

THE INTERNATIONAL JOURNAL OF HUMANITIES & SOCIAL STUDIES

Ethnic Violence in North East India: The Jurisprudence of the Rule of ‘Proportionality’ of Force

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Abstract:

Ethnic violence has been incessantly active in the North Eastern region of India for more than 60 years now. With more than 300 dialects and indigenous communities with their own practices of administration. It was but natural that freedom would not have been easy in these parts. From being perennially treated as different from the colonial era to the lack of economic development and planning lead to an increase in anti nationalistic activities including ethnic violence. This was further escalated by the implementation of harsh law and rules leading to allegation of human right violation and outright declaration of war against such intrusion by the ethnic minorities residing in these hills This paper therefore explores and identifies the reasons for progeny of such ethnic violence, followed by an examination of the rules ,law and strategies employed to curb the violence. By studying the strategies used by the administration in ending such ethnic violence, this paper examines the underlying principle of ‘use of force’ and the proportionality of the force. The objective of this paper is to provide a wider understanding to violence based on ethnicity in North East India through the legal prism.

Keywords: Ethnic violence, north east, force, law, jurisprudence

1. Introduction

The North Eastern states of India are woven in a tapestry of luscious evergreen mountains, hills, rare flora and fauna. Amongst them resides a multitude of diverse tribes, culture and history. Despite of this region being rich in culture and indigenous practices, yet this region has attracted the attention of national and International community for the ethnic violence and the demand to separate identity. Separatist rebellions broke out first in Naga Hills district of erstwhile Assam State, to be followed by similar armed movement in the Lushia Hills District of that State. Soon secessionism overtook the entire mainland of Assam followed by Tripura and Manipur. Subsequently, Meghalaya and Arunachal Pradesh also joined the list of States that are characterized as unstable and violent with anti nationalistic activities.

Desperate to preserve national integrity and security, the executive and administrative mechanism has taken the aid of rules, regulations which have been more than often criticized to be harsh with allegation that they deviate from the very basic principles of conservation of human lives and human rights. It has becomes necessary to understand these rules, application keeping in mind the ethnic violence that is threatening to erode the very fabric of this tribal zones of India.

2. Ethnic Violence in North East India: An Analysis

Ethnic conflict began in North East India at around 1918 with the formation of the Naga Club. In 1946, the Naga National Council (NNC) was formed and it declared Naga Independence on August 14, 1947, a day before India declared its own independence. The Naga movement turned violent since the 1950s and is active till date under the leadership of the NSCN (IM) and its other faction NSCN (K). Manipur has also been grossly disturbed by armed violence with the formation of the UNLF on November 24, 1964. Another significant Manipuri separatist armed group known as the Revolutionary People’s Front (RPF) and its armed wing, the People’s Liberation Army (PLA) has been engaging in armed struggle for a sovereign Meitei state since 1976. Assam has also been affected by ethnic violence since 1979 with the formation of the ULFA and later on the DHD in the 1990s¹.

Today, there are more than 300 armed ethnic groups which are active within these states. Strong devolution of powers combined with weak law enforcement and monitoring, and a ‘winner-takes-all’ political culture, has set the stage for violent homeland politics.²

2.1. Analyzing the Nature and Causes of Ethnic Violence

Prior to analyzing the reaction towards such ethnic movement, it becomes necessary to identify the root causes for such violence and secessionist rebellion. More than often studies³ have suggested the ethnic exclusivity and colonial isolation is one of the reasons for such rebellion followed by the feeling of neglect, exploitation and non participation in the democratic process immediately after Indian Independence.

2.1.1. Ethnic Exclusivity and Colonial Isolation

The basic issues leading to armed ethnic conflicts in the Northeast was identity, ethnicity, desire for political empowerment and land. Added to this was the colonial residue of being treated differently —excluded/partially excluded areas based on the Inner Line Regulation of 1873⁴. Due to the apparent lack of a pre-colonial and colonial integrative policy with the rest of India, the hill tribes resisted the post-colonial Indian state's entry into the hill. Out of these contradictions emanated what Johan Galtung conceptualized in the 1960s: 'the conflict triangle'.⁵ According to Galtung, conflict, both symmetric and asymmetric, is best understood when seen through a triangle, whose vertices consists of i) contradiction, ii) attitude and iii) behavior⁶.

