

**HUMAN RIGHTS AND ARMED FORCES SPECIAL POWERS
ACT 1958 : A STUDY OF ITS USES AND ABUSES IN
NAGALAND**

(ABSTRACT)

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Introduction

The issues of human rights have become a global phenomenon in the contemporary world as people started showing their concern towards the miseries and humiliation of another fellow human being. The importance of contemporary international relations is attached to the promotion and protection of human rights. But the fact is that though everywhere people talk about human rights, at the same time, these rights are found violated everyday all over the world. Thus, today there is a need to increase awareness about human rights in the given situation of increasing trend of human rights violations. In this context, there are numbers of Governmental and Non-Governmental Organizations (NGOs) at regional, national and international levels, which are involved in human rights movement, creating awareness for human rights issues and protecting and promoting human rights in different societies.

Objectives:

The present study was carried out with an attempt to achieve the following objectives:

1. To analyze the development of contemporary ideas on human rights.
2. To analyze the background of enforcement of the Armed Forces Special Powers Act 1958 in Nagaland.
3. To study the uses and abuses of Armed Forces Special Powers Act 1958 in Nagaland.
4. To examine whether the enforcement of the Act has produced desired results or not.
5. To examine the role of some important NGOs in protecting and promoting human rights in Nagaland.

Methodology:

The ongoing problem in Nagaland can be traced back to the movement for Right to Self-determination of the Nagas that started soon after India's Independence. The Indian Government on its part saw this movement as one which is unconstitutional and unwarranted. Therefore, in order to suppress the Naga movement the Armed Forces Special Powers Act 1958 was enforced in the State. This Act has enabled the armies to use their power as an instrument in tackling the problem. However, this Act has not been welcome in Nagaland as the Nagas in general considered it as a 'Draconian' that have caused great human sufferings leading to the violations of human

rights, which form the central theme of this study. The study is based on both primary and secondary sources. The primary sources include government documents, interviews through structured and non-structured questionnaires with cross-section of the society, various NGOs' documents, etc. The secondary sources include publications such as books, journals, articles, newspaper reports, etc. The data so collected is objectively analyzed using suitable statistical diagram like pie charts that reflect the opinion of the people on the issues. The obtained empirical findings together with the secondary information are systematically organized so as to complete the study meaningfully.

The study has been divided into five following Chapters:

Chapter-I Introduction: Concept of Human Rights, deals with the process in the development of the contemporary concept of human rights. Historically, it is found that human rights emerged from the concept of Natural Law. How this concept became a universally accepted norm including its incorporation in the Indian Constitution has also been dwelt in this chapter. Though the concept of human rights is a century old, it became an international concern only after

the Second World War with the adoption of the Universal Declaration of Human Rights by the United Nations on 10th December 1948.¹

Further, this chapter has highlighted some definitions of human rights given by different scholars. The United Nations Center for Human Rights has defined human rights as, "Those rights, which are inherent in our nature and without which we cannot live as human beings".² In the words of R. J. Vincent, "human rights are the rights that everyone has, and everyone equally, by virtue of their very humanity".³ In simple words, human rights can be said as inherent rights of every individual. These rights are inalienable in a sense that every individual has been born with it. Article 1(3) of the UN Charter mentioned about the promotion and encouragement of human rights and fundamental freedom of all without distinction as to race, sex, language or religion⁴. Since all human beings belong to the family of humankind, every human being should be able to enjoy these rights for their development. The ultimate human aspiration is to develop to one's fullest potential and live with dignity as a human being. Therefore, these rights include right to life, freedom, dignity and justice, which

¹. Bajwa, G. S., *Human Rights in India: Implementation and Violations*, (Anmol Publications Pvt. Ltd. New Delhi, 1995), p. 27.

². Sharma, Gokulesh, *Human Rights and Legal Remedies*, (Deep and Deep Publications Pvt. Ltd., New Delhi, 2000), p. 4.

³. Vincent, R. J., *Human Rights And International Relations*, (The Royal Institute of International Affairs, Cambridge University Press, New York., 1986), p. 13.

⁴ Vijapur, Abdulrahim P. and Suresh Kumar (eds.), *Perspective on Human Rights*, (Manak Publications, New Delhi, 1999), p. 4.

need to be protected by the state. Denying or depriving the people of such rights is a case of human rights violation.

Article 1 (2) of the Charter of United Nations specifically mentioned to "develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples and to take other appropriate measures to strengthen Universal Peace".⁵ Basing on this guiding principle, the Naga Movement aimed at attaining the right to Self-determination and freedom for the Nagas. However, the Naga Movement has been opposed by the Government of India resulting in the enforcement of the Armed Forces Special Powers Act 1958 following which conflicts and human rights violations begin to take place in the State. Going by the contemporary ideas of human rights, atrocities of any kind committed by any organization or force towards the weaker section of the society irrespective of its objectives and justification, is considered as violation of human rights.

Chapter - II: Naga Movement and Enforcement of Armed Forces

Special Powers Act 1958, deals with the emergence of Naga Nationalism leading to the enforcement of Armed Forces Special Powers Act 1958. To achieve their objective of a Sovereign State, the

⁵. Vashum, R., *Nagas Right to Self Determination*, (Mittal Publications, New Delhi, 2000), p. 51.

Naga Movement led by Naga National Council (NNC) had resorted to several means such as negotiations and armed struggle against the Indian Armies occupying the Naga Hills. In the process, there have been wide spread violence all throughout the State resulting in the loss of lives and sufferings of many innocent Nagas. To resolve the problem amicably, several rounds of negotiation and agreements have taken place beginning with the first cease-fire agreement between the NNC and the Government of India on 15th August 1964. However, as this cease-fire did not yield any positive result, another peace initiative culminated in the signing of the Shillong Accord in 1974 between the representatives of NNC and the Government of India which drew a lot of dissatisfactions and flaks from several sections of the Naga people including some leaders of the NNC. This finally led to the formation of the National Socialist Council of Nagaland (NSCN) on 31st January 1980 under the leadership of Isak Swu and Thuingaleng Muivah and S. S. Khaplang. However, due to some differences among the leaders, the NSCN was split into two organizations namely NSCN (IM) led by Isak Swu and Th. Muivah and NSCN (K) led by S. S. Khaplang. Another landmark development that took place was the cease-fire agreement between the NSCN (IM) and the Government of India in 1997, which continues till date with extension every year.

Chapter – III: Armed Forces Special Powers Act 1958 and Human Rights Abuses in Nagaland

Chapter – III, discusses about the background of the Armed Forces Special Powers Act 1958 (AFSPA). To prevent the Naga Movement for Freedom, the Government of India deployed armies and para-military forces in Nagaland and begin to counter with Naga militants. This created more problems and when the situation became out of control, the Government of India enforced Armed Forces Special Powers Act 1958 with the objective to end all militant activities in Nagaland and its consequences are discussed in this chapter. The Armed Forces Special Powers Act 1958 in brief empowered the army personnel down to the rank of non-commissioned officers with the following powers:⁶

1. to "fire upon or otherwise use force, even to the extent of causing death against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or carrying of weapons or of things capable of being used as weapons or of fire arms ammunition or explosive substances";

⁶. Ministry of Defence, Government of India, *Manual of Military Law Vol. III*, (Controller of Publications, Civil Lines, New Delhi), pp. 457-58.

2. to destroy a place determined to be an arms dump, or a fortified position or shelter from which armed attacks are made or are likely to be made or are attempted to be made or any structure used as a training camp for armed volunteers or utilized as a hide-out by armed gangs or absconders wanted for any offence;
3. to arrest without warrant, any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence;
4. to enter and search without warrant any premises to make any such arrest as aforesaid or to recover any person suspected to be illegally confined or any property reasonably suspected to be stolen or any arms, ammunition or explosive substances believed to be unlawfully kept.

On the part of the Government of India, the enforcement of the Act is intended to control the situation and also to bring about peace and development in the State. However, the Act in Nagaland has rather deteriorated the situation leading to violations of human rights. Therefore, in order to get an in depth understanding of the ground reality prevailing in the State, field work was carried out through structured and non-structured questionnaires with the cross-section of the society including Indian Army officials, State police personnel in Nagaland, prominent Non-Governmental Organizations

(NGOs) operating in Nagaland in the field of human rights, victims of human rights violations, leaders of different political parties, Government Officials and prominent citizens of Nagaland. The data so collected indicated that the Act has created more problems rather than solving the Naga issues and it has been faced with lot of criticisms and the Nagas in general through different organizations are fighting for its withdrawal from the State.

Chapter – IV Role of Non-Governmental Organization (NGOs): Naga People's Movement for Human Rights NPMHR)

Chapter – IV, deals with role of Non-Governmental Organizations (NGOs) with special reference to Naga People's Movement for Human Rights (NPMHR). The NGOs worldwide have been playing an important role in all spheres of human life including all round development and protection and promotion of human rights. Similarly in Nagaland, several NGOs have emerged guided by the same principle. They are in essence, investigators and disseminators of information who collectively comprise the human rights movement. NGOs such as the Naga Peoples Movement for Human Rights (NPMHR), Naga Mothers Association (NMA), Nagaland Students Federation (NSF), and Naga Hoho have been found actively involved in fighting against the cases of human rights violations in the State. Of

all these NGOs, the most prominent in dealing with the issues of human rights is NPMHR.

Whenever raids were conducted by the Indian Army under cover of AFSPA 1958 to flush out the militants, there were instances where mostly the innocent Nagas have suffered. As Nagas in general are not aware of the existing Act, many innocent people were arbitrarily arrested as suspects and often branded as rebels. Under such circumstances, the NGOs particularly the NPMHR has been found playing important role in highlighting the issues and fighting for the victims. For example, the NPMHR in June 1978, together with some representatives of Naga Students Federation went to Phek town to enquire into the torture of two students by the Assam Rifles. They also went to visit the victim of alleged raped case of Mrs. Kuono (65 years) by 99 Border Security Force at Kohima and the arrest of four Naga youth movement workers. Following the publication of report of their visit, NPMHR organized protest rallies in Delhi, Shillong and Kohima against continued violations of human rights committed by the armies in Naga inhabited areas. These rallies were conducted in order to create awareness of human rights and to mobilize support for the movement of the organization.

Another case taken up by NPMHR was the Kohima incident of 5th March 1995 in which an Indian Army Convoy carrying 600 soldiers of the Rastriya Rifles killed 7 (seven), innocent Naga civilians on the spot and injured 20 other innocent Nagas, while destroying numbers of residential buildings and vehicles as well. The case was taken to the Supreme Court of India by NPMHR after which a Commission was set up and on the basis of the reports of the Commission the victims were compensated.

Further, the different NGOs in Nagaland have vehemently opposed the enforcement of the Armed Forces Special Powers Act 1958 and terming it as 'Draconian Act' they have demanded for its removal. In fact, the NPMHR has gone to the extent of taking the case to the Supreme Court of India fighting for its withdrawal from Nagaland state.

Chapter V: Conclusion, Human rights in Nagaland as uncovered by the study clearly exposes the sufferings of the people because of the enforcement of the Armed Forces Special Powers Act 1958 which has been called by many as 'black law' or 'draconian law'⁷. Thus, the concluding chapter summarizes the study and

⁷. "Naga agitation on 'black law' reaches capital" *The Telegraph*, Region, Gauhati, 25, July, 2004, p. 8.

discusses the findings and suggestions so as to prevent human rights abuses in the State. The different socio-economic and human rights organizations are of the opinion that the enforcement of Armed Forces Special Powers Act 1958 is not in consonance with the efforts made to achieve peace in the insurgency-ravaged State.⁸

Major Findings:

1. Study and analysis of various definition of human rights and contemporary ideas of human rights contained in the provision of international covenants and conventions on human rights atrocities of any kind committed by any organization or force towards the weaker section of the society irrespective of its objectives and justification, is considered as violation of human rights.
2. The study reveals that the main cause of disagreement/conflict between the Government of India and the Naga Nationalist was on the question of Naga Sovereignty. On the part of the Government of India all discussions or negotiations were to be carried out within the framework of the Indian Constitution which was rejected by

⁸. Naga agitation on 'black law' reaches capital" The Telegraph, Region, Gauhati, 25, July, 2004, p. 8.

the Naga Nationalist since such conditional discussions or negotiations will not bring any result leading to Naga Sovereignty as the Indian Constitution does not provide any provision for granting of Sovereignty.

3. The study revealed the Naga Hills District Tribal Council which was transformed into a political organization known as 'Naga National Council' (NNC) on February 1946 was started to give active support to the Britishers in bringing about all round development in the Naga Hills. Subsequently, after India's Independence, this organization started the Naga movement in order to achieve Naga independence from the Indian Government. The movement was further carried out by Naga armed organization as namely NSCN. The movement was however not supported by the leadership of the Indian Government which led to the conflict between the Government of India and the leadership of the Naga Movement. The conflict further escalated leading to the loss of lives, properties and worsening the normal and peaceful situation not only in Nagaland but also in all Naga inhabited areas. This development necessitated the Indian Government to adopt and enforce the AFSPA 1958, mainly to contain and control militancy in Nagaland.

4. The objective of AFSPA 1958 was to eradicate Naga militancy, to maintain law and order and to bring about over all peaceful situations in all Naga inhabited areas. Keeping this objective in mind the Act provided the Indian armies and para-military forces deployed in Nagaland and Naga inhabited areas with blanket powers including to fire upon or otherwise use force, to destroy a place determined to be an arms dump, to arrest without warrant, to enter and search without warrant any premises to carry out the duties assigned to them. However the study has revealed that the usage of the Act has been in contravention to the provisions laid down in the Act.
5. It is found that the activities of the Indian Armed Forces operating under the Act is in contravention to the provisions laid down in Article 6 of International Covenant on Civil and Political Rights that provides, "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life".⁹ India is a ratifying member of the covenants, India has also agreed to abide by all provisions laid down in the covenants, however the act committed by the Government agencies while carrying

⁹. Subramanian, S., *Human Rights: International Challenges*, (Manas Publications, New Delhi, 1997), p. 14.

out their duties totally is in contravention to the accepted norm as Stated Article 21 of the Indian Constitution which reads as, "No person shall be deprived of his life or personal liberty except according to procedure established by law"¹⁰.

In spite of the protection provided in the Constitution to each and every citizen of the country yet the Naga people in general live an unsecured life in the midst of 'militancy' and 'counter-militancy'.

6. Another important revelation of the study shows that there has been several cases of arbitrary arrest made by the Indian army. Many people who have been arbitrarily arrested under the Act were deprived of their liberty which was to be accorded to such persons. A number of people who were arbitrarily arrested by the Indian army never came back and their where about remain a mystery.
7. Although, because of the method of counter-militancy, the army activities are viewed as 'anti-people', it has been found that the armies have in fact come forward in helping the public particularly in times of natural disaster.

¹⁰. United nations, *Freedom of the Individual under Law: An Analysis of Article 29 of the UDHR*, (United Nations, New York, 1990), p. 104

8. The study also revealed that the Indian armies operating under the Special Powers Act 1958 alone are not responsible for violation of human rights in Nagaland. There were instances, where many civilians were also killed as a result of militancy and counter-militancy by both the Indian armies and Naga army. Further, the ideological differences and conflicts among the Naga 'nationalists' also resulted in fratricidal killings of many common Nagas.
9. The study reveals that NGOs are not satisfied with the Indian armies deployed under AFSPA 1958 and they have raised several forms of protest against the Act terming it as 'Draconian Act' which is not fit for human beings.
10. The ignorance of the general people about human rights has been one of the factors for their rights to be encroached and violated. The injustice and violations of human rights committed by the armies on the innocent people have brought about the negative attitude of the people towards Armed Forces and local police.
11. With regard to the functioning of the NGOs, it is found that they have not been able to do much practically to protect the rights of the common citizens of Nagaland.

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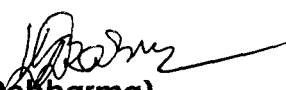
DECEMBER, 2004

I, **Ms. Nzanbeni Patton**, hereby declare that the subject matter of the dissertation is the record of the work done by me, that the contents of this dissertation did not form the basis of the award of any previous degree to me or to the best of my knowledge to anybody else, and that the dissertation has not been submitted by me for any research degree in any other University/Institute.

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PREFACE

PREFACE

Human rights have become a global concern in the contemporary world as people have started showing their feeling towards the miseries and humiliations suffered by fellow human beings. Today, the importance of contemporary international relations is attached to the promotion and protection of human rights. Various movement for more freedom and autonomy by different ethnic groups and their counter-movements by the States have made imperative to the question of human rights issues both in more developed and developing countries including India.

Nagaland has been one of the States in India where there has been a lot of human rights violations. The extent of human rights violations in the State following the Naga Movement for freedom particularly before signing of the Cease-Fire Agreement (1997), ranges from raping of women, torturing of men and children, moving people into concentration camps burning of villages, destruction of crops and many other forms of inhumane activities which are against the provisions laid down in the Universal Declaration of Human Rights.

The kind of human rights violations that have taken place in Nagaland since the enforcement of Armed Forces Special Powers Act 1958 has been the driving force for me to undertake this vexed issue. Infact, several individuals, numerous Non-Governmental Organisations at the state, national and international level have voiced their grievous concerns with respect to the state of affairs pertaining to human rights violations in Nagaland. However, very little in depth academic research work were undertaken and hence not shedding much light on this issue. Thus, the issue has generated an interest to make an attempt for in depth research study to find out the genesis of the whole problem of human rights violations in Nagaland.

As far as possible and within many constraints, this work attempts to examine the rationale leading to the enforcement of Armed Forces Special Powers Act 1958 in Nagaland, the after effect of this enforcement that has led to gross human rights violations, the role of some prominent Non-Governmental Organisations operating in the state in their endeavour to protect and fight against all forms of human rights violations.

An objective analysis was carried out with an intention to bring out suggestions on the basis of the findings that I am sure will make many readers particularly the policy makers to have a better understanding of the whole issue and thereby coming up with some practical policies and programmes that would solve the problems. The study covers the period between 1950s to the signing of the Cease-fire agreement in 1997.

This work would not have seen the light of day if it was not for my Supervisor, Dr K. Debbarma, Reader, in the Department of Political Science, North-Eastern Hill University, Shillong, for which I am grateful since he not only encouraged me to take up this particular topic but also helped me through his constant guidance and supervision thus enabling me to complete the work.

I am thankful to Professor B. J. Deb, Head, and all other teachers in the Department of Political Science, North-Eastern Hill University, Shillong, for their help and encouragement in my study.

I am grateful to all the respondents and others for their help and cooperation during the course of my data collection and interviews in Nagaland.

I would also like to thank Mr. Khekha, and Mr. Niketu, who helped me while consulting the libraries in New Delhi and Kohima respectively. Mr. Yanithung, Deputy Superintendent of Police, Wokha District and Mrs Shabana for helping me in meeting the cross-section of the Indian army in Nagaland and the State Police personnel thus enabling me to get their opinions which would have otherwise been impossible on my own.

I would like to thank my friends especially, Miss Cressida, Mr. Raj, Dr. Lalmachhuana, Miss Lolita, Miss Sophia, Mr. Andrew, Mr. Zubemo, Miss Orenvungi who had encouraged me during the course of my research.

I am indebted and thankful to all my family members who have always inspired me for the study through their unrelenting moral supports and prayers all throughout the course of the research work. During the course of my research

work, I lost my only brother, Samuel Patton to whom I dedicate
this work.

Shillong,

December 16, 2004

Nzanbeni
Miss Nzanbeni Patton

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CHAPTER I

Introduction: Concept of Human Rights

CHAPTER – I

INTRODUCTION: CONCEPT OF HUMAN RIGHTS

The issues of human rights have become a global phenomenon in the contemporary world as people started showing their concern towards the miseries and humiliation, of another fellow human being. The importance of contemporary international relations is attached to the promotion and protection of human rights. To this end efforts have been made to protect and promote individuals and collective human rights by various Governmental and Non-Governmental Organizations (NGOs) all over the world. However, despite such efforts, the fact remains that there are continued reports of human rights violations each day in most countries of the world. Therefore, there seems to be a contradiction between what is preached and actually practiced. Today, there is a need to create awareness about human rights in most parts of the world. In this context, the emergence and role of NGOs and other agencies at regional, national and International levels for protection and promotion of human rights among the people in different societies, are of immense significant.

The International concern for human rights originated only after Second World War but the philosophy underlying the concept is centuries old. The idea of human rights is understood to have been as old as the history of human civilization, which was traditionally known as "Natural Law". The idea of rights for men, women and children were seen in some form or the other in all culture and societies. Although several movements might have started to secure certain basic rights for individuals in different period of human history, the roots of human rights of individuals can, however, be traced out from humanitarian traditions, the unceasing struggle for human freedom and equality of individuals in all parts of the world and the historic pronouncements of philosophers, political leaders and Statesmen in different centuries in general and in 20th century in particular.¹ Indeed, humankind has made history through the struggle for freedom from exploitation and subjugation. In course of these struggles all throughout history, the concept of rights, which every human being should enjoy by virtue of their very humanity, was developed. From here it can be clearly pointed out that, since those days people had some ideas about inherent rights, known as Natural Laws. But the term "human rights" was in a rudimentary form, which was developed in the 20th century after the adoption of the Universal

¹. Vidhya Bhushan, "The Evolution of Human Rights and Fundamental freedom of Individuals: An Introductory Appraisal", in Sehgal, B. P. Singh, (ed.), *Human Rights In India: Problems and Perspectives*, (Deep and Deep Publications, New Delhi, 1995), p. 501

Declaration of Human Rights by the United Nations on 10th December 1948.²

There are many definitions as regard to the meaning of human rights. The United Nations Center for Human Rights has defined human rights as, "Those rights, which are inherent in our nature and without which we cannot live as human beings".³ D. D. Basu explained the stages of development of the concept of Human Rights. According to him, "The expression of human rights had its origin in International Law relating to the development of the status of an individual in the international legal system, which was originally confined to the relation between sovereign states, who were regarded as the only person in International law. For all practical purposes, the genesis of contemporary human rights is not older than Second World War though the concept of individual having certain inalienable rights as against state had its origin in the dim post. Thus, the concept of human rights, embodying the minimum rights of an individual versus his own state is as old as Political Philosophy. For instances, D. D. Basu's definition of human rights include "those minimum rights which every individual must have against state or other public authority by virtue of his being a member of human family, irrespective of any other

². Bajwa, G. S., *Human Rights in India: Implementation and Violations*, (Anmol Publications Pvt. Ltd., New Delhi, 1995), p. 27

³. Sharma, Gokulesh, *Human Rights and Legal Remedies*, (Deep and Deep Publications Pvt. Ltd., New Delhi, 2000), p. 4.

consideration". He further added that the concept of human rights is as old as the ancient doctrine of Natural Rights founded on Natural Law. Therefore according to Basu, it is only Natural Rights that eventually led to the development of modern concept of human rights.⁴ According to Jack Donnelly human rights are literally, the rights that one has simply because one is human.⁵ In the words of R. J. Vincent, "human rights are the rights that everyone has, and everyone equally, by virtue of their very humanity".⁶ David Selby gave a similar kind of definition, which says, "human rights pertain to all persons and are possessed by everybody in the world because they are Human Beings, they are not earned or inherited, nor are they created by any contractual undertaking".⁷ Susan Moller Okin, defines human rights as a "claim to something (whether a freedom, a good or a benefit) of crucial importance for human life". According to her, there are at least three kinds of important human needs - to basic physical goods, to physical security, to being treated with respect".⁸ In the words of Cranston, "human rights are forms of moral rights and

⁴. Mishra, Pramod , *Human Rights Global Issues*, (Kalpaz Publications , New Delhi, 2000), p. 4.

⁵. Donnelly, Jack, "What are Human Rights", in *Introduction to Human Rights*, (United States Information Agency, Washington DC, December 5, 1995), p. 3.

⁶. Vincent, R. J., *Human Rights And International Relations*, (The Royal Institute of International Affairs, Cambridge University Press, New York., 1986), p. 13.

⁷. Palia, Arun, Kumar, *National Human Rights Commission of India*, (Atlantic Publishers and Distributor, New Delhi, 1998), p. 9.

⁸. Jawahar, Kaul, L. (ed.), *Human Rights: Issues and Perspectives*, (Regency Publications, New Delhi, 1995), p. 10.

they differ from other moral rights in being the rights of all people at all time in all situations".⁹

Thus, there seems to be no specific and precise definition of human rights as it is a dynamic concept that changes and develops with time. In simple words, human rights can be said to be the inherent rights of every individual. These rights are inalienable in a sense that every individual is born with it. Therefore, the difference in race, sex, language, property, religion, etc., does not distinguish anyone from enjoying these rights. Since all human beings belong to the family of humankind, every human being should be able to enjoy these rights as rights are meant for all. The ultimate human aspirations are to be able to survive, develop to one's fullest potential and live with dignity as a human being. These rights include right to life, freedom, dignity and justice, which need to be protected by the state so as to enable the people to enjoy the same.

As said, human rights are, literally, the rights one has simply because one is human. Human rights, because they rest on nothing more than being human, are universal, equal, and inalienable.¹⁰ It also implies availability of such conditions, essential for the fullest

⁹ Samal, Sunita, *Human Rights and Development in Emerging World Order*, (Ph.D. Thesis, Centre For Political Studies, School of Social Sciences, Jawaharlal Nehru University, New Delhi, 2000), p. 90.

¹⁰ Donnelly, Jack, n. 5, p. 3

development and realization of the innate characteristics which nature has bestowed men and women with, as human being; they are essential to ensure the dignity of every person as a human being. Irrespective of one's place of birth, race, religion, color, sex, or any other such factor, each human being has an instinct to live and not be deprived of life arbitrarily. All human being, instinctively wish to move about freely, express their thoughts, develop fullest human personality, etc. Likewise, there are need for food and shelter. This necessitates a social system, where individual humanness finds expression and their day to day needs are satisfied.

An analysis of various definitions of human rights as discussed suggests that atrocities of any form committed by any organization or force towards the weaker section of the society irrespective of its objectives and justification, is considered to be violation of human rights. The violation of human rights also includes suppression of congenial atmosphere and environment wherein individuals and groups can develop to the fullest.

DEVELOPMENT OF THE IDEA OF HUMAN RIGHTS

Historically speaking, it is found that human rights emerged from the concept of Natural Law. The idea of human rights has been most

popular among the scholars in Western societies. Though various nations and regions of the world have equally supported to the concept of human rights, the credit often goes to the Western thinkers, as they were the first to regard the idea of human rights in the modern literature. The ancient Greeks were known to be the originators of the western philosophical tradition and therefore also of its tradition of human rights. They believed that god exercised power in human society, which was based on law, and this law stands above the obligations imposed by the rulers of the community, which is known as Natural Law.¹¹ "Natural Law" according to *International Encyclopedia of the Social Sciences*, means a law that determines what is right and wrong and that has power or is invalid by nature, inherently hence everywhere and always.¹² Natural law consists of rules founded on the primary instincts of man as modified by his inborn perception of what is right or wrong, it follows that natural rights constitute the primary rights and obligations of men to one another as soon as they begin to live in society, that is, in association with other. Since the rules of natural law are of universal application, natural rights also inhere in every human being, in all ages and in all times.

¹¹. Bajwa, G. S., n. 2, P. 27.

¹². Sills, David, L., (ed.), *Encyclopedia of Social Sciences, Vol.11-12*, (The Macmillan Company and the Free Press, New York, Collier Macmillan Publishers, London, 1972), P. 80.

The Stoic¹³ philosophers in the Hellenistic period¹⁴ formulated the doctrine of natural rights as something which belong to all men at all times: the rights were not particular privileges of citizens of particular cities, but something to which every human being everywhere is entitled by virtue of being human and rational. The stoic argued that nature provided the best guidance for people's behaviour and that people should do their best to devise an ethical and moral system based upon nature. Further, the stoics argued that because nature had given all individuals reasons (intelligence), all individuals should realize that by virtue of being human, they are all brothers and should treat one another with respect. According to stoics both slave owner and slave are equal because they belong to the same species that is human being. Therefore, the concept of having the same rights for all humankind is the beginning of modern theories of human rights.¹⁵

¹³. Stoics belong to the ancient Greek School of Philosophy established by Zeno (335-263 B.C.) another Greek. They attracted many adherents, and flourished for centuries, not only in Greece, but later in Rome.

¹⁴. Hellenistic period begins with the rise of Macedon in 355 BCE and Alexander the Great's conquest. It covers the successor kingdoms established by Alexander's generals after his death, most notably the tolemaic Dynasty in Egypt, and the Seleucid Dynasty in Asia. The period ends with the death of Cleopatra an Mark Anthony in Egypt in 30 BCE, and the assimilation of Ptolemaic Egypt as a Roman province.

¹⁵ . Lewis, James, R., and Skutsh, Carl, *The Human Rights Encyclopedia*, (Sharpe Reference an Imprint of M.E. Sharpe, INC New York, 2001), p. 748.

Stoicism¹⁶ was popular among intellectuals in the Roman Empire, more particularly Marcus Tullius Cicero. In Roman law a clear emphasis is made on the difference between nation law and the law which is actually common to all nations known as *jus gentium*. The expression "*jus gentium*" developed in more recent times into the concept for the rules of law regulating relations between states. On the other hand, the law that the nature has established is *Jus Naturale*. The term "*jus naturale*" has been defined by Cicero, a great Roman Jurist, as one eternal and immutable law which will apply to all people at all times and God is the source of this law.¹⁷ After the fall of the Roman Empire in the fifth century A.D., ethical philosophy languished and overshadowed by discussions of Christian morality and ethics. Further, the concept of natural law was also elaborated through the works of the Christian theologians who advocated a belief in the law of the existence of God.¹⁸ During that time St. Augustine (354-430) advocated a principle that a law, which violated Justice, was in principle invalid. In the Middle Ages St. Thomas Aquinas, reaffirmed the central idea of the stoics that the idea of a law superior to the external authority of the state. According to St.

¹⁶. Stoicism was one of the new philosophical movements of the Hellenistic period. The term Stoicism is derived from the Greek word "Stoa" referring to a colonnade, such as those built outside or inside temples, around dwelling-houses, gymnasia, and market-places. (the name derives from the porch (stoa poikile) in the Agora at Athens decorated with mural paintings, where the members of the School congregated, and their lectures were held.

¹⁷. Thamilmaran, V. T., *Human Rights in Third World Perspective*, (Har-Anand Publications, New Delhi, 1992), p. 29.

¹⁸. United Nations, *Freedom of the Individual Under Law: An Analysis of Article 29 of the UDHR.*, (United Nations New York, 1990), p. 137.

Thomas Aquinas, the state is subject to that higher law which determines the relationship of the individual to the state. Further, he justified by saying that the state is in its service to the individual and that all political authority is derived from the people and laws must be made by the people or their representatives. According to him any order or authority which contravene the natural law, could be disobeyed, for unjust law has no moral validity. Further, this led to the establishment of the doctrine of natural rights and by the end of the middle ages the concept of natural rights of men became well established.¹⁹

The most important event that took place during this period was the development of an English legal tradition, arguing that all men had certain rights vis-à-vis the government. This tradition began with the signing of the *Magna Carta* also known as "the Great Charter of the Liberties" by King John I of England in 1215. The *Magna Carta* stated that Englishmen had certain basic rights which even the King could not violate: "No free man shall be taken or imprisoned, disposed, outlawed, exiled, or damaged without lawful judgement of his peers or by the laws of the land".²⁰ *Magna Carta* is the first official documents in the legislation of human rights but it obtained certain

¹⁹ . Thamilmaran, V.T., n. 17, pp. 27-28.

²⁰ . Holt, J. C., *Magna Carta*, (Cambridge University Press, London, 1965), pp. 1-2.

concessions and freedoms from King John I only for the benefit of feudal lords.

The doctrines of natural rights received further impetus at the hands of the great protagonists of the theory of social contract in the seventeenth and eighteenth centuries, particularly John Locke and Jean Jacques Rousseau. In 1690, an English Philosopher and politician, John Locke (1632-1704), published *Two Treaties on civil government*, in which he advocated rights for human being based on natural law. He envisaged the concept of an original state of nature where no national community or state power had been recognized and where all people have the same rights and obligations in common. Locke viewed this state of nature as providing everyone an entitlement of defending his right to life, freedom and property. This is followed by the organized community which is established by means of a social contract. The primary object of this community is to confirm and protect these individual rights. For this purpose the individual need not abandon more of his original rights in the natural state than necessary to organize the community. Those individual rights, which have not been abandoned, still exist and they are eternal, unforfeitable, and inviolable. He states the case for human natural rights dwelling on the explanation of the relationship between state and society. According to Locke, all people have reason, and this reason should tell every

human being not to harm others as all human beings are created by the same divine force, and therefore, all shared certain basic rights, which are "Life, Liberty, and Estates". Subsequently, such rights were incorporated in the constitution of many Countries of the world. For instance, Article 21 of the Indian Constitution guarantees the most important right that is, the right to life. From the Indian perspective an individuals' right to life as enshrined in the Constitution means that no person shall be deprived of his life and personal liberty except according to the procedure established by law. The right to life was also emphasized by Justice Field of the US Supreme Court who once said:

By the term 'life' something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by amputation of an arm or leg or putting out an eye or the destruction of any other organ of the body through which the soul communicates with the outer world. The deprivation not only of life but of whatever God has given to everyone with life, for its growth and enjoyment, is prohibited by the provision in question if its efficacy be not frittered away by judicial decision.²¹

According to Locke, right to liberty meant that no person should be held against his or her will; a right to estates meant a right

²¹. Thakur. L. K., *Comparative and International Human Rights*, (Authors Press under the auspices of Indian Institute of Human Rights, New Delhi, 2000), p. 305.

for individuals to have property and possessions. Despite the apparent universalism of natural rights, liberties and right to estates, etc., his philosophy provided justification for these rights and freedom only for upper-class males. Women, wage-labourers, menial workers of either sex, whatever their race or color and of course non-Europeans were not entitled to be rightholders. The Lockean formula of right to "life, liberty and property" was largely concerned with protecting the individual person against governmental power and a government which does not protect them is a bad government and may be overthrown or ignored.²² Though Locke's philosophy of social contract is full of contradiction, it was Rousseau who gave a kinetic impetus to the doctrine by emphasizing that the sole justification of the state, which derives its authority from the people, was to guarantee the natural rights of man, of freedom and equality.

The theory of natural rights entered into the realm of constitutional realism with two revolutionary documents, namely, the *American Declaration of Independence* and the *French Declaration of Rights of Man*. The *Bill of Rights* adopted in the State Constitution of Virginia in 1776 was considered to be the first declaration of rights in a written Constitution as the basis and foundation of government. The impress of the doctrine of "natural rights" is to be found in the

²². Lewis, James, R. and Skutsh Carl, n. 15, p. 748.

preamble of this declaration: "All men by nature are equally free and independent and have certain inherent natural rights of which when they enter society, they cannot by any compact derive or divest their posterity".²³ In the same year (1776) on July 4, Thomas Jefferson (1743-1826) wrote in the *American Declaration of Independence*: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights that among these are life, liberty, and the pursuit of happiness".²⁴ Jefferson and his fellow supporters of independence from England felt that American Revolution was justified because King George III had violated their basic human rights. The *American Declaration of Independence* was elaborated by the United States Constitution in its first ten amendments, called the *Bill of Rights* which stated that Americans possessed certain basic rights including the right to speak freely, meet freely, worship as they pleased, bear arms, and be free from unreasonable arrest or searches of their home. The *American Declaration of Independence* (1776) followed by Constitutional amendments or *Bills of Rights* contained fairly exhaustive guarantees for the rights of man; but in practice their application was largely confined to those who constituted what was abbreviated as WASP (White Anglo-Saxon Protestants). As slavery continued to be part of

²³. United Nations, n. 18, p. 139.

