptualizations of citizenship have thrived on the division between members and non members. The discursive practices surrounding the notion of citizenship became increasingly identified with male and public activities. The exclusion of women from civil and political citizenship and reproduction of patriarchal institutions via social citizenship

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has been resisted by the feminists. Feminists have also reiterated that women have been incorporated into the welfare state not as workers or as citizens, but as dependants and welfare providers: more particularly as wives and mothers. In other words, welfare state has reinforced women's identity as men's dependent. Pateman questions in this context, "How could women as dependent of men, whose legitimate work is held to be located in the private sphere, be citizens of the state?"

Thus the exclusion of women from positions of public power prevents women from being involved in decision making and shaping laws and institutions that affect women's lives.

The geographies and spatiality of human rights challenge the traditional treatments of human rights that are cast exclusively in legal frameworks. It is argued that the concept of space is used to understand human rights violations. One of the major concerns of human rights discourse is the restricted mobility of women in comparison to men, coupled with right to work and political participation. Fear of violence also makes women to avoid certain places, especially in ethnically divided societies.

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10 Ibid., p.181


13 Ibid., p.472.
4.2 Justice, Gender and Armed Conflict:

In armed conflict situations, where widespread atrocities have been committed, the judicial system has a major role to play for maintaining rule of law.

Justice is understood as an important social virtue and is enforceable by law. The traditional view of justice has given way to the modern view of social justice. Justice is viewed from feminist perspective as 'group' perspective, as groups play a major role in shaping one's perspective on justice. Feminists believe that social or political systems based on the individual perspective of justice are highly biased as they are shaped by the dominant individual male and not by women. Thus, such socio-political systems of domination such as men over women can distort society so severely that none of the theories of justice will prove acceptable. Carol Gilligan, Catharine Mackinnon and Joan Tronto are among many others who have disputed this dichotomy of male versus female and argue that such a bifurcation is a cause of men's autonomy and the ground for women's inequality.

Nancy Folbre proposes dismantling of inequitable power structures, stressing particularly those based on gender, sexual orientation etc. which she terms as 'structures of collective constraints'. Groups held back by structures of constraint have an especially strong stake in a redistribution of social power.

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Susan Moller Okin\textsuperscript{17} offers both a critique and a construction of Rawls' original position as an analytical tool use to define workable standard of justice for liberal democracies. She opines that Rawls' own characterization of the original position, despite its occasional claims to gender neutrality, in fact contains many implicit assumptions that would tend to reinforce the current inequality of women in the gendered structure of social institutions. Rawls' characterization of parties to the original position is the male population. The equal value of political liberty is out of reach in a gendered structured society, because women who bear responsibilities for domestic labour have little time for political activities.

The contemporary debates on the nature of justice focuses on the distinction between procedural and substantive justice( distributive). Champions of procedural justice hold that it is necessary to determine a just procedure for the allocation of social advantages, such as goods and services, opportunities and benefits, power and honour and its outcome will automatically be accepted as just. Procedural justice repudiates all discrimination between human beings on the basis of class, gender etc. and accepts equal dignity and moral worth of all human beings\textsuperscript{18}.

In contrast, the idea of substantive justice corresponds to the philosophy of socialism. It holds that the test of justice in society consists in ascertaining whether the poor and the underprivileged have adequate opportunity to improve their fate. It demands that the opportunities of self development should be progressively extended to the underprivileged sections of the

\textsuperscript{17} Ibid., p.101.
society. In a conflict prone society like Assam, these concepts of justice hold relevance.

There are many challenges to providing justice for victims conflict especially conflict related sexual violence. Women survivors of conflict face considerable economic, educational and socio cultural barriers in gaining access to justice. In most cases they are stigmatized and often rejected even by family members.

In addressing sexual violence in the time of conflict, both restorative and retributive types of justice have a role to play. Restorative justice mechanisms offer opportunities to give a voice to survivors of sexual violence. Retributive justice on the other hand, may act as a stronger deterrent to future crimes, especially of sexual nature. Retributive justice is in this way backward-looking. Punishment is warranted as a response to a past event of injustice or wrongdoing. It acts to reinforce rules that have been broken and balance the scales of justice.

4.3 Justice, Capabilities and Freedom:

The Rawlsian paradigm of justice assigns a central role to the achievement of liberty. Amartya Sen has reservations about this freedom oriented evaluation of justice. In his opinion, Rawlsian framework concentrates only on the means to freedom rather than on the extent of the freedom that a person actually has. Sen has described his approach to justice as a

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19 Report on Sexual Violence in Armed Conflict, Geneva, 2001,
capability based one. Whereas it is not just the access to primary goods but the extent of capabilities that each individual has to convert these primary goods into lives that they value living and would determine freedom and ultimately uphold justice. Sen clarifies that capability means a person's freedom to choose between alternative lives and there need be no unanimity about what would be considered a valued way of life. Capability thus represents freedom, whereas the Rawlsian primary goods are just means of this freedom. Sen argues that equality of freedom to pursue our ends cannot be guaranteed by equal distribution of what Rawls describes as primary goods.

Nussbaum tackles the issue of individual capability and social arrangements with her concept of 'combined capabilities'. Sen and Nussbaum take a different approach to the matter of selecting capabilities. Sen's approach is grounded in participatory human development and Nussbaum's in analytical philosophy. Sen consistently argued for the importance of public participation and dialogue in arriving at values capabilities for each situation and context. Freedom for Sen is concerned as much with the process of decision making as with the opportunities to achieve valued outcomes. Nussbaum has somewhat different view on the idea of capabilities list. Nussbaum argues for a Marxian conception of truly human functioning as the proper functioning of government which requires that it “make available to each and every member of the community the basic

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21 Ibid., p.83.
necessary conditions of the capability to choose and live a fully good human life". Nussbaum has produced a universal, cross cultural list of central capabilities for human flourishing and for a dignified life. The list which she presents consists of life, bodily health, integrity etc which need to be present for each individual for a good life.

4.4 Women, Armed conflict and International Humanitarian Law:

Modern International Humanitarian Law (IHL) can be divided into those rules that govern the conduct of hostilities and those that deal with the protection of victims of armed conflict. Theoretically, women benefit from all the provisions of IHL. In common with the civilian population, women enjoy the rules of IHL which provide protection against hostilities when in the hands of an adverse party to the conflict. Under International Law, the State has clear responsibility for avoiding human rights abuses from any quarters. The women are considered as potential victims of the present day conflicts. There are provisions dealing specifically with women in all of four 1949 Geneva Conventions and both the Protocols.

The state inevitably plays a differentiating role as a distributor of privileges amongst various groups in society during conflict. India has signed all the four Geneva conventions of 1949 and ratified them by Geneva Conventions.

