

## **State Violence and Impunity in the Borderlands: The Case study of Kashmir and Manipur**

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**Abstract:-** The violence directed by the state institutions and the impunity that it enjoys has received scant regard in the academic circles. Organizations abound that highlight the issue but in the academic sense of term there is alarming paucity of attention that this serious issue has so far received. The purpose of this paper thus is to explore the interplay of state institutions and the systematic violence it directs to achieve the desired ends in the borderlands or the fringe territories. The paper argues that the violence that has been directed, even in the enormous proportions, has failed to bring the territories under the effective control of the centre. In contrast, it has further distanced the populations of these territories from the state, both emotionally as well as physically. The contextualist approach has been used to situate the seemingly disparate and incongruous violations of human rights in the proper context so as to highlight their systematic nature. The impunity (codified in laws like Armed Forces (Special) Powers Act (AFSPA), Disturbed Areas Act, etc.) that the state grants to its armed and police forces has been blatantly misused to kill even the innocent civilians that becomes manifest as one goes deeper into the hidden pattern of the violations. The paper concludes with a note of optimism that in a fledgling and maturing democracy like India one can be hopeful about justice being done to the populations of these fringe territories. The fringe territories that have been 'Otherized' by the state policies cannot be held by mere force, nor can the centre rule over them in the manner that it does to the other 'mainland' states. Any lasting solution has to consider the special nature of these territories.

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### **I. INTRODUCTION**

For nearly two to three decades, the entire Kashmir and parts of Northeast India have been in the throes of turmoil. The violence by state as well as the non-state actors has been a recurrent feature of these regions that share their borders with the other sovereign nations, and whose status has been in contest right since independence. The people of these fringe territories have become grist to the mill of this conflict and have for the most part bore the brunt of the ongoing violence. The violence has taken multiple forms like custodial killings, torture, rape, enforced disappearance, and so on.

Violence, as a concept is notoriously hard to define precisely. There is scholarly disagreement as to what exactly constitutes violence. However for the purpose of our study we adopt the legal and juridical definition of violence given by the World Health Organization (WHO) that defines it as, '*the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment, or deprivation.*'<sup>1</sup> This violence it is important to note is statutorily impermissible and is seen by us as being an act that strays into the sphere of illegality, and is inconsistent with the codified national and international law.

Likewise, for the purpose of this study impunity is defined as a grant of formal or informal amnesty for the crimes that have been committed or that are yet to be committed that normally under domestic or international law would beget prosecution and punishment. This impunity it may be noted is in the form of general consensus among the state leaders that such impunity or free hand for committing crimes may be necessary for the general public good or for purpose of national security. This grant of impunity insulates the public officials from any prosecution or at best leaves the prosecution at the will of the central government, and hence incentivizes the officials for committing crimes of highest magnitude without caring for the laws preventing such crimes.

In the context of our study, the case studies of Kashmir and North-east show a blatant use of violence by the armed forces and the general impunity granted to them by the central government. The impunity has been granted in the formal sense and has been enacted as a legislation. The Armed Forces Special Powers Act (AFSPA) has been enacted by the Parliament of India that gives blanket amnesty for the crimes committed under the garb of national security. The working of the AFSPA in these states shows that it has totally failed to achieve its proposed intent – that of curbing the anti-national activities. That there has been the rise rather than fall in the activities that are classified as being 'anti-national' is a terse reminder that the cosmetic solutions to the problems that are essentially political would never work in a long run.

## II. REVIEW OF LITERATURE:

Haley Duchinski (2009) *Destiny Effects: Militarization, State Power and Punitive Containment in Kashmir Valley* published in the *Anthropological Quarterly*, vol. 82 no. 3. This research paper is based on the ethnographic research in the valley of Kashmir by an anthropologist of Ohio University. The author's research focuses on the patterns of state violence in Kashmir and the resistance to it by the masses. This paper shows how the people of Kashmir have been treated as the threat to the national security and have been gaoled, imprisoned, tortured and killed at will. The pattern of intensive militarization, and the impunity that is enjoyed by the armed forces, according to the author, in fact operates 'beyond the domain of law'. The author argues that the impunity produces a 'real patterns of social abandonment and social death' and drags all the members of society that ostensibly bear rights into the field of state violence. The paper is an important work in that it highlights the criminal nature of the state institutions and blasts the notion of the necessity of violence in the name of national security, but the paper fails to capture any solution that can be acceptable to the parties to the conflict. This stems from the fact that the author treats her subject as a rights issue as understood by a westerner and ignores the external dimension of the conflict and multiple facets of the problem. However, this is one of the enlightening papers that one can have on the subject of impunity.