²⁴. Waghmare, B.S., *Human Rights: Problems and Prospects*, (Kalinga Publications, New Delhi, 2000), p. 11.

the system, the blacks of African origin were referred to as "Negro" and not as man. It was in 1864 that slavery in America was legally abolished after a bitter civil war which threatened the unity of the United States.²⁵

Inspired by the same ideals, the leaders of the French Revolution formulated the *Declaration of the Rights of Man and the Citizen* (1789), which stated that "Men are born and remain free and equal in rights" and that "the aim of every political association is the preservation of the natural and inalienable rights of man".²⁶ All these expressly acknowledged and recognized the inherent rights of man, the human right. Thus, we find that the early developments in the field of human rights were the result of historic pronouncements of statesmen, philosophers, political leaders and the unceasing struggle for freedom and equality in all parts of the world. But here again, Rights of Man and of the Citizen were meant only for the French citizens. The emphasis on liberty, equality and fraternity was there because until the French Declaration, the so-called "natural rights" were enjoyed only by those who belonged to royal/noble and feudal families and not the common people. French Declaration included the common people of all social status, but here again women and

²⁵. K. P. Saksena, "Human Rights and Wrongs", in *World Focus, Monthly Discussion Journal: Human Rights: Violations Continue*, Vol. 22, No. 1, (Hari Sharan Chhabra, M-13 South Extension -II, New Delhi, January 2001), p. 5

²⁶. United Nations, n. 18, p. 139.

non-Europeans were excluded.²⁷ The theory of natural rights was opposed by many thinkers. Above all others, Jeremy Bentham, the founder of the philosophy of utility argued that the doctrine of natural or human rights was based upon imaginary wishes. According to Bentham, rights came from laws, and people, rather than nature, invented those laws. The doctrine of natural law compels a man, on the dictates of his conscience, to take arms against any law which he may happen to dislike. Bentham asks his opponents to explain what sort of government can survive in face of an attitude of this kind. According to him, it is the principle of utility which promotes the greatest possible number of people that affords the only clue to guide a man.²⁸

During the 19th Century, the emergence of "humanitarian intervention" in cases where a State committed atrocities against its own subjects, contributed to a clearer understanding of human rights. Great Britain, France and Russia against the Ottoman Empire can be used an example regarding humanitarian intervention in 1827 in order to bring to an end the sufferings of the Greek population under Turkish rule. The independence of Greece in 1830, the numerous interventions undertaken by the European powers to end massacres

²⁷. K. P. Saksena, n. 25, p. 5.

²⁸. Thamilmaran, V.T., n. 17, pp. 33-34.

of Christians in Syria (1860), to bring relief to the persecuted population in Crete (1886-8), and in the last quarter of the 19th Century to end the persecution by Turkey to the Christian population in various Balkan countries under Turkish sovereignty²⁹ are some example of humanitarian intervention. The emergence of "humanitarian intervention" further reflected the growing international concern against the wanton denial of justice.

With the establishment of the League of Nations after the First World War, human rights were further developed in the International sphere. The League of Nations, did not mention "Human Rights" explicitly in the Covenant but the Organization was alive to the task of seeking to protect the rights of people in two particular spheres, namely, the minorities and persons inhabiting the colonies of the defeated powers. Besides these, the League was active on the protection of worker's rights and indeed the goal of fair and humane conditions of labour for man and children, which was put into practice through International Labour Organization (ILO) since its inception in 1919. Now it works as a specialized agency in the United Nations. The concept of inalienable human rights in the 20th century owes much to the classic Western definition in the writing of John

²⁹. Nirmal, C.J., (ed.), *Human Rights In India: Historical, Social and Political Perspectives*, (Institute of India and International Studies, Oxford University Press, New Delhi, 1999), p. 5

Locke, Jean Jacques Rousseau, as well as in the proclamations, such as the *English Bill of Rights* (1689), *French Declaration of the rights of Man and the Citizen* (1789) and the *American Bill of Rights* (1791). These were meant to encapsulate mainly the aspirations of the rising Western bourgeoisie in their successful challenge to the established aristocratic political order. The imprints of these seminal statements are clearly reflected on the *Universal Declaration of Human Rights* adopted by the United Nations in 1948.³⁰

UNIVERSALIZATION OF HUMAN RIGHTS

The horrors of two World Wars, which killed millions of people, violated people's instinctive belief in certain human rights, helped renew interest in the philosophy that included human rights. The experience of war and the Nazi-atrocities resulted in the widespread conviction that effective international protection of human rights was one of the essential conditions of international peace and prosperity. It was the catalyst that produced revolutionary development in international law relating to human rights. The statesmen of the great powers realized that vigorous attempt must be made to put an end

³⁰. Srivastava, Shelly, *Human Rights: The Emerging Concepts and Challenges in the Indian Society*, (Centre for the Study of Social Systems School of Social Sciences, JNU, New Delhi 1997), p. 18

the scourge of war and bring lasting peace to the world. The attempts to build up an effective world body to safeguard international peace and security started in 1941 and towards this end, various meetings and conferences were held and the world organization was given a final shape at San Francisco Conference held from April to June 1945. At the San Francisco Conference the Charter for International Organization was drawn up. Finally, the objective of peace and of better conditions of life became major issues with the establishment of an International Organization known as the United Nations Organizations, (UNO) on 24th October 1945.³¹ This International Organization today is called as the United Nations (UN)

The preamble of the UN Charter, which was drawn up to prevent a recurrence of the destruction and suffering caused by the Second World War (1939-1945) shall have as its objectives, "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small..."³² and Article 1, paragraph 3, of the UN Charter establishes the principle that international cooperation is to be sought in solving international problem of an economic, social, cultural or

³¹. Narasimhan, C. V., *The United Nations: An Inside View*, (Vikas Publishing House Pvt. Ltd., New Delhi, 1998), p. 27.

³². Waghmare, B.S., (ed.), n. 24, p. 2.

humanitarian Charter, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.³³ This article advocates that human rights are universal and there can be no discrimination with regard to race, sex, language, or religion. In addition, Article 13 states that the General Assembly shall initiate studies and make recommendations for the purpose of "assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion". It further says that efforts should be made to create awareness on human rights where it is found to be lacking or deprived of their rights. Article 55 of the Charter provides that "the United Nations shall promote universal respect for and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion". As mentioned earlier in Article 1, para 3, about the role of nation states in advocating human rights, this Article clearly emphasized the importance of human rights and that United Nations itself will take up the responsibility in promoting human rights. Whereas Article 56 provides that "all members pledge themselves to take joint and separate action in cooperation with the organization for the achievement of the purposes set forth in Article 55". This Article says

³³. United Nations, *Human Rights and Law Enforcement*, (United Nations Publications, New York, 1997), p. 26.

that all member states should strive towards achieving the objectives laid down in Article 55 on the issues of human rights. Article 62 empowers the Economic and Social Council (ECOSOC) for the purpose of promoting respect for and observance of human rights and fundamental freedoms for all". ECOSOC which is under the authority of General Assembly is the principle organ of the UN with responsibility in matters of international, economic and social cooperation, and promotion of universal respect for, and observance of human rights. Finally, one of the basic objectives of the trusteeship system, as set forth in Article 76, is "To encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the people of the world".³⁴ This article calls for every rational being to strive towards a mutual respect for human rights without any distinction or discrimination whatsoever.

THE ADOPTION OF UNIVERSAL DECLARATION OF HUMAN RIGHTS

The General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights (UDHR) on 10th December 1948 as a common goal for all people, all nations and every individual and every group in society. The UDHR is the

³⁴. Bajwa, G. S., n. 2, pp. 51-52.

foundation of contemporary international human rights law and the touchstone of the global human rights movement. Its preamble states that the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world and also member states have pledged themselves to achieve in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms. It adds that a "common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge".³⁵ In 1950, the General Assembly invited all member States and interested organizations to observe 10th December, as Human Rights Day. The main purpose of the anniversary is to draw attention of the people and remind them about the principles enshrined in the Declaration. This day is celebrated in all Countries of the world as an occasion to recall many serious violations of human rights and to reaffirm the solidarity to fight against such violations.

The Universal Declaration of Human Rights containing 30 articles make up the body of the Declaration and enumerate the rights of all human beings such as freedom from arrest and detention without

³⁵. Borgohain Bani, *Human Rights Social Justice and Political Challenge*, (Kanishka Publishers, Distributors, New Delhi, 1999), p. 28.

trial, freedom of movement, freedom of association, freedom of expression, freedom to participate in the cultural activities of the State, freedom to basic education, freedom to form family and protection of family rights, right to nationality, right to property, right to participate in political life of a country, and freedom to seek asylum in other countries. These articles encompass Civil and Political Rights and Economic, Social and Cultural Rights. This Declaration is a document that aims to protect human rights by serving as human rights proclamation to which, States and individuals are morally obligated to respect. The contemporary statement of human rights is the Universal Declaration of Human Rights, which was adopted by the United Nations General Assembly in 1948, in order to protect and to promote respect for human rights.

In 1966, the United Nations adopted and recommended for ratification of two Covenants on human rights, one setting forth the International Covenant on Civil and Political Rights (ICCPR) and its Optional Protocol and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Together with the Universal Declaration, they are commonly referred to as the International Bill of Human Rights. The three documents namely UDHR, ICCPR and ICESCR deals with human rights and fundamental freedoms. Since the Covenants are international legal instruments, the Member-States of

the United Nations, who are parties to the Covenant must accept all major obligations. They bind themselves to bring national law and practice in line with the provisions of the Covenants. They are also answerable to the international community by reporting regularly on what they have done to ensure that the rights proclaimed in the Covenant are being respected and enjoyed and on the progress they have made towards this end.

The Preamble and articles 1, 3 and 5 of the two Covenants are almost identical in a sense that each Covenant recalls the obligation of all states under the United Nations Charter to promote human rights, as well as reminding the individual of his responsibility, to strive for the promotion and observance of those rights and recognizes that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying Civil and Political Rights, as well as Economic, Social and Cultural Rights.

Both, ICCPR and ICESCR state in Article 1 that the right to self-determination is universal, and call upon States to promote the realization and the respect of that right. Both Covenants state that "all people have the right to self-determination" and add that "by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development". Again

Article 3 reaffirms the equal right of men and women to the enjoyment of all human rights. Article 5, in both cases, provides safeguards against the destruction or undue limitation of any human right or fundamental freedom, and against infringement of a right or freedom or its restrictions to a greater extent than provided in the Covenants. It also prevents States from limiting rights already enjoyed within their territories on the ground that such rights are not recognized, to a lesser extent, in the Covenants. The UDHR has provided a model for many subsequent international and regional human rights Treaties and Conventions, and elements of the UDHR have been incorporated into the national Constitutions of many Countries. Hailed as the "International Magna Carta" by Eleanor Roosevelt, the former American First Lady who chaired the Human Rights Commission that drafted it regarded UDHR as the 20th most important human rights document.³⁶ The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were signed and ratified by India in 1979. Therefore, India agreed to these human rights standards, and to provide each and every citizens with these rights. Although the UDHR has been in existence for over fifty years, yet not everyone enjoys them. In many countries, these rights have been guaranteed by governments in appropriate law, while in other countries, the rights

³⁶. Lewis, James and R., Skutsch, Carl, n. 15, p. 926.

are guaranteed by law, but are ignored in practice. As a result, human rights abuses continue throughout the globe.

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted and opened for signature, ratification and accession by the United Nations' General Assembly Resolution 2200A (XXI) on 16 December 1966. It entered into force on 3rd January 1976 in accordance with Article 27. Article 6 to 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) focuses on issues such as food, education, health and shelter. These basic Human Rights are expressed in such a way that everyone understands it and accepts it as a desirable goal by all Countries. The implementation of law was required in order to make ICESCR a reality for all. It also emphasized that the member-state shall enjoy these rights without any discrimination. The implementation is provided through a system both of state reporting as well as report by United Nations specialized agencies such as the International Labour Organization (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), and the Food and Agriculture Organization (FAO) on the

effects of policies and programmes on economic, social cultural Rights falling within the scope of their activities. The ICESCR entered into force in 1976 when, by ratification or accession, the number of states parties had risen to 35.³⁷

In 1978, ECOSOC established a 15-member sessional working group to assist it in considering the reports submitted by States parties. The working group was composed of representatives of States members of the Council who were also States parties to the Covenant. However, in 1985, the working group was transformed by ECOSOC into a Committee on Economic, Social and Cultural Rights, with 18 members who are experts with recognized competence in the field of human rights serving in their personal capacity. Its members are elected for a term of four years by ECOSOC by secret ballot from a list of persons nominated by the States parties to the International Covenant on Economic, Social and Cultural Rights.

The Committee carries out functions relating to the implementation of the Covenant. It examines reports submitted to it by States parties on the measures adopted by them and the progress made in achieving the observance of the rights recognized in the Covenant, and assists the Economic and Social Council to fulfil its

³⁷. Thamilmaran, V.T., n. 17, p. 58.

supervisory functions relating to the Covenant by making suggestions and recommendations of a general nature based on its consideration of reports submitted by States parties and the specialized agencies concerned. The establishment of the Committee put United Nations to implement the Covenant on lines similar to those which have proved effective with other international human rights treaties: the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and, subsequently, the Convention on the Rights of the Child.

THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

The General Assembly adopted the Covenant on Civil and Political Rights in 1966. This Covenant came into force on 23rd March 1976. Under the Civil and Political Rights there are 27 articles which set out, certainly in much greater detail than the Universal Declaration, a catalogue of rights and freedom. Article 2 makes it obligatory on a state "to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present

Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Articles 6 to 27 of the International Covenant on Civil and Political Rights (ICCPR) focuses on such issues like the right to life, freedom of speech, religion, and voting. Both Covenants trumpet the extension of rights to all persons and prohibit discriminations of any form. The Covenant has established Human Rights Committee which has authority:

- a. to comment on reports to be submitted by the State Parties on the measures they have adopted to comply with their obligations under the Covenant;
- b. to investigate complaints that State Parties are failing to fulfil their obligations; and
- c. under an Optional Protocol to investigate complaints from victims of such failures.³⁸

This Covenant is regarded as a far-reaching instrument on human rights that unequivocally sets standards for the protection and implementation of human rights and fundamental freedoms. Till date, about 120 countries have ratified the ICCPR, a majority of States have stated to take human rights seriously and place them high in the

³⁸. Thamilmaran, V. T., n. 17, pp. 61-62

agenda; and the 1993 World Congress in Vienna reflected deep concerns of the International community for human rights and highlighted their Universality yet the gross violations against human rights and Fundamental freedom of individuals are still being committed all over the world particularly in Third World Countries.

THE OPTIONAL PROTOCOL

The Optional Protocol is an adjunct instrument to the Covenant, which entered into force in 1976 at the same time with the Covenant. The Optional Protocol enables the Human Rights Committee established under the Covenant to receive and consider communications from individual claiming to be victims of violations of any of the rights set forth in the Covenant. In practice, the Committee also accepts communications from the individual's legal representatives or from close family members, if the family is not in the position to communicate personally. The committee considers the communication from an individual only after the matter has been placed before the national courts or competent administrative authorities. The state against who complain is made must be a party to both the Covenant on Civil and Political Rights and the Optional

Protocol.³⁹ After a communication has been declared admissible, the committee in closed session examines the communications and discusses the merits of the case. When the Committee has finished considering the individual's complaint and the state party's reply, it can make its views known whether or not the rights in the Covenant have been respected.

To sum up, it may be recalled again that Article 1 of the Universal Declaration of Human Rights lays down the philosophy upon which the declarations is based that, "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". Article 2 sets out the basic principle of equality and non-discrimination as regard the enjoyment of human rights and fundamental freedom. Article 3 to 21 deals with the Civil and Political Rights and Articles 22 to 27 deals with the Economic, Social, and Cultural Rights. The concluding Articles 28 to 30 recognize that everyone is entitled to a social and international order in which all human rights and fundamental freedoms can be fully realized and stress the duties and responsibilities which each individual owes to the community.

³⁹. Thamilmaran, V. T., n. 17, p. 165.

The adoption of two Covenants and Optional Protocol was quite an important achievement for United Nations that instill some enthusiasm about the human rights and in that enthusiasm the United Nations declared 1968 as a year of Human Rights. The major event of that year was the proclamation of Tehran, made at the International Conference on Human Rights, and reaffirmed faith in the principles of the Universal Declaration and other international instruments. According to the proclamation, the Universal Declaration of Human Rights constitutes an obligation for the members of the international community, and states, a common understanding of the people of the world concerning inalienable and inviolable rights. Therefore, it urged all peoples and governments to dedicate themselves to the protection and promotion of internationally accepted principles of Human Rights.

HUMAN RIGHTS IN INDIA

In India references have been found on the basic human rights in recorded history and ancient scriptures though the exact term "Human Rights" was not used. There are many Indian thinkers who opined that the history of human rights and fundamental freedoms did not begin with the *Magna Carta* signed by King John of England in 1215 nor did the world come to know of them for the first time

through the endeavors of Locke, Rousseau and Jefferson or the proclamation of the Declaration of Independence by the representatives of the Thirteen North American Colonies in 1776, and the adoption of the Declaration of the Rights of Man and of the Citizen by the National Assembly of France in 1789. Therefore, it may not be proper to say that the idea of human rights was started in the West. No doubt, the Western thinkers were the first to contemplate the idea and used the term "human rights" in modern forms. Indeed, human rights jurisprudence has always occupied a place of prime importance in India's rich legacy of historical tradition and culture which is evident in the prevalence of different cultures, traditions, faiths in India. The fact is that what the West has discovered about human rights, India had embedded the same in its deep-rooted traditions since time immemorial.

During the course of British rule the philosophy of human rights in the modern sense took place in India. The national struggle for freedom was an attempt to secure basic human rights for all the people which resulted in the incorporation of human rights in the Constitution of India (January 1950). The historical account of ancient India shows that human rights were as much visible in the ancient Hindu and Islamic civilizations as in the European Christian civilization. During the Ancient period, lives of the people were not regulated by

the law of the State but by customary rules known as *Dharma*. The term *Dharma* means to uphold, supports and nourishes the society.⁴⁰ *Dharma* is believed to be a theory of higher moral law which is above positive law embodying certain values of universal validity like *Dharma* (righteousness), *Artha* (wealth), *Kama* (desires) and *Moksha* (salvation), with a view to establish a harmonious social order by maintaining a balance between inner and outer, spiritual and material aspects of life. They involve a system of legal theory which was based on higher values and ideals, that is, on their conception of *Dharma*, which governed in an integrative manner all civil, religious and other actions of men in society be it King or his subject. It maintains stability of the social order and promotes well-being and progress of humankind.⁴¹ Thus, *Dharma* asserts to oneself good conscious and conscientious principles that spring from and aims at increasing one, happiness and well-being. The *Vedas*⁴² and *Puranas* contain basic principles of *Dharma*, *Artha*, *Kama* and *Moksha*. *Dharma* was practically dominating other aspects of Indian life in the past. It influenced substantially social, economic and political life and seems to have moulded and wielded into a social order which was a unified configuration of ideas, ideals and practices that are mostly

⁴⁰. Singh, Gurcharan, "Human Rights of women in India", in Sehgal, B. P. Singh, (ed.), *Human Rights In India: Problem and Perspectives*, (Deep and Deep Publications, New Delhi, 1995), pp. 137-38.

⁴¹. Sharma, Gokulesh., n. 3, p. 59.

⁴². The metrical religious works of the ancient hindus, offering guidance, inter alia, on religious and social obligations. These constituted the base on which was built the Hindu Law.

ethical as well as spiritual. The fundamental principles propounded in the *Vedas* aim at securing happiness to all, which constitute *Dharma*. These were all basic human rights found in the *Smritis* and *Puranas* in various rules and regulations, customs and usages. Anything that goes against these principles was rejected as invalid. The principles of *Dharma* show that human rights are valuable and eternal. These are identified and recognized in Indian civilization from time immemorial as the basic conditions for peaceful and progressive life. These are the values included in the human rights which are also found in the Universal Declaration of Human Rights and also in various Fundamental Rights contained in part III of the Constitution of India. It is *Dharma* which has impelled men since vedic ages to strive for "righteousness". The philosophy expounded by the saints of the vedic time is nothing but a reinstatement of Natural Law with religious fervour to enthuse people towards the path of *Dharma*, enlightenment and unity. It is this higher law of morality, justice and righteousness, which has been continuously guiding and directing Hindu thought, spirit and action from time immemorial and would continue to mould for the realization of *Dharma* in a timeless fashion.

The various feudal practices prevailing during pre-independence was almost similar to slavery. In some of the Princely States, labourers were not allowed to leave their area of work in

search of new and better prospects. They were tied down for life. Involuntary servitude and child labour were rampant and the women were the silent sufferers. Landlordism was at its zenith. Untouchability flourished without any qualms. The majority-minority tussle, resulting in the vivisection of the country, had left its imprint on the polity and society.⁴³ This was the context in which the founding fathers of the Indian Constitution set on their task of drawing up an elaborate scheme of rights which was incorporated in the Fundamental Rights and the Directive Principles of State Policy covering almost the entire principles of Universal Declaration of Human Rights. The first set of rights enunciated in Article 2 to 21 of the declaration are incorporated under the Fundamental Rights Articles 12 to 35 of the Constitution and the second set of rights enunciated in Articles 22 to 28 of the Declaration are incorporated under Directive Principles, Articles 36 to 51 of the Constitution.⁴⁴ It further led to the realization that human rights have a significant place in the national context.

The Fundamental Rights adopted by the Constitution of India include Right to Equality and Prohibition of Discrimination on grounds

⁴³. Bhat, S. L., *India and the International Covenants on Human Rights*, (M.Phil Dissertation School of International Studies, Jawaharlal Nehru University, New Delhi, 1974), p. 9.

⁴⁴. Varandani, Gursharan, "Human Rights: Constitutional Mandate and the worker" in, Sehgal, B.P. Singh, (ed.), *Human Rights In India: Problem and Perspectives*, (Deep and Deep Publications, New Delhi, 1995), p. 301.

of caste, religion, sex, birth, etc., the Right to Liberty, the Right of Speech and Expression, the Freedom of Association, Religious Freedom, Protection against double prosecution and conviction for the same offence, and abolition of untouchability. It may be noted here that the Constituent Assembly while drafting and shaping the Constitution of India seemed to have incorporated the principles of Universal Declaration of Human Rights. Thus, final shape was given to the Indian Constitution on 26th November 1949 and it came into force on 26th January 1950.

The Preamble of the Constitution declared India to be a Sovereign, Socialist, Secular, Democratic, Republic. The word Democratic denotes that the Government gets its authority from the will of the people. The people elect the government, a body comprising the representatives of the people. Thus the power to exercise legal as well as political vests in the people. It gives a feeling that they are all equal irrespective of their race, religion, language, sex and culture. The Constitution of India, in order to achieve the stated objectives, has given a special place to the Chapter on Fundamental Rights in Part III and Directive Principles of State Policy in Part IV of the Constitution.⁴⁵ Fundamental Rights were deemed essential to protect the rights and liberties of the people against the

⁴⁵. Bajwa, G. S., n. 2, p. 183.

encroachment of the power delegated by them to their Government. They are limitations upon all the powers of the Government, legislature as well as executive and they are essential for the preservation of public and the private rights. Therefore, the Fundamental Rights guarantee certain rights to the individuals, whereas, the Directive Principles gives direction to the state to provide some other rights to its people in the specified matters. They together constitute the conscience of the Constitution. But, these rights guaranteed and provided in the Constitution are required to be in conformity with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. In 1979, India adopted the International Covenant on Civil and Political Rights (1966). Hence, it become the duty of India to provide these rights to all its citizens in consonance with the provisions enshrined in these international instruments.

The two Covenants of Human Rights namely Civil and Political Rights and Economic, Social and Cultural Rights are to some extent reflected in the Constitution of India. The realization of Civil and Political Rights was considered as a goal within immediate reach while the Economic, Social and Cultural Rights were regarded as ideals for that country to strive.

INDIAN CONSTITUTION AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

Table 1.1⁴⁶ shows a close similarity of the United Nations Universal Declaration of Human Rights 1948 with the Fundamental Rights of Indian Constitution.

⁴⁶ . Chitkara, M.G., *Human Rights: Commitment and Betrayal*, (APH Publishing Corporation, New Delhi, 1996), pp. 161-64.

Fundamental Rights under the Indian Constitution	United Nations Declaration of Human Rights
1. Article 14 The state shall not deny person equality before the law of the equal protection of the law.	1. Article 7(1) All are equal before the law and are entitled without any discrimination to equal protection of the law.
2. Article 15 (1) The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.	2. Article (2) All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.
3. Article 16 (1) There shall be equality of opportunity for all citizens in matters relating to employment.	3. Article 21 (2) everyone has the right of equal access to public service in his country
4. Article 19 (1) All citizens shall have the right to freedom of speech and expression	4. Article 19 Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.
5. Article 19 (1) (b) Right to assemble peacefully without arms	5. Article 20 (1) Everyone has the right to freedom of peaceful assembly and association.
6. Article 19 (1) (c) Right to form unions and associations	6. Article 23 (4) Everyone has the right to form and to join trade unions for the protection of his interests.
7. Article 19 (1) (d) right to reside and settle in any part of the territory of India	7. Article 13 (1) Everyone has the right to freedom of movement and residence within the borders of each state.
8. Article 19 (1) (f) Right to acquire, hold and dispose of property.	8. Article 17 (1) Everyone has the right to own property alone as well as in association with others
9. Article 20 (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence not be subjected to a penalty greater than that	9. Article 11 (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at time when it was committed. Nor shall a heavier

which might have been inflicted under the law in force at the time of the commission of the offence, i.e. no subjection to ex-post facto laws.	penalty be imposed than the one that was applicable at the time the penal offence was committed.
10. Article 21 No person shall be deprived of his life and personal liberty except according to the procedure established by law.	10. Article 9 and 13 (2) No one shall be subjected to arbitrary arrest, detention or exile. Everyone has the right to leave any country, including his own, and to return to his country.
11. Article 23 Traffic in human beings and beggary and other similar forms of forced labour are prohibited.	11. Article 4 No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.
12. Article 25 (1) All persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.	12. Article 18 Everyone has the right to freedom of thought, conscience and religion, this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.
13. Article 29 (1) Citizens residing in the territory of India having distinct language script or culture of their own shall have the right to conserve the same.	13. Article 22 Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each state, of the economic, social and the cultural rights indispensable for his dignity and the free development of his personality.
14. Article 30 (1) All minorities whether based on religion or language, shall have the right to establish and administer educational institutions of their own choice.	14. Article 26 (3) Parents have the prior right to choose the kind of education that shall be given to their children
15. Article 31 (1) No one shall be deprived of his property save by	15. Article 17 (2) No one shall be arbitrarily deprived of his property.

authority of law. Proposed to be deleted as fundamental right and just in the category of a constitutional right.	
16. Article 32 The right to move Supreme Court by appropriate proceedings for the enforcement of the right conferred by this part is guaranteed	16. Article 8 Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law.

From the above table, it can be pointed out that India incorporated most of the provisions of the UDHR in its Constitution so as to promote and guarantee Human Rights and Fundamental freedoms without distinction. Besides India, there are several other countries which has been influenced by the Universal Declaration of Human Rights as explicit references to it are found in the Constitutions of countries like France, Germany, Libya, Indonesia, El Salvador, Costa Rica, Syria, Mauritania and Sudan. Legislatures of Paraguay, Canada, Guatemala, Argentina, Bolivia and Panama⁴⁷ have also enacted statutes corroborating the Universal Declaration.

The United Nations sets an international standard for nations and people through the Universal Declaration of Human Rights but it lacks the legal force of an International Treaty. However, countries that have ratified the Covenants are obliged to implement the

⁴⁷. Bhat, S. L., n. 43, p. 9

provisions on human rights. Although India is a signatory to the Covenant yet the existence of certain laws and their implementation complying with the provisions of the UDHR are yet to be fully found for which India has been subjected to several national and international criticisms. The Police Act, 1949, Armed Forces (Special Powers) Act, 1958, Disturbed Areas (Special Courts) Act, 1976, Arms Act, 1959, besides these, Maintenance of Internal Security Act 1971, Essential Services Maintenance Act 1981, Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974, and National Security Act, 1980⁴⁸ are some of the repressive laws of the Government, which have been criticized for violating the fundamental rights and freedom of the people. The Armed Forces Special Powers Act (1958) enforced in the State of Nagaland as a means to suppress Naga Movement for Freedom and its militancy. The enforcement of the act and its uses by the Indian armed forces and paramilitary forces are alleged to have resulted human rights violations in the State. The implementation and uses of the Act and the consequences thereof particularly in Nagaland will be the main focus of the study in the following Chapters.

⁴⁸. Palia, Arun, Kumar, n. 7, p. 30.

Chapter – II

Naga Movement and Enforcement of Armed Forces Special Powers

Act 1958

CHAPTER - II

NAGA MOVEMENT AND ENFORCEMENT OF ARMED FORCES SPECIAL POWERS ACT 1958

Nagaland, the sixteenth state of the Indian Union is bounded by Arunachal Pradesh on the north, Assam on the west, Manipur on the south and Burma on the east. The state has a total geographical area of 16,579 square kilometers which is divided into eight districts namely, Tuensang (population, 414801), Kohima (State Capital, 314366), Dimapur (308382), Mon (259604), Mokokchung (227230), Wokha (161098), Zunheboto (154909) and Phek (148246). The total population of Nagaland according to 2001 Census is 19, 88,636 persons.¹ The bulk of the population comprises of the Nagas belonging to different tribes like, Ao, Lotha, Angami, Sema, Chang, Chakhesang, Khamniungam, Konyak, Phom, Pochuri, Rengma, Sangtam, Yimchunger and Zeliang.² The Nagas belong to the Mongolian race and they are of the Tibeto-Burman families with each tribe having a distinct dialect from one another.

¹. Basic Facts of Nagaland, 2002, (Published by Directorate of Information and Public Relations, Nagaland, Kohima.

². Mao, Ashikho Dailu, *Nagas: Problems and Politics*, (Ashish Publishing House, New Delhi, 1992), pp. 7-8

The Nagas were a people who, though unaware of the democratic principles of the Western civilizations, lived and governed by democratic principles and practices since time immemorial.³ The Nagas lived in villages and each village was a democratic unit of the tribes they represented. Each village headed by the Council of Elders was represented by each clan they existed in the village. Each village was self-sufficient in itself. Another feature of the Naga leaders is that they exercised powers not according to the hereditary system as in the monarchic and feudal system but were elected to leadership on the basis of their merit and efficiency.

India's North-East has attracted the attention from a wide spectrum of people both within as well as outside the country. The region has been a hot bed of political activity right from the time India got its Independence. The indigenous tribal group who occupy much of the region such as the Nagas had always been fighting to maintain their political identity. The Naga National Movement based on ethnic identity aimed to comprise an 'independent nation-state' for themselves, that is, for the several ethnically related tribal groups which had come together and recognized themselves as 'Nagas' or 'Naga'. From time immemorial the Nagas had remained isolated from their neighbouring people and even from one village to another.

³. Nuh, V. K., *The Naga Chronicle*, (Regency Publications New Delhi, 2002), pp. 15-16.

During the rule of Ahoms, they had periodical clashes with the rulers of Assam and their attitude was a curious mixture of antagonism and cooperation. The British too administered them loosely and there was no interference in the local administration.

EMERGENCE OF NAGA MOVEMENT

The history of the Naga Consciousness⁴ can be traced back to the early part of the 20th century when the first organization known as the Naga Club was formed in 1918 in Kohima under the official patronage of the British administrators. During the First World War, the British Government sent nearly 2000 Nagas to serve as the Labour Corps in the French Front in 1917.⁵ It was during this period the Nagas for the first time had the exposure outside. This exposure and experience made the Naga soldiers who were on this assignment to realize their own ethnic, linguistic, social and cultural uniqueness leading them to form the Naga Club in 1918 at Kohima, with the joint efforts of Government officials, village headmen and *Dobashis* (interpreter) after returning from the war. The objectives of the Naga Club were primarily to formulate and thereafter consolidate a distinct Naga nationality, to develop fraternal feelings of the various

⁴. Vashum, R., *Nagas Right To Self Determination*, (Mittal Publications, New Delhi, 2000), p. 65.

⁵. Aosenba, *Ethnicity in International Politics: Naga Problems across the International Border*, (Ph.D. Thesis Centre for International Politics, Organisational and Disarmament, School of International Studies, Jawaharlal Nehru University, New Delhi, 1998), p. 76

inhabited tribal areas, to look after the welfare and unity amongst the various tribes of Naga areas.

In 1927 the British Government set up a Commission known as the Simon Commission to study the administrative working system in India and to make recommendations for its improvement. This Commission under the Chairmanship of Sir John Simon along with Mr. Clement Atlee as one of the member visited Kohima on 26th March 1928. During their visit to Kohima they met the Naga tribal leaders at the local ground asking them whether they would like to join the New Reformed Scheme of India. The Naga tribal leaders who were also the members of the Naga Club in their reply to the visiting British team refused to join the New Reformed Scheme but the Nagas preferred to be under the British rule as it will safeguard their right and freedom against all encroachments from outside. On 10th January 1929, the members of Naga Club submitted a Memorandum stating that the Nagas should be placed directly under the British Government and at the same time should be kept excluded from the proposed Reformed Scheme of India. Also included in the Memorandum was the desire of the Nagas to be left alone as in the past.⁶ The result of the Memorandum was the change in the position of the Naga Hills

⁶. Vashum, R., n. 4, p. 65.

Districts which was declared as an "Excluded Area"⁷ within the Province of India from 3rd March 1936 and directed the Governor of Assam Province to act as more or less caretaker of the Excluded Areas of the inhabited various Naga tribes areas, and therefore to look after their affairs with effect from the 1st April 1937.

During the Second World War, the Nagas were said to have participated in both the warring forces and the war cemetery in Kohima stands as a witness even today of their participation during the War. C. R. Pawsey, the then Deputy Commissioner of the Naga Hills formed a body known as Naga Hills District Tribal Council in 1945 in order to unite all the Naga tribes and to take up post-war reconstruction work to repair the damages caused during the Second World War. In February 1946, at a meeting in Wokha, the Naga Hills District Tribal Council was transformed into a political organization known as 'Naga National Council' (NNC) with Mr. Mayang Nokcha, as its President. Initially, the NNC was limited to fostering the welfare and social aspiration of the Nagas and to give active support to the British Officers with regard to the overall development of the Nagas particularly in the fields of economic, political, social, and cultural. But it soon developed into a political party and a pressure group whose

⁷. Sema Hokishe, *Emergence of Nagaland: Socio-Economic, Political Transformation and the Future*, (Vikas Publishing House Pvt. Ltd, New Delhi, 1986), p. 75

political activity was to achieve Naga 'Independence' from the Indian Government. It is apparent from the fact that when the Cabinet Mission came to India to prepare ground for granting Independence to India, the Naga National Council submitted a four-point Memorandum on 19th June 1946, which contained the following:⁸

1. NNC stands for the solidarity of Naga tribes including those in the unadministered areas.
2. This Council strongly protests against the grouping of Assam with Bengal;
3. The Naga Hills should be included in an autonomous Assam in free India with local autonomy and due safeguards for the interest of the Nagas.
4. The Naga tribes should have a separate electorate.