24 Ibid., p.13.
26 Geneva conventions:
Act (Act 6 of 1960). The conflicts in which Indian government is also a party are bound to certain minimum guarantees to women, whether they are party to a rebel forces or taken as prisoners or common civilians. The provisions contained in common article 3\textsuperscript{27}, which talks of armed conflict of non international character, have been elaborated further in Protocol II of 1977 to the Geneva Convention of 1949.

The starting point of such system of protection for women is the provisions that deal with ‘the regard’ or ‘consideration’ due to women on account of their ‘sex’. These provisions are described as having the purpose of preserving the ‘modesty’ and ‘honour’ or ‘weakness’ of women.\textsuperscript{28}

\begin{itemize}
\item a. Conventions for the amelioration of the condition of the wounded and sick in armed forces in the field.
\item b. Conventions for the amelioration of the condition of the wounded and sick and shipwrecked members of armed forces at sea.
\item c. Conventions relative to treatment of prisoners of war.
\item d. Convention relative to the protection of civilian persons in time of war.
\end{itemize}

\textsuperscript{27} Article 3 In case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth or any other similar criteria. To this act the following acts are and shall be prohibited at any time and in any place whatsoever with respect to the above mentioned persons:

\begin{itemize}
\item a. Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture.
\item b. Taking of hostages
\item c. Outrages upon personal dignity, in particular humiliating and degrading treatment
\item d. The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, afforded all the judicial guarantees which are recognized as indispensable for civilians
\end{itemize}

2. The wounded and sick shall be collected and cared for

4.4.1 Protection against Abuses by the Party to the Conflict against Women through Geneva Conventions:

The principle of equal treatment is extended by the principle that "women shall be treated with all the regard due to their sex" (Common Article 12, Convention I and II, Article 14, Convention.III). This particular word 'regard' is not legally defined, but regardless of the status accorded to women, it covers certain concepts such as physiological specificity, honour and modesty, pregnancy and childbirth as mentioned above.

Like all civilians, women are protected both against abusive treatment by the party to the conflict in whose power she finds herself and against effects of hostilities. Protocol I defines 'civilian' as "Any person who does not belong to the armed forces" (Article 50, P. 1).29 "women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution or any form of indecent assault" (Art. 27, para 2, Convention. IV; Art. 75 and 76, Protocol. I).

In non-international armed conflicts, Protocol II provides similar rules. It specifies that women who are arrested, detained or interned "shall be held in quarters separated from those of men and shall be under the immediate supervision of women except when members of a family are accommodated together" (Art. 5, para 2a). In the event that it is not possible to provide separate quarters it is essential in any event to provide separate sleeping places and conveniences. It should be noted that the foregoing provisions

refer both to civilians deprived of their freedom and to captured combatants.

In non-international armed conflicts, the Protocol II, specifies that "the death penalty shall not be carried out on mothers of young children" (Art. 6, para 4, P. II).  

In an armed conflict of ethnic nature in Assam and Nalbari in particular, these international mechanisms would have a great applicability as it addresses the need of women in armed conflict.

India is not a signatory to additional protocol of 1977, though it has signed and ratified a number of international treaties relating to protection and preservation of human rights.

The international community's evolving recognition that conflict affects men and women differently is an essential first step in developing gendered responses to conflict, empowering women in prevention and ending of conflicts and the rebuilding of communities after conflict.

Recognition of gendered nature of conflict is also codified in Beijing Declaration and Platform for Action (1995) and Security Council Resolution 1325 on Women, Peace and Security (2000). The two key documents outlining the rights and obligations of the international community, governments and civil society with regard to women in conflict. Sexual

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31 India has ratified the following relevant international documents of human rights and humanitarian treaties—The Geneva Conventions of 1949 (9 November, 1950), Genocide convention (27 August 1959), CERD (3 December 1968), ICCPR (10 April 1979), ICESCR 910 April 1959), CRC (11 December 1992), CEDAW (9 July 1993 not ratified yet).
violence during armed conflict was identified as an integral part of the broader campaign to address the issue of violence against women. At Beijing Conference women and armed conflict was identified as one of the twelve critical areas of concern to be addressed by member states, international community and civil society. Paragraph 44 of Beijing platform for action says,

Governments, the international community and civil society including NGOs and private sectors are to take strategic action, inter alia, in relation to the effects of armed conflict on women, including those living under foreign occupation. 33

Although sexual violence remains a central focus, the Beijing Platform for Action places the issues of armed in a broader framework. For the first time, the general vulnerability of women to the adverse effects of armed conflict is formally linked to the discrimination and disadvantage they are subjected to in many areas of life, in many areas of life. While entire communities suffer the consequences of armed conflict and terrorism, women and girls are particularly affected because of their status in society and their sex. 34

Security Council Resolution 1325 was passed on 31 October and has been hailed as ground breaking because of its nature as it deals with range of issues—from conflict prevention to peace negotiation. This resolution is also

34 Ibid.
35 Refer Appendix.
historic for the fact that it has set forth gender equality as priority which has already been set as agenda for most of the government but hardly met. \(^{36}\)

**UN Security Council Resolution 1612** of 2005 has also reaffirmed the resolution of 1325\(^{37}\).

**Resolution 1674**, adopted by the United Nations Security Council on 28 April 2006, "reaffirms the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, *ethnic cleansing* and crimes against humanity"\(^{38}\) (emphasis added). This resolution commits the council to protect civilians in armed conflict through appropriate and necessary means.

**United Nations Resolution 1820**: On 19 June, 2008, the 15-member UN Security Council unanimously adopted Resolution 1820 (2008) on Sexual Violence against Civilians in Conflict, in a conference on “Women, Peace and Security.” The Resolution condemns the use of rape and other forms of sexual violence in conflict situations, stating that rape can constitute a war crime, a crime against humanity, or a constitutive act with respect to genocide.\(^{39}\) 1820 resolution is the most recent document of UN that state the protection of women in armed conflict.

The Resolution also calls for effective steps to prevent and respond to acts of sexual violence as a way of contributing to the maintenance of international peace and security – including urging Member States to comply with their

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\(^{36}\) [UNIFEM Report on Women peace and Securityy, October 2004, p.4.]

\(^{37}\) [www.un.org.]

\(^{38}\) [www.unbisnet.un.org.]

\(^{39}\) [www.womenwarpeace.org.]
obligations for prosecuting the perpetrators of sexual violence, ensuring that all victims of sexual violence, particularly women and girls, have equal protection under the law and equal access to justice, and ending impunity for sexual violence as part of a comprehensive approach to seeking sustainable peace, justice, truth, and national reconciliation.

India's image in the world especially as a country where 'rule of law' is important and humane treatment is accorded without distinctions could be further enhanced, if it signs and ratify Additional protocol II. Geneva Conventions and its two Protocols are amongst the most widely accepted international documents.

By signing and ratifying India could become one of the countries in Asian region to show its commitment towards international document for protection of vulnerable sections, which is also enshrined in our constitution. Both the protocols are essential document for a nation state like India and may become a starting point and give birth to a "new human rights route" for India to develop its domestic law in the areas of conflict. These international instruments provide a basic framework for protection of women as victim of conflict. These may not be directly applicable in the case of women belonging to Nalbari because of India’s non signatory status, but they provide fundamental guarantees relating to protection of human rights.