The Naga rebellion began in the year 1918 with the formation of the Naga Club by 20 members of the Naga French Labour Corp, who had served in World War I in Europe. These selected few Nagas who had come in contact with the European battlefield were motivated to politically organize themselves as a distinct ethnic political identity. The Club submitted a memorandum to the Simon Commission in 1929, in which it was stated that, 'the people of Naga areas and that of mainland India had nothing in common between them. —We should not be thrust to the mercy of the people who could never subjugate us, but leave us alone to determine ourselves as in ancient times'.⁷ Significantly, a Nine Point Agreement known as the Akbar Hydari Agreement was signed between the moderates in the NNC like T. Sakhrie and Imkonglba Ao and the Governor of Assam, Sir Akbar Hydari on June 29, 1947. The Agreement gave the Nagas rights over their land as well as executive and legislative powers but the Agreement was rejected by the leader of Angami tribe A.Z. Phizo. On August 14, 1947, Phizo declared Naga independence, a day before India attained its own independence.

2.1.2. Migrant Issues and Assam: Birth of United Liberation Front of Assam

The radical turn in Assamese nationalism could be traced to the influx of migrants from East Pakistan after partition of India in 1947 and later Bangladesh since 1971 onwards. This massive migrant flow created immense anxieties amongst the ethnic Assamese population, who resented the rapidly changing demographic profile of the state and the loss of land to the Bengali migrant. The ULFA was formed on April 7, 1979 at Ranghar a place of historical significance since the time of the Ahom rule situated in Sibsagar district of Assam. Most of the recruits of the ULFA were drawn from the Asom Jatiyabadi Parishad (AJYCP), which professed Marxism and advocated the Assamese right to dual citizenship and self-determination. The outfit advocated scientific socialism, Assamese nationalism and self-determination or Swadhin Asom (Independent Assam). The ULFA sought to revert Assam's status to the Ahom ruled Assam, pre- 1826 treaty of Yandaboo between the British and the Burmese, which ushered in British rule in Assam⁸.

2.1.3. Leftist Ideology and Manipur

The UNLF in Manipur was established by Arambam Samaranda Singh. It is based on a leftist ideology vis-à-vis the economic and social alienation of the people of Manipur which the group asserts will be undone with the establishment of an ethnic Meitei sovereign homeland. Meitei Manipuri's are one of the oldest sect/tribe settled in Manipur and thus, felt neglected and sidelined with the integration of North East region and the entry of non meities only complicated the matter.

2.1.4. Non Participation in the National Building Process

One of the arguments for the prolonged armed conflicts in the north-east is attributed to the failure of the Indian state to reproduce the consent of the governed through the participation of citizens in routines such as tax payment and elections or the citizen's reliance on the state for key services such as guaranteed public order. In a situation where one ethnic group is organised as an armed 'national liberation force' threatening the security of a rival group and the state is not seen as a reliable provider of security, it is easy to assume why that group, which feels the threat would self-help themselves by turning⁹

2.1.5. Illiteracy and under Development with a Fight for Survival and Sharing of Resources

Lack of value education and skill building training has also lead to the feeling of neglect and exploitation. There have been numerous case studies that suggest that economic disparity, competition over scarce resources, lack of opportunity, and exclusion from income generation are some of key causes of protracted sub-national conflict¹⁰. Such economic disparities and underdevelopment clubbed with low level of literacy becomes the breeding ground for armed insurgencies to easily find recruits among disadvantaged youth, and that marginalized groups in society often mobilize along ethnic identities.

According to Ted Gurr, 'The politics of identity are based most fundamentally on persistent grievances about inequalities and past wrongs, conditions that are part of the heritage of most minorities in most countries'¹¹. As suggested by Paul Collier and Anke Hoeffler, insurgency depends less on 'grievances' than on access to funding, typically diamonds and other easily extractable commodities, and the 'greed' of those profiting from war economies¹².

3. Curbing violence: Strategies, Rules & Regulation & Reaction towards the Use of 'Force'

The period between mid-1950s to early 1990s were a tumultuous period in Naga history including the North Eastern States with militancy on the rise coupled by the state's military response propelled by acts like the Armed Forces (Special Powers) Act, 1958, amended in 1972. The implementation of Armed Forces (Special Powers) Act, 1958 have led to several allegations of violations of Human rights. None the less, peace effort in the form of Accords has been signed by various States. Thus, began the series of signing Accords with the grant of statehood to Naga areas in 1963, the establishment of a peace mission in 1964 and the signing of the Shillong Peace Accord in 1975.