The Cabinet Mission could not take any decision as demanded by the NNC for the future course of the Nagas. Another Memorandum was submitted on 20th February 1947 to both His Majesty and the Government of India wherein it stated that the Naga people were independent and their country was not subjugated by the Ahom Kings of the Assam Valley since Nagaland never formed a part of

⁸. Mao, Dr. Ashikho Daili, n. 2, p. 34.

Assam or India at anytime before the advent of the British.⁹ Further, it was argued by NNC through the Memorandum that the Indian Constitution was unsuitable and unacceptable as the same was drawn up by the people who had no knowledge of the Naga Hills and the Naga people. They felt that "thrown among 40 crores of Indians, the one million Nagas with their unique system of life would be wiped out of existence".¹⁰ As a result, the NNC demanded to His Majesty for setting up of an Interim Government with India as the Guardian Power for a period of ten years at the end of which the Nagas should be left to choose their own Government.

Again, NNC submitted another Memorandum on 19th May 1947, clarifying that the ten years interim government should be Government of the Naga people, with full powers of legislative, executive and judicial except on defense. After a series of meetings and hectic discussions it ended up with the Nine-Point Agreement known as Hydari Agreement which was signed between Sir Akbar Hydari, the then Governor of Assam and the leaders of the NNC in June 1947. The preamble of the agreement recommended that "the right of the Nagas to develop themselves according to their freely

⁹. Nuh, V. K., n. 3, p. 64.

¹⁰. Angami, M. Khrienuo, *Nagaland Peoples Council: A Study of its Role in The State Politics*, (M. Phil Dissertation, Department of Political Science, N.E.H.U. Shillong, 1990), p. 22

expressed wishes is recognized".¹¹ In other words, it was equal to ranging from prevalent tribal laws to the ownership of land and taxation. But when the question of interpreting the Ninth Point Agreement came up, trouble started as there was a misunderstanding between the Nagas and the Government of India due to different line of interpretations. The clause 9 of the Article of the Ninth-Point Agreement says:

The Government of Assam as the agent of the Government of the Indian union will have a special responsibility for a period of ten years to ensure the due observance of this agreement; and at the end of period the Naga National Council be asked whether they require the above agreement to be extended for a further period, or a new agreement regarding the future of the Naga people would be arrived at.¹²

According to the interpretation of the Nagas, after ten years, they would have their right to self-determination.¹³ On the other hand the Government of India asserted that Nagaland would remain a protected State of India even after the expiry of ten years. Therefore, this Article became controversial as it failed to bring any clear understanding and solution between the two parties. Further, the controversy resulted in splitting NNC into moderates and the extremists

¹¹. Horam, M., *Naga Insurgency- The Last Thirty Years*, (Cosmo Publications, New Delhi, 1988), p. 42.

¹². Singh, Prakash, *Nagaland*, (National Book Trust, New Delhi, 1972.), p. 89

¹³. Horam, M., n. 11, p. 43

with A. Z. Phizo as the leader of the former group. The split was mainly due to two different lines of understanding and interpretations of the clause 9 of the agreement between the Nagas and the Government of India. The extremist group of the NNC started opposing strongly the interpretation of the Government of India in not conceding the right to self-determination of the Nagas. This was said to have been the beginning of the NNC's strong opposition to the Government of India and struggle against the Indian Army deployed in Nagaland. However, in spite of their opposition, negotiation was brought to a close as they were in minority. Thus, in the process of refusing to accept the Hydari Agreement, a delegation consisting of six members of the minority group including Phizo met Mahatma Gandhi at the Bhangi Colony in New Delhi on 19th July 1947, and demanded that the Nagas be left outside the India Union when the British withdrew from India. Then Mahatma Gandhi told the delegates the following:

Nagas have every right to be independent. We did not want to live under the domination of the British and they are now leaving us. I want you to feel that India is yours. I feel that the Naga Hills are mine just as much as they are yours. But if you say that they are mine, the matter must stop there. I believe in the brotherhood of man, but I do not believe in force or forced unions. If you do not wish to join the union of India, nobody will force you to do that.¹⁴

¹⁴. Nirmal, Nibedon., *Nagaland The Night Of The Guerrillas*, (Lancers Publications, New Delhi, 1983), p. 33.

However, when the Naga delegates pointed out that Sir Akbar Hydari was threatening to do exactly that, Gandhi exclaimed: "Sir Akbar is wrong. I will ask them to shoot me first before one Naga is shot".¹⁵ On returning to Nagaland and inspired by the words of Mahatma Gandhi, this group led by Phizo declared the Independence of Nagaland on 14 August 1947. But unfortunately Gandhi died before his promises made to the Naga delegation led by Phizo could be fulfilled since the Indian Constituent Assembly refused to consider Gandhi's promise. When A. Z. Phizo became the President of NNC in December 1950 the Naga Movement for self- determination became more consolidated, defined and stringent. No sooner, he was recognized as the leader of the Naga National Movement by the Naga people.

Since no concrete decision was made as regard to the future of the Nagas the NNC conducted a plebiscite in 1951 under the leadership of A. Z. Phizo. It was reported that 99.9 percent of the Nagas voted for the Independence of Nagaland.¹⁶ However, the Government of India refused to accept the outcome of the plebiscite.¹⁷ After the refusal of the Government of India to accept the outcome of this

¹⁵. Nirmal, Nibedon, n. 14, p. 33.

¹⁶. Mullick, B. N., *My Years with Nehru: 1948-1964*, (Allied Publishers, Bombay, 1972), p. 302.

¹⁷. For details see, Singh, Prakash, n. 12, p. 94., Singh, Chandrika, *Political Evolution of Nagaland*, (Lancers Publishers New Delhi, 1981), p. 48.

plebiscite, a non-co-operation movement was led by the NNC and the Nagas boycotted the elections to the District Council, Assam State Legislative Assembly and Parliament in 1952, though all necessary arrangements were made by the Government of India for holding the general elections. Following this development, Indian Government with the objective of bringing peace and to maintain law and order situation started deploying security personnel in Nagaland from 1955.

On 11th March 1952, A. Z. Phizo, NNC President met the Prime Minister, Jawaharlal Nehru, in New Delhi which was reported to have been a stormy meeting, as the issue of Naga Independence and the verdict of the Naga plebiscite was raised, Nehru exploded with anger and banging his fist on the table and said; "whether heaven falls or India goes into pieces and blood runs red in the country, whether I am here or anyone else comes, Nagas will not be allowed to be independent".¹⁸ Seeing the attitude of Nehru, the Nagas were depressed as there was no sympathy left from the Government of India towards the Naga's demand for independence. For the NNC all efforts and pleas to the departing British Government did not create any positive outcome. All their pleas to the Indian leaders also did not materialize. And even the verdict of their plebiscite stood nullified by the Government of India. The ignorance to the pleas of the NNC by the

¹⁸. Nibedon, Nirmal, n. 14, p. 36.

Indian leaders made it difficult to resolve the Naga issue which only resulted in confrontation. However, on hearing that both the Prime Ministers of India and Burma would visit Kohima on 30th March 1953, one last appeal for a negotiated settlement was undertaken by the Naga leaders. They thought that since the appeal to a single Prime Minister had failed, an appeal to both Prime Ministers of the newly Independent Countries (India and Burma) who were taking a joint tour to Nagaland might succeed. During the joint visit of the Indian Prime Minister, Jawaharlal Nehru and his Burmese counterpart U. Nu to the Capital of Nagaland, accompanied by Mrs. Indira Gandhi and B. N. Mullick on 30th March 1953, the NNC who were eagerly awaiting to submit a memorandum and to speak openly in front of the Naga public with Nehru on the desire of the Nagas for independence could not be materialized when the then Deputy Commissioner of the Naga Hills, Barkokati, turned down the NNC's request. The action of the Deputy Commissioner resulted in protest by the Naga leaders who said, "If the Prime Minister would not hear us then we would not hear him either".¹⁹ There, thousands of Nagas who came, staged a walk-out from the public meeting when Nehru was about to make his address, excepting a few non-Naga government servants. It was a great shock for both the Prime Ministers especially for Nehru as he has never encountered such an incident. This humiliating experience by Nehru, led to the issue of

¹⁹. Horam, M., n. 11, p. 51.

arrest warrants against eight NNC leaders.²⁰ Prior to the enforcement of the Armed Forces Special Powers Act 1958, two Acts namely the Assam Maintenance of Public Order (Autonomous Districts) Act 1953 was enacted in order to deal with the "law and order situation". Thereupon, the Assam Disturbed Areas Act 1955 was introduced to enable the Assam Armed Police and Assam Rifles to execute their task openly without legal constraints.²¹ This action angered the Naga leaders, who under the leadership of A. Z. Phizo with the support of Thungti Chang (Chief of the Chang tribe) led them to take an extreme step when on 18th September 1954 the first so called Hongkin²² or 'People Sovereign Republic of Nagaland' was formed in Tuensang area.²³ Thereafter, Assam Rifles launched several large scale armed operations in Tuensang Frontier Areas by burning down villages, churches, granaries and even standing crops in an attempt to bring the Nagas to submission besides their normal duty of maintaining law and order. An armed forces wing of the Hongkin Government²⁴ was formed to counter and confront the Assam Rifles. This armed wing of the Hongkin Government attacked police outpost, looted arms and kidnapped personnel belonging to the Assam Rifles.

²⁰. Iralu, D. Kaka, *Nagaland and India: the Blood and the Tears*, (published by the author, 2000), p. 82.

²¹. Luithui, Luingam and Nandita, Haksar, *Nagaland File: A Question of Human Rights*, (Lancer International, New Delhi, 1984), p. 26.

²². Hongkin means get out in Chang tribal language implying to force the government of India out of the Naga hills

²³. Aosenba, *The Naga: The prospect of Peace and Armed Conflict*, (Regency Publications, New Delhi, 2001), p. 50.

²⁴. Singh, Chandrika, n. 17, p. 51.

On 24th October 1954, an incident took place in Tuensang Frontier Divisions where a Government *dak* runner, the son of a Pangsha warrior, was killed by Yimpang villagers. Following the incident on 15th November 1954 Pangsha villagers retaliated with the help of the Indian Government and killed 60 men, women and children including three NNC leaders. The Government of India through a report presented in the Parliament by Prime Minister Jawaharlal Nehru denied any involvement.²⁵

Another inhumane episode took place was on 27th November 1954 when a battalion of Indian armed forces bombarded the Chingmei Village causing unknown deaths.²⁶ All these were carried out simply because of mere suspicion of the presence of NNC activists. By the beginning of 1955, lawlessness and violence had flared up in Tuensang Frontier Areas. On 25th March 1955 fighting between the Free Naga Government forces and the Indian army started in the Tuensang division. About sixty houses and some granaries were also burnt down by the Naga army.²⁷ The Government of India was unable to contain the force of Naga resistance particularly in the two areas of Tuensang and Mokokchung which were subsequently declared as 'disturbed

²⁵. Aosenba, n. 23, p. 51.

²⁶. *Ibid*, p. 51.

²⁷. Roychowdhury, Profulla, *The North East: Roots of Insurgency*, (Firma Klm Private Limited Calcutta, 1986), p. 140.

areas'.²⁸ During the period from 1953 to 1955 it was reported that the activity of the Naga Movement resulted in lawlessness, violence and created a fear psychosis in the minds of people living in the Naga Hills. By 1955 over 10,000 Nagas had been beaten up and tortured, 1562 women were beaten up and assaulted, out of whom 709 girls were below 20 years of age. 515 granaries were destroyed or burned down, 1811 men were maimed through torture, 482 houses had been looted by Indian soldiers; 60 houses belonging to Naga leaders were pulled down and many schools were occupied by the Indian armed forces; 46 villages, containing 10, 791 houses had been attacked as many as 223 times, and Rs 86, 517.6 0 was been imposed as "fines".²⁹

As lawlessness was spreading throughout the Naga Hills, deteriorating the situation, one section of the NNC considered as the moderates led by Sakhrie (Phizos' cousin), and Jasokie came forward to condemn the violence and terrorism. This group felt the need for a peaceful solution to the Naga problem and promised to use peaceful methods for redressing their grievances. They even tried to reorganize the NNC and take it away from Phizo's leadership. As a result, towards the end of 1955, there was a split between the moderates and the extremists as both differ in their approaches. While the moderate's

²⁸. Aosenba, n. 23, p. 52.

²⁹. Nuh, V. K., n. 3, p. 148.

approach to the Naga problem was through peaceful means, the approach of the extremist on the other hand was through armed struggle. Further, Phizo and his followers launched their activities making it difficult for the Assam Rifles to control them. According to some reports, Sakhrie was kidnapped from his house, and murdered brutally on 18th January 1956 with a view to striking terror in the minds of the peace seekers and those supporting the Indian Government.³⁰ The Indian Government could no longer tolerate the activities of Phizo and his followers and hence, instructed the Assam Government to take stern action in order to curb the hostile activities. Subsequently, this development led the Government of India to declare the entire Naga Hills as 'disturbed area' on 31st January 1956.³¹ In retaliation, Phizo and his followers further stepped up their rebel activities against the Indian army.

It was reported, that the Indian army terrorized the people through cruel and inhuman methods. One such means was to display the bullet-riddled corpses of Nagas to convey that any Naga who refused to accept the authority of the Indian army would face the same fate. At Kohima on 18th to 21st March 1956, the dead bodies of Thepfucha, Purhielie and Lhouphezhu were displayed in the market for

³⁰. Singh, Chandrika, n. 17, p. 52.

³¹. Roychowdhury, Profulla, n. 27, p. 140.

many days³² without any respect to the dead, depriving the family members to pay their last respect to the departed soul. On 22nd March 1956 NNC set up the Federal Government of Nagaland at Phensinyu Village in the Rengma area under Kohima District, and a Constitution was drafted which declared Nagaland as a People's Sovereign Republic.³³ A separate military wing known as "Naga Home-Guard" later named as Naga army³⁴ was formed to drive out the Indian armed forces from Nagaland. The first clash that took place between the Naga Home Guards and the Indian Army was on 24th March 1956.³⁵ However, India brought in more than a hundred thousands troops in re-enforcement and occupied Nagaland again.

The Assam Police and the Assam Rifles operating under these Acts were said to have unleashed a reign of terror and intimidation on the general public. Various reports said that military hardware and rations were transported using forced labour and anyone who refused to comply with, are made to pay heavy fines. So much so that by the end of 1956 the fines collected amounted to Rs. 86,517.60 p., (Rupees

³². Luithui, Luingam and Nandita, Haksar, n. 21, p. 27.

³³. For details see, Singh, Chandrika, n. 17, p. 52., Nibedon, Nirmal, n. 14., p. 72., Mao, Dr. Ashikho Dailu, n. 2., p. 54., Vashum, R., n. 4, p. 82., Aosenba, n. 23, p. 53.

³⁴. The terms 'Naga army' and 'Naga Nationalist' are used by the Naga Movement leaders. However, the Government of India refer to them as 'Naga insurgents' or 'Naga underground' or 'Naga Militants'. Nonetheless all these terms have been used interchangeably to refer to them.

³⁵. Nuh, V. K., n. 3, p. 149

eighty six thousand five hundred seventeen and sixty paise).³⁶ Labour or imposition of fines on anybody who refused to comply with soon became the order of the day. The Naga people were confirmed and described as "unlawful" and even termed as "dacoits", "gangsters", "terrorists", "hostiles" "ruthlessly bloodthirsty" and "misguided".³⁷ Therefore, in order to check the so called "unlawful activities" of the Naga people, Assam Armed Police Units and Assam Rifles battalions started moving into the Naga villages. These units set up camps using forced labour from villages and even made villagers fetch water and carry firewood for the camps without any payment.

The failure of the Assam Rifles to bring the situation under control necessitated the Indian armed forces to replace them on 2nd April 1956³⁸ with an instruction not to function as in war time but strictly in aid of the civil power³⁹ in order to maintain law and order and to stop violence and blood shed. However, several cases of human rights violations took place from the time the Indian army took control over the law and order in the Naga Hills. On 16th April 1956, twelve men belonging to the Chakhabama Village under Phek District were caught by the personnel of the Sikh Divisions and started shooting

³⁶. Iralu, D. Kaka, n. 20, p. 84.

³⁷. *Ibid*, p. 84.

³⁸. Naga Peoples Movement for Human Rights (NPMHR), *Naga Resistance and the peace process*, (Published by other media communications Pvt. Ltd. Bangalore, 2001) p. 10.

³⁹. Singh, Prakash, n. 12, p. 97.

them.⁴⁰ On 19th April 1956 Colonel Gurksh Singh, Commanding Officer of the Sikh Division, burnt three men alive, who were serving in the Indian Government at a place more than 50 miles away from Kohima.⁴¹

Besides these two acts, the Government of India imposed the Armed Forces (Special Powers) Regulation of 1958 in April 1958. This was converted into The Armed Forces (Assam and Manipur) Special Powers Act on 11th September 1958. Subsequently this Act was amended on 5th April 1972⁴² and henceforth known as the Armed Forces (Special Powers) Act 1958. The subsequent division of States in the North-East led to amendments in 1972 and 1986 extending the Act to all the newly created States. The amendment additionally gave powers to the Central Government to apply the Act, a power which was hitherto a sole prerogative of State Government through the Governor.

What was more surprising to the people of Nagaland was that even such empowering laws to flush out the militancy were considered inadequate by the Indian army. Thus, in 1962, a much more infamous law, called the Nagaland Security Regulation 1962 was introduced. This

⁴⁰. Nuh, V. K., n. 3, p. 176.

⁴¹. *Ibid.*

⁴². Vashum, R., n. 4, pp. 226-31.

regulation aims at maintaining public order by suppressing subversive activities endangering the safety or security of Nagaland, maintaining supply of essential services and for the control of possession and disposal of certain articles in Nagaland.⁴³

However, the Armed Forces Special Powers Act did find favour from some section of the Naga people since it had produced a positive result and this can be justified from the two statements released by the Naga leaders themselves during 1956–57. For example Kenneth Kerhuo, the then Field Director of the Angami Baptist Mission, said:

Owing to the violent activities of the Naga Home Guards, most of the Churches stopped functioning in Naga Hills sometime ago. The villagers were so terror-stricken that they could not even enter their own homes. How could they come to the Churches? Thanks to the Army, confidence has returned to the villages, and the peaceful Nagas are able to look after their affairs unafraid. The Churches are having regular services attended by bigger congregations than ever. Quite a number of Army officers and men are Christians. They make it a point to attend Church services. I have heard nothing but the highest praise of army officers and men in general from several Nagas of different tribes. They all say the way Army personnel rehabilitate villages and bring medical succour to the infirm shows that they literally implement the following words of the Lord: 'Love your enemies, do good to them that hate you, bless them that curse you, pray for them that spitefully use you.'⁴⁴

⁴³. Nuh, V. K., n. 3, p. 158.

⁴⁴. Singh Prakash, n. 12, p. 98.

The other statement was released by a group of Nagas leaders including Jasokie, Kenneth, Ruzhukhrie, Khieya, (Mrs) Lucy Dino, (Mrs) Dzobvunno and (Miss) Kerino Zinyu, who protested over the charge of immorality against the Indian armed forces:

We are shocked to hear that the Nagas who are at present engaged in violent activities in Naga Hills, in their zeal to vilify officers and men of the Armed Forces, speak light-heartedly of Naga women-Folk and even describe their own daughters, sisters and wives as harlots and prostitutes. To say the least, these Nagas who speak so irreverently of Naga girls, have lost all sense of proportion as also sense of shame. We, who are intimately connected with the Angami area and are engaged in social or religious uplift work, can say that the Armed Forces personnel in our area have behaved in the most exemplary manner possible. On several occasions they have praised the modesty of the Naga girls. No Armed Forces in the world could have behaved better than the Indian Armed Forces have done in Naga Hills.⁴⁵

The two statements clearly contradicted the opinion voiced by a section of the Naga people on the conduct and activities of the Indian army which were always termed as anti-people.

The extent of excessiveness committed by the Indian army operating in the Naga hills has been substantiated by none other than a high ranking Government official, B. N. Mullick, the then

⁴⁵. Singh Prakash, n. 12, p. 99.

Director of Intelligence Bureau (IB), who stated that, by 1956 "nearly two divisions of the Indian army and thirty-five battalions of Assam Rifles or Assam Police were in operations in the Naga Hills and Tuensang Frontiers Division and the adjoining areas exerting pressure". He went on to say; "and though there were nearly one security troop for every adult male Naga in the Naga Hills Tuensang area, there never was a time when it could be claimed that the Naga Guerrillas had been broken into submission".⁴⁶ Though the Government of India increased the number of Indian armed forces in the Naga Hills, the NNC fought back with great determination protecting the penetration of the Indian army. In course of time, however, it was the innocent civilians who had suffered immensely. This can be justified by citing one of the articles that appeared in India Today which stated that:

Nowhere has the experience of insurgency been longer and greater than in Nagaland, and nowhere else in the North-East human suffering been more painful and protracted. Nagaland was the laboratory in which the Indian Army, new to counter-insurgency, committed its biggest errors.⁴⁷

⁴⁶. Mullick, B. N., n. 16, pp. 312-14.

⁴⁷. "Ice in the Soul", in *India Today*, October 31, 1982., as cited in A. S. Atai Shimray, *Naga Nationalism and National Socialist Council of Nagaland*, (Ph. D. Thesis, Department of Political Science, N.E.H.U. Shillong, 1996), p. 91.

Dessan Tagore an ardent critic of the Government of India's policy while writing about the Naga issue vehemently asserted: "Nagaland has seen the worst horrible form of the state terrorism - women are raped, men and children tortured, and people moved into concentration camps. The Nagas have no recourse to civic justice".⁴⁸

Since the Naga Independence issue was not favoured by the Government of India, the NNC decided to send Phizo to London to seek foreign help. Therefore, Phizo slipped out via East Pakistan (now Bangladesh) to London to internationalize the Naga issue in November 1957.⁴⁹ While Phizo was away on his mission abroad, the fighting between the Naga army and the Indian armed forces continued unabated, and it was the innocent civilians who had to bear the brunt of this fighting. During the fighting, many civilians were arrested, tortured, beaten, women were raped, villages burnt, crops destroyed and many forms of inhumane acts violating the human rights were committed by the Indian army as retaliation against the Naga army. All along, the Indian armed forces were alleged to have been indulging in several inhumane activities both to the Naga civilians as well as Naga army. A report sent by Phizo to the

⁴⁸. Tagore, Dessan, *Israel in India*, (Published by the Author, 1986), p. 1, as cited in A. S. Atai Shimray, *Naga Nationalism and National Socialist Council of Nagaland*, (Ph. D. Thesis, Department of Political Science, N.E.H.U. Shillong, 1996), p. 80.

⁴⁹. Horam, M., n. 11, p. 78.

International Commission of Jurists dated 11th February 1962 explicitly elucidated the atrocities committed by the Indian armies during the operations in the Naga Hills. Many Naga villagers were taken to custody and sent to concentration camps where they were subjected to various forms of torture. As a result, many died in jails and concentration camps because of torture and of starvations, many houses in the villages were razed to the ground and properties damaged resulting in the loss of worth crores of rupees.⁵⁰

There were also reports giving an indication that the inhumane activities were committed even by the Naga army in the form of torture and brutal murder of the Nagas, whom they suspected of helping the Indian Government.⁵¹ During this time (1957-1958), two civil officers namely Kapoor and Carvalho, the then Commissioner and the Deputy Commissioner respectively adopted an idea to regroup villages in order to cut off the communication of Naga army from the civilians as the Naga army depended for their supplies and information on the villagers. So by regrouping the villages the residents of several villages were taken to one central village, which was fenced round and kept under protection of strong security forces. The villagers were allowed to go out during daytime and cultivate their fields under escorts but

⁵⁰. Iralu, D. Kaka, n. 20, pp. 139-47.

⁵¹. Roychowdhury, Profulla, n. 27, p. 54.

before nightfall they had to come back to the grouped village and there was no permit to go out before daybreak. Then another major step was initiated by raising of local militia or village guard to fight against the Naga army. However, these measures initiated by the civil officers proved to be more counter productive as the Naga army became more aggressive thereafter.⁵² It was reported that, at the 'concentration camps' many died due to lack of food, clean drinking water, sanitation and medical care.⁵³

At the same time, the army was freely operating in the jungle in full-scale. The Indian Air Force was brought into action in a tactical role, bombing and strafing rebel oppositions.⁵⁴ Even Jaya Prakash Narayan, a member of the peace commission could not seal the factual account of Indian army atrocities. Having studied the ground reality in Nagaland he admitted saying; "Many atrocities were perpetrated by the Indian security forces, of which every decent Indian I am sure is ashamed".⁵⁵

It was at this point, S. M. Dutt, an Indian Intelligence Officer, realised that the Naga problem will not be solved by simply fighting

⁵². Mullick, B. N., n. 16, p. 313.

⁵³. Aosenba, n. 23, P. 55.

⁵⁴. Palit, Major General., *The Sentinels of the North-East*, (Palit and Palit Shanti Niketan, New Delhi, 1984), p. 224.

⁵⁵. A. S. Atai Shimray, *Naga Nationalism and National Socialist Council of Nagaland*, (Ph. D. Thesis, Department of Political Science, N.E.H.U. Shillong, 1996), p. 318.

against the Naga army. Therefore, in the midst of such chaotic conditions, and sufferings of the common people caused by the activities of the Naga army and the consequent operations of the Indian army, Dutt, conceived an idea of separating the Naga Hills District from Assam into a separate unit. Mr Dutt along with the liberal leaders (who broke away from Phizo) formed the Naga Peace Organizing Committee in 1956 and appealed to abandon the policy of armed rebellion. Meanwhile, the Church leaders also openly came forward and condemned the violence. Finally, the efforts of the Church leaders resulted in the formation of; the Naga Peoples Convention (NPC). The First Convention of the Organization (NPC) was held at Kohima from 22nd to 26th August 1957⁵⁶ under the leadership of Dr. Imkongliba Ao. The main objective of the Convention was to act as an 'intermediary' between the Government of India and the Federal Government of Nagaland to settle the Naga political problem. The outcome of the First Convention was a resolution passed for the creation of a separate Administrative unit. Thus, on 1st December 1957 the erstwhile Tuensang Division was taken out of the North East Frontier Agency and amalgamated with the Naga Hills District of Assam. The newly formed Naga Hills Tuensang Area was under the Ministry of External Affairs

⁵⁶. Aosenba, n. 23, p. 62.

who appointed a Commissioner to administer the area and who was responsible to the Governor of Assam. The First NPC brought calm to the otherwise volatile situation as both the Indian armed forces and the Naga militants adopted a policy of "wait-and-see". On 21st May 1958, the Second Naga Peoples Convention was held in Ungma village in Mokokchung District to review the effect of the First NPC. The only important resolution adopted in this Convention was the appointment of a Liaison Committee under the Chairmanship Kevichusa along with eight other members in order to contact the Naga Nationalist leaders to assess their views with regard to the Naga political settlement. This Committee reported that the Naga Nationalist were not prepared to start any negotiations with the Government of India unless the issue of Naga Sovereignty is taken up, whereas on the part of the Government of India, it had categorically stated that there could be no talks with any group on the issue of Sovereignty.⁵⁷ The leaders of the NPC brushed aside the request of the underground leaders and went ahead with their own plan for a solution of Naga problem. Later, the Sixteen-Point Memorandum for the Constitution of a separate State to be called 'Nagaland' within the Indian Union and under the jurisdiction of the Ministry of External Affairs was drafted which was passed with little modifications in the Third Naga People's Convention held at Mokokchung from 22nd to

⁵⁷. Luithui, Luingam and Nandita Haksar, n. 21, pp. 64-66.

26th October 1959. Accordingly, the 16th State of India called "Nagaland" was constituted on August 1962 and was inaugurated on the 1st December 1963 ⁵⁸ by the then President of India Dr. S. Radhakrishnan.

However, the Naga Nationalist leaders were not happy to reconcile with the creation of the State of Nagaland. Hence, their activities stepped up in 1964 in order to show that the Naga problem will be solved only on achieving complete political Independence. But on the other side, the liberal Nagas made serious efforts to bring about a lasting peace by putting an end to the activities of the Naga rebels. In 1964, with the initiative of the Naga Church leaders, a three-member peace mission was set up consisting of Rev. Michael Scott, Jaya Prakash Naryan and B. P. Chaliha to bring about the Naga rebels into a negotiating discussion. This initiative resulted in the First Cease-Fire Agreement signed between the Naga Nationalist leaders and the Government of India on 15th August 1964, which came into force with effect from 6th September 1964. In accordance with the terms of the agreement, peace talks began between the Naga militants and the Government of India. Though, there were as many as six rounds of talks no solution could be brought regarding the

⁵⁸. Channa, Subhadra Mitra, *Nagaland: A contemporary Ethnograph*, (Cosmo Publication, New Delhi, 1992), p. 256.

problem of the Naga Issue.⁵⁹ It was reported that even while the talks were going on, Naga militants continued their hostilities; the cease-fire agreement remained operative only on paper, and it was officially brought to an end on 1st September 1972.⁶⁰ Immediately after this, Naga National Council, Federal Government of Nagaland and the Naga Federal Army were declared outlawed and brought under the Unlawful Activities (Prevention Act, 1967).⁶¹ Under this Act, any Naga civilian who supports the Naga Movement through speech, writing, giving rations, shelter or any other form of support was subjected to be punished and treated as criminal and offenders. The Government of India banned these organizations after the unsuccessful assassination attempt made on the life of Hokishe Sema, then Chief Minister of Nagaland, on the National Highway 39, about four miles away from Kohima on 8th August 1972, by suspected Naga militants. The reason for the ambush on Hokishe Sema was the transfer of the Naga affairs to the Ministry of Home Affairs which was otherwise under the Ministry of External Affairs since 1957⁶². Following the incident, the Indian army was called back into action and in retaliation, the Naga Federal Army also counteracted against the Indian armies. In due course, the situation in Nagaland started deteriorating.

⁵⁹. Mao, Ashikho Daili, n. 2, p. 130.

⁶⁰. Horam, M. n. 11, p. 162.

⁶¹. *Ibid*, p. 178.

⁶². Vashum, R., n. 4, p. 93.

At that period of time, many cadres of Naga Federal Armies went to China for training and successfully returned with sophisticated arms and ammunitions. This made Government of India to deploy more forces in order to restraint the activities of the Naga militants leading to a lot more atrocities against the civilians. As the prevailing situation became more tense, another Peace Council known as the Nagaland Peace Council (NPC) was formed by the leaders of Nagaland Baptist Church and Sarvodaya Peace Observers in 1974. A Liason Committee was formed on 5th February 1975 by NPC with its members namely Rev. Longri Ao, Kenneth Karluo, Klungshim Shaiza, Dr. Aram and L. Lungalang. The NPC through its Liason Committee succeeded in bringing both parties to talk leading to a peaceful negotiation which was acceptable from both sides. The President of the Naga Federal Government, Zashi Huire appointed six members from the Federal and NNC representatives led by Kevi Yalley, brother of A. Z. Phizo, in order to negotiate with the Government of India. The six member delegation led by Kevi Yalley met the then Governor, L. P. Singh, who was representing the Government of India, on 10th November 1975, at Raj Bhavan, Shillong. There were nearly four rounds of talks between the Governor and the Naga representatives. The outcome of these discussions was the Shillong Accord containing

three points which was signed on 11th November 1975 ⁶³ between the Governor and the Naga representatives. But, out of the six Naga representatives, one did not sign the accord as he refused to become a party to the accord. The points of Agreement according to the Shillong Accord were:

1. The representatives of the underground organizations conveyed their decision of their own volition, to accept without any condition, the Constitution of India;
2. It was agreed that the arms, now underground, would be brought out and deposited at appointed places. Details for giving effect to this agreement will be worked out between them and the representatives of the Government, the security forces and members of the Liaison Committee;
3. It was agreed that the representatives of the underground organizations should have reasonable time to formulate other issues for discussion for final settlement.⁶⁴

As a result of the accord, the Unlawful Activities (Prevention Act, 1967) was lifted from Nagaland leading to the released of many political prisoners. However, Clause III of the agreement was never

⁶³. Singh, Chandrika, n. 17, p. 157.

⁶⁴. Horam, M., n, 11, p. 178.

implemented as the Nagas in general and the NNC, leaders overseas never agreed to endorse the Shillong Accord.

Meanwhile the President of the NNC A. Z. Phizo, who was in London, showed no sign of approval to the Shillong Accord when the matter was discussed by three Naga delegates who had gone to meet him. Further, he met the Prime Minister of India, Shri Morarji Desai in London in June 1977, to discuss the Naga problem but the discussion came to a standstill as the Prime Minister declined to discuss anything to do with the Independence of the Naga people. As it has been mentioned already that the Naga leaders overseas along with the Eastern sector of Nagaland never accepted the Shillong Accord and they further condemned the Accord saying that it was signed without the approval of the NNC President, and General Secretary. The signing of Shillong Accord further led the Nagas to disunity, misunderstanding and differences in opinion among the Nagas. Isak Swu and Th. Muivah who were in China denounced the Accord as treason and the signatories representing NNC, Federal Government as traitors. With regard to these, seven Naga delegation urged Phizo to condemn the Accord without delay. But Phizo was said to have remained silent on this matter and his silence was taken as an

approval to the work of the Shillong Accordists.⁶⁵ The Government of India thought that it was a successful endeavor on their part to bring an end to the Naga issue but it only resulted in forming a new organization. Therefore, a three-member team namely, Isak Swu, Thuingaleng Muivah and S. S. Khaplang, a Hemi Naga of Burma declared the formation of the National Socialist Council of Nagaland (NSCN) on 31st January 1980, which represented the most radical section of Naga Nationalism till today by breaking away from NNC. This new organization stands for sovereignty. The new organization also established the Government of People's Republic of Nagaland (GPRN) by replacing the Federal Government of Nagaland (FGN). Since the breaking up of the NNC in 1976, a new dimension was added to Naga National politics which began with bitter killings among those who once fought along side each other against the Indian army. The worst came about when the NSCN was split in 1988 which saw massacres and the birth of fratricidal conflict resulting in the deaths of many innocent people in Nagaland.⁶⁶ In a short period of time after its formation, the headquarter of NSCN at Hangsen was allegedly attacked on 30th April, 1988 by Kaplang faction in collaboration with the Burmese armies killing over 200 persons

⁶⁵. Aosenba, n. 23, pp. 77-78.

⁶⁶. Ao, Lanunungang, A., *From Phizo to Muivah: the Naga National Question in North East India*, (Mittal Publications, New Delhi), pp. 96-99.

including women and children, which proved to be a great disaster for the Naga National Movement.⁶⁷

Differences in ideology, to capture power through elimination of all those cadres standing in their way, started gripping in the minds of the leaders since they mistrust one another. After this incident, NSCN was reported to have been vertically split into two factions. One led by Isak Swu and Th. Muivah called NSCN (I-M) and the other led by S. S. Kaplang NSCN (K).

As mentioned earlier, it has been alleged that human rights violations in Nagaland has not been perpetrated by the Indian armed forces and paramilitary forces alone. There have been several instances of human rights violations by the Naga Movement as well. The fratricidal conflict among the Nagas themselves has also been largely responsible for the countless instances of killings and human rights violations in the strife-torn state of Nagaland. Under the circumstances, the study will remain incomplete without an attempt to analyze the viewpoints from cross-section of society.