The Supreme Court of India in M Nagraj v. Union of India AIR\textsuperscript{41} 2007 SC 71 has held: "It is a fallacy to regard fundamental rights as a gift from the State\textsuperscript{40}.

\textsuperscript{40} Shekhar Ranjan, 'Should India Become a Party to 1977 Protocols Additional to the Geneva Conventions of 1949?' in Indian Journal Of International Law, vol.40 no.2, April June 2000, p.249

\textsuperscript{41} M Nagraj v. Union of India, AIR 2007 SC 71.
to its citizens. Individual possess basic human rights independently of any constitution/laws by reason of basic fact that they are members of human race. These fundamental rights are important as they possess intrinsic value. None of these international instruments are applicable to Nalbari or any of the Indian states for her non signatory status. Moreover, problem of insurgency through which Assam has been a theatre of conflict, has not been internationalized as in Kashmir or the case in Punjab as the north Eastern scholars often reiterates.\textsuperscript{42} The conflict in Assam has remained essentially a domestic Indian issue.\textsuperscript{43} Thereby it is unable to get the benefit or to receive due attention from any the international instruments. It is a sad reality that in spite of having a State Human Rights Commission, issues pertaining to women in armed conflict has not taken up the, though they have taken up issues pertaining to domestic violence.\textsuperscript{44}

4.5 Initiative of Central Government along with Government of Assam:

For upholding justice in the society and rule of law, the Central Government and the State Government of Assam has taken up certain measures. Through these measures, the Government can keep a vigil in the conflict situations. Broadly the measures taken up for the people of Nalbari can be divided into two categories-Individual level and societal level.

\textsuperscript{42} As told by Indira Goswami during an interview with her.
\textsuperscript{43} Paula Banarjee, 'Between Two Armed Patriarchies:Women In Assam And Nagaland', in Manchanda, Rita ed., Women War and Peace in South Asia, New Delhi, 2001, p.131.
Individual level measurements are meant to address the need based issues of the individual victims. It includes mostly the motivational methods for the individual surrendered members of militant groups and specific focus centric income generation and ex-gratia schemes. On the other hand, for bringing societal justice, projects like Backon, Prahari and Aashwas has been taken up by the State of Assam, locally, in the district of Nalbari.

**Figure 6** Measures to check conflict and provide justice for people of Nalbari

**Source:** Field work observation

a) **Motivational** : This is one of the most attractive method of State government to motivate the present members of militant groups to the mainstream.

1. Economic rehabilitation and reintegration of former combatants:

In a conflict prone zone of Nalbari, where large number of people becomes
victims\textsuperscript{45} (direct as well as indirect) of militancy as well as combatants, the State Government has come up with a coping mechanism for them in the form of surrender-cum-rehabilitation scheme. Economic support is critical for the integration of combatants into productive sectors. To become part of a community and not to revert to their military past, former combatants need to be fully integrated. The reintegration of ex combatants is an important part of development assistance programmes of the state. The State Government of Assam in the year 1998 has initiated this scheme. This incidentally was the second such package announced in the State, the first one being the brainchild of the Hiteswar Saikia government. The latter was called the '100 per cent Special Money Margin Scheme' and was implemented between June 1, 1992 and March 31, 1997. The objective of the Scheme is to wean away the youth attracted towards rebel groups and hardcore militants that have strayed into the folds of militancy and now find themselves trapped into that net. The Scheme also seeks to ensure that the militants who have surrendered do not find it attractive to join militants again. The following agencies will be involved in the process of surrender and rehabilitation:

\begin{itemize}
  \item IG (Special Branch) will act as the Surrender and Rehabilitation Officer (S&R Officer) under the Scheme
  \item Army
  \item Central Para Military Force
  \item A nominated NGO
\end{itemize}

\textsuperscript{45} Please see appendix for number of civilians killed in conflict from 1992-2001 in Assam (official)
Each of the Security Forces are required to identify one officer of the rank of DIG or equivalent officer as the nodal officer for coordinating surrender and rehabilitation work of militants with respect to their organization.

This scheme has certain added incentives such as, incentives for surrendered weapons.

**Table 4: The Incentives for the Surrendered Weapons/Ammunition**

<table>
<thead>
<tr>
<th>Weapon/Item</th>
<th>Incentive</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rocket</td>
<td>Rs.25,000 per weapon</td>
</tr>
<tr>
<td>Launchers/UMG/GPMG/PIMCA/Sniper Rifle</td>
<td></td>
</tr>
<tr>
<td>AK 47/56/74 Rifle</td>
<td>Rs.15,000 per weapon</td>
</tr>
<tr>
<td>.303 Rifles/Pistol/Revolver and other service weapon</td>
<td>Rs.3,000 per weapon</td>
</tr>
<tr>
<td>Rocket</td>
<td>Rs.1,000 per weapon</td>
</tr>
<tr>
<td>Grenade/Hand grenade/Stick grenade</td>
<td>Rs.500 per grenade</td>
</tr>
<tr>
<td>Remote Control device</td>
<td>Rs.3000 each</td>
</tr>
<tr>
<td>Ammunition of all types</td>
<td>Rs.3 per round</td>
</tr>
<tr>
<td>Wireless Sets:</td>
<td></td>
</tr>
<tr>
<td>a. Short range</td>
<td>Rs.1000 each</td>
</tr>
<tr>
<td>b. Long range</td>
<td>Rs.5000 each set</td>
</tr>
<tr>
<td>IED</td>
<td>Rs.3000 each</td>
</tr>
<tr>
<td>Explosive material</td>
<td>Rs.1000 per kg.</td>
</tr>
</tbody>
</table>

*Source: Department of Relief and Rehabilitation, Government of Assam, Guwahati, 2000.*

The benefits under this scheme was that initially the person eligible were to be kept in rehabilitation camp where they were to be imparted training, a stipend of Rs 2000 pm were to be given for a period of 12
months till the arrangement of an alternative for them. However the men who have surrendered are rehabilitated faster than their women counterparts. The women had to face the problem due to the prevailing unequal space for them. 46

Most of the men who surrendered continue to live openly, some are even allowed to carry guns for self defense. But the story is not the same for women. There is no counseling program for the traumatized women who became a victim either in the hands of military personnel or in the hands of unidentified gunman.