Despite of accords and creation of statehood, the demand for a separate sovereign was not given up. The Shillong Accord was the proximate cause for the foundation of the unified National Socialist Council of Nagaland (NSCN). Replicating Phizo's aversion to the Hydari Agreement, Thuingaleng Muivah, Isak Chisi Swu and S S Khapleng, then young leaders of the NNC, condemned the Shillong Accord as a sell out to the Union government by the NNC moderates and formed the NSCN in Myanmar in 1980. By the late 90's differences within the groups' ideologies and goals, division and factions between the groups emerged¹³.

State response has, so far, been to see this as a threat to national security and to react with a number of sweeping laws that enable the suspension of democratic and representative processes. These laws and acts include the 1953 Assam Maintenance of Public Order Act, the 1955 Assam Disturbed Areas Act and the Armed Forces Special (Powers) Act 1958 (AFSPA). The AFSPA gives wide discretionary powers even to junior army officers to use force as a method of warning, to search any shelter that could be a hideout and to conduct searches without warrants. The Assam Maintenance of Public Order Act, 1953 which was imposed on Nagaland in 1953, and subsequently, the Assam Disturbed Area Act, 1955 gave wide powers to the Governor and the Assam Police and other para military forces deployed in the region.

The implementation of the stringent laws has lead to several allegation of human rights abuse. extra judicial killing, torture and death in custody including abuse of women have been reported and thoroughly documented and researched¹⁴. The use of such force and measures in order to curb ethnic violence bring us to consider and question the very fundamental 'proportionality' doctrine.

4. Human Right Jurisprudence & Necessary 'Force'

The proportionate use of force within the jurisprudential sphere is known as Just War.

St. Augustine is widely believed to be the founder of the principles of Just War.¹⁵ He was one of the ancient jurist to formulate the concept of *justum bellum* systematically directing western Christian thought towards the problem of war¹⁶. Augustine questioned the Roman idea of morality as more vicious than others in its pursuance of the end that is morality.

He explicitly covered the issue of right intention, which means legitimate goals. Augustine also emphasized on the need for a legitimate authority, allowing only those responsible for public order to declare war in his *jus ad bellum*. According to him, just wars were to be waged strictly for the restoration of peace and must be the last resort. It was to be undertaken, not to kill, but to prevent further loss of life. This line of thought was further amplified by St. Thomas Aquinas in his *Summa Theologica* developed and strengthened some of the various sub-divisions of *jus ad bellum*, most notably legitimate authority, just cause and right and moral intention. He stressed that competent authority must not wage war out of their own thirst for political hegemony, but only to avenge evil done to them.

Further to the doctrines developed by St. Augustine and Thomas Aquinas, during the 16th century & 17th century prominent jurist such as Hugo Grotius (1583-1645) and Emmerich de Vattel (1714-1767) became instrumental in the development of a secular *Jus War* doctrine. Both pointed out that armed intervention to assist people suffering under an unjust sovereign was just, but the tension between order and justice remained. In *On the Law of War and Peace*, Grotius cited three causes that are just: to defend against an injury, to recover what is legally due, and to inflict punishment on a wrong doing state for excessive crimes. In other words, Grotius cited punishment of excessive crimes (*punitio*) on its citizens by a state as a just cause for war¹⁷. Thus, the rule of proportionality and force need to consider the essentials such as the meaning of 'proportionality' and the measure of proportionality. Means used in war must not outdo or outweigh the good achieved. This calls for proportionality between the probable course of action and the end that it serves followed by the measure of immunity and protection to civilians or non-combatants should never be targeted in war.

5. Conclusion

Countering ethnic violence, insurgency and insurgents is a difficult tasks for the administration specially in the complex social and cultural terrain of North East India. However, based on the observation and the analysis, firstly, this sensitive situation today requires local trust building and nurturing, creative leadership, and political awareness.

Secondly, the skillful and strategic use of peaceful dialogue and negotiations with the assistance of local NGO's and administration could be a trustworthy ally in curbing ethnic violence in these states. Such negotiations could deal with the challenge of understanding complexities at the social, political and cultural levels buttressed by differences in perceptions of the contextual situation, vagueness regarding causes of conflict, and ambiguity with regard to the future.

Thirdly, all provisions of security laws which either directly violate or lean towards violation of fundamental rights must be amended with an provision of legal recourse for those who alleges abuse and such other crimes¹⁸.

Finally, a war today is fought not only with arms and was strategies alternative measures such as special administrative blocs, tailor-made economic policies for this regions, upgrading the infrastructural capacity and compatible resource allocation with a proactive citizen participation in the process of nation building could solve the larger part of this peculiar situation .

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