Nevertheless, the use of powers under the Act has resulted in a situation far worse than under an emergency. To make matters worse,

⁶⁷. Vashum, R., n. 4, pp. 96- 97.

brutal acts performed in exercise of these powers, under the Armed Forces Special Power Act 1958, have made a mockery of the legal system, and this power has been used against innocent people, in ways unimaginable in contemporary laws. Thus, the atrocities of the Indian army on the innocent Naga people are almost uncountable and unrecordable.

Infact, after the inhuman atrocities perpetrated by armed forces in the fifties till seventies in Nagaland, the other dark chapter in Naga history remains the fratricidal conflict and random killings for over last one decade. As a result of the clash between the two factions, the scourge of the nineties witnessed a wide spread fratricidal killings. The nature of killings, characterizing house arrest, ambush, kidnapping, intimidations, chasing people like hunted animals, holding foreign made guns in public place including church buildings, and its surroundings, villages, towns and streets, random killings and assassination attempt and spraying bullets⁶⁸ are clear cases of human rights violations.

Several efforts had been made after signing the Shillong Accord in order to bring about the solution to the Naga problems. Shillong Accord had all the intention of solving the vexed Naga problem but it only led to further aggravation of the issue. Hence, the

⁶⁸. Ao, Lanunungsang, A., n. 66, p. 98

Government of India started to take initiative for new agreement in order to solve the problem, but it never got materialized as there were always pre-conditions from the Indian side stating that any solution to the Naga problem should be within the framework of the Indian Constitution.

However, in the early 1990s, Indian leaders realized that military approach alone cannot solve the problem. Therefore, in 1995 the Government of India considered non-military options by inviting NSCN (I-M), to begin political negotiation at the highest level without conditions at a mutually agreed third country. After two years of preparations, the Government of India announced on 25th July 1997, its decision to enter into a "Cease-Fire Agreement" effective from 1st August 1997, to pave the way for political negotiations. The then Prime Minister of India, P.V. Narasimha Rao, called for a dialogue without setting any pre-condition, which the NSCN-IM accepted. There were some preliminary talks on a prospective peace process. He further met the Naga Nationalist Movement leaders in New York in September 1995. When Deve Gowda succeeded Narasimha Rao, the Government of India continued the already initiated peace process. Deve Gowda also met the Naga leaders in Zurich (Switzerland) on 3rd February 1997 continuing the preliminary peace talk process which included proposition on a cease-fire. When I. K. Gujral succeeded

Deve Gowda, he took up the policy initiated by his predecessors. NSCN (I-M), leaders met Satish Chandra, the then Principal Secretary (PMO), acting as the representative of the Government of India in Geneva. The out come of this meeting was announced by the Prime Minister of India in the Parliament, which was the decision to enter into peace negotiation with the NSCN (I-M), on 25th July 1997, and also to announce the ceasefire to begin unconditional Peace-Talks stating that there should be a total suspension of armed conflict from the two sides for three months with effect from 1st of August 1997. The term of the Cease-Fire Agreement was for securing a peaceful political solution, for which discussions were held between the Government of India and the NSCN leadership. It has been mutually decided to declare cease fire for a period of three months with effect from the 1st August 1997 and embark upon discussions at political level. The cease-fire was then extended after every three months till 31st July 1998. From 1st August 1998, it was extended on annual basis which is being continued without any lapse till date. The essence of the cease-fire agreement constituted the following four points:

1. The there will be total suspension of armed conflict between the two sides (initially) for three months, beginning 1st August 1997;
2. That Peace talks begin with no preconditions;

3. The Peace talks shall be conducted at the highest level, that is, with the Prime Minister;
4. That Peace Talks shall be held in a neutral country.⁶⁹

Finally, the terms and conditions of the cease-fire was agreed upon on 12th December 1997 by both the representatives of India, Shri K. Padmanabhaiah and NSCN (IM) Mr. V. S. Atem, and arrived at the terms and conditions for the cease-fire on 12th December 1997. It was agreed upon by both the parties for monitoring the cease-fire process by drawing members from both the sides including some Non-Government Organizations. The other group, NSCN (K) also announced a formal cease-fire with the Central Government on 9th April 2000. Even during the cease-fire, the Armed Forces Special Powers Act 1958 continued to remain enforced. However, all parties to the cease-fire agreement had to comply with the terms and conditions of the cease-fire.

The objective of the cease fire in Nagaland was to pave the way for making political dialogue and no offensive operations like ambush, raid and attack leading to death/injury/damaged or loss of property to either side were to be carried out. No blockade of roads

⁶⁹. For details see, Naga Peoples Movement for Human Rights (NPMHR), n. 36, p. 14. Vashum, R., n. 4, pp. 105-06.

and communications, disruption of economic or developmental activities as well as essential services by the NSCN were to be organised. However, even though, the cease fire exist in Nagaland, there have been many voices who had expressed their negative views such as those of the Governor of Nagaland, His Excellency Shri O. P. Sharma who said, 'the ceasefire ground rule is utterly meaningless'. He again stated that the present cease-fire agreement is a mockery of the entire spirit of agreement'. He further defined the Ceasefire agreement as 'a license to carry on criminal and anti-social activities that culminated in the dastardly attempt on the life of S. C. Jamir, the Chief Minister of Nagaland on 29th November 1999.⁷⁰ S. C. Jamir, the former Chief Minister of Nagaland also said that, 'the cease-fire in the present form has not only become meaningless, but also counter productive to the national interest. He suggested that the ground reality should be comprehensively reviewed and cease-fire be meticulously implemented or the cease-fire should be altogether done away with'.⁷¹ The Council of Ministers, Nagaland Legislative Assembly defining the cease-fire agreement through a press release said,

⁷⁰. Ao, Lanunungsang, A., n. 66, p. 194.

⁷¹. *Ibid.*

the cease-fire is a license to kill, to assassinate, to ambush, to kidnap, to rob, to extort and to intimate with a view to creating fear psychosis in the minds of the people of Nagaland with naked tactics of terrorism.⁷²

Lanunungsang Ao, in his book, *From Phizo to Muivah: The Naga National Question in North East India*, analyzed the post cease-fire scenario in Nagaland after which he is of the opinion that the cease-fire did not yield much positive result as yet due to the continued killings of innocent people and anti-social activities in Nagaland. Lanunungsang Ao expressed that the Naga people have lost their confidence on their leaders including the Government authorities as they feel that they should not be made to suffer for want of political solution. The common man needs peace, justice and economic progress and development which is the need of the hour.⁷³

⁷². Ao, Lanunungsang, A., n. 66, p. 194.

⁷³. *Ibid*, p. 195.

CHAPTER III

**Armed Forces Special Power Act 1958 and Human Rights Abuses in
Nagaland**

CHAPTER – III

IMPLEMENTATION OF ARMED FORCES SPECIAL POWERS ACT: HUMAN RIGHTS ABUSES IN NAGALAND

BACKGROUND OF ARMED FORCES SPECIAL POWERS ACT 1958

When the All India Congress Committee launched the Quit India Movement in Bombay in 1942 and at the same time in Singapore, about 40,000 British Indian soldiers who had joined the Indian National Army were marching towards India from the eastern front together with the Japanese soldiers. In a sweeping move, Congress was declared an illegal organization. Prominent Congress leaders were arrested and imprisoned. A mass cataclysm broke out all over India. The Viceroy Lord Linlithgow declared emergency all over the British India and promulgated the Armed Forces (Special Powers) Ordinance 1942 on 15th August 1942.¹ This Ordinance conferred power on Commissioned Officers not below the rank of Captain in the army, to use force if necessary to the extent of causing death of a person who fails to halt when challenged by a sentry or who attempts to destroy property which the Officer has been deputed to protect. The power to arrest a person was also given along with a duty to hand over the arrested person to the Police. Immunity was also provided to

¹. Loitongbam, Babloo., *Manipur Update*, Human Rights Alert, Vol. I, Issue I, February, 2000, (Lamyamba Printers, Konung Lampak, Imphal, Manipur), p. 1.

army personnel acting under the Ordinance. This Ordinance was extended to the whole of British India.

The armed forces were protected from legal action, unless prior sanction is obtained from the Central Government. India got Independence five years later on 15th August 1947 after the promulgation of Armed Forces Special Powers Ordinance 1942, and became a Sovereign Democratic Republic on 26th January 1950. The armed forces are still enjoying the same Special Powers and privileges granted in the colonial ordinance in the remote North East corner of the country even today. In its new incarnation, the enabling legislation is called the Armed Forces (Special Powers) Act, 1958.²

As the Naga National Council (NNC) took up arms against the 'Indian armed forces' deployed in Nagaland by the mid 1950s, and when the state force failed to contain the uprising, the army was called in. But, for facilitating army operations, a legal framework became necessary. So, the then Government of India led by the Congress whose leaders, who were once jailed under the Armed Forces (Special Powers) Ordinance 1942 of British India, promulgated the Armed Forces (Special Powers) Regulations, on 5th April 1958, which had inherited the same powerful political potency as the 1942 demoniacal Ordinance. There were certain modifications made to

². Loitongbam, Babloo, n. 1, p. 1

the 1942 Ordinance giving empowerment to the Indian army, which are as follows:

1. The provision for declaration of emergency was replaced by the term 'disturbed area';
2. More defined powers were added to the existing Ordinance including the power to use force to even kill any person on suspicion of disturbing public order or carrying weapons, 'to search any place without warrant or destroy any place on mere suspicion of being used by armed groups militant';
3. The power to take action, which was authorized to an Officer of captain and above in the old Ordinance, was delegated to lower ranks including junior commissioned officers.
4. The area of operation of the Armed Forces Special Powers Act, 1958 was confined to ethnically distinct of India North East region; unlike the 1942 Ordinance, which was applied to the whole of India.³

The Ordinance became harsher than the colonial Ordinance of 1942. In 1958, this bill was introduced mainly to replace the Ordinance of 1942 giving more empowerment to the Indian army. This bill was strongly justified by the Home Minister G.B. Pant, who stated that;

³. Loitongbam, Babloo, n. 1, p. 2-3.

there (Assam and Manipur), they (certain misguided sections of the Nagas, in the words of Mr. Pant) are indulging in arson, murder, loot, dacoity, etc. So it has become necessary to adopt effective measures for the protection of the people in those areas. In order to enable the armed forces to handle the situation effectively wherever such problem arises hereafter, it has been considered necessary to introduce this Bill.⁴

Some members of the Parliament opposed it on the ground that blanket powers being conferred on the India army by this Act would lead to the violation of the Fundamental Rights of the people, that this Act would circumvent the Constitution by effectively imposing an Emergency in these areas without actually declaring one and that it would abrogate the powers of the civil authority in favour of the Indian army.⁵ However, despite this opposition by few members of the Parliament, the Bill was passed. Therefore, the resultant Act was given retrospective effective from 22nd May 1958.

The Act was further amended in 1972 and K.C. Pant, the son of G. B. Pant and new Home Minister, who moved the amendment laid down the objectives of the amendment as, it is proposed that the Armed Forces (Assam and Manipur) Special Powers Act 1958 may have uniform application in all the North Eastern States. Secondly, it sought to state clearly

⁴. Loitongbam, Babloo, n. 1, p. 3.

⁵. Gonsalves, Colin and Mihir Desai, (ed.), *Combat Law, the Human Rights magazine, License to Kill Armed Forces (Special Powers) Act*, Vol.2 Issue1, April-May 2003, (Published by Colin Gonslaves for combat Law Publications Pvt. Ltd., Mumbai), p. 7.

that the Governor of these States and the administrators of the two union territories would have the power to declare an area as disturbed. Thirdly, the amendment additionally gave powers to the Central Government to apply the Act, a power which was hitherto a sole prerogative of State Government through the Governor. It is this Armed Forces (Special Powers) Act, 1958 as amended in 1972 which is in operation in Nagaland. The title of the Act was also changed to the Armed Forces (Special powers) Act 1958.⁶

PROVISIONS OF THE ARMED FORCES SPECIAL POWERS ACT (AFSPA), 1958

The original text of AFSPA, contains the following provisions: ⁷

1. **Short title and extent-**(1) This Act may be called the Armed Forces (Special Powers) Act 1958.
 (2) It extends to the whole of the States of Assam, Manipur, Meghalaya, Nagaland, Tripura, Arunachal Pradesh and Mizoram.
2. **Definitions** - In this Act, unless the context otherwise requires.
 (a) "Armed Forces" means the military forces and the air forces operating as land forces, and includes any other armed forces of the union so operating

⁶ Loitongbam, Babloo, n. 1, pp. 4-5.

⁷ Ministry of Defence Government of India, *Manual of Military Law Vol. III*, (Published by the Controller of Publications, Civil Lines, New Delhi), pp. 457-58.

(b) "Disturbed Area" means which is for the time being declared by notification under S. 3 to be disturbed area;

(c) All other words and expressions used herein, but not defined in the Air Force Act 1950 or the Army Act 1950 shall have the meanings respectively attached to them in those Acts.

3. **Power to declare areas to be disturbed areas** - If, in relation to any State or Union Territory to which this Act extends, the Governor of that State or the Administrative of that Union Territory of the Central Government in either case, is of the opinion that the whole or any part of such State or Union Territory, as the case may be, is in such a disturbed or dangerous condition that the use of armed forces in aid of the civil power is necessary, the Governor of that State or the Administrator of that Union Territory or the Central Government, as the case may be, may, by notification in the official Gazette, declare the whole or such State or Union Territory to be disturbed area.
4. **Special Powers of the Armed Forces** – Any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces may, in a disturbed area:
 - (a) if he is of the opinion that it is necessary so to do for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force,

even to the causing of death against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire arms, ammunition or explosive substances;

(b) if he is of the opinion that it is necessary so to do, destroy any arms dump, prepared or fortified position or shelter from which armed attacks are made or are likely to be made or are attempted to be made or any structure used as a training camp for armed volunteers or utilized as a hide-out by armed gangs or absconders wanted for any offence;

(c) arrest without warrant, any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect that arrest;

(d) enter and search without warrant any premises to make any such arrest as aforesaid or to recover any person believed to be wrongfully restrained and confined or any property reasonably suspected to be stolen property or any arms, ammunition or explosive substances believed to be unlawfully kept in such

premises, and may for that purpose use such forces as may be necessary.

5. **Arrested persons to be made over to the police.** – Any person arrested and taken into custody under this Act shall be made over to the officer in charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest.
6. **Protection to person acting under Act** – No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.
7. **Repeal and saving** (1) The Armed Forces (Assam and Manipur) Special Powers Ordinance, 1958, is here by repealed.
(2) Notwithstanding such repeal anything done or any action taken under the said ordinance shall be deemed to have been or taken this Act, as if this had commenced on the 22nd day of May, 1958.

Ever since the implementation of the Act in Nagaland there were several reports and cases of human rights violations particularly by the law enforcing agencies of which few are highlighted in this Chapter. There was an incident, recorded in a letter to the Peace Mission by

the members of the Village Panchayat of Khuivi under Zunobetuo district. They wrote that the family members of the National workers were separated and punished in the army concentration at Atukuzu under Zunobetuo district for eight months in 1959. It was reported that on 4th April 1959, in Akutuzu the Indian army raided the camp of the Home Guards and shot dead four Home Guards. The Army Post Commander at Akutuzu ordered the villagers to re-excavate and bring the remains of the victims to his post. The villagers were punished by being made to dig the ground and erect army *bashas* (camps) at Zunheboto for seven days. Further, on 18th April, 1960 ten villages were grouped along with Atukuzu, Vishepu, Kilo Old Khukiye, Lukhai, Tukunasami, Sheipu, Nunumi, Satakha old and new. Besides this, the villagers were reported to have been treated discriminately. They even introduced forced labour by making the villagers above the age of twelve carry the stocks on their back for transportation of military goods.⁸

A report of the Naga Hills Rehabilitation Committee submitted to the Naga National Council mentioned that up to December 1960 many Christian Churches were damaged, burnt and destroyed in several parts of Nagaland. For instances, in Angami areas 37

⁸. Iralu, Kaka, D, *Nagaland and India: The Blood and The Tears*, (published by the author, 2000), pp. 155-56.

Churches were burnt and 12 damaged, in Chakhesang areas 18 and 20 Churches were burnt and damaged respectively, in Lotha areas 3 and 15, Rengma areas 5 and 7, Sema areas 41 and 21, Yimchunger areas 5 and 5 and in Konyak and Sangtam areas 10 and 3 Churches respectively were burnt by the Indian army.⁹

Further, in one of the Ao Naga inhabited areas, the Indian army even carried out a policy known as 'earth-scorch Policy' in 1960. By this policy they intended to flush out all the Naga armies taking shelter in the jungles and at the same time destroy all their hideouts. The total area of jungle burnt accounted to 351,840 acres or 549 square miles.¹⁰

The incident of Matikhru village revealed how the Indian army implemented the Act during that time. Matikhru is a village of Pochury Naga tribe, located just below Kanjang village in Nagaland bordering Manipur. As reported by Pastor Zhihuotho, in the "*Nagaland Post*", a local daily and who also happened to be a witness to the said incident, on 6th September, 1960 when the 16th Punjab Regiment of Indian armies under the command of Major Kanger posted at Kanjang village came down at around 10 a.m and rounded up the village and grouped the villagers in one place and separated men-

⁹. Iralu, Kaka, D, n. 8, p. 144.

¹⁰. *Ibid*, pp. 155-62.

folks from children and women. All the women and children were made to stand in front of the male adult group and made to watch them being beaten and tortured mercilessly till 4.00 p.m. In the evening, all the women and children were driven out into the jungle like animals, after which all the male adults were herded together into the village chief's house. Soon after their heads were chopped off with the Chief's dao. It was reported that the first victim on line was the Chief of the village himself and the father of the narrator. Later, the bodies were burnt along with all the houses and properties.¹¹ Therefore, to this day the 6th of September is observed as a Black Day by the Pochury Naga tribe in remembrance of those innocent victims.

SOME REPORTS OF ATROCITIES COMMITTED BY THE INDIAN ARMY

Some of the rape cases reported to have been committed by the Indian army in the State of Nagaland are as follows:

On 24th February 1957, Miss Mayangkokla with her brothers, Kikamongba and Markaba, the Goan Bura of Ungma village under Mokokchung District, left their village for their normal duty. On their way, they were surrounded by a contingent of the Jat Regiment

¹¹. Pastor Zhiwuocho, Unforgettable event: 6th September, 1960 A.D, Nagaland Post, 28, 2000 Vol. X, No. 254. Dimapur, Nagaland.

under the command of Major Trilok Singh. Without even interrogating them they were all mercilessly beaten and Mayangkokla was even stripped naked while one soldier after another raped her in full view of the public who could not do anything since the soldiers were fully armed and had their guns pointed at the poor civilians. This inhuman act continued even in the camp where Mayangkokla and her brothers were taken.¹²

On 11th July 1971, Contingents of 1st Maratha Regiment took four minor girls namely Miss Shanchano Lotha (17 years), Nseno Lotha (15 years), Nzanbeni Lotha (12 years) and Thungdeno Lotha (11 years) inside the Yankeli Baptist Church and raped them on the pulpit of the Church, which is considered to be a sacred place.¹³ This incident showed that the army did not even spare the places of worship as they carried their inhumane act even inside a worshipping place.

On 25th February 1973, the 4th Kumaon Regiment of the Indian Army under the command of Captain Janbir Singh came to Habalimi. They attacked three women namely, Mrs Miyile, Mrs Hosheli and Mrs Yetovi when they were sleeping.¹⁴

¹². Iralu, Kaka, D, n. 8, pp. 229-33.

¹³. Luithui, Luingam, and Nandita Haksar, *Nagaland File: A Question of Human Rights*, (Lancer International, New Delhi, 1984), p. 27

¹⁴. Ao, Lanunungsang, A., *From Phizo to Muivah: The Naga National Question in North East India*, (Mittal Publications, New Delhi, 2002), p. 154.

Tsiemekhuma village, which is 45 kilometers away from Kohima, is a place where a sad event took place on a Sunday the 13th November 1974. On that ill-fated day Mrs. Thenounei aged about 27 years and mother of five kids was gathering vegetables from her garden to send them to her three children who are studying in Kohima. Suddenly Jakodi, a jawan belonging to the 26th Maratha Regiment posted about 5 kilometers from the village appeared and on the pretext of asking pumpkin from Thenouneiu came charging at her in a mad frenzy of lust. Before she could scream for help, Jakodi gripped her throat and wrestled her to the ground and thereafter raped her. What followed after this was a total mayhem causing the death of Mrs. Neiselhouu following the firing by the jawans of the regiment on the group of local people who had gathered inside and outside the outpost perimeter to catch hold of Jakodi the culprit.¹⁵

On 30th March 1997, at about 3:30 p.m. Miss Vikheni, a 12 year old girl, daughter of Mr. Huzhukho Sema, studying in class V in a Government School and a resident of Mokokchung town was raped by one Indian army Jawan, named Shri, Shinde Vilas, bearing No.2786438W, belonging to Kashinath of 15 Maratha Light Infantry

¹⁵. Iralu, Kaka, D, n. 8, pp. 398-404.

(MLI). After the incident, the residents of the town led by womenfolk raised a big hue and cry that alarmed the whole town. In the process the complainants were given the opportunity to identify the culprit from the standing lines of the company personnel before the crowd. After the rapist was identified by the victim he was arrested and tried by Summary General Court Martial. On his plea of guilt, he was sentenced to eight years imprisonment and dismissed from the service by the Court, dated 25.7.1997. It was confirmed on 6.9.1997. He was then shifted to the Central Jail in Pune, Mahartashtra.

On the basis of the Writ Petition filed by the victim's father against the culprit in Civil Court of Guwahati High Court, Kohima Bench, Justice H. K. Sema of the Kohima Bench, finally declared the judgement order on 28th June 2000. In its judgement, the Court directed the Union of India, Ministry of Home Affairs, New Delhi, and the Secretary to the Government of India, Ministry of Defence, New Delhi to pay Rs. 5 lakhs as compensation to the victim within a period of three months from the date of receipt of the said order. The Court further directed the concerned department to deposit the amount to the Court Registry who shall transmit the amount to the Deputy Commissioner, Mokokchung, with a direction to him to deposit the same amount in the Nationalized Bank by opening a Fixed Deposit Account in the name of the petitioner, Miss Vikheni, for a period of

five years, during which she should receive only the interest payable thereon and the principal amount being payable to her on her attainment of maturity of 20 years taking the date of birth of the petitioner as on 2.1. 1998. The Deputy Commissioner, Mokokchung, was further directed by the Court to submit the completion report of the Court's decision.¹⁶

Another identical incident that took place was on 27th December 1994, in Mokokchung district of Nagaland. On this day, one patrol of a Task Force of 16 Maratha Light Infantry, comprising of 30 men and one JCO was moving from the hospital location to the Police Point and onwards to the Micro hills in Mokokchung town. At 1020 hrs, when the patrol party came under heavy fire from a kutcha thatch house across the road, one jawan, who was the first man in this patrol, was shot and died instantaneously. The patrolling party immediately returned fire and a hand grenade was lobbed in that Kutcha house. Two members of the Naga militants were also shot death inside that Kutcha house. Two Indian army eye-witnesses namely Major D. K. Sharma and Nawab Subedar Chidambara stated in their affidavits that the Kutcha house caught fire because of explosion of the hand grenade and fire started spreading fast due to strong wind blowing on that day. Also, due to heavy exchange of fire,

¹⁶. Ao, Lanunungsang, A, n. 14, pp. 136-37

a number of electric wires got snapped and a few shops were caught with fire due to this short circuiting. The fire started spreading fast due to not only high speed winds but also the highly inflammable items like paints, clothes, gas cylinders kept for lighting purposes in the adjoining shops. Another reason why fire could not be controlled was due to acute shortage of water and limited number of fire tenders available in Mokokchung town. The fire was controlled only on the next day that is by the late afternoon of 28th December 1994. Soon thereafter, a number of shops and houses were caught with fire leaving 12 (twelve) persons death and considerable damage to properties. Allegations were also made on rape and molestations to four women by jawans of the Task Force during the incident.

On 7th September 1995, Mr. Inashe Ayemi, Project Director of District Rural Development Agency, Zunheboto District, along with his friend, Mr. Shikato, went to Dimapur to visit his mother and family members who were staying in Dimapur. On that day, at about 1:00 p.m, some unidentified miscreants had ambushed a Gypsy carrying security forces that led to the death of three army jawans. This incident took place some distant away from where Mr. Inashe Ayemi and his friend were staying. Following the incident, the security forces went on a rampage in and around the adjoining residential Colonies resorting to indiscriminate firing from different corners. Many innocent

civilians were picked up, brutally beaten and inhuman treatments meted out on them. In course of their rampage operation, some jawans entered the house where Mr. Inashe and his friend were staying. Instantly the male servant was shot death on the spot, while Mr. Inashe and his friend were brutally beaten up which led to the death of Mr. Inashe. The dead body of late Inashe was later handed over to the civil authority on the evening of 7th September 1995.¹⁷

Another incident occurred on 5th March 1995 at Kohima, the State capital of Nagaland. On this day, while convoys of 16 Rastriya Rifles Personnel coming from an election duty in Manipur were passing through Kohima town along the National Highway No.39 towards Dimapur and at around 1:10 p.m., a big bursting sound was heard and this was alleged by the Indian army that they were fired upon by the Naga militants. Following this, they took a defensive stance and started firing and shelling with mortars which continued till nearly 3:30 hrs. As a result of the firing, 7 (seven) innocent civilians were killed, injuring 20 (twenty), out of which 16 (sixteen) were due to the bomb blast and 4 (four) from gun shots, and a large number of buildings and vehicles were destroyed. As the Indian army started firing randomly

¹⁷. For detail see Ao, Lanunungang, A, n. 14, pp. 140-47.

two Assam Rifles jawans and one 16 Rastriya Rifles jawan received bullet injuries.

On 15th March 1996, Mr. Missamo from Lakhuti village in Wohka district of Nagaland was picked up by the Indian army personnel. It was reported that he underwent tortured in several forms like, administered electric shocks, brutally beaten up, hung by his arms ridiculing him saying that even Jesus Christ too was hung in the same manner. After all these forms of torture they injected him in both his arms, making him unconscious. It was only after four days that is, on the 19th of March that he regained his consciousness and found himself in hospital, undergoing blood transfusion, unable to speak with large wounds on his stomach. On 28th March, he was handed over to the police but only after signing a document which was in Hindi, following which he was admitted in the Civil Hospital, Dimapur. He was brought to the hospital with 27 stitches on his abdomen and 14 stitches around his neck which was reported to have been removed prematurely¹⁸ resulting in physical disability and thus preventing him from carrying out his normal life till today.

¹⁸. Naga Peoples Movement for Human Rights, Vol. 1, No. 04., Quarterly Publication Delhi, July, 1996, p. 5

These are only few examples of many atrocities leading to the violations of human rights committed by the Indian armies deployed in Nagaland.

IMPACT/CONSEQUENCES OF THE ACT

The study has been based on data collected from the cross-section of the society comprising different organizations, armies, victims, citizens and some public leaders. The field study was conducted to find out the ground realities and the impact of the enforcement of the Armed Forces Special Powers Act 1958, (AFSPA). There has always been conflicting views regarding the use and impact of this Act. One view says that the usage of this Act has resulted in violations of Human Rights in Nagaland whereas the other view holds that the enforcement has been an instrumental to enable the Indian army to tackle the secessionist's movements.

The data collected revealed three different opinions as regard to the enforcement of AFSPA. Accordingly, the data have been categorized into three groups. The first group is made up of data collected from the Indian armed forces and State police. The second group consists of the data collected from the victims and family members of the deceased victims of human rights, as well as from the

leaders of the various NGOs operating in Nagaland in order to find out how effectively they have been able to promote and protect human rights in Nagaland. Such NGOs include Naga Peoples Movement for Human Rights (NPMHR), Naga Students Federation (NSF), Naga Mothers Association (NMA), Naga Hoho representing the various tribes of Nagaland while the third group comprises of data collected from the cross-section of the common people including civil officials and public leaders.

In order to know the consequence of the enforcement of this Act through out the State, interviews based on structured and non-structured questionnaires were conducted with various law enforcement officials that include the Indian armed forces units and State police posted and operating in all the districts of Nagaland, common citizens, leaders of various political parties, NGOs, etc. The term law enforcement officials is defined as all officials who exercise police powers, especially powers to arrest and detain.¹⁹ Despite the sensitivity of the given nature of the area of study, yet there was a tremendous positive response received from the cross-section of the society.

¹⁹. United Nations, *Human Rights and Law Enforcement, A Manual on Human Rights Training for the Police, Series 5*, (United Nations Publications, New York and Geneva, 1997), p. 37.

According to the data collected through field work, the nature of duties of Indian armies posted in Nagaland include combing operations, search and cordoning off, enforcing cease- fire ground rules, patrolling and maintaining law and order situation. Interrogating the suspect in isolation, separating men from women and children, joint interrogation, comprising the State Police, Army, and CID²⁰, etc., are some of the methods adopted in Nagaland for combating Naga militancy. However, while carrying out their duties the Indian armed forces encountered several problems such as communication problems in terms of language barriers with the local people, non-cooperation from the public, cross-firing with the militant groups, people willing to give information but reluctant due to fear of retaliation from undergrounds. In addition to these, they face problems in relation to handling young men, elderly women and men. In order to overcome such problems, they try to convince the people that they are simply carrying out their duty in the form of surprise raids and arbitrary arrest, search on suspected people and places, arrest on warrant or under section 41 Criminal Penal Code²¹, sometimes, in order to maintain peace they coordinate with NGOs as well.

²⁰. Based on the interviews conducted during 2002-2003, with retired Nagaland Police Personnel and Security Forces posted in Nagaland.

²¹. *Ibid.*

While executing the duties the suspects are arrested and interrogated and if found innocent they are handed over to the local police in the presence of the village elders. In some cases, compensation in the form of medical aid, access to army canteen, special recruitment into the service and dismiss all charges framed against arrested persons only after ascertaining their innocency. Where the suspects are women, interrogation is carried out in the presence of women armed personnel, and in the absence of such armed personnel, help is taken from village ladies and local police. However, if found to be guilty under the Act, they are taken into custody for further interrogation and while in custody, certain facilities are provided to the alleged culprits such as, medical assistance, counseling, proper fooding, clothing, hygienic cell and access to visitors, and communication with family members.

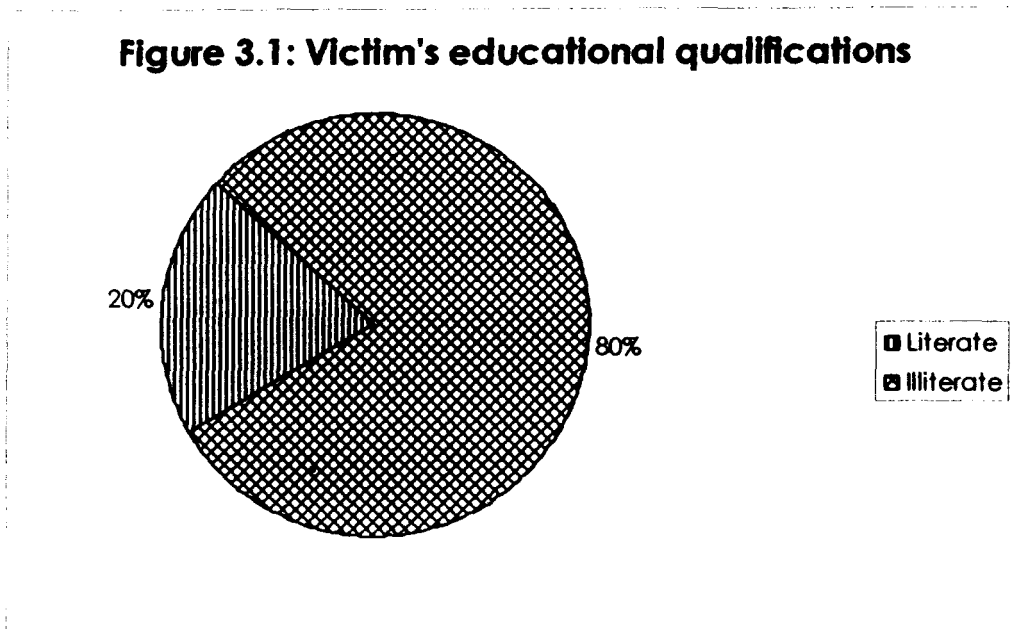
With the enforcement of the AFSPA in Nagaland, an analysis of the opinion of both the Indian army and the State police strongly indicate that there is a positive result in curbing insurgency and maintenance of law and order. They further said that this Act should continue to remain enforced in Nagaland to bring about complete peaceful situation and economic progress and development. According to the opinion expressed by the Indian army and State police the Act has been effective in achieving its objective of

maintaining law and order in the State to a certain extent. On the other hand, there is no denying the fact that there has been excessiveness on the part of some Indian armed personnel while performing their duties such as rape, torture, atrocities, etc., which have been alleged by members of the public as well as victims who themselves comprised the sample in the study. Such allegations are supported by reports appearing in newspapers and other media. The very fact that various inquiry committees²² were constituted by the law enforcing agencies whenever such allegations are made show that there could be some truth against such atrocities.

The data collected from the second group comprises of the victims, family members of the deceased victims and the NGOs. As they share the same opinion regarding the army they are placed in the same group. These groups believed that the enforcement of AFSPA has indeed resulted in gross violations of human rights in Nagaland. From the questionnaires and interviews conducted it revealed that most of the victims were arrested, shot death, some detained or taken into custody and whose whereabouts are not known till today. All these usually took place while the Indian armies were conducting operations. Further, it is found that most of the

²². Based on interviews with conducted during 2002-2003 a cross section of Nagaland Police and Security Forces posted in Nagaland.

victims were illiterate and were not at all aware about the reason leading to the enforcement of the AFSPA 1958 neither about the provisions of the Act nor are they aware of their rights. Figure 3.1, clearly indicate the educational status of the victims.



The interviews revealed the harrowing experiences the victims encountered with the Indian armies on execution of their duties particularly before the Cease-Fire Agreement that started in August 1997. The nature of human rights violations committed by the Indian army are mostly on the pretext of carrying out their duties and as mentioned earlier, they include rape cases, torture and killing in cold blood, some of whom succumbed to their injuries that was inflicted

upon them from the torture, while some had undergone unnecessary harassment which had affected them mentally and brought about fear-psychosis among the people in general and the victims in particular.²³ More importantly, such undesirable experiences forced the victims and relatives, in particular and the people in general, to have a bad impression about the Indian army as a whole.

It is therefore obvious that the victims were unanimous in their view that the enforcement of the Act has not helped in bringing about peace in Nagaland rather it has worsened the situation. This is substantiated by the fact that the attitude of all the victims including their relatives expressed a negative response towards the role of the Indian armed forces and even the State police to a certain extent. This attitude has been clearly shown in figures 3.2 and 3.3. Figure 3.2, indicates that 80 percent of the victims expressed negative attitude towards the Indian army while 20 percent remained neutral and did not expressed any opinion. Figure 3.3, also indicates the opinion of the victims and their relatives about the State police personnel wherein 50 percent of the respondents expressed as positive and 50 percent as neutral.

²³. The names of the victims are withheld to protect their privacy as desired by the respondents.