In a place like Nalbari, where maximum number of women suffer due to conflict, psychological counseling is very important as a part of psychological rehabilitation. 47

The case of Ms Bharati Kalita or widow of Phuren Narzary or eighty years old mother of NDFB extremists who became mentally ill speaks the same story which is beyond repair. In this connection, Nussbaum who talks of central capability measurement, rightly mentioned that forbidding women from moving freely in their environments either because of political reasons or because of internal cultural norms that seek to ensure women’s faithfulness and modesty, is a kind of violation. 48

46 Due to societal norms and stigma attached to them.
47 As told by Dr Jayanta Das, famous Psychiatrist of Guwahati and a member of newly formed ‘watch committee’ of Kamrup district, is of the opinion that a regular counseling force is needed in the vulnerable districts like Nalbari where women need maximum assistance which are of psychological in nature. He gave reason for this stating that due to the stigma attached to cases of sexual violence or assault, women do not want to talk about it openly and try to cope silently with such trauma. (Field data, 2 January, Guwahati, 2007).
48 Martha C Nussbaum, ‘Capabilities As Fundamental Entitlements: Sen and Social Justice’ in Agarwal Bina, Humphries, Jane and Robeyns Ingrid, eds., Capabilities,
of the rights of women. (emphasis added) In Nalbari, the right to work and the right to political participation are also grossly abused because of lack of freedom of movement. In fact the ideal of full employment which is central to the welfare state are fast crumbling in the context of the economic rehabilitation scheme of Nalbari.

On 23 October, 2007, in Tamulpur of Baksa, alone, some 33 militants of ULFA and KLNLF have joined the mainstream, including two women combatants. “The women cadres were from ULFA’s 109 battalions. At this rehabilitation ceremony, militants have laid down 19 assorted weapons including one AK 47, two AK56, one muzzle loaded gun, five revolver, one pistol, five grenades, five AK magazine, 195 rounds of AK ammunition, detonators, 6.5 kgs of explosives and a radio set.”

Photo 5: Women militant of ULFA surrendered in Tamulpur with a hope for economic rehabilitation; Source: Dainik Asom, 4 June, 2006.


51 Ibid.
The cardinal question is however, whether by such rehabilitation policy women are truly integrated into the mainstream or not? Whether their space is secure and they attain the bargaining capacity in the male dominated society? These issues will be taken up later in the end of this chapter.

Some of the field work findings say that even the ethnic factor and body politics is very much attached to women while coming back to the mainstream. After surrendering with the help of Government funds, a Bodo man can open up a liquor shop anywhere in Assam. It really does not matter whether he is a Bodo or an Assamese. But it does matter for a woman. It is not permitted to an Assamese woman to open up a liquor shop. Even if she dares to open she has to face the wrath of either the policemen, or the SULFA men. Moreover, due to the attached ethnic marker she may be targeted by other ethnic rebel groups anytime, even if she is located in the heart of the capital.\(^52\) This is just an instance which shows that by granting rehabilitation schemes to women do not necessarily mean improving their position, structurally.

b) Focus centric

The government has also started some focus centric preventive measure to cope up with conflict situation in Nalbari in societal plane such as, STEP training programme, micro credits for women, ex gratia for the victims of conflict, DPEP programme and so on. The rationale for such programme is to develop skill and make women self sufficient.

\(^{52}\) Field observation, 13 June, 2006.
It is interesting to note that both Bodo and Assamese women are great weavers. Gandhiji also reiterates, "Women of Assam are accomplished weavers"\textsuperscript{53} while visiting Assam in the year 1926.

The STEP training is a step by government towards the women to achieving self sufficiency.

**Skill Development through Support to Training and Employment programme (STEP)**

This scheme aims to increase the self-reliance and autonomy of women by enhancing their productivity and enabling them to take up income generation activities. It also provides training for skill up gradation to poor and asset less women in the traditional sectors viz. agriculture, animal husbandry, dairying, fisheries, handlooms, handicrafts, khadi and village industries, sericulture, social forestry and wasteland development. In Nalbari, Mahila Samiti however, got assistance from STEP programme. Women from various strata (some of them are direct victim of conflict) getting jute making training of STEP in Mahila Samiti. However, as told by Phunu Devi, heading the STEP training programme in the Samiti, the main lacunae which was found in the societal level skill generation programme in a conflict ravaged area like Nalbari is the lack of information and transparency as well as dissemination of knowledge about these schemes and too much of paperwork attached to avail the benefit of such schemes automatically alienate the women from becoming the beneficiaries.\textsuperscript{54}

\textsuperscript{53} http://gandhismriti.gov.in

\textsuperscript{54} Field work observation
Moreover, earlier association of one of the member of the outfit organization like ULFA with the Mahila Samiti has also made the position of the samiti doubtful. Absence of implementing agencies or co operatives with a strong network becomes a major setback of such programme.

**Micro credit** is another area where government of Assam particularly in Nalbari has taken interests. Credit programmes endow demobilized combatants and victims with opportunities for a viable livelihood. The vulnerability of ex-combatants during the transition period is reduced by demobilization allowances. Through the reintegration support scheme, former combatants and their families may be granted subsidies in the form of disbursements. In the line of Grammen Bank of Bangladesh, UCO Bank, the lead bank of Nalbari and Grameen bank started giving micro credit to rural women to start up their own entrepreneur. There are many women who are being benefited and have achieved economic empowerment through such credit. However, the number of such economically empowered women is less. 56

Dalimi, a Bodo respondent says, “with the help of Pragjyotish Gaonlia Bank (now Gramin Bank) my sustenance problem is solved. Earlier for every small thing I had to ask money from my husband, who is a daily wage worker. I did not have even a 50 paisa with me. Now micro credit has changed the

55 Ms Pranati Deka, Cultural Secretary of ULFA hail from Nalbari and was working in Nalbari Mahila Samiti for quite some time. She was a hard working and of charming nature. No one suspected her to be a member of an outfit organisation till someone saw her weaving a flag with ULFA emblem, ie a rising sun (Udita Surya). Immediately after that Pranti Deka vanished from the society. Police and the state authority was suspecting the Mahila society having a link with underground activity. Mahila Samiti was had to face a tough time ever since that incident

56 Field work observation. 5 September, 2006.
scene. I have a *tatsal* and one cow that I have purchased from my earnings."57

Members of *Rangjuli Aijew*, a Bodo self help group from Barama has also shared similar views.58

Phunu, one of the respondents from Dhamdhama, Nalbari who is also a member of *Milijuli Self Help Group* says, "We are a group of thirteen women. We have received small credit of Rupees ten thousand from the local Punjab National Bank.( Nalbari Branch). We have invested money in *tatsal* and plastic chairs. These chairs are rented at the rate of Rs.2 or 3 for local marriage parties, public meetings and so on. The money which we earn from this business is kept in bank and is re used for our development." Phunu proudly said, "Now we do not depend upon our husbands or in-laws for two square meals"59

In most of the cases, women have proved to be the successful creditors60. With the help of small loans provided by different banks in the line of Grameen Bank of Bangladesh, the women who were incapacitated due to various reasons (victims of violence, poor economic base, and disease) in the society are now in a position to help their group fellow members and prove themselves as wise creditors. They have become the agents of their own development. Now these women groups have a leading role to play in the promotion of micro enterprises and agree to save regularly and convert their savings into a common fund and formed SHGs and empower themselves in the line of the most jealous punch line of Ninth Five(1997-2002) year plan 'Empowerment of women'. Now these groups of women have become the agents of their own development.

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57 Field work observation, 19 July 2006.
58 Field work observation, 19 July 2006.
60 Field work data, 25 June, 2006.
**Ex Gratia Grant (EG)**

It is a method to provide respite to the victims of conflict. At present, there are various slabs which is available under Ex gratia scheme available to victims of armed conflict. Along with this, a Rehabilitation Grant (RG) and a Gratuitious Relief (ration) is also being delivered to the victims based on necessity. It is being delivered to victims kin who got killed/injured /in loss of property so that they are rehabilitated and can start a new life.

**Table 5: The Slabs of Ex-gratia Schemes**

<table>
<thead>
<tr>
<th>KIND OF VIOLENCE</th>
<th>NATURE</th>
<th>RELIEF</th>
</tr>
</thead>
<tbody>
<tr>
<td>Extremists violence</td>
<td>On death</td>
<td>EG Rs 1 Lakh</td>
</tr>
<tr>
<td></td>
<td>Injured</td>
<td>EG up to 1-3,000</td>
</tr>
<tr>
<td></td>
<td>Property damage</td>
<td>RG to 5,000</td>
</tr>
<tr>
<td>Group clashes</td>
<td>On death</td>
<td>EG Rs 5,000</td>
</tr>
<tr>
<td></td>
<td>Invalid persons</td>
<td>EG Rs 5,000</td>
</tr>
<tr>
<td></td>
<td>Injured</td>
<td>EG Rs 1-3,000</td>
</tr>
<tr>
<td></td>
<td>Property damage</td>
<td>RG upto Rs 5,000</td>
</tr>
</tbody>
</table>

Extremist violence in Nalbari, Kokrajhar district

<table>
<thead>
<tr>
<th>KIND OF VIOLENCE</th>
<th>NATURE</th>
<th>RELIEF</th>
</tr>
</thead>
<tbody>
<tr>
<td>On death</td>
<td>EG Rs 1 lakh</td>
<td></td>
</tr>
<tr>
<td>Injured</td>
<td>EG 1-3,000</td>
<td></td>
</tr>
<tr>
<td>Property damage</td>
<td>RG Rs 10,000</td>
<td></td>
</tr>
</tbody>
</table>

Source: Report on Ex Gratia Scheme, Deputy Commissioner's office, Nalbari District, Guwahati, 2000. Note: EG = Ex-Gratia payment; RG = Rehabilitation grant
However, there are no special provisions that could handle the specific needs of women in situations of conflict. To cover up a lack of special provisions, government officials were quick to point out some individual focused centric provisions, which are common to all conflict prone areas. These are: 61

- Rs 10,000 to families below the poverty line, which lose their breadwinner for any reason
- Widow Pension Scheme
- National Old Age Pension Scheme
- National Maternity Benefit Scheme
- Balika Samriddhi Yojana
- Micro-credit schemes of DRDA & Social Welfare Department of the state government
- Indira Mahila Yojana & Rashtriya Mahila Kosh
- Several grant-in-aid schemes on training-cum-employment programmes, working women's hostels, awareness, street children, day care centers or creches, for NGOs working on 'mother and child' programmes
- Welfare schemes to train women for self employment 62

The numbers of women (either surrender militant or the victim) who actually get the benefit by such schemes are very meager in number.

However, these schemes hardly benefited the women victims due to the attached red tappism to avail such grants in a patriarchal state. Even if at the

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62 A Report on Women in Armed Conflict Situations, A Study by North East Network, Guwahati, 2005, p.120.
rarest cases she is been able to avail the amount, the male relatives in the family uses the amount. As a result instead of improving her position deteriorates.

District primary Education Programme (DPEP) is also started in Nalbari along with other districts of Assam. The capability to be educated can be considered as basic capability which has been focused in Nalbari district. But due to frequent army operations and counter operations DPEP in the vulnerable pockets of Nalbari has had a setback.

In educational studies, there has been much concern with the relationship between educational and social inequalities. Drawing on the capability approach, while analyzing education provides a useful vocabulary to engage these issues. Capability and functioning depend upon on individual circumstance, the relations a person has with others and social conditions and contexts within which potential options can be achieved.

Amartya Sen identifies basic capabilities as a subset of all capabilities. Basic capabilities, in his approach are a relatively small number of centrally important beings and doings that are crucial well being. The capabilities to be educated are one of the basic capabilities. In case of Nalbari, physical limitations and challenges impose restrictions on capabilities.

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Measures taken by the State for Societal Justice

The State of Assam has also initiates certain projects in Nalbari District for overall societal development and to address the problem of conflict therein. Some of them are:

a) **Project Bacon:** It was initiated by then Governor of Assam Gen (Retd) SK Sinha along with 10th Battalion of Indian Army; Bihar Regiment on 24 October, 2000. It has allotted a plot of 12 Bigha with a plot for the project. A rehabilitation centre was also built. At the initial stage, the project was launched full scale in Tamulpur area of Nalbari. However, after the shift of Bihar regiment the project started collapsing. The surrendered men and women with their children who have taken shelter started moving out in search of some other alternative. When visited the area of project Bekon, a lone lady, Mrs Basumatari, wife of a surrender NDFB cadre was found. As their economic condition is very poor, they could not move anywhere with their children but continue to stay there, she said with a sense of insecurity.

"Like other friends of ours, we do not have any house to move. This is our temporary shelter. We do not know where to move next," Mrs Basumatari reiterated.

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65 Measurement of land.
1 bigha = 100 lesa
100 lesa = 5 katha = 1 bigha
66 Field observation, 26 March 2007.
Project Backon was only a temporary relief. Army officials were reluctant to handover any report on this project for this research. After inquiring from various places in the locality it was deciphered that no timeframe or direction was drawn out clearly to deliberate upon this project.

Photo 6: The ‘Project Bacon’ of Nalbari and its Beneficiary

Source: Field work

Assam government’s promise in 29 April, 2007, regarding the establishment of two rehabilitation centre (one in upper Assam and one in lower Assam) under social welfare department for the women victims of conflict situations as well as for the widow of the militants along with their children has proved to be a false promise so far.

However the picture is not fully pessimistic. In the year 2007 on 22 October almost 33 militants have laid their arms and Lt Gen BS Jaiswal, GOC 4 corps have opened a vocational training centre at Tamulpur where militants specially women combatant now undergo vocational training in computers, tailoring, carpentry, driving, fishing, fishery,

poultry and many more. However, the success of this vocational centre can be judged only in near future.

The following section will discuss the initiatives to mitigate conflict by Assam Police in two vulnerable villages of Nalbari.