On the role of the politicians, 80 percent of the victims expressed their opinion as neutral in figure 3.4. However, the role of NGOs was highly appreciated by the victims as 60 percent of the respondents expressed positive and good opinion while 40 percent remain neutral or expressed no opinion. This opinion has been reflected in figure 3.5.

Figure 3.2: Victim's attitude towards Indian Armed Forces in Nagaland

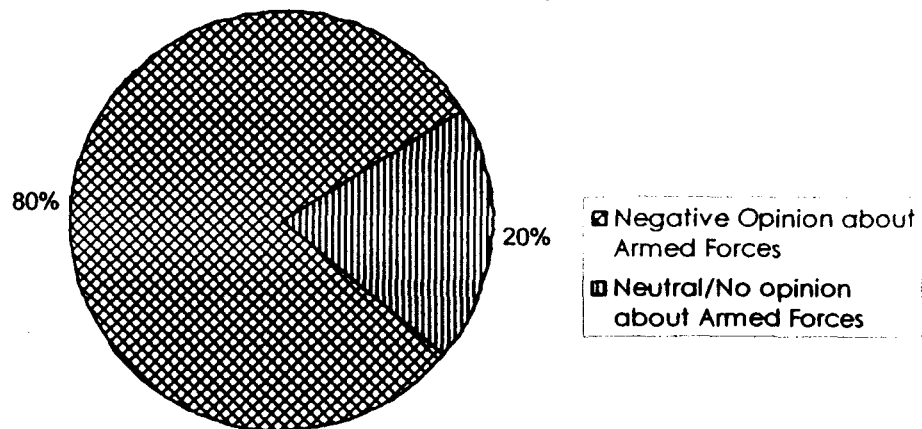


Figure 3.3:Victim's attitude towards the State police in Nagaland

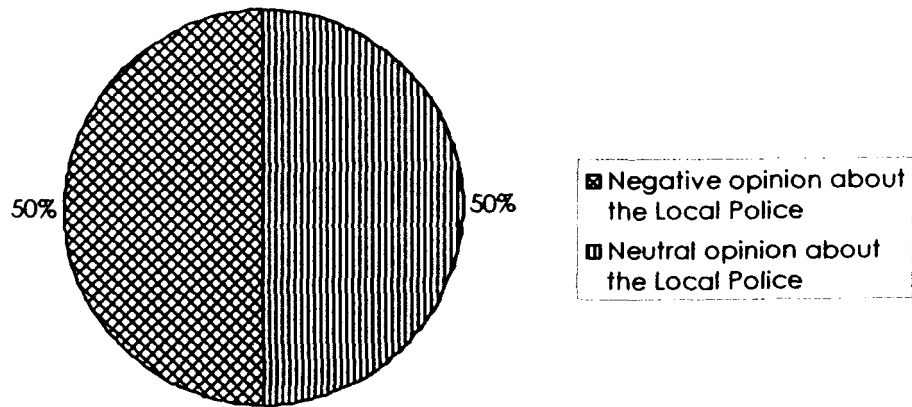


Figure 3.4:Victim's attitude towards Politicians

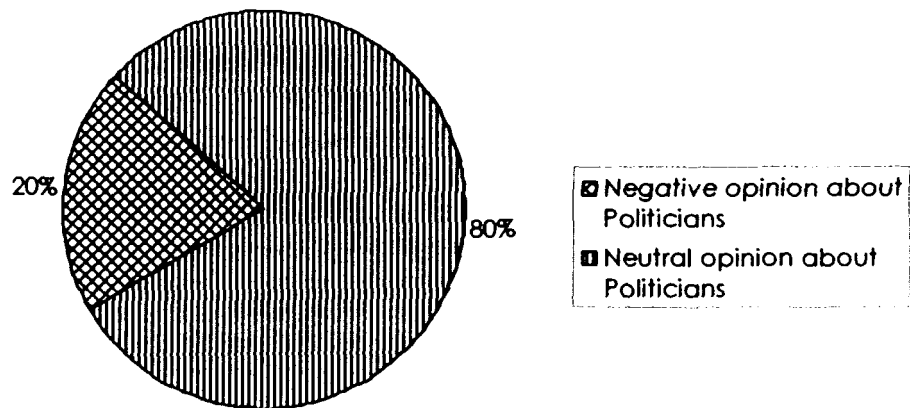
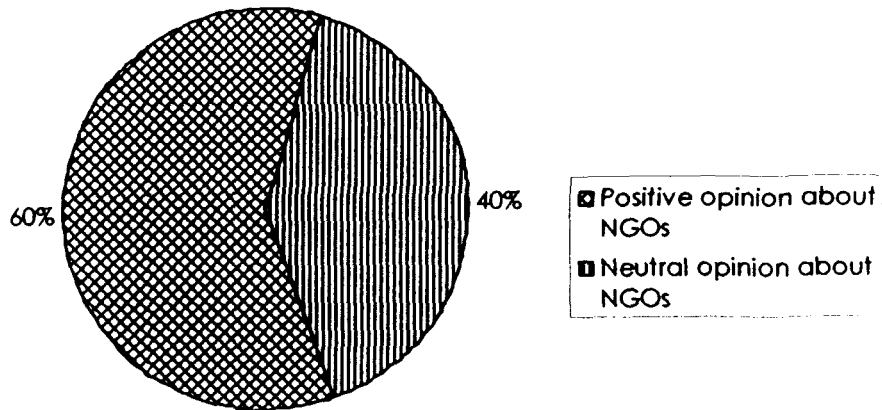


Figure 3.5:Victim's attitude towards NGOs



Similar to the views of the victims, the NGOs are also vehemently against this Act as it has caused many sufferings to the people of Nagaland and aggravated the situation to a large extent rather than resolving the on going problem. The opinion of the NGOs with regard to the Armed Forces Special Powers Act 1958 has been dealt elaborately in Chapter-IV of the study.

So far two extreme views on the alleged violation of human rights as a result of the enforcement of AFSPA 1958 in Nagaland have been examined. The views of the third group comprising of some public leaders including civil officials and members of the general public were also taken into consideration for the study. Majority from

this group had an opinion that the AFSPA 1958 has not been able to produce much positive result while there were some who were in favour of this Act. It is found that though they were literate yet most of them were not fully aware of the provisions of the AFSPA 1958, and its causes leading to enforcement that have resulted to violation of human rights as shown in figures 3.6 and figure 3.7.

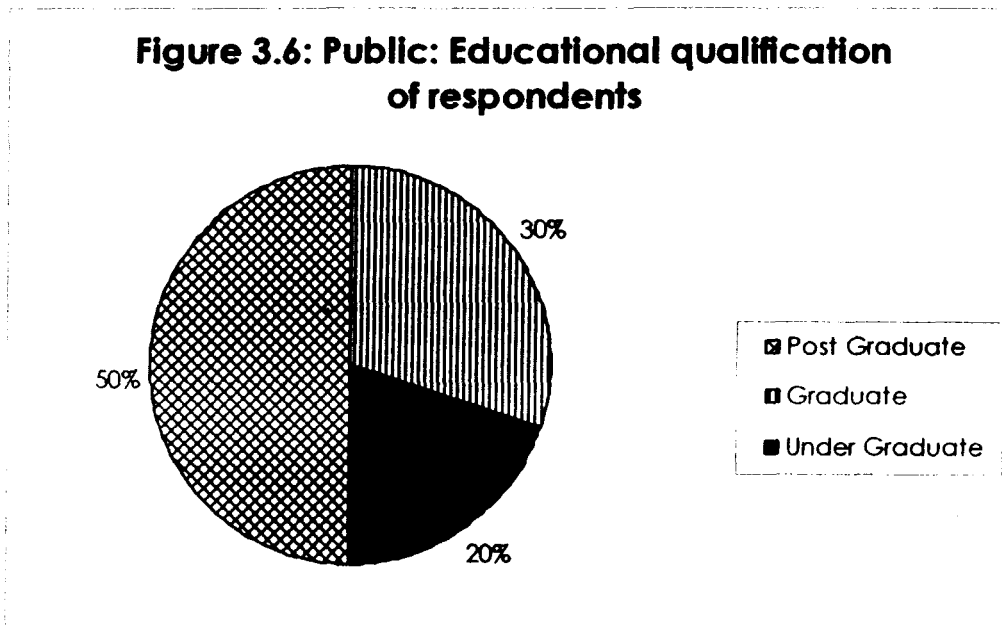
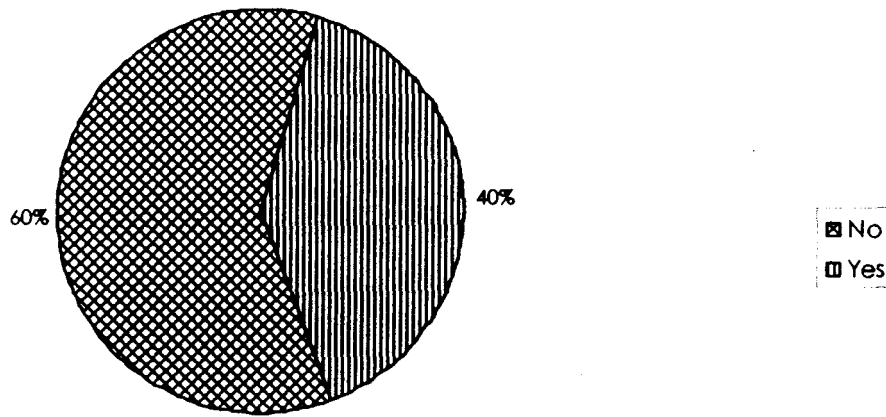


Figure 3.7: Public's awareness of AFSPA 1958

Interviews with cross-sections of the public were conducted to find out who according to them are the worst perpetrators of human rights in Nagaland. It revealed that the Indian armed forces are the worst perpetrators of human rights with 69 percent followed by the State police with 44 percent and others 31 percent which is given in figure 3.8.

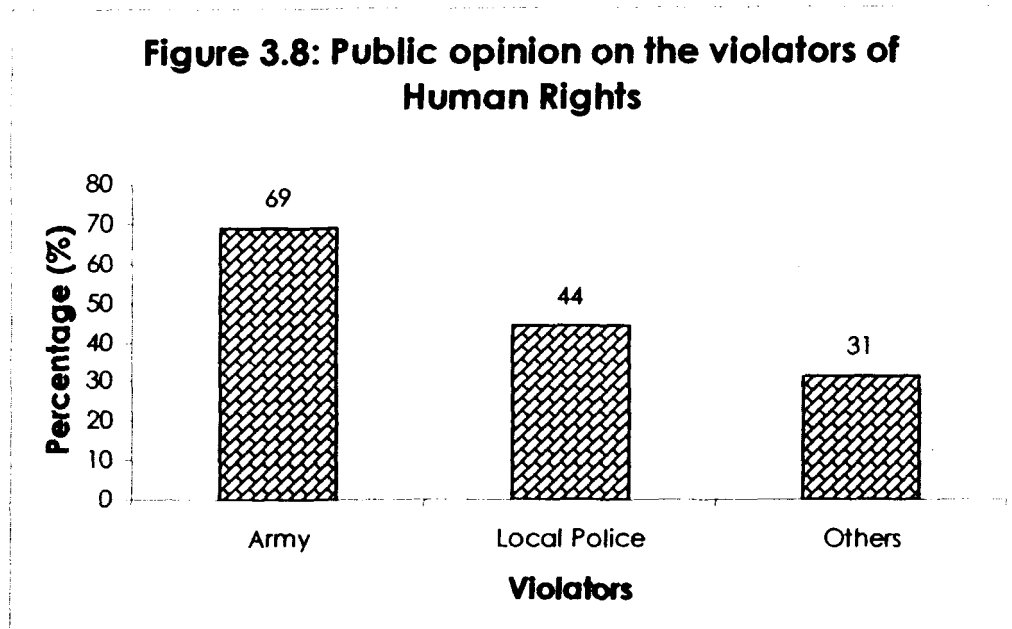
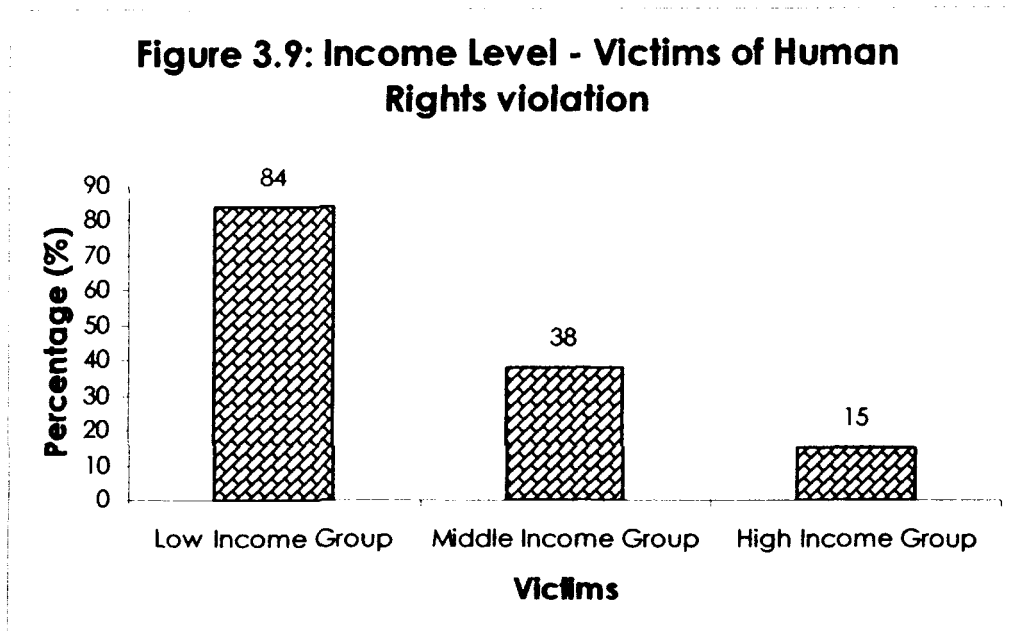
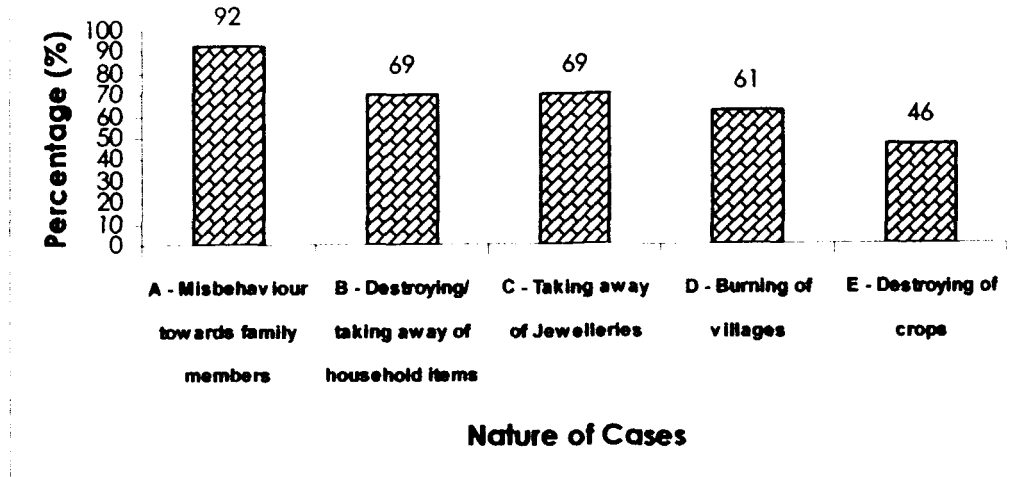


Figure 3. 9, revealed that the majority of the victims are people belonging to low income group followed by middle and high income groups.



Further, the study showed that while raids were carried out by the law enforcement agencies there were some instances of human rights violations as shown in Figure 3.10.

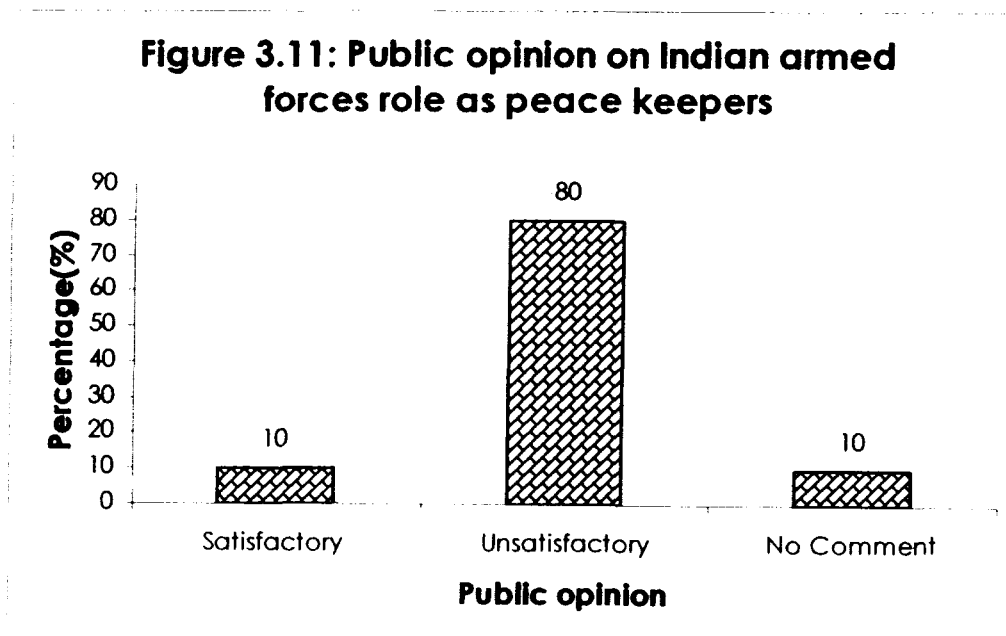
Figure 3.10: Cases during raids by the Indian armed forces and State police



In short, the respondents again cited some cases or incidents where they felt that the law enforcement agencies had committed atrocities resulting in the death of many innocent people. Many of them have mentioned about the incidents of Mokokchung that took place on 27th December 1994 and Kohima that took place on 5th March 1995 which were so vivid in their minds. The detailed of these two incidents has been discussed in Chapter-IV. Some respondents mentioned that whenever there is any altercation between Indian army and Naga militants the people staying in that area are often the victims of the aftermath. It was also reported by some political leaders that since 1957 villages were burnt down; many innocent people

were killed including the local headman. An interview conducted with a politician who himself was a victim of human rights violation²⁴ confirmed about the nature of human rights abuses which did not spared no one.

Figure 3.11, revealed the different opinion of the respondents about the role of the Indian army wherein 80 percent of the respondents have expressed their opinion about the role of the Indian army as unsatisfactory while 10 percent as satisfactory and the remaining 10 percent did not make any comment.



²⁴. Interview conducted with an Ex-MIA (Identity withheld) reported that he was picked up several times and tortured during the period 2002-2003.

Besides, on the question of the removal of Armed Forces Special Powers Act 1958, the majority comprising of 76 percent of the respondents supported for removal while 24 percent wanted the same to continue. This is shown in figure 3.12.

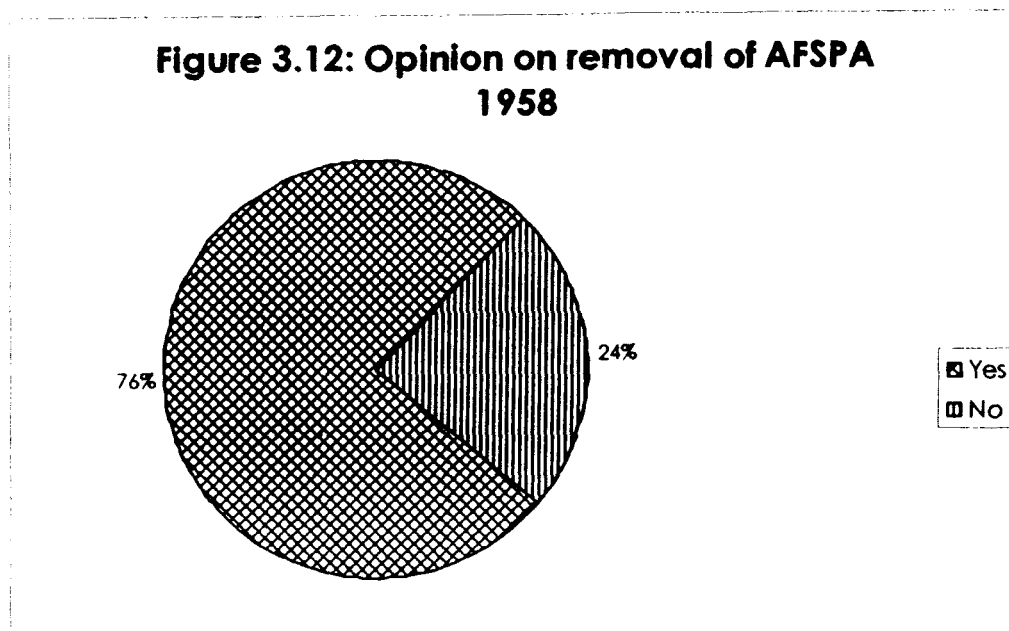
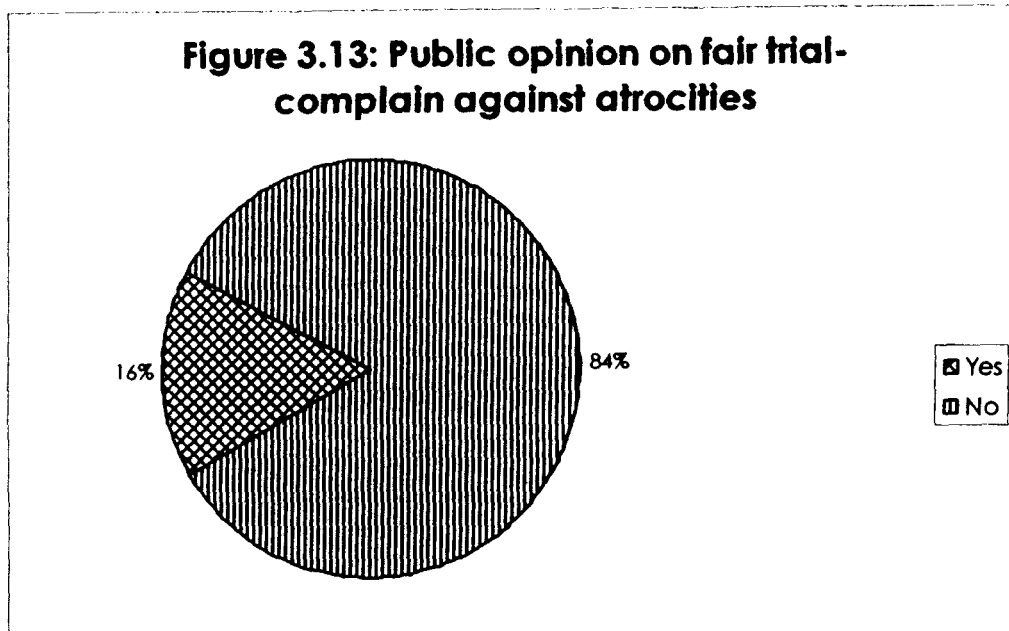
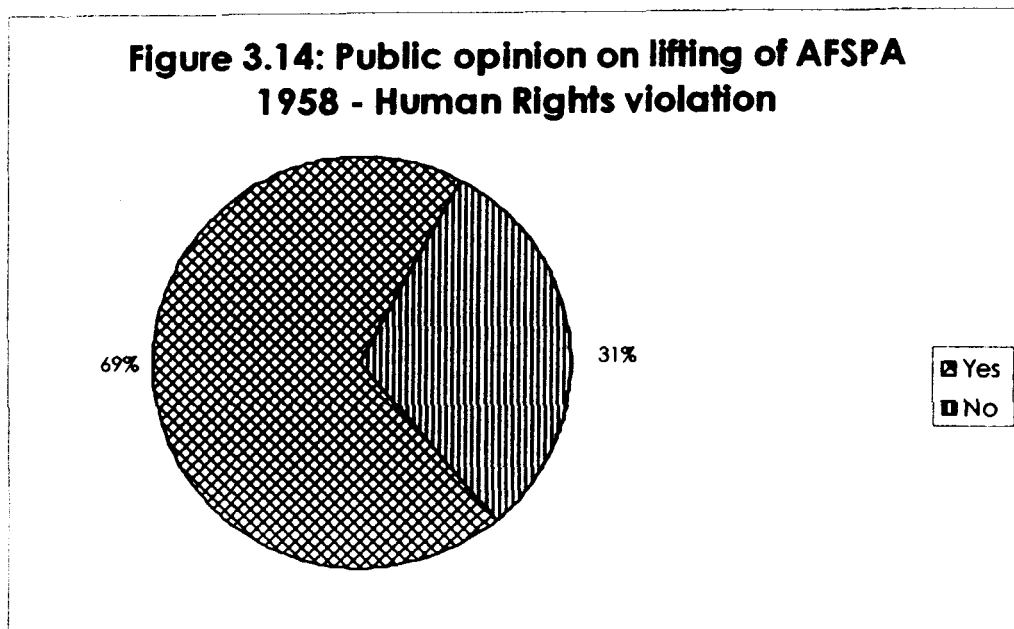


Figure 3.13 revealed the opinion of the respondents about free and fair trial in the legal cell or judicial system. 84 percent of the respondents are of the opinion that lodging a complaint in legal cell or judiciary will not yield any fair trial or positive result while only 16 percent of the respondents expressed their faith on the system.



The reasons why they consider that it will not bring about any fair trial is that usually such cases are hushed up in the higher level and the legal cell cannot prosecute the offenders since it is the law that has empowered them. Hence, majority of the people being denied of their rights prefer to endure the suffering and the injustice committed on them rather than putting their lives at risk by lodging a complaint. Normally, the law enforcement agencies obtain false confessions from either the village authority or the victims under duress. But there are few among the respondents who say that justice will be executed to those victims who lodge a complaint in consultation with human rights activists.

While expressing their views on whether the lifting up of the Act will stop human rights violations in Nagaland, 69 percent agreed and 31 percent disagreed with the view.



Those who opined that lifting the Act from Nagaland will prevent the violation of human rights believe that the cases of human rights violations are committed under the cover of this Act. Hence, lifting or removal of the Act will bring about the reduction of human rights violations in Nagaland. And also to bring about rapid socio-economic development, to enable the Nagas to carry out their everyday life without any tension or fear of being arrested, detained

torture or sexually molested, the respondents opined for the removal of the Act. However, there are those who are of the view that even if the Act is removed from Nagaland, violations of human rights may still persist because it has been noticed that the violations of the same were committed not only by the law enforcing agencies but also by other social elements of the Nagas themselves to some extent.

It is the opinion of 85 percent of the public respondents that the Indian armies are not performing their duties in accordance with the provisions of the Act as shown in figure 3.15. It could therefore be the reason that the presence of the Indian army in Nagaland is affecting the daily life of the public and the common people which is shown in figure 3.16, where 54 percent expressed their opinion that the presence of Indian army in Nagaland is affecting their daily life but the remaining 46 percent says that it did not affect their daily life.

Figure 3.15: Public opinion on Indian armed forces performing their duties as per provisions of the AFSPA 1958

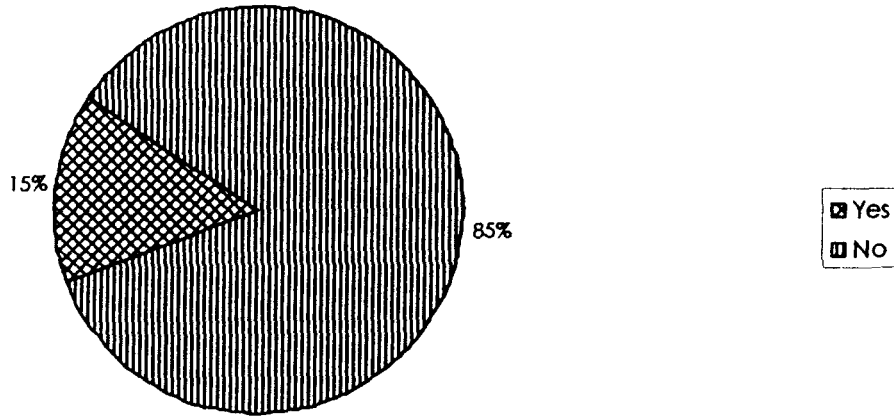
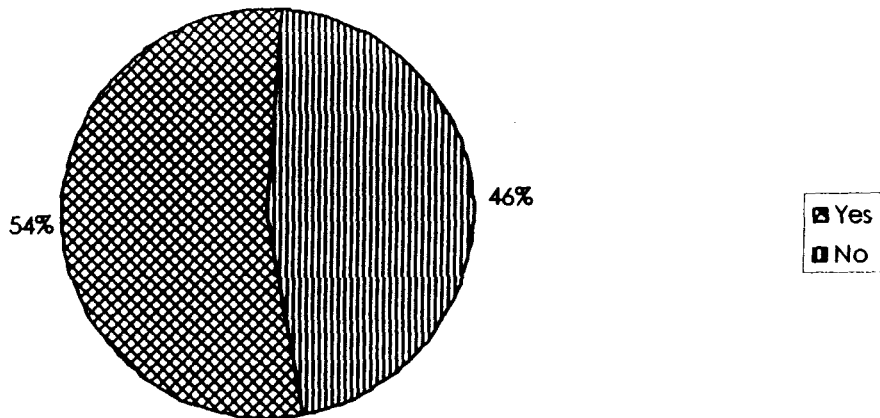


Figure 3.16: Public opinion on the affect on daily life due to the presence of the Indian armed forces



Some prominent knowledgeable citizens of Nagaland also expressed their opinion saying that the presence of the Indian army in

Nagaland has really affected their day today life as random checking at regular frequency in all areas of Nagaland, creating fear-psychosis in the minds of the people that they may be arrested, harassed, physically assaulted, etc., merely on ground of suspicion became the order of the day following the enforcement of AFSPA 1958.

On the working of the NGOs, the respondents are of the opinion that since the incidents of human rights violations have increased ever since the enforcement of the Armed Forces Special Powers Act 1958, therefore, they are of the opinion that the NGOs must be more active and strong enough to safeguard the lives and properties of the people in Nagaland. According to them, the NGOs must function with honesty and integrity to fulfill the objective of protecting and promoting human rights, help Naga people to be aware of their rights socially and economically, and also should focus to internationalize the issue in order to get worldwide support to reduce the violations of human rights. However, some critics have expressed their disapproval with regard to the functioning of NGOs. To them, NGOs have in practice not been able to do much in protecting the rights of the common citizens of Nagaland rather they alleged that these Organizations exist to promote their own vested interests. According to the critics, high level dialogues must bring about positive changes at the ground level. They are of the opinion that whatever works

undertaken by various NGOs so far are found to be ineffective and have not shown any promising result.²⁵ An analysis on the role of NGOs has been made in the following Chapter-IV of the study.

²⁵. Based on the interview conducted with cross-section of society during 2002-2003

CHAPTER IV

Role of Non-Governmental Organization (NGOs): Naga People's Movement for Human Rights (NPMHR)

CHAPTER IV

ROLE OF NON-GOVERNMENTAL ORGANISATION (NGOs): NAGA PEOPLE'S MOVEMENT FOR HUMAN RIGHTS (NPMHR)

c.

In the contemporary world, the Non-Governmental Organizations (NGOs) have been playing an important role in all spheres of human life including all round development and issues relating to the protection and promotion of human rights. There has been an explosive emergence of local, national and international Non-Governmental Organizations formed by different groups of people on every continent and in almost every country of the world which are working for the promotion and protection of human rights. In protection and promotion of human rights, the NGOs seek not only to investigate, but more importantly, to publicize the cases of human rights violations in order to pressurize the offending governments to comply with international law and recognized norms of human rights. They are in essence, investigators and disseminators of information who collectively comprise the human rights movement. The rise in the numbers of human rights NGOs has occurred as a response to abuses of human rights perpetrated both by State agencies such as the army, paramilitary or police forces, and by dominant sections of the society and other elements exercising exploitation and domination through various forms. But most of the organizations were established

in direct response to what were seen as gross and systematic violations of rights by the State. They strive to play a role in promoting and protecting rights of individuals and groups, often mediating between them and the state. However, in practical functioning, this task is rather complex and the relationship between the state and the NGOs does not make it easier due to mutual mistrust at times.

The United Nations Economic and Social Council (ECOSOC) defined the NGO, "as international organization which is not established by inter-governmental agreement".¹ Later the scope of this definition was expanded to include all those organizations which accept members designated by governmental authorities, provided that such membership does not interfere with the free expression of views of the organization.

Since human rights claims are addressed to governments, and various administering authorities, governmental practices and recognition of NGOs form an important part of the human rights movement. As the NGOs seek solutions to various kinds of abuses, they are often forced to recognize the paramount importance of the role of governmental agencies. Though NGOs differ in their origins,

¹. Tyagi, Yogesh Kumar, *Human Rights and Non-Governmental Organization: A case study of the Amnesty International*, (M.Phil Dissertation, School of International Studies, Jawaharlal Nehru University, New Delhi, 1979), p. 13.

histories, ideological orientation and strategies of intervention, however, they share the same basic perspective of gathering information and influence the governmental agencies for implementation of human rights. Nonetheless, these NGOs in all their diversity comprise a common feature of human rights movement, the dynamo that had driven the struggle against arbitrary rule, and to secure social and economic justice.

While drafting the United Nations (UN) Charter, NGOs played an important role as they lobbied for the inclusion of human rights provisions in it and for a system that would give NGOs a formal institutional affiliation. Consequently, it resulted in the incorporation of Article 71 of the UN Charter which provides the provisions that "Economic and Social Council (ECOSOC) may make suitable arrangements for consultation with Non-Governmental Organizations which are concerned with matters within its competence".² In 1993, the World Conference on Human Rights held at Vienna in Austria had recognized the significant role of the NGOs in the promotion and protection of human rights. In its Resolution No.38, the Declaration says:

². Singh, Gurjeet, "Role of National Institutions and Non-Governmental Organizations (NGOs) in Promotion and Protection of Human Rights- A Study of India" in Sehgal, B.P. Singh, (ed.), *Human Rights in India: Problems and Perspectives*, (Deep and Deep Publications, New Delhi, 1995), p. 587.

The World Conference on Human Rights recognizes the important role of Non-Governmental Organizations in the promotion of all human rights and in humanitarian activities at the national, regional and international levels. The World Conference on Human Rights appreciated their contribution to increasing public awareness of human rights issues, to the conduct of education, training and research in this field, and to promotion and protection of all human rights and fundamental freedoms. While recognizing that the primary responsibility for standard settings lies with States, the conference also appreciates the contribution of Non-Governmental Organizations to this process. In this respect, the World Conference on Human Rights emphasizes the importance of continued dialogue and co-operation between Governmental and Non-Governmental Organizations.³

Today, NGOs have been significant catalysts in the promotion and protection of internationally recognized human rights and there are more than hundreds of such organizations playing an active role in the field of human rights throughout the world. They often confront governments to safeguard human rights. It may be appropriate to discuss about some prominent Human Rights Organizations of International stature.

The International Committee of Red Cross (ICRC) founded in 1863 in Geneva⁴ is an Organization known widely throughout the world. The principal activities of the ICRC range from providing

³. Singh, Gurjeet, n.2, pp. 587-88.