4.6 Initiatives of Assam Police:

Assam Police has also initiated two projects which is applicable in the district of Nalbari, Project Aashwas and Prahari. Aashwas is a unit functioning under the Assam Police, Guwahati. It is a Project which is helping the Foundation by identifying child (both girl and boy) victims of militancy in Assam who are being provided financial assistance. Aaswas in Nalbari has selected child victims of militancy and stated giving scholarship (see the list of beneficiaries in the appendix), besides creating a people friendly corps.

If we see the list of beneficiaries from the project Aashwas, we could find a very few girl child getting benefited by it. Moreover, in most of the cases availing such schemes needs lot of paper work and time.

Nirmala, a widow of Kekerkuchi of Nalbari says in this regard,

'I am an illiterate women. My husband was in ULFA. After his death my neighbours have suggested me to apply Aashwas Scheme for my son who is in class seven. Once I went to Nalbari town to find out about this

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69 In Baraliapar village adjacent to Baralia river, Aaswas has helped the local people to establish a tomb of the 17 people who laid their lives in the hands of insurgency in the year 1999.
scheme. But the babus were not giving me proper direction and I have lost hope to avail the same 70

Likewise the Samaritan scheme of PRAHARI—which is an acronym for “People for Progress” (in Assamese, ‘Pragatir hake raji’) is an initiative of Assam Police. This project was based on the concept of community policing and aims at addressing the root cause of social problems, which led to criminal activities. Nalbari Police administration team led by S.P Mr Sarat Phukan has launched this project in village Lakhipar, which is backward in every respect. It is one of the insurgency infested area with poor socio economic conditions of the people without any civic amenities.

Prospect for women was also there in the areas of weaving/tailoring/knitting. The project visualized Lakhipar to grow as a ‘model village’. In October 2, 2001 the project was formally launched. Initially the project was going well. But after the change of the officials, the project got a backseat.

After so many years of its inception, Lakhipar is not accessible easily all link roads are broken with a torn bridge, due to the changing course of Pagaladia river. The lone connecting bridge is hanging in the air as seen in the photo. It was surprising to see the position of a ‘model village.’ The condition of the women was equally bad. Though they are good in weaving and handwork lack of infrastructure has made them poverty stricken and weak. The only teacher Sidhartha Ramchiary of Mainao ME School is not getting salary for the last 12 months.

70 Field data, 22 September, 2005.
To realize its goal with respect to women empowerment, initially in Nalbari, there was a plan for community centres with ‘tatsals’ (weaving machine) for the local women. Two sewing machines were installed and it was run on community basis. However, stopping of fund to purchase
raw material for weaving has forced the women of Lakhipar from economically empowered. Most of the project which has been initiated under Prahari is in a dilapidated condition.

Though, Red Horn Division of Indain Army has established a Sadbhavana haat (good will local market) in the border of Debasara and Lakhipar on 10 May,2007 for betterment of people to people contacts, women's specific needs are largely neglected in relation to physical and psychological care, economic security and displacement. Women continue to have the least access to protection and assistance provided by state.

Inferences:

The state’s response to the ethnic conflict in Assam has been two fold: First, an increasing dependence on military and Para military forces, many times leading to violation of some basic human rights. Secondly, granting lavish funds to accelerate development. Extension of rights and accommodation to ethno cultural minorities in a conflict prone area resulted in massive tension. It is generally noticed that the rights of the weaker members are often undermined within a larger societal set up. In similar lines, Susan Moller Okin argued that group rights often reinforce the subordination of women within groups.

Custodial death, encounter death and denial of every type of civil rights have become rampant in Assam. Case of Belshri mentioned in chapter three and Savitri killings are some of the examples. Moreover, longer
judicial probe has made the whole system cumbersome. Although a judicial probe was demanded in recent killing of Savitri, nothing has been initiated so far. Assam Public Works (APW), a non governmental organization engaged in garnering public support against ULFA demanded that the Government must bear moral responsibility for the death of the elderly citizen as of Savitri and adequately compensate the family. Power equation game between ULFA versus SULFA has made the situation even worse. Extremist organization has accused that government being engaged ‘secret agent’ (SULFA) for kiling the present members in extremist organization.

In Assam, both the extremists group and the state authority are accused of violating human rights. Extremists group particularly ULFA and NDFB along with others are involved in spree of extortions, killings of innocent people, kidnapping and most importantly creating an atmosphere of intimidation, fear and insecurity, thus resulting in violations of civil and political rights. Reboti, one of the respondents in this regards says,

"From time to time, there have been severe outbreaks of terrorism and local insurgencies in Nalbari. As a matter of policy, the terrorists have used violence against the local population, including women...."

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71 The Assam Tribune, 12 September, 2007, p.4.
73 Field Observation, 15 October, 2005.
The following sections will describe how the State has become the barrier of the rights of the people especially for women in Nalbari.

**Institutional Barriers:**

The enactment of Armed Force Special Powers Act, which has been discussed briefly in the last chapter, has caused lots of inconvenience to women in the state. While women are affected directly, they are equally disadvantaged when the presence of the armed forces impacts on the lives of their men in the community. Without their men, women are forced to become the sole bread earner.

In other words, women are trapped badly between institutional barriers of the State like operation of the Armed Forces (Special Powers Act) along with the wrath of non state actors.

**Armed Forces (Special Powers) Act** has certain repressive feature that causes injury to women very easily. Some of its provisions are:

- It gives Central Government the right to declare an area ‘disturbed’ and impose the Act, even if the state government does not deem such action necessary.
- It does not specify the conditions under which the authority justified in making such a declaration.
- The Act can be enforced for an indefinite period, without review.
- It gives unbridled powers to armed forces to shoot to kill in order to maintain public order.

• It gives armed forces personnel the right to enter, search and arrest without any warrant and on the basis of suspicion
• It gives total immunity to the armed forces for their actions; for it clearly establishes that no prosecution, suit or legal proceedings can be brought against any personnel acting under the Act without the permission of Central Government.
• It excludes the possibility of inquiry into legality of such actions. In other words, this Act has left no room for safeguards against human rights violations. Irrespective of sexes, army now can pick up anyone in the name of inquiry and do whatever they want. Meenakhi,75 one of the victims of sexual violence by army personnel says,

"I still remember how they (Army) came and asked for my brother who is in ULFA. As I was alone in the house three men forced them upon me. Though I screamed nobody could hear me as my house is located in the corner of the village and is little isolated. It was puja time and all my family members went out to watch a bhaona76 When my sister came back she found me unconscious in pool of blood..."77

Even if the women are arrested they never follow the detention rule, neither are they kept in a separate room from other male detunes which is against international norm of humanitarian law. The greatest outrage of the AFSPA under both Indian and international law is the violation of the right to life.78 This comes under Article 6 of the ICCPR79, which India

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75 Name changed due to ethical and security reasons.
76 Assamese play.
77 Field work observation. 22May, 2005.
is a signatory, that talks of non-derogable right. This means, no situation, or state of emergency, or internal disturbance, can justify the suspension of this right.