⁴. Bhalla, S. L., *Human Rights*, (Docta Shelf Publications, New Delhi, 1991), p. 98.

humanitarian assistances and securing humane treatment in international and non-international armed conflicts to seeking excess to prisons and presenting confidential reports and thereby ensuring humane treatment to political prisoners of internal tensions. The objective of their activities is not to challenge the legitimacy of detentions or to question the legality of a particular war but to mitigate excesses of both phenomena. The operations of ICRC are strictly confidential and reports are published only if the concerned Government issues selective or inaccurate information. Its work depends on the cooperation of Governments and confidentiality of their operations.

Amnesty International was established in 1961 with its headquarters in London. Its main thrust is to secure immediate and fair trials of political prisoners. It seeks an end to torture, execution, disappearance, arbitrary killing, hostage-taking and other inhuman, *cruel or degrading treatments or punishments*. Meeting prisoners and mediating with the government officials concerned in trying to find remedies to the problems of prisoners has been an ongoing programme that is documented in the International Report published by Amnesty International every year. In 1977, Amnesty International

received Nobel Peace Prize and in 1978 it received the United Nations award for outstanding achievement in the field of human rights.⁵

Among such other human rights NGOs of international stature are the International Commission of Jurists (Geneva), the International Federation of Human Rights (Paris), the International League of Human Rights (New York) and the Minority Rights Group (London). All these organizations have a special consultative status with the United Nations. A special category of private human rights activity is undertaken by professional organizations whose membership and concerns transcend national boundaries. It has been noticed that Human Rights NGOs perform primarily the following six functions: (1) information gathering, evaluation and dissemination, (2) advocacy, (3) development of human rights norms, (4) lobbying and mobilizing of public opinion, (5) legal aid and/or humanitarian relief. (6) Building solidarity with aggrieved groups through greater exposure and condemnation of violations contribute substantially to the protection and promotion of human rights. Human rights NGOs have been working to promote the brotherhood of individuals and nations.

⁵. Subramanian, S., *Human Rights: International Challenges Vol. II.*, (Manas Publications New Delhi, 1997), p. 582.

In India the first human rights organization known as Civil Liberties was formed by Jawaharlal Nehru and some of his colleagues in the early 1930's. The main objective of the organization was to collect information on violation of human rights and to provide legal aid to nationalists who were accused of sedition against the colonial authorities.⁶ The exercise of Preventive Detention Act in 1962 during Indo-China conflict on communist groups and police repression in several states in 1970's further flared up the civil liberties movement. For instances, various NGOs emerged like the Association for the Protection of Democratic Rights (APDR) in Calcutta, Andhra Pradesh Civil Liberties Committee (APCLC), and the People's Union for Civil Liberties and Democratic Rights (PUCLDR) were started in 1970s. However, the PUCLDR was split in 1980 into two groups, namely, People's Union for Democratic Rights (PUDR) and People's Union for Civil Liberties (PUCL).⁷ Another trend appeared in Civil Liberties Movement that affected its dimension in the 1980s was in context of terrorist violence in Punjab and North-Eastern region. While on the one hand the atrocities committed by the militants on masses and on the other hand the phenomena of State-terrorism in form of police tortures and exercising of Preventive Draconian Laws like NASA, ESMA,

⁶ Palia, Arun Kumar, *National Human Rights Commission of India: Formation, Functioning and Future Prospects*, (Atlantic Publishers and Distributer, New Delhi, 1998), p. 44.

⁷ Kumar, Shashi, 'Human Rights Movements in India and National Human Rights Commission', in Sehgal, B.P. Singh, (ed.), *Human Rights in India: Problems and Perspectives*, (Deep and Deep Publications, New Delhi, 1995), p. 540.

and TADA,⁸ etc. worsely affected the civil liberties. Therefore, various domestic human rights groups started condemning the Government repressive activities.

During the emergency period (1975-1977), a number of human rights organizations such as Civil Liberties and Human Rights Organizations (CLAHRO) of Manipur, the Committee for the Protection of Democratic Rights (CPDR) in Bombay, the Jammu and Kashmir Peoples Movement for Human Rights, Naga People's Movement for Human Rights of Nagaland, and several other organizations have emerged and are fighting for some justice on behalf of the minorities and the oppressed. Although these organizations differ in their nature and structure, their activities are more or less similar that concern the promotion and protection of human rights.

Kashmir insurgency as well as the denouncement of Indian human rights record by the international Non-Governmental Organizations (NGOs) like Amnesty International, Human Rights Watch Asia, etc., further intensified the pressure in this direction. Therefore, the need for self-regulating human rights body became more apparent thereafter. The Indian Government started with the idea of constituting a self-vigilance body for monitoring the human rights

⁸. Kumar, Shashi, n. 7, p. 541.

situation in India. In fact, the Government had already intended to establish an internal body to counter the national and international pressure. Thus, the proposal for a commission as originally contained in a Human Rights Commissions Bill was introduced in the Lok Sabha on 14th May 1993. After incorporating certain amendments, the Commission was initially constituted on 12th October 1993 under the protection of Human Rights Ordinance of 28th September 1993, which was later presented to Parliament on 25th November 1993 to replace the Ordinance and became 'The Protection of Human Rights Act', 1993.⁹

The objective of the Act was to provide for the constitution of a National and State Human Rights Commissions and Human Rights Courts for better protection of human rights. It has twin objectives to fulfil namely, establishment of institutional structure both at centre and state level and to create enforcement machinery by way of human rights Courts for Protection of Human Rights. Such events of developments finally led to the establishment of National Human Rights Commission (NHRC) in September 1993. National Human Rights Commission (NHRC) advocated for the abolition of Terrorist and Disruptive Activities (Prevention) Act (TADA), its stand on custodial deaths, right to women and children and Police atrocities have all led

⁹. Palia, Arun Kumar, n. 6, p. 54.

to an atmosphere where NHRC has made its presence felt.¹⁰ The objectives of the NHRC are to create a culture of human rights throughout the country and amongst its citizens. As investigatory and recommendatory body with a specific stature powers, the NHRC acts as an advisory to the Government and submits its reports and recommendations for the future course of action on human rights issues. The role of the NHRC can be assessed in term of its achievements on several issues in the light of the manifestations of its objectives.

Since its inception, NHRC has been conducting many inquiries into complaints received from different States in the form of custodial deaths, custodial rape, police excesses, rape cases, dowry death, and indignity to women, excesses by armed forces, etc. On the basis of the section 12 (c) of the Protection of Human Rights Act 1993, the Commission is empowered to visit any jail or any other institution under the control of the State government where persons are detained.¹¹ With this power in hand, the Commission has visited several jails throughout the country to study the conditions of prisoners. Many changes did take place on the basis of the reports and recommendations made by the Commission for improving the

¹⁰. Magotra, V. P., "National Human Rights Commission: Credibility and Acceptance", in Sehgal, B.P. Singh, (ed.), *Human Rights in India: Problems and Perspectives*, (Deep and Deep Publications, New Delhi, 1995), p. 532.

¹¹. Palai, Arun Kumar, n. 6, p. 145.

conditions of the jails and for the inmates. On account of the changing social realities and emerging trend in the nature of crime and violence along with the growing concern about the issues pertaining to human rights within the country and the world over, the NHRC is empowered to review the existing laws and proceedings. One of the controversial Acts the Terrorist and Disruptive Activities (Prevention) Act 1985 (TADA) was reviewed by the commission and thereby recommended that this Act should not be renewed on the grounds that it was "incompatible with our cultural traditions, legal history and treaty obligations".¹²

The NHRC is also responsible in spreading human rights literacy and awareness among various section of the society. A three-fold strategy was evolved by the Commission to carry out this responsibility of human rights literacy and awareness. Firstly, all political parties at national and regional levels were involved in such a manner as to promote and create awareness about human rights issues among its cadres, besides monitoring the conduct of their cadres and liaising with the Commission. Secondly, meeting with the Chief Ministers of States to sensitize their civil servants and thirdly, having dialogues with Human Resources Development Ministry and National Council for Educational Research and Training at the Centre and competent

¹². Palai, Arun Kumar, n. 6, p. 149.

educational authorities at the state level. It is because of the effort of NHRC that the 10th December of every year is celebrated as Human Rights Day even in India. As research is one of the most important functions of NHRC, accordingly, the Commission has taken up several research studies in areas such as abolition of child prostitution, terrorism and violation of human rights in the Punjab, problems of the aged, abolition of child labour in the safety-matches and fire work industry in Tamil Nadu, and improving conditions of mental hospital and rehabilitation of cured patients.

The NHRC as an organization established to deal with human rights in India has taken up several cases even in the North Eastern Region. Some of the cases include the custodial death of Kheshiho Sumi of Nagaland while in the custody of the Assam Rifle who was arrested on mere suspicion on 12th November 1994. The outcome of the case was found to be a violation of law as per the provisions laid down in section 5 of the Armed Forces Special Powers Act (AFSPA) 1958 and as a result the Commission recommended compensation of Rupees 1 lakh to the next of kin of the victim.¹³

Another case taken up by NHRC was from Ukul town in Manipur. On 9th June 1994, the Commission received a complaint that

¹³ Palai, Arun Kumar, n. 6, pp. 125-27.

there was an alleged killing of civilians in cross-firing between 20 Assam Rifles and NSCN. Besides, acts of physical torture, looting of cash and valuables and destruction of properties by the Assam Rifles took place as a retaliatory act against the NSCN who were alleged to have shot dead two Assam Rifles Officers on duty in an ambush in Wino Bazar of Ukrul town. On 9th February 1995, the Commission recommended that compensation of Rs. 50,000/- be paid by the Ministry of Defence to the next of kin of each of the 3 civilians killed in the cross-firing.¹⁴

NGOs OPERATING IN NAGALAND

To understand the nature of the activities and role of NGOs in Nagaland, interviews were conducted through the structured and non-structured questionnaires, with the leaders of various NGOs, political parties, socio-economic and cultural organization. The interviews revealed that they have been handling with mostly cases of rape, custodial death, torture, arbitrary arrest and also to educate the common people and create awareness about their rights. The NGOs in Nagaland have been fighting against human rights violations committed mostly by the armed forces and to a certain extent by local police. The success and failure of the NGOs with respect to

¹⁴. Palai, Arun Kumar, n. 6, pp. 107-08.

solving the cases show that they have not been able to achieve much. The factors attributed to the failure are due to the fact that the Armed Forces Special Powers Act 1958 and the Disturbed Area Act cannot be challenged in the court of law though the enforcement of the Act has resulted in the violation of human rights. The political intervention and cumbersome of legal judicial system are the other factors contributing to its failure. In spite of their ineffectiveness in achieving their desired objective on account of the many hurdles they encountered yet the NGOs are still striving in their fight for the cause of protecting and promoting human rights as manifested in the form of support measures which they render to the victims of human rights abuses such as, rehabilitation and counseling, financial assistance in some cases, material support through humanitarian channels, etc.

The NGOs have been fighting for a revocation of this Act for a long time since according to them this Act is not at all effective as it has led to suppression of individuals' rights and freedom. They have expressed the Act as anti-democratic, and have even termed it a 'draconian law' that is applicable only to the animals and not meant for human beings. Several alternative measures to the Act were suggested including repealing the Act without any further delay, replacement of the armed forces by the local police and Reserved

Battalion and legal prosecution to those who were previously under immunity.

The prominent NGOs in Nagaland include the Naga People's Movement for Human Rights (NPMHR), Naga Mother's Association (NMA), Naga Students Federation (NSF) and the Naga Hoho. Of all these NGOs, the most prominent in dealing with the issues of human rights is NPMHR. Thus, an analysis of the NGOs operating in Nagaland with regard to the protection and promotion of human rights issues with special emphasis on Naga Peoples Movement for Human Rights has been made.

NAGA MOTHER'S ASSOCIATION

Women's groups in North-East India have persisted in their own way to express their desire for peace and to condemn violence. The most prominent among such groups are the Naga Mother's Association (NMA) of Nagaland, the Mothers' Union of Tura and the Naga Women's Union of Manipur. In a symbolic gesture of condemnation and rejection of violence whosoever be the perpetrator; the NMA has persisted in covering the body of every victim of violence with a black shroud. This silent yet eloquent

statement has not gone unnoticed or unheeded, and today the NMA is also playing a pivotal role in conflict resolution.

The head office of the NMA is in Kohima, the capital of Nagaland. It came into existence on 14th February 1984, with a preamble that stated, "Naga mothers of Nagaland shall express the need of conscientizing citizens toward more responsible living and human development through the voluntary organization of the Naga Mother's Association"¹⁵. Any adult women, irrespective of whether married or single can be a member of NMA either on individual capacity or through the women's organizations of their own tribes. The organization encourages human development through education and aims at eradicating social evils and economic exploitations and work towards peace and progress.

NMA has rendered valuable service for the cause of peace by mediating between the Government of Nagaland and the Naga Students Federation over age limit for jobs and came to an equitable settlement. In October 1994, NMA formed the Peace Team in order to confront the deteriorating political situation in Nagaland in which their theme was "Shed No More Blood". The NMA also has several women units in different Districts in Nagaland of which Watsu Mongdung is

¹⁵. Constitution of the Naga Mother's Association, (Reprinted in Kohima, 1992).

one of them in Mokokchung. An extraordinary case catapulted the Watsu Mongdung to fame through the incident that took place on 27th December 1994 in Mokokchung town. On this day, ten members of the Assam Rifles entered the town where several women were raped and arson was carried out. The Watsu Mongdung formed a special committee and investigated the matter. They identified eight victims and reconstructed the incident after a thorough discussion with them. None of the other social organisations wanted to take this up this matter, hence some members of the Watsu Mongdung filed a litigation on behalf of the rape victims and are still awaiting the verdict of the court.

The Watsu Mongdung carries out relief works during calamities, man-made or otherwise. They have led protests against any kind of oppression and violence. Once during a combing operation in Mokokchung when the army wanted to separate the men and women, they refused to be separated since they feared that the army would kill the men. Ultimately the army had to interrogate both men and women together and then released most of them.¹⁶

The NMA not only spoke against killings by the army but also by the militants. In a pamphlet released on 25th May 1995 the

¹⁶. Interview with Merenla Jamir, member of Watsu Mongdung, January 2003, Dimapur.

representatives of NMA voiced their concern at the conduct and activities of both the overground government and the underground government towards the deteriorating and intolerable Naga society.

Apart from peace initiatives, the NMA has worked for social regeneration. In Nagaland, there is a rampant abuse of alcohol and drugs. The NMA provides facilities for de-addiction. They collaborate with the Kripa Foundation of Mumbai for rehabilitation of drug addicts. The NMA has also started anonymous HIV testing. They are probably the first women's organization in the North-East to test pregnant women for HIV virus. The NMA is providing pioneering service for care of patients afflicted with Aids. An important issue that is preoccupying the doctors of NMA is the increase in HIV positive cases among pregnant women. The total number of persons afflicted with HIV in Nagaland is 700 as on 31st January 2004.¹⁷ An NMA spokesperson is of the opinion that conflict in Nagaland is a result of chronic underdevelopment. Therefore, the NMA believes that without addressing developmental issues there cannot be any peace in Nagaland.

¹⁷. Based on information provided by North East India Drugs and Aids Care, Shillong, Meghalaya, 2004.

NMA's greatest achievement lies in its ability to integrate and collaborate all Naga Women's Organizations in Nagaland. The members of NMA also collaborate with the Naga Women's Union of Manipur. The rallies organized by NMA are always well attended by other Naga Women's organizations. NMA has been working very closely with the Naga Hohos. The NMAs enormous influence in Naga politics is borne out by the fact that they are the only women's group in South Asia who has participated in a cease-fire negotiation. In 1997 they mediated between the Government of India and the NSCN (IM) faction and facilitated a cease-fire.

THE NAGA HOHO

The Naga Hoho is an apex body of all the Naga tribes. It was formed on 25th June 1994 at Wokha District and its Constitution was adopted after official formation of the Naga Hoho during 11th and 12th March 1998 session at Zunheboto District.¹⁸ The Naga Hoho is neither a political nor a Government body nor like the other NGOs and social organizations. But it is the tribe-based apex body of the Nagas which operates under the traditional system and the practice of the Naga people.

¹⁸. Naga Hoho, *White Paper on Naga Integration*, (Published by Hekhevi Achumi, Secretary (Finance) Naga Hoho), Nagaland, 2002, p. IX.

The main objective of the Naga Hoho is to uphold the solidarity of the Nagas, to rebuild the Naga family, to safeguard and protect the Nagas and their traditional life, to promote the social, cultural, economic and political heritage and to facilitate early settlement of the Naga issues. The Naga Hoho functions like a mediating council with Governmental and other NGOs to resolve certain issues pertaining to the Naga peoples as a whole. However, there are not much reports of Naga Hoho's involvement in specific cases of human rights.

NAGA STUDENTS FEDERATION

The Naga Students Federation (NSF) was formed in 1947 with the vision and sacrifices of educated Naga youths of that time, who felt the need to have an organized body through which collective aspirations could be articulated and at the same time respond to issues confronting the Naga students in general. It came into being at a time when there were only few Nagas who could apprehend futuristic possibilities with clear political and social acumen. Since then, the NSF has been striving for the larger interest of the Nagas—unwavering in its stand and persevering in promoting the rights of the Nagas. NSF stood firm without compromising on any issues, according to their own perspectives, which are matter of concerns for the Nagas

as a people, irrespective of tribes or divisive elements that may prevail from time to time.

The head office of Naga Students Federation is in Kohima. NSF draws out funds from membership collected from students, contributions from well-wishers and various organizations and individuals. NSF not only operates in Nagaland but its activities extend up to all Naga inhabited areas in Burma, which is known as Eastern Nagaland, Naga areas in Assam, Manipur and Arunachal Pradesh. The main objectives of NSF are to cultivate and preserve the cultures, customs and traditional heritages of the Nagas, ameliorate social and moral activities, to look after the welfare of the students, and to play a complimentary role towards the Naga political movement.¹⁹

Since its inception, it is said that the NSF has been supporting the Naga struggle for freedom. This is substantiated in A. S. Atai's thesis on "*Naga Nationalism and National Socialist Council of Nagaland*", wherein he had mentioned that "NSF either directly or indirectly helped the Nationalist Socialist Council of Nagaland (NSCN) in espousing the cause of Naga unity". The motto of NSF "for a greater Lim and glory of the Naga" in itself contains elements of NSF stands as

¹⁹. As said by the President of the Naga Students Federation December, 2003.

manifested in a Memorandum submitted to the Prime Minister of United Kingdom on 9th April 1994, which says:

We (Nagas) are the people who are independent. However, we are now a divided nation under forced occupation and military siege. We are fighting these occupational forces and under no circumstances will we accept the division of our land and people. Once again, we say "the occupational forces (of Myanmar and India) must go and our rights respected."²⁰

The gross human rights violations committed by the security forces which is prevalent in Nagaland has become an instrument used by the NSF in bringing about unity among the Nagas and at the same time using it to campaign for the right of self-determination as indigenous people.

The nature and cases that the Naga Students' Federation (NSF) has dealt with prior to the enforcement of Armed Forces Special Powers Act 1958 (AFSPA) till the period of the cease-fire between the Indian Government and the Naga militants are rape cases, custodial death, torture and arbitrary arrest. After the cease-fire agreement in

²⁰. Shimray, Atai , A. S., *Naga Nationalism and National Socialist Council of Nagaland*, (Ph. D. Thesis, Department of Political Science, N.E.H.U. Shillong, 1996), p. 305.

1997, the NSF have been dealing mostly with cases of torture and arbitrary arrests.²¹

NAGA PEOPLE'S MOVEMENT FOR HUMAN RIGHTS

In 1978, a representative of the Naga Students Union based in Delhi (NSUD) attended the Conference of Asian Forum for Human Rights which was held in Hongkong. It was from this experience of the campaign that NSUD conceived the idea of having an organization which will not only represent the students but also raise people's voice. As a result, on 9th September 1978, the NSUD appointed a steering committee of five members for the purpose of launching a human rights organization. After several rounds of deliberations, the committee presented the idea of forming an organization called "Naga People's Movement for Human Rights" (NPMHR) along with the draft declaration. The title was formally approved by the NSUD in a general meeting held on 26th 1978 November and adopted the declaration of the NPMHR. In that meeting, they elected a five member executive committee with P.S. Lorin as the first Convenor.²²

²¹. Based on an interview conducted with the President of the Naga Students' Federation, on December, 2003.

²². Naga Peoples Movement for Human Rights (NPMHR), 20 years of NPMHR (1978-1998), (published by NPMHR), p. 22.

Thus, NPMHR was primarily formed to protect the Nagas from the atrocities committed by Indian armies and para-military forces in Naga inhabited areas.

The main objective of Nagaland People's Movement for Human Rights (NPMHR) is to highlight army atrocities on the Nagas in Nagaland and Naga inhabited areas. The organization in these areas responds to the special circumstances created by a vast army presence. This organization seems to have emerged from backdrop of ethnic struggles. The NPMHR has the peculiar distinction of having a cosy relationship with the Government of Nagaland but it is on antagonistic terms with the Government of India as it protests an army presence and atrocities in Nagaland and all Naga inhabited areas.

The NPMHR has its unit offices at Kohima, Capital of Nagaland and Senapati in Manipur with the Secretariat at Kohima. Outside the Naga areas the unit is at Delhi but if there has to be creation of any new unit it will depend on the merit of the circumstances and with the prior approval of the General Assembly of the Organization. NPMHR seeks to collaborate with other organizations working on the similar principles and objectives. NPMHR is a non-political, non-religious

organization. Membership is opened to any Naga who is in agreement with the declaration of the organization. However, the members of any political party are not eligible to become its member.

ORGANIZATIONAL STRUCTURE OF NPMHR

The success and failure of any organization depends upon its structure, support base and objective dynamism. An effective organization brings together interdependent parts to form a united whole through which authority, co-ordination and control may be exercised to achieve a given goal. An organizational structure as a framework holds the various functions together according to the pattern, order, topical and legal arrangements and built-in relationships.

The NPMHR, as an organization, fighting for promotion and protection of human rights is dedicated to facilitate, support and strengthen solidarity, unity and peace among the Nagas and also with other indigenous peoples and other human rights organizations. To achieve such objective it has a well defined organizational structure. At the top of the structure is the General Assembly which is the highest decision making body. The General Assembly is composed of all individual members including the Executive and

office bearers. The meeting of the General Assembly is held once in a calendar year. The venue of the meeting is selected in different districts of the Naga inhabited areas on the basis of rotation. The General Assembly after discussions and deliberations gives policy direction to the organizational activities of the NPMHR.

In order to foster co-ordination of its various activities towards the attainment of its goals, precise and effective delegation of authority, proper direction, motivation and control, a Secretariat composed of Executive Council headed by the Secretary General and assisted by five members nominated by the General Assembly carry out the day-to-day activities of the organization besides acting as a coordinating body among the different functioning units.

The purpose of having a Secretariat is to carry out activities which are within the parameter of goals of the NPMHR. It is the Secretariat that promotes maximum participation of the people in the decision making process particularly in the areas of human rights, ecological justice, social development, culture and education through bulletins, annual reports and other activities such as relief works for victims of human rights violations including economic development programmes. The Secretariat also looks after the financial management of NPMHR and it is entrusted with the

responsibility of preparing budget, maintaining and preparing records of income and expenditure.

As said, going by the reports and documents, the NPMHR seems to have emerged to fight against the atrocities committed upon indigenous communities and weaker sections of the societies by the Indian army deployed in Naga inhabited areas to eliminate militancy. The concern of NPMHR is not only confined to the violation of civil rights but also the State structure and the development model. The Programme of NPMHR includes awareness building, organizing the struggle for protection and promotion of human rights, documenting and disseminating human rights violations which include taking to the Supreme/High Courts of India against such violations. Organizing relief works for victims of human rights violations including economic programmes of rehabilitation also occupies an important aspect of NPMHR.

The NPMHR is based on the universal belief that "violation of human rights in any part of the world is a threat to the human race as a whole and protection and promotion of human rights anywhere is a

concern for all."²³ The NPMHR has been attempting to give an organized expression to the Naga peoples fight for their rights.

DECLARATION OF THE NAGA PEOPLE'S MOVEMENT FOR HUMAN RIGHTS

The NPMHR is a movement for human rights for the full realization of the human personality through social transformation. Mankind has made history through the struggle for freedom from exploitation and subjugation. And the history of the Naga people has manifested that there are forces both inside and outside the society collaborating in strangulating social progress. The Naga people have seen economic exploitation, political and military domination, social suppression with the imposition of alien cultural and legal systems and the distortion of their history.

In the light of these experiences, the Naga People's Movement for Human Rights takes upon itself the task of initiating organized struggle to ensure and safeguard the following:²⁴

1. the right to life;
2. the right to work;

²³ Naga Peoples Movement for Human Rights (NPMHR), n. 22, p. 1.

²⁴ *Ibid*, p. 3.

3. the right to live together as a people and the unification of all Naga lands;
4. the right to hold and communicate one's beliefs;
5. the freedom of movement, assembly and association;
6. free access to all places of learning;
7. maximum participation in the making of decisions affecting their lives;
8. freedom from socio-economic exploitation, political domination and military repression;
9. against anti-democratic practices and the dismantling of institutions and the social values which legitimize and perpetuate these within our society;
10. against the practices of arbitrary arrest, detention, torture and execution, and the use of unconventional weapons;
and
11. against the imposition of undesirable alien legal systems and socio-cultural concepts and ways of life.

ACTIVITIES OF NPMHR

In June 1978, NPMHR along with representatives of Naga Students Federation and its unit based in Shillong went to Phek town in Nagaland to enquire into the torture of two students by the Assam

Rifles. They also went to visit the victim of alleged raped case of Mrs. Kuono (65years) by 99 Border Security Force at Kohima and the arrest of four Naga youth movement workers. Soon after the publication of the report of their visit, NPMHR organized protest rallies in Delhi, Shillong and Kohima against continued violations of human rights in Naga inhabited areas. These rallies were conducted in order to create awareness of human rights and to mobilize support for the organizations.

Following its formation, the NPMHR organized a Human Rights Week in Nagaland from 10th to 15th December 1978, in order to observe the 30th Anniversary of the Universal Declaration of Human Rights by the United Nations. But the Government of Nagaland tried to prevent them from having such rallies. Thus, on 14th December the Government of Nagaland imposed the Assam Maintenance of Public Order Act 1953,²⁵ banning public meeting, and rallies for one month starting from 14th December 1978. Further, the assembly of more than five persons was also prohibited and any violation was to be dealt with two years imprisonment along with fine.

²⁵. Luithui, Luingam and Nandita Haksar, *Nagaland File: A Question of Human Rights*, (Lancer International, New Delhi, 1984), p. 238.

Despite the tough measures initiated by the Government, the Week's programme organized by the NPMHR was reported to be a great success which culminated in the adoption of several resolutions. The resolutions include demand for immediate withdrawal of Indian armed forces, revoking of all 'black laws', and also atrocities committed by the Armed Forces on the Nagas and the State Government for imposing the Assam Maintenance of Public Order Act of 1953 in order to prevent peaceful rally and processions.

During the above mentioned week long observations and tour, public meetings were held in all the villages they visited, wherein people expressed their long-suppressed feelings without any fear. Many of them gave moving accounts of the frequent torture, hunger and humiliation, etc, committed by the Indian armed forces. Some of the reports and nature of repressions used by the military and para-military forces of India on the Nagas were said to be:

1. execution in public;
2. mass raping;
3. deforming sex organs;
4. mutilating limbs and body;
5. electric shocks;
6. puncturing eyes;

7. hanging people upside down;
8. putting people in smoke-filled rooms;
9. burning down of villages, granaries and crops;
10. concentration camps;
11. forced starvation and labour etc.²⁶

Besides all such incidents, forced labour was also imposed on the Naga people. Villagers were forced to carry heavy loads, and when they collapsed due to the heavy weight or were unable to walk they were whipped. It was reported that some were even shot death. Women were also not spared as they were made to dig trenches, build bunkers, fetch water and fuel for the army. Many a times, villages were burnt down and the villagers were herded into concentration camps. Relatives of those who were suspected to be involved in the Naga Movement were kept separately along with their children and for days together they were made to starve. As they were kept in concentration camps and not allowed to go out they could neither cultivate their fields nor have any contact with their families and relatives. Even when they were released after two or three years, the victims were so weak due to malnutrition that most of them died on their way before reaching their respective villages. All these incidents took place mostly in the 1960s and 1970s in Nagaland.

²⁶. Luithui, Luigam and Nandita Haksar, n. 25, p. 235.

Since its inception, NPMHR drew the attention and support of many in Nagaland and outside. Prominent among these are; Justice V.M. Tarkunde, Prof. Dharendra Sharma, Prof. Phadnis, Govinda Mukhoty, Nandita Haksar, Kirti Singh, Mohan Ram, Nikhil Chakravarty, Sudeep Majumdar and many others. Organizations such as People's Union for Civil Liberties (PUCL), People's Union for Democratic Rights (PUDHR), Jawaharlal Nehru Students²⁷ were the backbone in the protest March rallies organized in Delhi on 15th October 1979.

Besides, NPMHR also held a workshop in October 1980 at Dimapur in which discussions on social, economic and political aspects of the Naga society took place. As a result of its contribution towards human rights, NPMHR was again invited to participate to the Asian Forum for Human Rights Conference held in Manila (1981). As the only organization formed in the State with the objective of protecting the rights of the Nagas against any kind of violation committed by the Indian armed forces, and at the same time acting as the voice of the people, the NPMHR took upon itself this mantle by bringing to light several such cases by filing 'public interest litigation' in the Supreme Court of India. For instances, in 1982, the Naga Peoples Movement for Human Rights filed a case with the Supreme Court of

²⁷. Naga Peoples Movement for Human Rights (NPMHR), n. 22, p. 23.

India challenging the Constitutional validity of the Armed Forces (Special Powers) Act 1958 at the same time giving details of atrocities committed by the armed forces in Manipur and Nagaland.

In the words of V. K. Krishna Iyer former judge of the Supreme Court:

The stark and tragic fact remains that Army excesses under the guise of Armed Forces (Special Powers) Act are taking place, the military stationed in that area is menacing the common people's life and liberty...it becomes the compelling duty of every Indian to protest against such gross violence. Even judicial remedies are becoming futile on account of Army indifference to court orders.²⁸

The statement clearly explained about the menace of army atrocities calling for concerted efforts from all citizens of the country to protest against such violence. However, after 15 years in 1997, the Supreme Court finally gave a hearing and passed the judgement upholding the Act, saying that the "the Act in itself is good". The act in itself may sound good but the manner in which it has been misused and misappropriated by the army personnel, resulted in lot of hardship, harassment, torture, suffering and death of many common innocent people.

²⁸. Shimray, Atai , A. S. n. 20, p. 324

The NPMHR moved a Habeas-corpus petition on behalf of two women, whose husbands were taken away during March 1982, by the 21st Sikh Regiment and did not return. There was never any allegation that these two men namely C. Paul and C. Daniel a pastor and a school teacher were in any way connected to the militant activity. In 1984, the Supreme Court of India gave its historic judgement in Sebastian Hongray vs. Union of India, Case No. A.I.R. (1984) S.C.1026, in which the Court directed the army to give rupees one lakh as compensation to each of these widows and directed the District Superintendent of Police to initiate prosecuting the culprit army personnel.²⁹

NPMHR took up some of the specific cases of violations of human rights with his Excellency, the Governor of Nagaland, on 16th November 1990 through a representation, which was submitted by about ten thousand students and villagers in a public rally-cum-peaceful procession to the Raj Bhavan in Kohima and enlightened him on the following for his careful perusal and necessary action:³⁰

²⁹. Sanajaoba, N., *Human Rights: Principles, Practices and abuses*, (Omsons Publications, New Delhi, 1994), p. 178.

³⁰. *Ibid*, p. 175.

1. On 25th March 1990, at Zubza 20 kilometer away, from Kohima, Captain Hooda of the Assam Rifles shot at and fatally wounded Mr. Nungshi Ao, an employee of the Nagaland Government.
2. On 19th July 1990, at Zubza, Mrs. Gono, an old woman of about
3. 70 years was tortured and raped by a jawan of the Assam Rifles.
4. On 27th August 1994 following an encounter at Yakhunou village, the 3rd Assam Rifles went on a mad rampage wherein the villagers were tortured, houses were ransacked and valuables were looted, a school teacher and student were pulled out of church service and beaten up and seriously injured. Against Supreme Court directives and restorations, the armed forces also used educational institution as concentration camps creating neighbouring villages a nightmarish time.
5. During 1st-5th October 1990, innocent villagers of Pherima, Zuyekhu, Phiphema, Ciepama and surrounding areas in Nagaland experienced untold harassments and indignities. Travellers between Kohima and Dimapur on National Highway 39 were subjected to harassments likewise.

6. During 12th-15th October 1990, most of the Northern Angami areas, comprising of 8-10 villages were subjected to various degrees of torture. Entire villages were herded into concentration camps. Church building was again used as a concentration camp against Supreme Court directives. Several reports say that women were herded like cattle, while the men were systematically tortured. Chili powder was reported to have been put into their eyes, while water was poured down through nostrils. Over 50 innocent villagers sustained serious injuries. The area MLA was told to shut up, when he tried to intervene. High government officials including the Home Secretary were reported to have been harassed and humiliated. On 12th October 1990, while the Minister for Power, Government of Nagaland, was travelling from Wokha to Kohima, his official car was shot and his bodyguard disarmed at gun-point. The Minister was asked to come out of the car and made to stand with his hands up in the air for about three hours.

As regards the excesses of the Assam Rifles personnel's, the Chief Secretary to the Government of Nagaland had to write this letter to the Inspector General of Assam Rifles, C/O. 99 APO, and the

Deputy Inspector General of Assam Rifles, Nagaland Range on 13th

October 1990:

While expressing our heartfelt sympathy over the unfortunate incident in the ambush on the men of the Assam Rifles personnel yesterday, the 12th Oct. 1990 in Kohima-Wokha road, and the serious views taken by the Government of Nagaland on the incident, it is regretted to say that number of innocent citizens including a Minister and responsible officers were harassed and ill treated by the Assam Rifles personnel operating in the area indiscriminately. It is felt that this old method will only result in losing sympathy with the loyal citizens and create more administrative problems. You may therefore issue instruction to the forces operating in the area to stop forthwith any unnecessary harassment to the innocent villagers and other persons. On the other hand, the district administration and police have been asked to ensure extension of cooperation with all other agencies of maintenance of law and order to ensure that rule of law is enforced.³¹

However, as, the above directive was simply ignored, again the Chief Secretary to the Government of Nagaland was compelled to issue another order to the Deputy Inspector General of Assam Rifles, Nagaland Range (south) c/o 99 APO, on 15th October 1990:

You may kindly refer to my letter no. CON/90(A) dated 13th October 1990 and my discussions with you on the 14th October 1990 morning regarding the incident on 12th October 1990. It is regretted that, in spite of our request to you to issue instruction to the Assam Rifles personnel operating in the area to stop forthwith harassment and ill-

³¹. Sanajaoba, N., n. 29, pp. 175-76.

treatment of innocent persons, we have received detailed reports about beating up and physical tortures as under:

Botsa village; 5 persons were harassed and beaten up badly. The five persons are now undergoing medical treatment.

In Nachama Village; 16 persons were physically tortured and beaten up and 2 among them, including the village headman were very serious and later taken, to Kohima for treatment.

In Nerhema Village; 29 villagers were beaten up; out of which six persons whose conditions were serious were taken to Kohima for treatment.

In addition, the persons traveling between Kohima and Wohka were dragged out from vehicles, slapped and ill-treated, including responsible State Government officials and serving jawan of the Assam Regiment. The Minister for Power, traveling from Kohima to Wokha with his official vehicle and national flag was stopped, interrogated, harassed and made to stand for about three hours even after verification of his identity.

Resorting to this kind of excesses did not seem to help in isolating the elements indulging in unlawful activities. It is important that the law enforcing agencies should not also indulge in unlawful acts. You are, therefore, requested once again to ensure that necessary instructions are issued to the men under your command to stop harassing and torturing innocent villagers and citizens without any further delay, and to ensure that the orders are complied with."³²

On 30th January 1992, Mr. Neipelie Chucha was shot dead in cold blood, as he got off from the vehicle which he was driving from Meluri to Kiphire under Phek District, while in company with two-members, Mr. David Ward and Steve Hillman of London based Human Rights Group called the 'Naga-Vigil' along with 13 other

³². Sanajaoba, N., n. 29, pp. 176-77.

Nagas, who were then arrested and detained in an Army camp at Jessami in the State of Manipur. It was reported that even after 13 days of detention, they were not produced before any court of law, and instead, they were reportedly tortured, harassed and kept blind-folded all the time. NPMHR then moved a Habeas- corpus petition in the Gauhati High Court, under Civil Rule No. (HC) 41 of 1992 and secured an interim order. The order included a provision, "to provide such medical aids as may be considered necessary to the detenus", Dated 17.2.92. They were reportedly lodged in Imphal jail of Manipur and Naini jail Allahabad in Uttar Pradesh respectively.³³

With a view to get international attention on the Naga problems, some members of the NPMHR attended the United Nations Conference on Indigenous Peoples at Geneva from 25th-29th July 1994. In this Conference, they voiced their concern over the forced occupation by the Indian armies in the Naga Hills and along with this illegal occupation of the land, the Government of India had enforced several 'black laws' which the Indian Armed Forces have used them as instruments to unleash a reign of terror in the Naga areas.³⁴

³³. Sanajaoba, N., n. 29, pp. 177-78.

³⁴. Shimray, Atai , A. S. n. 20, p. 378.

The NPMHR had played an important role on many issues relating to human rights violations in Nagaland. Out of these issues in which NPMHR's role became prominent following two cases are discussed here under:

1. MOKOKCHUNG INCIDENT OF 27th DECEMBER 1994:

On 27th December 1994, one patrol of a Task Force of 16 Maratha Light Infantry, comprising of 30 men and one JCO was moving from the hospital location to the Police Point and onwards to the Micro hills in Mokokchung town. At 10:20 am, when the patrol party came under heavy fire from a *kutcha* house across the road, one jawan, who was the first man in this patrol, was shot and dead by militant. The patrol party immediately returned fire and a hand grenade was lobbed in that *Kutcha* house. One militant inside that *Kutcha* house was also shot killed while another trying to escape from the same house was chased and shot death. Two army eye-witnesses namely Major D. K. Sharma and Nawab Subedar Chidambara, stated in their affidavits that the *Kutcha* house caught fire because of explosion of the hand grenade and fire started spreading fast due to strong wind blowing on that day. Also, due to heavy exchange of fire, a number of electric wires got snapped and a few shops caught fire

due to this short circuiting. The fire started spreading fast due to high speed winds and the highly inflammable items like paints, clothes, gas cylinders kept for lighting purposes in those shops. Soon thereafter a number of shops and houses caught fire leaving 12 (twelve) persons death and considerable damage to properties. Another reason why fire could not be controlled was due to acute shortage of water and limited number of fire tenders available in Mokokchung town. It was however reported that fire was brought under control only by the late afternoon of 28th December in 1994. Allegations were also made on rape and molestations to four women by jawans of the Task Force during the incident. An FIR was lodged suo moto by the officer- in-charge of Mokokchung Police Station No.1, with regard to the arson, casualties, damages to properties and rape.

Following the gravity of the incident and pressure from the various NGOs prominent among them being the NPMHR, the State Government constituted on 3rd April 1995, a Commission of Inquiry headed by Justice D. M. Sen (Retd.), Gauhati High Court, to probe into the causes and circumstances leading to the above incident. The Inquiry commission cross-examined 22 (twenty two) civilians, 4 (four) Government officials and 3 (three) Army personnel. During the investigations an eye witness, Colonel Malik, stated in his affidavit that "the persons of NSCN (I-M) not enjoying the local support and having

failed in gaining a foot hold in the town resorted to create chaos and setting property to fire which thus resulted in the loss of property of the civilians".³⁵

However, some prominent civilian witnesses namely Dr. Senti Longkumer, Mrs Marjungla, Shri Karikishan Bajaj, Shri Bajranglal, Shri Govindaram Chandak gave a different picture stating that "three Army jawans" were the main culprits in setting the houses and shops on fire. This deposition statement was corroborated by other civilian witnesses as well. Allegations of rape and molestation by personnel of the Task Force of 16 Maratha Light Infantry and 10 Assam Rifles were also made though these allegations did not come within the purview of the commission. Nonetheless, evidence on these allegations was collected from the victims.³⁶

After the thorough investigation and probing evidence, the Inquiry Commission in its final report stated that the shooting was indeed started by the insurgents prompting "preventive and punitive action from Task Force of 16 Maratha Light Infantry". On the case of arson to the houses and shops, the Inquiry Commission found that it was a "deliberate act of setting fire" by 3 to 4 Jawans of the 16

³⁵. Report of the one man Commission of Inquiry, Justice D.M.Sen, Retired Judge of Gauhati High Court, The firing and Arson Incident, on 27th December 1994. Mokokchung, Nagaland, Volume-4.

³⁶. *Ibid.*

Maratha Light Infantry Task Force, that resulted in seven casualties. The Inquiry Commission also found that the complaints of rape and molestation were fully substantiated.

On the basis of the findings, the Inquiry Commission in its report, stated that the setting of fire to the shops and houses by three Army jawans "was a most indisciplined act and it could not be justified, even if some insurgents had taken shelter in those houses /shops, they had to be flushed out, since there was every possibility of innocent inmates being there inside those premises at that time".³⁷

Another recommendation made by the Inquiry Commission was with regard to the role of the Indian armed forces when acting in aid of civil power, whereby, "the Armed Forces must be educated and warned as regards the parameters of their role. They are not to oversee the law and order situation and cannot act on their own, without expressed or implied consent or authorization of the civil authority, except in emergency situations, like, when there is a sudden confrontation with insurgents or large scale attempted infiltration across the border. Evidently, some of the Jawans in the Task Force patrol on that day were not aware of their limitations; otherwise, they

³⁷. Report of the one man Commission of Inquiry, Justice D. M. Sen, Retired Judge of Gauhati High Court, n. 35.

would not have threatened Shri Bendangtoshi, Superintendent of Police, as stated in the latter's evidence" before the Commission.³⁸

2. KOHIMA INCIDENT OF 5th MARCH 1995:³⁹

On 5th March 1995, while a convoy of 16 Rastriya Rifles Personnel coming from an election duty in Manipur was passing through Kohima town along the National Highway No. 39 towards Dimapur, at around 1310 hrs, a loud sound like bomb blast was heard. Alleging that the loud sound was an attack by the militants, the convoy took a defensive stance by randomly firing and shelling with mortars towards residential areas and then and then which continued till nearly 1530hrs. This incident killed 7 (seven), innocent Naga civilians on the spot due to bomb blast and gun shot. It also injured 20 other innocent Nagas, while destroying numbers of residential buildings and vehicles as well. However, it was later confirmed by the eye witnesses that the loud sound actually came from a bursting of a truck (vehicle) tyre in which army personnel were traveling.

The NPMHR, one of the premier NGOs operating in Nagaland and fighting for promotion and this protection of human rights took up

³⁸. Report of the one man Commission of Inquiry, Justice D. M. Sen, Retired Judge of Gauhati High Court, n. 35.

³⁹. Report of the one man Commission of Inquiry, Justice D.M.Sen, Retired Judge of Gauhati High Court, The Firing Incident, on 5th March, 1995, Kohima, Nagaland, volume-4.

this matter by lodging a complaint that the whole incident was a clear case of atrocities committed by the armed personnel on the innocent people. Following this complaint an inquiry committee was constituted by the Government of Nagaland under its order NO. CON- 35/95 dated 3rd April 1995, which was headed by the Justice D. M. Sen (Retd.) of the Gauhati High Court. After thorough inquiries and investigations from the cross-section of eye witnesses of civilian, armies and State Government officials on the unwarranted incident, the inquiry commission in its report submitted to the Government the following findings:

1. The tyre of one of the convoy shaktiman vehicles got accidentally burst, whereupon occupants of that vehicle got panicky and thought that the insurgents had fired on them. They immediately resorted to retaliatory firing, which should, however, have been discontinued immediately, since no insurgents had actually ambushed or fired on them. The firing by the occupants of that vehicle was followed by supportive firing from jawans in other vehicles, starting from the CRPF complex to the Naga Hospital complex area. Even innocent passers-by and labourers were suspected to be insurgents. The convoy personnel lost

all restraint and did not act as a disciplined and trained body of troops.

2. On the question of whether the firing incident and the resultant casualties and damage to properties could have been averted or restricted; the finding says that the initial firing by the 16 Rastriya Rifles could be justified, as they were under the impression that they have been fired upon. But such firing should have stopped immediately on discovering that they were not fired upon by any insurgent. Therefore, it is considered to be unjustified and indefensible as they continued firing and also shelling of mortars. At the same time the casualties and damage to properties were also considered to be unwarranted. The deaths of the innocent people caused by the 16 Rastriya Rifles personnel were said to be cold blooded murder.
3. The use of mortars in one of the most densely populated areas of Kohima township was a most insensitive and indefensible action on the part of the convoy personnel. It shows that the 16 Rastriya Rifles officers and men had abandoned all restraint and had no regard for the life and property of innocent and helpless citizens.

4. The 16 Rastriya Rifles personnel of the convoy were fully responsible for causing the casualties and damage to properties.
5. On the questions of whether there was any lapse or dereliction of duty on the part of the civil officials of Nagaland Government entrusted with the maintenance of law and order; it was said that there was no lapse or dereliction of duty on the part of any civil officials entrusted with the maintenance of law and order. On the contrary, Justice D. M. Sen commented that the Director General of Police and Superintendent of Police acted with great courage, regardless of their personal safety. The Superintendent's conduct throughout was commendable and deserves recognition by suitable President's award. The Director General of Police also acted most creditably, as he did his best to control the situation, but his efforts did not evoke any proper response from the officers and men of the 16 Rastriya Rifles.

However, the Commission commented adversely on the role played by the Road Opening Party (ROP), provided by 29 Assam Rifles

on that day. It was their responsibility to check and sensitize the entire route to be taken by the convoy, while passing through Kohima township and cover that area by effective patrolling. It seems that ROP proved totally ineffective; had they done their job properly, the firing would have not escalated into a major catastrophe, as it unfortunately did over a length of 5 to 6 kilometers on the National Highway on that day.

On the basis of their inquiry and findings, the head of the inquiry commission strongly commended that

the 16 Rastriya Rifles personnel acted in a most in-disciplined manner and some of them were guilty of heinous offences like, attempt to murder, assault and damage to property. In the circumstances that obtained on that day, individual responsibility cannot be affixed; however the 16 Rastriya Rifles convoy personnel, including their officers and JCOs, cannot escape collective responsibility for the offences they have committed that day. In point of fact, I feel that this body of troops behaved in such a manner as would justify their disbandment. The way these troops acted that day would indicate that they would crack down and be a liability in actual combat condition with any entrenched enemy. I, therefore, urge serious consideration of the Army authorities whether commanding officers of the 16 Rastriya Rifles should not be relieved of his command and all the five officers be not posted to different units and their performances be subjected to review for at least a year or more. JCOs and men should also be disembodied from this particular battalion and absorbed in other

battalion or regiments where they would be subject to more rigorous discipline.⁴⁰

Further, the Chairman of the Commission recommended that the next of kin of all those persons killed be granted speedy compensation of Rupees. 2 lakhs and Rupees 25, 000/- to Rupees 1 lakh, to the injured, along with medical facilities. For those, whose *properties were damaged, compensation will be paid accordingly as per the assessment of a Technical Committee to be set up for that purpose.*

The human rights violations in Nagaland had caught the attention of International Organizations involved in human rights activities. In 1995, the United Nations Commission on Human Rights (ECOSOC E/CN.4/Sub.2/1995/NGO/35-10 August 1995) through the Secretary General circulated 'the human rights situation in Nagaland' in consonance with ECOSOC resolution 1296 (XLIV) (3 August 1995) wherein it stated that the United Nations Human Rights Commission "profoundly regretted that four-decade long genocidal campaigns of the Indian and Burmese armed forces against the Naga people have never been called into question by the commission on Human Rights. We urge that the danger inherent in the suppression of the

⁴⁰. Report of the one man commission of Inquiry, Justice D.M. Sen Retired Judge of Gauhati High Court, Volume-4, n. 39.

people's right be looked into before it is too late, if peace and justice are to prevail".⁴¹

In order to find out the truth about violations of human rights, a fact finding team was instituted by the NPMHR to meet and conduct interviews with the cross-section of victims. The following are the statements recorded during the interviews conducted by the fact finding team with the victims in Nagaland in 1996:

1. Mr. Humangot, S/O Reilpin; an 18 year old farmer from the Zeliangrong tribe was picked up by the army on 4th April 1996 at 2.30 p.m from Jalukie town and was taken to the 16th Assam Rifles camp at Samzuiram, one and a half kilometre from Jalukei, under Major Rana. He was blind-folded, his body pricked all over with pins, and a lathi was squeezed on his lower body from hips to feet. For 5 days he was beaten severely, abused and forced to admit that he was an underground worker. Not only were his wounds not treated, red-chillies were rubbed into his open sores. He was then handed over to the police on 19th April 1996. When the team

⁴¹. United Nations Commission on Human Rights, ECOSOC Resolution 1296 (XLIV) 3, August, 1995.

met him on 20th April, his bruises and wounds were reported to be still fresh and visible.⁴²

2. Mrs. K. Terhuja, Principal of Christian English School, Dimapur, narrated the traumatic incident that her son underwent in March 1996. Her teenage son was picked up by the army personnel and taken to the police station, just one day before he was due to appear his class ten examination on biology paper. He was beaten up, leaving bruises all over his body. Mrs. Terhuja was able to get him released only after the intervention by the Naga Mothers' Association. Despite this harrowing incident, the boy appeared for his examination the next day.⁴³
3. Mrs. K. Terhuja, Dimapur, narrated yet another harrowing tale of her 30 year old nephew, who was a disabled person, his mental age being about 15 years only. After following the incident of a bomb blast in February 1996, the Nepali driver "identified" Mrs. Terhuja's nephew as the suspect. The boy was tortured mercilessly, resulting in broken eardrums and disabled arms. Ironically, the driver responsible for identifying the boy later told the Superintendent of Police. that he had

⁴². Naga Peoples Movement for Human Rights, Vol. I No. 04 Quarterly Publication Delhi, July 1996, p. 4.

⁴³. *Ibid*, p. 5.

never seen him before, but felt compelled to identify any person, to escape inevitable torture.

4. Mr. Alu, Dimapur (Reg. No. 1350): aged about 19 years, S/O Lakshim, was a Tamilian working as a labour in Dimapur. Emaciated to skeletal portions, he had electric shock marks on his wrists and ankles, scars on his abdomen and cut all over his body. Due to torture on his chest, he could not breathe or talk. His medical report further stated that his eardrums were ruptured and infected due to external "damage". At the time when the team met him he was in severe pain and was also confined to the bed with a 3ft heavy metal chain. He was later reported to have succumbed to his injuries on 28th April 1996.

When the Indian State and the National Socialist Council of Nagaland entered into a ceasefire agreement on 1st August 1997, it brought a new sense of hope and aspiration to heal the wounded spirits and reclaim a rightful place as a free people. As an outcome of the meeting between Indian Government representatives and Naga Civil Society on Human Rights, Freedom and Justice from 18-19 August, 2001 in Kohima, a Memorandum was submitted to the President of the Republic of India, Shri. K. R. Narayanan in New Delhi, on 24th April 2001. The excerpt of the memorandum reads as:

Despite the enormity of the crimes committed against the Naga people for over fifty years, their generosity and grace show their conviction and desire for a negotiated solution. We in the rest of India can no longer escape the consequence of a military suppression of the Naga people, which throw away the nation's human and material resources and carry the real danger of subversion of our democratic process.⁴⁴

Soon after the declaration of the cease-fire in August 1997, the various Naga people's organizations like Naga Hoho, Naga Students' Federation, Naga Mothers Association and Naga Peoples Movement for Human Rights took initiatives to broaden the democratic space to ensure that the voices and the participation of the common Nagas at the grassroots were accounted for in the peace process. Thus, in an effort to strengthen the peace process, the Naga Peoples Movement for Human Rights (NPMHR) initiated a peoples-to-peoples dialogue to reach out to the people of India and to share their history, their struggle and their vision to live as free peoples with dignity. The dialogue calls for the imperative need to have the political will and the political courage to work together with reasoning towards a peaceful and democratic solution. This initiative of NPMHR was called as 'A Journey of Conscience' which started in January 2000.

⁴⁴. Memorandum submitted to the President of the Republic of India, 24th April, 2001 by Krome, Neingulo, Secretary General NPMHR on behalf of 133 Members of Indian as well as Naga Civil Society Groups who participated in the meeting on human rights, justice and the Naga Peace Process held from 14th to 19th March 2001.

The 'journey' pointed out the nature of human rights violations by the Indian army deployed under the Armed Forces Special Powers Act and its failure to bring about the decisive ends. It also points out that the use of force cannot resolve differences as it only destroys human's hopes and dreams. The Naga people through the journey reaffirms that in spite of these bitter experiences, they would continue to manifest through their struggle a strong yearning for their rights to freedom, respect, equality, justice and commitment to self-determination through non-violence.

In order to reduce or eliminate abuses of human rights in Naga dominated areas, the various NGOs operating in the region have suggested the following measures:

1. The armed forces have to be kept away from towns and villages.
2. Setting up Tribunal courts to re-address the grievances of the victims and common Naga people.
3. The armed forces must be withdrawn from the State of Nagaland including all laws like the AFSPA 1958, Disturbed

Areas Act 1955,⁴⁵ POTA, and Nagaland Security Regulations Act 1962.⁴⁶

4. The District administration has to fight with the Centre not to extend it again in order to safeguard the welfare of the citizen as is expected in any democratic set up.

⁴⁵. Disturbed Areas: If, in relation to any State or Union Territory to which this Act extends, the Governor of that State or the Administrator of that Union Territory of the Central Government in either case, is of the opinion that the whole or any part of such State or Union Territory, as the case maybe, is in such a disturbed or dangerous condition that the use of armed forces in aid of the civil power is necessary, the Governor of that State or the Administrator of that Union Territory or the Central Government, as the case may be, by notification in the Official Gazette, declare the whole or such part of such State or Union Territory to be a disturbed area.

⁴⁶. A Regulation to make special provision for the maintenance of public order by the suppression of subversive activities endangering the safety or security of Nagaland, for the life of the community and for the control of, possession and disposal of certain articles in Nagaland and for matters connected therewith.

CHAPTER V

Conclusion

CHAPTER V

CONCLUSION

The study of human rights in contemporary world occupies an important place. Several studies covering the aspects of human rights issues have been undertaken by different scholars both at macro as well as micro level. This work which is a micro study attempts to study one aspect of human rights that is the abuses of human rights in the State of Nagaland as a result of the imposition of the Armed Forces Special Powers Act 1958. The period of study cover from 1950s till the Cease-Fire Agreement 1997 signed between the Government of India and NSCN (I-M).

Chapter-I, Introduction: Concept of Human Rights deals with the development of the idea of human rights from its nascent stage, to the stage where it has become one of the most important contemporary issues all over the world. Indeed, the genesis of human rights can be traced back to the concept of Natural Rights. The concept of "natural rights" from which "human rights" emerged is as old as the human civilization. But the expression of the term "human rights" is relatively new, having come into everyday parlance only after Second World War thereby getting worldwide recognition

particularly with the establishment of the United Nations. The United Nations Preamble contains provisions and objectives to prevent a recurrence of the destruction and suffering of mankind and pledged, "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small..."¹ Further, the United Nations with an objective to prevent human rights abuses established the Commission on Human Rights that was entrusted to prepare a document which has resulted in the Universal Declaration of Human Rights (1948). This initiative taken by the United Nations also got recognition by the founding fathers of the Indian Constitution where many provisions of the Universal Declaration of Human Rights were incorporated. In 1979, India adopted the International Covenant on Civil and Political Rights (1966). Hence, it becomes the duty of India to provide these rights to all its citizens in consonance with the provisions enshrined in these international instruments.

Human rights encompass several elements with varying degrees. Human rights issues in the context of Nagaland can be traced back to the time when the Naga Movement started with an objective to attain Independence from India. This endeavor of the

¹. Waghmare, B.S., (ed.), *Human Rights: Problems and prospects*, (Kalinga Publications, New Delhi, 2000.), p. 2.

Naga Movement to achieve their objective was not supported by Indian Government that in the process conflict situations began to develop which led to human rights abuses in Nagaland.

A review of the various definitions of human rights revealed that atrocities committed by any organization or force towards the weaker section of the society irrespective of its objectives and justification, is considered to be violation of human rights. The violation of human rights may also include suppression and denial of congenial atmosphere and environment wherein individuals and groups can develop to the fullest.

The Government of India has also laid down several rules and regulations as well as Acts such as the Police Act 1949, Armed Forces (Special Powers) Act 1958, Arms Act 1959, Disturbed Areas (Special Courts) Act 1976, etc., to contain militancy. Further, the Maintenance of Internal Security Act 1971, Essential Services Maintenance Act 1981, Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974, and National Security Act 1980² were passed with an objective to tackle several other problems and also to maintain stability and integrity of the country. These laws were however

². Palia, Arun, Kumar, *National Human Rights Commission of India: Formation, Functioning and Future Prospects*, (Atlantic Publishers and Distributor, New Delhi, 1998), p. 30.

considered as repressive laws of the Government as their enforcement often violated the fundamental rights and freedom of the people.

Chapter-II Naga Movement and of Armed Forces Special Powers Act (AFSPA) 1958 deals with the emergence of Naga Nationalism leading to the enforcement of Armed Forces Special Powers Act 1958. Just before India got Independence, a Memorandum was submitted by Naga National Council (NNC) on 20th February 1947 to both His Majesty's Government and the Government of India wherein it stated that, "the Naga people were independent and their country was not subjugated by the Ahom Kings of the Assam Valley since Nagaland never formed a part of Assam or India at anytime before the advent of the British".³

After the Memorandum was submitted a series of meetings and discussions took place between the Government of India and leaders of NNC, which finally led to the signing of the Nine-Point Agreement also known as Hydari Agreement between Sir Akbar Hydari, the then Governor of Assam and the leaders of the NNC in June 1947. But the Nine Point Agreement could not materialize as there was a misunderstanding between the leaders of NNC and the Government

³. Nuh, V. K., *The Naga Chronicle*, (Regency Publications, New Delhi, 2002), p. 64.

of India due to differences in interpretation. Having failed to achieve their objectives of a 'Free and Independent Nagaland' through peaceful negotiations, the Naga Movement led by Naga National Council (NNC) thereafter resorted to armed struggle against the Indian armies occupying the Naga Hills. The Indian Government on its part saw this movement as one which is unconstitutional and unwarranted. Therefore, a strong measure was adopted by the Government of India to fight against the Naga movement. As a measure of suppressing the movement, in 1955, the Assam Rifles were deployed in Tuensang area of Nagaland where it was believed to be the stronghold of the Naga Movement.

Due to the failure of deployed Assam Rifles to suppress the activities of the Naga Movement which by then had spread all throughout Naga inhabited areas thereby worsening the situation and became out of control, the Government of India started deploying the Indian army since 2nd April 1956⁴, to deal firmly with the situation. The deployment of the Indian army along with enforcement of the Naga Hills Disturbed Area Ordinance and Assam Maintenance of Public Order was basically aimed to wipe out the activities of the Naga Movement and at the same time to maintain peace and order

⁴. Naga Peoples Movement for Human Rights (NPMHR), *Naga Resistance and the peace process*, (Published by other Media Communications, 2001), p. 10.

in the Naga Hills. However, the enforcement and uses of the Armed Forces Special Powers Act 1958 in the State brought untold miseries particularly to the innocent people living in the Naga Hills.

Series of reports have pointed out that during 1950s to 1970s there were several cases of human rights abuses and atrocities committed by the Indian army. As retaliation against the forced occupation of their land by the Indian armed forces, the Naga army started to fight against the Indian army which has resulted in wide scale destructions of not only properties but also the loss of lives and human sufferings in Nagaland. On the other hand, it was reported that the Naga army also made several retaliatory attacks against the Indian army personnel in the form of kidnapping, attacking army outpost, looting arms and ammunitions, etc.,⁵ Atrocities on civilians in the forms of tortures and arbitrary arrest, rapes on women, burning down of many Naga villages, destruction of crops and several inhuman activities were also reported to have been committed by the Indian army as retaliation to the Naga Movement and its activities.

⁵. Ao, Lanunungsang, A., *From Phizo to Muivah: The Naga National Question in North East India*, (Mittal Publications, New Delhi, 2002), p. 98.

The Naga movement in the State of Nagaland further worsened since the Indian Government and Naga army was not willing to come forward to negotiate under any preconditions. While the Naga army stood firmly by their objective of complete freedom, the Indian Government on the other hand took all necessary steps to put an end to the Naga Movement in the name of ensuring law and order and maintaining peaceful environment.

Following this development, there were wide spread of violent activities all throughout the State resulting in the loss of lives and sufferings of many innocent Nagas in Nagaland. To resolve the problem amicably, several rounds of negotiations and agreements have taken place beginning with the first cease-fire which was signed on 15th August 1964, between the NNC and the Government of India. However, as this cease-fire did not yield any positive result, another peace initiative culminated in the signing of the Shillong Accord in 1974 between the representatives of NNC and the Government of India which drew a lot of dissatisfactions and flaks from several sections of the Naga people including some leaders of the NNC. This finally led to the formation of the National Socialist Council of Nagaland (NSCN) on 31st January 1980 under the leadership of Isak Swu and Thuingaleng Muivah and S. S. Khaplang. However, due to some differences among the leaders, the NSCN was split into two

organizations namely, NSCN (IM) led by Isak Swu and Th. Muivah and NSCN (K) led by S. S. Khaplang. Another landmark development that took place was the cease-fire agreement signed between the NSCN (IM) and the Government of India in August 1997, which continues till date with the extension taking place every year.

Chapter-III Armed Forces Special Power Act (AFSPA) 1958 and Human Rights Abuses in Nagaland, discusses about the enforcement of the Armed Forces Special Powers Act 1958 with an objective to end all militant activities in Nagaland and its consequences. The failure of the Assam Rifles to contain the activities of the Naga National Council (NNC) in the mid 1950s warranted the deployment of the Indian armed forces in Nagaland. But, for facilitating army operations, a legal framework became necessary. So, the then Government of India led by the Congress I whose leaders, who were once jailed under the Armed Forces (Special Powers) Ordinance 1942 of British India, promulgated the Armed Forces (Special Powers) Regulations on 5th April 1958, which had inherited the same powerful political potency as the 1942 demoniacal ordinance.

The provisions of the Act contained, power to fire upon or otherwise use force, even to the extent of causing death to any person who is suspected to be a militant and acting in contravention

of any law. The Armed Forces Special Powers Act 1958 (AFSPA) currently enforced in Nagaland prohibits the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire arms ammunition or explosive substances; power to destroy any arms dump, prepared or fortified position or shelter from which armed attacks are made or are likely to be made or attempted to be made, or any structure used as a training camp for armed volunteers or utilized as a hide-out by armed gangs or absconds wanted for any offence; power to arrest without warrant, any person who has committed a cognizable offence or suspected to be likely to commit; power to enter, search any premises, any place without any warrant, for recovering any person suspected to be illegally confined, or property suspected to be illegally kept. According to the provision of the Act, any person arrested by army personnel under the AFSPA, must be handed over to the nearest police station with the "least possible delay". However, there is no definition in the Act of what constitutes the least possible delay. But since this provision has been interpreted as depending on the specificity of circumstances of each case, there is no precise amount of time after which the section is violated. The holding of the arrested person without review by a magistrate, constitutes arbitrary detention. The Act further made the provision that no legal proceeding can be brought against any member of the armed forces under the AFSPA,

without the permission of the Central Government. This provision leaves the victims of the armed forces abuses without a remedy.⁶

Since the implementation of this Act in Nagaland many cases of human rights abuses and atrocities were reported to have been committed by the Indian army at several places in the State. On account of this, the Act was criticized by many and some of the critics have even termed it as 'Draconian Act'.⁷ In order to find out how far this Act has been responsible for human rights abuses in the State of Nagaland, data and relevant information were collected through structured and non-structured questionnaires from cross-section of the society comprising of different organizations, armies, victims, citizens and some public leaders. The data collected revealed three different opinions as regard to the enforcement of AFSPA. Accordingly, the data have been categorized into three groups. The first group is made up of data collected from the Indian army and State Police. The second group consists of the data collected from the victims of human rights, as well as from the leaders of the various human rights Non Governmental Organization (NGOs) in operating in Nagaland. This group believed that the enforcement of AFSPA has indeed

⁶. Ministry of Defence Government of India, *Manual of Military Law Vol. III*, (Published by the controller of publications, civil lines, New Delhi), pp. 457-58.

⁷. "Naga agitation on 'black law' reaches capital" *The Telegraph, Region, (Gauhati)*, 25th, July 2004. p. 8.

resulted in gross violations of human rights in Nagaland. The third group comprises of data collected from the cross-section of the common people including civil officials and public leaders. This group had a mixed opinion about the AFSPA 1958 as some of them were in favour of this Act while others were totally against it.

Chapter-IV, Role of Non-Governmental Organizations (NGOs):

People's Movement for Human Rights (NPMHR), discusses the role of Non-Governmental Organizations (NGOs) with special reference to Naga People's Movement for Human Rights (NPMHR). There are many Non Governmental Organisations (NGOs) the world over which were established with the sole objective of protecting and promoting human rights issues. The role of NGOs operating in Nagaland for protecting and promoting of human rights finds an important place in the study as they have taken up several cases pertaining to human rights issues. Thus, this Chapter of the study has been devoted on the role of NGOs in general with special reference to the Naga Peoples Movement for Human Rights (NPMHR). Though there are other NGOs such as, Naga Mothers Association (NMA), Nagaland Students Federation (NSF), and Naga Hoho who are involved in taking up some human rights cases and pleaded on behalf of the victims of human rights abuses, it is the NPMHR, which has been found most active among the of all in this particular field. This organization has been the

mouthpiece of many victims of human rights abuses. Apart from the role of protecting the victims of human rights abuses, the NGOs have vehemently opposed the enforcement of the Armed Forces Special Powers Act 1958 in the State of Nagaland and also filed few cases on behalf of the victims in the Court of Law seeking for the some justice.

Chapter-V, Conclusion, summarizes the study and discusses the findings and suggestions so as to prevent human rights abuses in the State. On the basis of field work conducted using questionnaires, the study has unfolded some important findings, on the basis of which some observations have been made that may be useful for policy measures in resolving human rights issues. Following are the findings and observations of the study:-

1. The study and analysis of various definitions of human rights and contemporary ideas of human rights contained in the International Covenants and Conventions on human rights reflect that atrocities of any kind committed by any organization or force towards the weaker section of the society irrespective of its objectives and justification, is considered as violation of human rights.
2. The study revealed that the Naga Hills District Tribal Council which was transformed into a political organization known as

'Naga National Council' (NNC) on February 1946 was started to give active support to the Britishers in bringing about all round development in the Naga Hills. Subsequently, after India's Independence, this organization started the Naga movement in order to achieve 'Naga Independence' from the Indian Government. The movement was further carried out by Naga armed organization namely the NSCN. The movement was however, not supported by the leadership of the Indian Government which led to the conflict between the Government of India and the leadership of the Naga movement. The conflict further escalated leading to the loss of lives, properties and worsening the normal and peaceful situation not only in Nagaland but also in all Naga inhabited areas. This development necessitated the Indian Government to adopt and enforce the AFSPA 1958, mainly to contain and control militancy in Nagaland.

3. The study revealed that the main cause of disagreement/conflict between the Government of India and the Naga Nationalist was on the question of 'Naga Independence' or 'Naga Sovereignty'. On the part of the Government of India all discussions or negotiations were to be carried out within the framework of Indian Constitution

which was rejected by the Naga Nationalist since such conditional discussions or negotiations will not bring any result leading to 'Naga Sovereignty' as the Indian Constitution does not provide any provision for granting of Sovereignty.

4. The objective of AFSPA 1958 was to eradicate Naga militancy, to maintain law and order and to bring about over all peaceful situations in all Naga inhabited areas. Keeping this objective in mind, the Act provided the Indian armies and para-military forces deployed in Nagaland and Naga inhabited areas with blanket powers including to fire upon or otherwise use force, to destroy a place determined to be an arms dump, to arrest without warrant, to enter and search without warrant any premises to carry out the duties assigned to them. However, in practice, it has been found that the Indian armies, in most cases, have crossed the limits and jurisdictions of their power given through the Act.
5. It is found that the activities of the Indian armies deployed in Nagaland seemed to have gone beyond the provision laid down in the AFSPA 1958 and the internationally accepted norms on human rights, for example, of International Covenant on Civil and Political Rights that provides, "Every human being has the inherent right to life. This right shall be

protected by law. No one shall be arbitrarily deprived of his life".⁸ Similarly, Article 17 also provides, "No one shall be subjected to arbitrary interference with his privacy, family home or correspondence, or to attacks upon his honour and reputation. Everyone has the right to protection of the law against such interference or attacks". As ratifying member of the Covenants, India has also agreed to abide by all provisions laid down in the Covenants. However, the acts of atrocities committed by the Indian armies under AFSPA 1958 while carrying out their duties had gone beyond the jurisdiction of the AFSPA 1958 and the provision of the Indian Constitution as mentioned in Article 21 which reads as, "No person shall be deprived of his life or personal liberty except in accordance to the procedure established by law".⁹ In spite of the protection provided in the Constitution to each and every citizen of the country yet the Naga people in general live an unsecured life in the midst of 'militancy' and 'counter-militancy'.

6. The Indian armies in the name of maintaining law and order often created havoc in the life of many Naga people. For instance, whenever there is confrontation between the

⁸. Subramanian, S., *Human Rights: International Challenges*, (Manas Publications, New Delhi, 1997), p. 14.

⁹. *Freedom of the Individual under Law: An analysis of 29 of the U.D.H.R*, United Nations New York, 1990., study series 3, p. 104.

Indian army and the Naga underground, the army would cordon the area and start their search and combing operations. The study revealed that while the combing operations are on, the Indian armies misused their power by terrorizing the place and committing all sorts of inhumane atrocities in the form of torturing the suspected people even to the extent of causing death, taking the suspected one to the army camp without returning them, raping women and even minor girls leading many women to commit suicide since they had been robbed of their chastity. Such activities of the Indian army had created a fear psychosis in the minds of the people to such an extent that rural people have fear even to go out for their day today activities. The kind of terrors that the Indian army had created often makes people fear at their sight rather than having confidence in them. It is on account of such inhuman activities that people in general have always viewed the activities of the army as anti-people particularly in the case of Nagaland. Considering the atrocities committed by the Indian armies on the Naga people, it is clear that Naga people were inhumanly treated during the time of army search operations particularly prior to the 1997 cease-fire period.