Moreover, the Indian Criminal Procedure Code (CrPC) establishes the procedure police officers are to follow for arrests, searches and seizures, a procedure which the army and other para-military are not trained to follow. Therefore when the armed forces personnel act in aid of civil power, it should be clarified that they may not act with broader power than the police, which has been grossly violated in the North Eastern states, including Assam.

The Ideological/Societal Barriers:

The ideology that perpetuates the subordination of women and underpins women’s inferior positioning runs through the entire gamut of disadvantages that women suffer in situations of conflict. Gender insensitivity and deeply entrenched patriarchal values of control and domination along with a perceived biological need further accentuate the problem. When the question of gender is linked with ethnicity as in Nalbari, there is a greater attempt to control the mobility and sexuality of women. While discussing the seven role framework in the earlier chapter, a discussion was followed regarding women’s role as a carrier of culture and the politics revolving round their bodies.

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79 International Covenant on Civil and Political Rights, India has signed this treaty in 1978.

The non state actors also severely violate human rights. Besides frequent bomb blasts, extortions etc, they also target women of the 'Other community', as the underlying meaning is 'to inflict injury to women implies to injure the entire community'. The example of Baraliapar is remarkable in this case.

**Material Barriers:**

The lack of special provisions for women affected by the conflict and the general unplanned and non transparent development policies further precipitated the problem. Both in conflict and post conflict situations women face particular threats to their security. In ethnic conflict, the destruction of communities may also mean the loss of social structures that might previously have offered a safety net for women. The tension between demands for justice for the commission of crimes during the conflict is a common scene in Nalbari.

There are other gendered dimensions too. For instance, Conflict and post conflict arrangements make provisions to welcome the members of the militant to surrender and join the mainstream. However, no such arrangements have made to integrate the rape victims and their return to normal life. This study felt the need of due attention to ways exposing attitudes that condemn or ostracise women who have suffered sexual abuse, and to reverse such attitudes through education, training and support.
While coming to the economic insecurity, in most of the cases from the field, it was found that the laws in context of labour and job are also discriminatory. For instance, quotas might be set that take account of ethnic difference, especially when the conflict is fought on these grounds. Such quotas may give priority to men who are involved in the conflict. Such quotas can deprive women of access to employment and pension rights, thus contributing to their poverty, where she is the sole means of family support.

**Political Barriers:**

In the entire region, there is a total absence of sincere political will to solve the problem. This attitude has complicated the issues tremendously, with women feeling the brunt of it most.

Policies and governance for this region have reflected a lack of socio-political and cultural understanding of the North Eastern Region. What characterizes the policies of successive Central Government is a fear of the strength of the communities in North Eastern Region (NER).81 This can be seen in the policy of regrouping in order to neutralize the strengths of the local governing bodies and institutions.

Unethical use of ethnic conflicts for political gains have also causes political barrier for the people of different ethnic origins. The recent killing of Hindi Speaking people by the Militants in the State further signifies such politics.

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Article 19 of the Human Rights Commission, which curtails the jurisdiction of the commission to address and monitor violations by the security forces, has also not been amended. In addition, most of the appointees of the state human rights commission of Assam are political, which resulted further deterioration of the human rights.

The role of the state as the user of violence has been widely recognized by analysts across the spectrum of political thought ranging from Weber to Marx. When Weber had defined the state as a “human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory ...the state is a relation of men, a relation supported by means of legitimate violence”, suppression of rights of segments of the population was implied in the definition. The categorical identification of the class by another is overtly suggestive of human rights violations under the aegis of the state.

Women’s engagements with the national and ethnic collectivities lead to further discrimination against them while availing the state policy or justice. As Nira Yuval-Davis pointed out: Women are always included in the general body of citizens of the state, and on the other hand, there is always a separate body of knowledge, that relates them as specifically women. As mentioned earlier, women have to live not only under draconian national laws by virtue of their location but also suffer other

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82 Ibid., p.103.
84 Cited in Paula Banerjee, Negotiating ..., p.3.
discriminatory practices by virtue of their gender. When Ethnic distinctions are stressed it is always possible to detect a political projection which is galvanized by injustice. The steps that the state has taken up to prevent conflict in the area of Nalbari have hardly brought out any change especially for its women members.

4.7 Role of Legal Means as Redressal Mechanism for Women Extremists of Nalbari/Female Kin after ‘Operation All Clear’ 2003:

Coming to the case of legal mechanism for women in outfit, first we need to categorise them into the following group.

- The women who are still in the banned organisation
- Those who are locked up in jails
- Those who are bailed and facing trials.
- Wives of missing militant groups.

In the year 2003, 35 women (either cadres or wives of militants from various groups like ULFA and NDFB) were caught in Samdrup Jongkhar, Eastern district of Bhutan bordering Nalbari in a joint operation of Bhutan and Indian government. They were handed over to

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86 Field work findings.
87 Pl.see the list in the appendix.
88 Samdrup Jongkhar was a safe heaven for most of the NE outfits. From Tamulpur it is 36 kms with proper roadways made by DANTAK i.e., *Seema sadak Sangathan* (border roadways). In this area, both Assamese and Bhutanese language are in use. To my surprise, I saw circulation of Bhutanese currency till Rangia dist of Assam (from Samdrup Jongkhar, Rangia is 61 kms of distance) and vice versa.
Tamulpur PS. In my narratives I am going to concentrate in the last three categories.\textsuperscript{89}

Out of the 35 women, most of them have been granted bailed. When a case is being investigated, various steps are involved like arrest, detention, bail and then trial. To start a trial, all of them must be present in the court in a given date. As initially the 35 women were put in different jails all across Assam due to security reasons, trial on a given date has become a cumbersome work even for the Police as well as for the court. In case of 4/5 women in the list of 35, they were not put on trial as they do not have any support from either their organisation or family members to deposit the bail able amount. Some of them are,

1. **Ms Debajani Talukdar**, aged 50 years, FIR has been lodged by Dr M.M Deka, Principal of Guwahati medical college, on 13.5.07 in the ground that he was threatened over phone by ULFA demanding money from a mobile phone and Debajani act as a linkman collecting the phone numbers of wealthy doctors and pass on the phone numbers to the dreaded militants. (Case no 607/07:U/s 387. Dispur PS)

2. **Ms Pranati Deka**, former cultural secretary of ULFA. She is still in jail as multiple allegations are lodged against her such as subversive activities as member of ULFA.

\textsuperscript{89} It is not feasible to meet the women of first category.