7. There is no doubt, that on the part of the Government of India, the enforcement of the AFSPA 1958 in the State of Nagaland was in principle intended in all good spirit to bring about normalcy. But the study revealed that while implementing it, the enforcers have often misused the power or abused it for their own selfish interests as some members of the armed personnel while conducting raids were found to have taken away money, jewellerys, household articles, television set, etc., which is contrary to the provisions of the Act.
8. The army activities under the cover of the Act to wipe out the Naga militancy resulted in many to become widow and widower. Today, many children of those victims have had to fend for themselves by working in odd jobs instead of attending schools. This is against the child rights to education as enshrined in Article 13 and also rights against child labour as it is found in Article 10 (3) of the International Covenant on Economic, Social and Cultural Rights. Many Nagas have become orphaned for no faults of their own and lives of many youth were cut short at their prime age shattering the dreams of their parents. Though, in some cases compensation in kind or cash were paid to the bereaved families, such help did not mitigate traumas and miseries of

the victim's families. However, in the absence of protective measures, it is ironic to receive any kind of compensation against the life of a person. When the life of the bread earner is removed from the family, the dependents are often left to fend for their future. In many circumstances, victim's children are deprived of the things that a normal child enjoys and instead they have to take up the responsibility of an adult.

9. Another important revelation of the study shows that there have been several cases of arbitrary arrest made by the Indian army. Many people who have been arbitrarily arrested under the Act were deprived of their liberty. A number of people who were arbitrarily arrested by the Indian army never came back and their where about remain a mystery.
10. No law allows anyone to be subjected to torture or to cruel, inhuman or degrading treatment or punishment. However, it is found that practically in many cases such law has not been followed by the law enforcers.
11. There were also instances where the armies made the people signed on papers containing statement of no harassment, nothing looted, and no properties destroyed, no sex abuses, while raids were conducted. However, it may be

noted that most of the raids are found to be conducted during the odd hours. This conduct on the part of the armies though seemed justified on their part, is not at all right for the public as the same disturb the normal life. The public as a result of such action by the armies have always gone through sleepless nights with emotional and mental terror which is something difficult to be erased or forgotten easily.

12. The study revealed that the presence and activities of the Indian army in Nagaland have been termed as anti-people primarily because of their methods of operations used in counter-militancy.
13. It has been on the other hand found that not withstanding the negative activities, there are some welfare activities and projects undertaken by the armies. For instances, during natural disaster, the armies have provided free health camps and other assistance. They also have been found providing free access to army canteen, opening up computer education centre, etc., for common people.
14. In the kind of circumstances in which the Indian armed forces have to carry on their duties, it might have been quite possible that in some cases the army seeing their comrades taking last breath as a result of an armed confrontation with the underground provoked them to react in ways that is in

contravention with the provisions laid down in the Act. In the heat of the moment they take the law in their hand causing unwarranted trouble. It is quite natural for the Armed forces who like any other human beings to be overcome with emotions on seeing their friends wounded, dying or killed in encounters with the Naga army and they often go berserk creating havoc and tension in and around the area where the incidents occurred.

15. The study also revealed that the Indian armies operating under the Special Powers Act 1958 alone are not responsible for violation of human rights in Nagaland. There were instances, where many civilians were also killed as a result militancy and counter-militancy by both the Indian armies and Naga army. Further, the ideological differences and conflicts among the Naga 'nationalists' also resulted in fratricidal killings of many common Nagas.
16. As regards the culprits of human rights violation when found particularly among the armies, no strict punishments were seen to have been meted out so as to give warning to other such colleagues to prevent them from committing, further abuses of human rights.
17. The ignorance of the general people about human rights has been one of the factors for their rights to be encroached

and violated. Today, the injustice and violations of human rights committed by the armies on the innocent people have brought about the negative attitude of the people towards Armed Forces and State police.

18. As revealed by the study, NGOs like the Naga Peoples Movement for Human Rights (NPMHR) have been playing a pro-active role in internationalizing the Naga issues and highlighting the atrocities committed by the Indian army on the innocent Naga people through attending seminars, workshops, meeting at international level.
19. The NGOs established with the primary objectives to safeguard and fight against human rights violations has also been an instrument in the peace process dialogue that is taking place.
20. The study revealed that NGOs are totally against the deployment of Indian armies under the Act because of the kind of human rights violations committed by them during the course of their operation. Thus, it is on account of such violations that led to several protest movements organized by the NGOs not only against the Indian army but also against AFSPA 1958 which they have termed it as 'Draconian Act', an Act not fit for human beings.

21. With regard to the functioning of the NGOs, it is found that they have not been able to do much practically to protect the rights of the common citizens of Nagaland. No doubt, they have been instrumental for high level dialogue and negotiation between the Government of India and the 'Naga nationalist' but such dialogues have not brought much positive changes at the grassroot level of the society.

SUGGESTIONS

The study revealed several lapses and loopholes in the AFSPA 1958, which have given scope for the numerous cases of human rights abuses in the State. However, based on the findings, prevention of further abuses of human rights may be possible if the following observations and suggestions are taken into consideration.

1. For decades, Nagaland has witnessed numerous cases of atrocities and human rights violations. In most of these cases, no justice was discharged. One of the reasons for lack of justice could be the absence of an organization that would take up such cases. Infact, victims on their own were reluctant to state their cases as in many instances there was no positive action taken either by judiciary or Government

tribunals. Under this situation particularly in a State like Nagaland where the rights of the people have been denied arbitrarily, setting up of as many institutions as possible that would safeguard the rights of people is the need of the hour. It is suggested that State Human Rights Commission would be one such organization that needs to be set up.

2. Another effective instrument that could go a long way in tackling atrocities and human rights abuses in the State could be the establishment of Lokayukta institution which is a one man Commission. However, for this institute to function effectively, people should only be conscious enough in giving positive support but also ensure that the person heading the Lokayukta does not overstep his domain.
3. It is suggested that, as there is a total lack of awareness on human rights and its related issues in the State particularly among the common people, efforts must be made to educate them by incorporating human rights as a subject in the curricula in all educational institutions. The NGOs which are at the forefront of the movement for human rights have an important role to play in taking necessary measures that will make the people aware of their rights. This will go a long way in protecting their rights from being violated. Besides,

the public can even voice their opinion and ensure that their rights are secured.

4. It may also be suggested for improvement of the mechanism and methods of recruitment in army cadres. At the time of recruitment into Indian army and para-military forces, it should be made mandatory for each and every new recruit to undergo tests such as psychological tests, personality tests, attitudinal tests, besides their normal physical tests as this will ensure selection of the right person for the right job and prevent misfits from entering into such a profession. The very fact that several cases of human rights abuses have been committed could be because many security personnel particularly those at the lower ranks and who are found to be the main accused in most of the cases, perhaps were recruited into the army not on the basis of fitness tests from all accounts. Thus, many cases of human rights violations could have been prevented if such measures were taken earnestly. There are members of the Armed Forces who might be suffering from kleptomania as a result of which there are several cases where the Armies are alleged to have taken away household items while conducting raids. The cases of rape, torture, indiscriminate killings, etc., committed by some members of the armed

forces could be on account of their mental imbalance or their wicked nature. If selection process is done with the right perspective, it may improve the image of the Armed Forces and also bring people closer to them rather than maintaining a distance like in the present scenario in Nagaland.

5. The violators of human rights as and when they are found caught should be dealt with strictly. In most cases those found guilty of committing human rights violations are either transferred or their cases are swept under the carpet. Such mild punishment, will never help in preventing similar cases of atrocities and human rights abuses. Therefore, stringent punishment must be meted out to the culprits belonging to any groups so as to deter others from committing the same.
6. The NGOs as a mouth piece of the people must perform their work with more honesty, integrity and transparency. They should not succumb to any political and other pressures in their role to protect and promote the human rights. They should be more pro active in their approach and continue to work in a constructive manner. They must also strive to uphold the rights of the people particularly the downtrodden and under privileged who are the most affected and deprived lot. They must always act as a

watchdog and opposed against legislations that are deemed to be anti-people. With regards to the victims, NGOs must take up their cases in right earnest and ensure that justice is done. Sincere efforts must be made by the leaders and members of NGOs to uphold their objectives and declarations. Maintaining sincerity and integrity of the leaders of NGOs can go a long way in creating confidence of the organization among the common people.

7. By ratifying both the International Covenants on Human Rights, namely, Civil and Political Rights and Economic, Social and Cultural Rights, India had in principle agreed to follow and protect the provisions of human rights. But, the events that took place in Nagaland and also in some states where AFSPA were enforced, it is found that the Armed forces operating on behalf of the Government of India have totally violated the provisions laid down in both the Covenants. Thus, it is essential that human rights as defined by the Charter of the United Nations be strictly abided with by all member states.
8. Like in any other States, where AFSPA 1958 has been enforced, this Act has not brought about positive result whatsoever, rather it has worsened the situation particularly

with respect to human rights violations as in Nagaland. Thus this Act should be repealed without any further delay.

For many decades, Armed Forces Special Powers Act 1958 has been imposed in Nagaland and huge contingent of the Indian armies deployed under the Act were given blanket powers and their presence continued till date in Nagaland. However, the activities of the Indian armies operating under the Act have not been welcomed by the people in the State. Their activities were found to have created more problems for the common people of Nagaland as the ill effects of the army operations have overshadowed the good intention of the Act. It is therefore, a high time now for the Government of India to consider the demand of the various Naga Organizations for its removal from the State of Nagaland in order to build up the confidence of the Nagas, which is important for amicable solution to the on going Naga problems.

APPENDICES

APPENDIX- I

THE NINE POINT AGREEMENT

(The Nine Point Agreement arrived at between the Naga National Council and the Governor of Assam, Sir Akbar Hydari in June 27-29, 1947)

Preamble: The right of the Nagas to develop themselves according to their freely expressed wishes is recognized.

1. **Judicial:** All cases whether civil or criminal arising between Nagas in the Naga Hills will be disposed of by duly constituted Naga courts according to Naga customary law, or such law as may be introduced with the consent of duly recognized Naga representative organisation, save that where a sentence of transportation or death has been passed there will be right of appeal to the Governor.

In cases arising between Nagas and non-Nagas in (a) Kohima and Mokokchung town areas, and (b) in the neighbouring plains districts, the judge, if not a Naga, will be assisted by a Naga assessor.

2. **Executive:** The general principle is accepted that what the Naga National Council is prepared to pay for the Naga National Council should control. This principle will apply to the work done as well as the staff employed.

While the District Officer will be appointed at the discretion of the Governor, sub-division of the Naga Hills should be administered by a Sub-Divisional Council with a full-time executive President, paid by the Naga National Council, who would be responsible to the District Officer for all matters falling within the latter's responsibility, and to the Naga Council for matters falling within their responsibility.

In regard to:

- 1) Agriculture: The Naga National Council will exercise all the powers now vested in the District Officer.
- 2) P.W.D.: The Naga National Council will take over full control.
- 3) Education and Forest Department: Naga National Council is prepared to pay for all the services and staff.

3. **Legislative:** That no laws passed by the Provincial or Central Legislature which materially affect the term of this agreement or the religious practices of the Nagas shall have legal force in the Naga Hills without the consent of the Naga National Council.

In cases of dispute as to whether any law did so affect this agreement, the matter would be referred by the Naga National Council to the Governor who would then direct that the law in question should have no legal force in the Naga Hills pending the decision of the Central Government.

4. **Land:** That land with its resources in the Naga Hills should not be alienated to a non-Naga without the consent of the Naga National Council.

5. **Taxation:** That the Naga National Council will be responsible for the imposition, collection, and expenditure of the land revenue and house tax and of such other taxes as may be imposed by the Naga National Council.

6. **Boundaries:** The present administrative divisions should be modified to as (1) to bring back into the Naga Hills District all the forests transferred to the Sibsagar and Nowgong Districts in the past, and (2) to bring under the unified administrative unit, as far as possible, all Nagas. All the areas so included would be within the scope of the present proposed agreement. No areas should be transferred out of the Naga Hills without the consent of the Naga National Council.

7. **Arms Act:** The District Officer will act on the advice of the Naga National Council in accordance with the provisions of the Arms Act.

8. **Regulations:** The Chin Hills Regulation and Bengal Eastern Frontier Regulation will remain in force.

9. **Period of Agreement:** The Governor of Assam as the Agent of the Government of Indian Union will have a special responsibility for a period of ten years to ensure the due observance of these Agreements; at the end of this period, a new agreement regarding the future if the Naga people arrived at.

APPENDIX- II

His Excellency Frederick H. Boland
 October 8, 1960
 President, United Nations General Assembly
 UNITED NATIONS
 New York, U.S.A.

Your Excellency,

I am submitting this Memorandum for Nagaland and along with this I enclose a copy of my Booklet-"THE FATE OF THE NAGA PEOPLE-AN APPEAL TO THE WORLD", which will form part of this Memorandum. This Booklet was again given to the Press in London this year on July 26, 1960.

From time to time since 1947, we have submitted reports to the United Nations about the situation in Nagaland, and all the previous documents form a coherent and continuous whole in the chain of events and tragedies which the Naga citizens have come to suffer from the hands of free India and which are continuing up to this day.

The External Affairs Ministry of India had directed its Armed Forces to carry out a genocide operation against the Naga citizens. They have accomplished the extermination of our people as far as they can. As such, our nation has perished in most of the village communities. The community leaders of men and women, to whom the people and the nation look up to for guidance and leadership have been put to death. Others who are not yet killed are herded into concentration camps and prisons.

The Indian Armed Forces continue to hunt and kill those of our citizens who have not fallen into their hands.

As in many other places, an intense genocide operation has been going on in the Tamenglong area, about 130 miles south of Kohima, for a long time. The operation in this area started in 1957 and many people have already been killed.

Also I enclose herewith recent report of the Naga Federal Government which reached me a few days ago. On the 2nd August this year in one day alone, the Indian Occupation Forces again killed hostages in their hands; as many as 15 people including a small girl. The prisoners in the Concentration Camps are cruelly treated and 10 people died in 13 days in two Concentration camps alone, (Kohima and Satakha). Among the dead, two were mothers, three young girls and two elected village chiefs (marked V.C. in the report). In another

imposed tragedy, 10 men and one woman died by being forced to starve, which is often the case; this occurred between July 4 and August 2 this year. Over and above these methods of eliminating the Naga citizens, the Indian troops have again burned down 18 villages between June 17 and August 10, 1960.

The Naga citizens who are in the hands of the Indian Occupation Forces cannot express even their opinion. They cannot utter their basic right independently as free citizens. Even though the Nagas traditionally enjoy a form of 'pure democracy' where every person is free to speak his and her right without worry and fear, this has been completely suppressed and the voice of the people muffled by force of violence.

In July 1960, the Indians claim to have set up this year, what is called "an autonomous state" in Nagaland. The Naga nation will never accept the status of Indian subjects and regard this "concession" a maneuver. They have noticed the struggle to retain their independence, as the enclosed newspapers will show Your Excellency:-

- (a) "Times" September 6, 1960.
- (b) "Guardian" October 4, 1960.

It may appear that India's announcement of taking Nagaland to be an autonomous state within the Indian Union was really a reasonable act on her part. In reality, it was to legalize her usurpation of Nagaland which is rich in mineral wealth of oil, coal, mica, nickel, iron-ore and other natural resources. **Her other objectives was to conceal the crime of genocide by this act of annexation which would make her crime an " internal affair" not open to investigation by the United Nations.**

Whatever the aggressor may have to say, the Nagas are human beings. We are not beasts just to be killed off.

Somebody will always occupy the last border of a landlocked territory and the Naga National State happens to touch the Indian border in the west of our country.

But the Nagas are not Indians and we have never had anything to do with India. If the basic right of man in having a National State is questioned of, and to be taken advantage of, simply because the nation is not strong enough to defend itself, then, the whole conception that man cherishes such as rights, peace, law and order, will be in danger. While the personality of the people counts above everything else, it is the territory and state, that forms the physical

foundation of human society and nation, and thus the Nagas uphold and defend their fatherland in their own national right.

Any Government which invades another territory is the aggressor and Nagaland is being invaded by free India under the direction of her External Affairs Ministry. Their Forces have committed genocide by whipping out community after community and they are now heavily occupying our country. As recently as August 26, only six weeks ago, Thewati village was bombed. In this Indian Air raids one of her Air Force Planes was shot down and nine of its crew with their transmitting set were captured by the Naga Home Guard (NHG). These Indian crew were later released by the Naga Federal Government. Thewati village contains 20 houses on the slope of a pine-clad hill in the midst of a vast forest, about 100 miles east from Kohima, the capital.

While making this complaint, I am not unmindful of the negative attitude and argument so often heard that the Nagas are too small a nation to exist by themselves alone in this 'modern' world and that Nagaland may easily be absorbed by Communist China.

Nagaland is not seeking isolation. We want to be assimilated in the world community of nations as a family and we want Nagaland to be a country for all people and nations not to be exploited by India alone.

The fact that we are a backward people needs hardly to be mentioned; yet we have our own culture and civilization which our forefathers developed centuries ago on a system of classless society. It has stood the test of time and this national institution, covering the whole aspect of social and political matters, serves our nation democratically.

The administrative system in Nagaland is rooted in the community organisation. Naga community is organized on the principle of the continuity of the family unit.

Thus the power and authority are directly in the hands of the people who live like one big family. Land belongs to the people as private and personal property. We pay no land tax.

There is no 'political party' for the simple reason that no one can override the sovereignty over the ownership of land.

Every Naga is a member of the Naga National Council and every Naga has the right to speak in the local, regional and National councils. Each Naga village is a Republic with its own people's Assembly and court of Justice. The villages are combined again to form a higher Regional Councils. A Tribal Council has two or more Regional Councils for its parliamentary work. The Tribal Councils send

their representatives to the Naga National Council (better known as N.N.C.). All Representatives in the Council are elected and also the Judges and Regional heads of the Government are elected. Thus NNC is rooted in the people and community as a national institution of democracy. The Judicial and Executive Departments of the Naga Government function independently though it is in the hands of the NNC which again is in charge of the National and Foreign policy.

Today, the Naga citizens who are in the hands of the Indian Armed Forces have no human rights. Those who are still free are hunted and killed as if they were animals. Mass killings and whole scale massacre started years ago and has been going on ever since.

Unless the UNITED NATIONS intervene, the Naga citizens will continue to die, all because they wanted to live as Free Nation. Nobody's life is safe anywhere throughout Nagaland. Therefore, I am appealing to Your Excellency to circulate this Memorandum among the Member Nations of the United Nations, including all those Naga documents, that have been previously submitted and which form a continuous whole of the tragedy in Nagaland.

Our need of the United Nations cannot be stressed too strongly. Unless protest is made in the United Nations, our suffering will continue and Naga citizens will be destroyed. We face a horrible situation and I am appealing to Your Excellency to take up the Naga case. We await your deliverance.

Yours most respectfully,

Signed/- A. Z. PHIZO
President,
Naga National Council.

APPENDIX- III**THE ARMED FORCES (SPECIAL POWERS) REGULATION, 1958 NO. 2 OF 1958**

(As published in the Gazette of India Extraordinary, Part II, Section I, dated April 5, 1958 No.2 of 1958)

Promulgated by President in the Ninth Year of the Republic of India, a Regulation to enable certain special powers to be conferred upon officers of the armed forces in disturbed areas in the Kohima and Mokokchung districts of Naga Hills-Tuensang Area.

In exercise of the power conferred by Article 240 of the Indian Constitution the President is pleased to promulgate the following Regulation by him.

1. (1) This Regulation may be called the Armed Forces (Special Powers) Regulation, 1958.

(2) It extends to Kohima and Mokokchung districts of the Naga Hills Tuensang Area.

(3) It shall come into force at once.

(4) It shall remain in force for a period of one year.

2. In this Regulation – Definitions.

(a) "armed forces" means the military forces and the air forces operation as land forces, and includes any other armed forces of the Union so operating.

(b) "disturbed area" means an area which is for the time being declared by notification under section 3 to be disturbed area;

(c) All other words and expressions used herein but not defined and defined in the Air Force Act, 1950, or the Army Act, 1950, shall have the meaning respectively assigned to them in those Acts.

3. If the Governor of Assam is of the opinion that the whole or any part of the Kohima district or the Mokokchung district in the Naga Hills Tuensang Area is such a disturbed or dangerous condition that the use of armed forces in aid of the civil power is necessary, he may. By notification in the official Gazette declare the whole or any part of such district or districts, as the case may be, to be a disturbed areas.

4. Any Commissioned officer, Warrant Officer, or non commissioned officer not below the rank of Havildar of the armed forces may, in a disturbed areas:

a) if he is of the opinion that it is necessary so to do for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire arms, ammunition or explosive substances;

b) if he is of the opinion that it is necessary to do so, destroy any arms dump, prepared or fortified position or shelter from which armed attacks are made or are likely to be made or are attempted to be made or any structure used as a training camp for armed volunteers or utilized as a hide-out by armed gangs or absconders wanted for any offence;

c) arrest without warrant, any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect that arrest;

d) enter and search without warrant any premises to make such arrest as aforesaid or to recover any person believed to be wrongfully restrained and confined or any property reasonably suspected to be stolen property or any arms, ammunition or explosive substances believed to be unlawfully kept in such premises, and for that purpose use such force as may be necessary.

5. Any person arrested and taken into custody this Regulation shall be made over to the officer in charge of the nearest police station with the least possible delay together with a report of the circumstances occasioning the arrest.

6. No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Regulation.

7. No prosecution, suit or other legal proceeding shall lie in any court of law against any officer of the armed forces in respect of anything done in any part of the Kohima or Mokokchung district of the Naga Hills- Tuensang Area on or after the 23rd December 1957 and before the commencement of this Regulation which might lawfully have been done during the said period including the arrest of any person or recovery of any person or property shall be as valid as if they had been done at a time when this Regulation was in force.

8. On the expiry of this Regulation, section 6 of General Clauses Act, 1897, shall apply as if the Regulation had then been repealed by another Regulation.

Sd/-
Rajendra Prasad
President

APPENDIX- IV**THE ARMED FORCES (ASSAM AND MANIPUR) SPECIAL POWERS ACT,
1958 NO. 28 OF 1958 (11 SEPTEMBER 1958)**

An Act to enable certain special powers to be conferred upon members of the Armed Forces in disturbed areas in the State of Assam and the Union territory of Manipur.

Be it enacted by Parliament in the Ninth Year of the Republic of India as follows:

1. (i) This act may be called the Armed Forces (Assam and Manipur) Special Powers Act, 1958
- (ii) It extends to the whole of the State of Assam and the Union Territory of Manipur.
2. In this Act, unless the context otherwise requires,
 - (a) "Armed Forces" means the military forces and the air forces of the Union so operating.
 - (b) "disturbed area" means an area which is for the time being declared by notification under section.3 to be a disturbed area:
 - (c) all other words and expressions used herein, but not defined in the Air Force Act, 1950 or the Army Act 1950, shall have the meanings respectively assigned to them in those Acts.
3. If the Governor of Assam or the Chief Commissioner of Manipur is of the opinion that the whole or any part of the State of Assam or the Union Territory of Manipur, as the case may be, is in such a disturbed or dangerous condition that the use of Armed Forces in aid of the civil power is necessary, he may, by notification in the Official Gazette, declare the whole or any part of the State or Union Territory to be disturbed area.
4. Any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the Armed Forces may, in a disturbed area,
 - (a) if he is of the opinion that it is necessary so to do for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons

or of things capable or being used as weapons or of fire arms, ammunition or explosive substances;

- (b) if he is of the opinion that it is necessary so to do, destroy any arms dump, prepared or fortified position or shelter from which armed attacks are made or are likely to be made or are attempted to be made, or any structure used as a training camp for armed volunteers or utilized as a hide-out by armed gangs or absconders wanted for any offence;
 - (c) arrest, without warrant, any person who has committed a cognizable offences or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest;
 - (d) enter and search without warrant any premises to make any such arrest as aforesaid or to recover any person believed to be wrongfully restrained or confined or any property reasonably suspected to be stolen property or any arms, ammunition or explosive substances believed to be unlawfully kept in such premises and may for the purpose use such forces as may be necessary.
5. Any person arrested and taken into custody under this Act shall be made over to the officer in charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest.
 6. No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.
 7. (1) The Armed Forces (Assam and Manipur) Special Powers Ordinance, 1958, is hereby repealed.
(2) Notwithstanding such repeal anything done or any action taken under the said ordinance shall be deemed to have been or taken this Act, as if this Act had commenced on the 22nd day of May, 1958.

APPENDIX- V**THE CEASE-FIRE AGREEMENT, SEPTEMBER 6 1964.**

1. The Government of India welcomes the steps intended to bring about peace in Nagaland and with this object in view, with whom will be associated the representatives of the Government of Nagaland, to take part in talks with leaders of the underground. They facilitate this talk and taking note of the letter of August 10, 1964, referred to above, it has been ordered that with effect from September 6th 1964, and for a period thereafter of one month at present, the security forces will not undertake:

- (a) jungle operations;
- (b) raiding of camps of the underground;
- (c) patrolling beyond one thousand yards of Security post;
- (d) searching of villages;
- (e) aerial action;
- (f) arrests; and
- (g) imposition of labour by way of punishment.

During this period fines connected with allegations of complicity with underground activities will be imposed.

2.(a) Operations will be suspended as above on the understanding that the underground have accepted that during this period they will refrain from:

- (i) sniping and ambushing;
- (ii) imposition of fines;
- (iii) kidnapping and recruiting;
- (iv) sabotage activities;
- (v) raiding and firing on Security posts, towns and administrative centre; and,
- (vi) moving with arms or in uniform in towns, villages and administrative centres, wherever there are Security posts and approaching within one thousand yard of Security posts.

(b) The assurance, contained in para 5 of the letter of August 10, 1964 is noted that during this period, the underground will refrain from moving with arms or in uniform in towns and villages and within a

radius of one thousand yards of Security posts. The understanding is confirmed that special arrangements may be made in cases where movement with arms or in uniform becomes necessary in any area where there may be risks of encounter with security forces e.g. along or across or bridges.

3. The arrangements specified above are calculated to preclude any unexpected encounter but in the event of encounter coming about, both sides will during the period of stoppage of operations observe the rules "no firing unless first fired upon".

4. The assurance is noted that, during the period of stoppage of operations, in order to promote an atmosphere conducive to peaceful occupations and free discussions there will be no parading with arms in inhabited areas where security forces will not be present under this agreement.

5. I note that it has been agreed that on the international border security forces will maintain patrolling to a depth of three miles as the crow flies from the frontier and that arrangements will be made for modification of the zone when the stoppage of operations is effected. For practical considerations, I request that as suggested in your letter of August 12, arrangements may be made for reconsideration of the depth of the zone at a very early date.

6. The assurance is noted that no arms will be imported from abroad by the underground during the period of stoppage of operations.

7. During the period of stoppage of operations the Government of India will continue the protection of army convoys and maintenance service and the usual road patrolling on either side of the road will continue. The road patrols will withdraw when the last convoy of the day has passed. The underground may move about freely on the roads when the convoy has passed the locality and also non-convoy days. The days of the week and the particular routes used by the convoys will be practicable. It may be necessary to have emergency convoys for such purposes as evacuation of sick and wounded personnel. It may not be possible to give prior information to these convoys. For such convoys however there will be no road protection parties. They will move self contain for protection. It is noted that the depth of patrolling in either side of the road will be one hundred yards. This accepted for the present but 100 yards is for practical reasons inadequate and I would therefore ask that this matter also should be kept upon for reconsideration at an early date.

APPENDIX- VI**THE ARMED FORCES (ASSAM AND MANIPUR) SPECIAL POWERS
(AMENDMENT) ACT, 1972 NO. 7 1972 (5 APRIL 1972) 06**

An Act to amend the Armed Forces (Assam and Manipur) Special Powers Act, 1958.

Be it enacted by Parliament in the Twenty-Third of the Republic of India as follows:

1. This Act may be called the Armed Forces (Assam and Manipur) Special Powers (Amendment) Act, 1972
2. In the Armed Forces (Assam and Manipur) Special Powers Act, 1958 (hereinafter referred to as the principal Act), in the long title, for the words "in the State of Assam, Manipur, Meghalaya, Nagaland and Tripura and Union Territories of Arunachal Pradesh and Mizoram" shall be substituted.
3. In section 1 of the Principal Act,
 - (a) in sub-section (1) for the words, brackets and figures "the Armed Forces" (Special Powers) Act, 1958 shall be substituted;
 - (b) for sub-section (2) the following sub section shall be substituted, namely:
 - (2) It extends to the whole of the States of Assam, Manipur, Meghalaya, Nagaland and Tripura and the Union Territories of Arunachal Pradesh and Mizoram.
4. For section 3 of the principal Act, the following section shall be substituted, namely:
 - (3) If in relation to any state or Union Territory to which this Act extends, the Governor of that State or the Administrator of that Union Territory, as the case may be, is in such a disturbed or dangerous condition that the use of Armed Forces in aid of the civil power is necessary, the Governor of that State or the Administrator of that Union Territory or the Central Government, as the case may be, may, by notification in the official Gazette, declare the whole or such State or Union Territory to be disturbed area.
5. As from the Commencement of this Act, the principal Act, as extended by notification of the Government of India in the Ministry of Home Affairs No GSR 1970, dated the 25th

November, 1970 to the then existing Union Territory of Tripura, shall cease to operate in the State of Tripura.

APPENDIX- VII**DECLARATION BY THE GOVERNMENT OF INDIA**

WHEREAS the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights were adopted by the General Assembly of the United Nations in Resolution 2200 (XXI) of 16 December 1966, which Covenants are reproduced in the Annexure to this Document;

AND WHEREAS it is fit and expedient to accede to the aforesaid Covenants subject to the following Declarations:

DECLARATIONS

- I. With reference to Article I of the International Covenant on Economic, Social and Cultural Rights and Article I of the International Covenant on Civil and Political Rights, the Government of the Republic of India declares that the words "the right of self-determination" appearing in those articles apply only to the peoples under foreign domination and that these words do not apply to sovereign independent States or to a Section of a people or nation-which is the essence of national integrity.
- II. With reference to Article 9 of the International Covenant on Civil and Political Rights, the Government of the Republic of India takes the position that the provisions of clauses (3) to (7) of Article 22 of the Constitution of India. Further under the Indian Legal Systems, there is no enforceable right to compensation for persons claiming to the victims of unlawful arrest or detention against the State.
- III. With respect to Article 13 of the International Covenant on Civil and Political Rights, the Government of the Republic of India reserves its right to apply its law relating to foreigners.
- IV. With reference to Article 4 and 8 of the International Covenant on Economic, Social and Cultural Rights and Articles 12, 19(3), 21 and 22 of the International Covenant on Civil and Political Rights, the Government of the Republic of India declares that the provisions of the said articles shall be so applied as to be in conformity with the provisions of Article 19 of the constitution of India.
- V. With reference to Article 7(c) of the International Covenant on Economic, Social and Cultural Rights, the Government of the Republic of India declares that the provisions of the said

article shall be so applied as to be in conformity with the provisions of Article 16 (4) of the Constitutions of India.

NOW, THEREFORE, BE IT KNOWN that the Government of the Republic of India, having seen and considered the said Covenants, do hereby accede to the same, subject to the aforementioned Declarations.

IN TESTIMONY WHEREOF I, NEELAM SANJIVA REDDY, PRESIDENT OF INDIA, have signed these Presents and affixed hereunto my seal at New Delhi this the Sixth day of Chaitra of the year one thousand nine hundred and one corresponding to the twenty seventh day of March of the Year one thousand nine hundred and seventy nine A.D. in the Thirtieth year of the Republic of India.

Deposited with the U.N. on 10.4.79

Sd/-
(Neelam Sanjiva Reddy)
President of India

APPENDIX- VIII**AGREED GROUND RULES FOR CEASE-FIRE FINALISED BETWEEN THE GOVERNMENT OF INDIA AND THE NATIONAL SOCIALIST COUNCIL OF NAGALAND (NSCN) ON 12TH DECEMBER 1997**

In pursuance of the Cease-fire as originally agreed to on 25th July, 1997 and its further extension on 25th October, 1997 for the period of three months, discussions were held between the representatives of the Government of India led by Shri. K. Padmanabhaiah and the National Socialist Council of Nagaland led by Mr. V. S. Atem, to finalize the ground rules and modalities for the implementation of the cease-fire with the view to ensuring continuance of an effective cease-fire to pave the way for a peaceful and a meaningful political dialogue. After exchanging views in context of the experience of the first three months of the cease-fire, both sides agreed to undertake steps for effective and unambiguous implementation of the cease-fire to create a proper and conducive atmosphere for further discussions. It was mutually agreed that during the period of cease-fire:

- (a) There would be no offensive operations like ambush, raid and attack leading to death/injuries/damage or loss of property against the NSCN by the Indian Army, Paramilitary Forces and the Police;
- (b) Patrolling by the Indian Army, Paramilitary Forces and the Police would continue to prevent infiltration of militants and Arms as hitherto fore. However, patrolling within one kilometer of NSCN designated camps, decided after due consultation in the monitoring mechanism, will be carried out with intimation to them. It is noted that such camps are located/will be located in urban areas, and/or near Highways;
- (c) Protection of convoys and patrolling of road would continue to be undertaken by the Indian Army, Paramilitary Forces and the Police;
- (d) The Indian Army, Paramilitary Forces and the Police would issue instructions to their formations, not to use masks to cover their faces, during the period of cease-fire;
- (e) The NSCN would not undertake offensive operations like raid, sniping and attack leading to death/injury/damage or loss of property;
- (f) In the interest of promoting peace process, there would be no parading (either in groups or individually) of NSCN cadres in

uniform and /or with arms. For the present this would cover towns including District Headquarters, Public transport, Highways and such EAC headquarters as other areas as may be mutually agreed upon by the Joint Monitoring mechanism;

- (g) There would be no blockade of roads and communications, disruptions of economic or development activities, as well as essential services by the NSCN;
- (h) It is mutually agreed that no safe haven or sanctuary to any armed groups or elements will be provided by anyone to ensure that the cease-fire conditions were not misutilise;
- (i) On the Government of India side, a concern was expressed that forcible collection of money or essential supply and intimidation of individuals including government official were taking place in the State. The NSCN representatives stated that theirs being a people's organization, they did not resort to such activities. However, in view of the concern express by the Government of India and in the interest of promoting the peace process, the NSCN representative agreed that the above activities would be prevented.
- (j) It was further agreed that implementation of these ground rules and modalities will be monitored by a group constituted for this purpose comprising representative of NSCN, NGOs and representatives nominated by the Government of India. However, it was also agreed that any accidental encounter or violation should not be allowed to jeopardize the peace process and the effect of any such incident should be localized through mutual consultations. All cases of violations of these ground rules would be referred to the Monitoring Group, so that the reasons for violations are identified and steps to be taken to prevent such violations in future are suggested. Notwithstanding the above, the Army, the Paramilitary Forces and the Police will act in an impartial and unbiased manner against any group causing public disturbance or when there is imminent danger to public safety and peace;
- (k) On the Government of India side, a concern was expressed about reports of forced recruitment to arm cadres. The NSCN representatives stated that they have not and do not resort to forced recruitment. However, in the interest of promoting the peace process, it was agreed that if there are any reports of forced recruitment, they should be discussed in the Monitoring Group.

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