\textsuperscript{90} For details, please see appendix.
3. Ms Deepti Gogoi-a Lance corporal of ULFA. She was arrested along with lots of arms and ammunitions. She was involved in supplying of explosives from place to place. Her case no is 196/07(Jalukbari PS)

However, due to the pressure of the Gauhati High Court, trial of most of the cases have began. Some of the cases are,

a) Case of Shanti Rajkumari - case no TADA session no 48/01. her case is being trailed under section 4 (1) TADA (p), R/W sec 10/13 UL (p) act. Allegation against her is that she is an active member of ULFA and police recovered lot of documents related to this group while caught her.

b) Mamoni alias Kusum Dihingia, aged 35-Mamoni was a second lieutenant of the banned group ULFA. Case registered against her regarding the bomb blast in Fancy Bazar of Guwahati where several people died. Case no 384/06.U/s 121/121(A)/326/427/307/302 of IPC:R/W section 10/13 UA(P) act. She was arrested with her 8 yearchild and husband Ananta Kakoti (ULFA cadre), now she is in bail and trial is yet to be started.

Third category consists of the wives of missing ULFA group like Malini, Anima, Gyanmona Moran, Menoka Chetia and several others. For almost three years, since Bhutan military operations in 15 December, 2003, to flush out militant groups from its territory, these women have been knocking on every door for information about the whereabouts of their missing husbands. The Gauhati Court, however,
asked the centre and State authorities to make detailed submissions as soon as possible, when the cases pertaining to missing ULFA leaders is scheduled to come up for hearing. Some of the writ petition cases are,

<table>
<thead>
<tr>
<th>Writ petition/case numbers</th>
<th>Name</th>
</tr>
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<tbody>
<tr>
<td>case no 14/2006, fixed on 14.6.07</td>
<td>Menoka Chetia Dihingia (wife of Rabin Neog) Vs Union of India and ORS.</td>
</tr>
<tr>
<td>9/2006</td>
<td>Mrs Malini Ingtipi alias Hema Hanshipi (wife of Ashanta Bagphpukan) Vs GOI and ORS.</td>
</tr>
<tr>
<td>10/2006</td>
<td>Ms Rupali Thakuria Vs Union of India and ORS</td>
</tr>
<tr>
<td>11/2006</td>
<td>Ms Anima Debi Rabha Vs Union of India</td>
</tr>
<tr>
<td>17/2006</td>
<td>Gyanomona Moran alias shyamolee Vs GOI and ORS.</td>
</tr>
</tbody>
</table>

Table 6: Writ Petitions of Women Extremists.
Source: Gauhati High Court documents, 2007

There are almost 113 missing male cadres of various outfits till date, whose wives are staging protest against the state to hand them over the records of their missing kin.

The main lacunae to start the legal hearing are the delay of submission of the list produced by Royal Bhutanese Army that has handed over to Indian authority to the court. That amply proves how the legal
proceeding moves in this part of India. Legal proceedings need to get flexible in case of a need of speedy justice. In this case, we can rightly quote William Gladstone, “Justice delayed is justice denied”\(^9\). In deed, the women relatives of the missing cadres become the victims of what Nancy Folbre says, ‘Structures of collective constraint\(^9\)’.

**Inferences:**

Feminist writers like Pateman argue that the state is a site of patriarchal relations where state represents patriarchal interests as a whole\(^9\). In most cases, state does not consider gender accounts, focusing instead on class relations or relationships between state and the state. State fails to account in general impact of gender equality and the relationship with the state\(^9\). The relationship between various ethnic groups and state is well explores by Paul Brass (1985). According to his view, state dominates particular social forces, a particular ethnic class or a group. It is inevitable that a stronger group will use state as an instrument of domination over others\(^9\). Moving his theory a little further, one can say that women as a group are less powerful and the state has a systematic bias towards patriarchal interests and its policies and action\(^9\). In most of the cases therefore, women centric initiatives had a set back and lacked of adequate focus. Whether it is PRAHARI project and its applicability on women in Nalbari or the judicial custody of the

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women combatant, the story is similar. The share of justice has grossly denied to women members of the society.

Gender justice within the context of armed conflict and its aftermath refers to legal processes that are equitable, not privileged by and for men, and which acknowledge ways in which women uniquely experience harm. Typically, gender justice is neglected in preference for achieving reconciliation, which is driven by patriarchal interests favoring the powerful and disenfranchising the oppressed. Importance of transitional justice system within the framework of gender justice and psychosocial healing as essential components of reconciliation processes are given stressed. It is argued that gender justice must occur if reconciliation processes are to succeed and that governments, communities, and individuals must accept responsibility for ensuring gender justice.

National judicial system may lack adequate financial and human resources to handle the large number of cases. In addition many a times, judicial system may be subject to ethnic or religious biases arising from conflict. Moreover, when it comes to secondary victim the legal justice system is found to be flawed as the victims story is not given due importance. The sequences that follows a particular crime is not been recorded which may provide valuable information regarding a particular crime.

There are two more important concepts: Re-integrative Shaming and Transitional Justice apart from the types of justice that has been mentioned

98 A "secondary victim" of an act of violence is a person who receives a compensable injury as a direct result of witnessing the act of violence that resulted in the compensable injury to, or death of, the primary victim of that act.
earlier. In fact, these two concepts are corollary to the earlier concepts. As Gabrielle Maxwell and Allison Morris observe, John Braithwaite's theory of re-integrative shaming has been quite influential in providing a basis for restorative justice in general and for some forms of conferencing in particular. (Braithwaite himself linked shaming with family group conferences in New Zealand and traditional Maori conflict resolution processes.) Following this, Masters argued that shame is a critical component in the development of effective restorative justice.

According to Braithwaite, in many societies, shame is an important tool for socializing. It is by the careful use of 'shame' that people learn the obligations they have to others and what others have to them. Shaming, a central concept in the broader theory of restorative justice, may be of two varieties. The first, 'disintegrative shaming', characterizes the traditional retributive framework of justice and is evident in recent state-led and popular responses to the risk posed by released sexual offenders. Far from ensuring offender integration, the net result is often labeling, stigmatization, ostracism and a return to offending behaviour. The second, 'reintegrative shaming', affirms the offender's membership within law-abiding society. This has been used in several jurisdictions as the basis of restorative support and treatment networks for sexual offenders where the community works in partnership with state and voluntary agencies. This sense of 'shame' can be harnessed in restorative justice mechanisms to acknowledge shame and discharge it, to shame acts of injustice and to prevent further injustice and enable restoration.

http://www.restorativejustice.org

Transitional Justice System refers to a range of approaches that societies undertake to tackle legacies of widespread or systematic human rights abuses, as they move from a period of violent conflict or oppression towards peace, the rule of law or respect for individual and collective rights. In other words, the primary objectives of transitional justice are two fold: to introduce process of reconciliation among both the parties to the conflict and the affected population by establishing a process of accountability and acknowledgement, and to deter occurrence, thus ensuring peace.\textsuperscript{101}

To conclude in the words of Amartya Sen,

"Women still have unfinished business in claiming their rights as full citizens"\textsuperscript{102}

\textsuperscript{101} Ibid., p.156.
\textsuperscript{102} Irene Tinker Lecture Series, 16 November, 2004. internet link (http://www.icrw.org)