Manisha Gangahar (2013) *Kashmir's Narratives of Conflict: Identity Lost in Space and Time* published by the Indian Institute of Advanced Study, Simla is an important work in so far as it highlights the plight of Kashmiris as seen by them and tries to come out of the jingoistic nationalistic narratives that impose meaning on the reality of Kashmir. The author has highlighted the interplay between the factors like violence, religion, politics, power, nationalism in Kashmir. She carefully analyses the sentiment of Kashmiriyat (the supposed Kashmiri identity) and whether or not the Kashmiris in reality relate to this. The author concedes that there is the manifest anti-India sentiment among the Kashmiris and is seen as being the occupier state. India has, according to the author, used every possible coercive and oppressive measure to deal with the anti-India sentiment in Kashmir. Thus she sees violence as a hallmark of the Indian state in Kashmir. This book however does not deal with the patterns of impunity enjoyed by the state forces. This book in the main is concerned with the making and unmaking of identities in the state of Jammu and Kashmir and not with violence per se, but is an important work as it shows what lies beneath the 'truths' doing rounds in the nationalistic circles.

Shubh Mathur (2016) *The Human Toll of the Kashmir Conflict: Grief and Courage in a South Asian Borderland* published by Palgrave Macmillan, London is a latest one in the burgeoning literature on the Kashmir conflict. This book according to the author is a 'collection of testimonies from the families of the disappeared in Kashmir.' The declared intent of the author is to preserve the memory that according to her is 'central to the struggle for justice'. The work is based on the author's personal fieldwork and tries to come up with an understanding about what life means to be under the oppressive military rule. The work draws an analogy between the crimes committed by the Indian Army in Kashmir with those crimes elsewhere that have been tried under the International Law. The author argues that the crimes committed by the state in India are no less than the crimes against humanity, and should be tried as such. The author also analyses the Armed Forces Special Powers Act and brands it as a 'Right to Kill' which also forms a chapter in her study. The author no doubt has an important argument that cannot be ignored, but she seems to be a more utopian in what she has to suggest. The hard realities of the present international order cannot be taken for granted. We have to look for the solutions that can actually be carried forward not the radical but unenforceable solutions.

K.M Deka's edited work *Nationalism and Regionalism in North East India* containing a dozen odd articles written by noted social scientists. The central theme of this volume is to discuss the nature and typologies of nationalism and their relevance in the context of India and to analyse the pattern of relationship obtaining between nationalism and regionalism and working of regional forces in the aforesaid region. This book made an attempt to analyse the interaction of nationalism and regionalism in northeast India in a theoretical framework.

R Constantine's work entitled *Manipur Maid of the Mountains*, Lancers publisher New Delhi 1981 gives stress on a new secular dimension to the fanatics who are bent on creating communal tension-pockets all over India, there by eroding the fibre of the union. This is the first authentic book on Manipur since 1009.

*We Widows of the Gun*, The Hague 2011 Rotterdam, The Netherlands by Frank Van Lierde is a jointly published book from Manipuri NGO's, women in governance, the gun victims survivors association, human rights alert, the extrajudicial execution victims families Manipur and Dutch international development organization cordaid. This book highlights the voice of five widows from Manipur who call themselves as the Gun widows. Four of them are widows of men were extrajudicially executed by army or police on suspicion of terrorist involvement—without charge, without evidence and without any form of due process. The husband of the fifth widow was tortured and killed by armed insurgents. Moreover this book also highlights how the real fight of these women begins after the death of their husbands such as fight for their children's future, fight against the stigma that comes with being the widow of a suspected terrorist, fight against impunity, corruption, extortion etc. in short the struggle to live a life with dignity as a women, a mother, a widow.

Sanjeeb Baruah's work entitled *Ethnonationalism in India* Oxford University Press 2012: The author in this book Discusses various ethnonational movements in India, including the Northeast, Punjab, and the Kashmir movements, the volume covers their initiation, subsequent trajectory, and the role of the State. The first part provides the context discussing democracy, diversity, and devolution and the containment of social and political power. The second and third parts focus on Kashmir as a legacy of Partition, and the Northeast respectively. Both parts discuss the nature of contest among various forms of legitimate and not-legitimate power in these conflicts. Dealing with the nature of federal design, the fourth part discusses conflict-negotiation between a democratic nation and prospective breakaway units, with an emphasis on how such situations are controlled. The fifth part explores the theory of fragmented nationalisms and relates it to the specifics of the situation in India. The concluding part charts the rise and fall of self-determination movements across the country

VIK Sarins' work entitled *India's North East in Flames* made an attempt to discuss and analyse the complex problems confronting Assam, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Arunachal Pradesh and Mizoram. Author has also stressed on the geographical significance of this sensitive region and described how various foreign powers are trying to make it a turbulent zone for international intrigues.

#### **OBJECTIVES OF THE STUDY:**

The prime objectives of this paper are as follows:

1. To highlight state violence in the borderlands with special reference Manipur of northeast and J&K when life and security of people are at stake.
2. To highlight incidents showing the violation of legal and fundamental rights of people in the borderlands
3. To present descriptive and analytical frame through which the inference can be drawn about the role of state authority behind impunity
4. To provide some inclusive policy measures to avoid such violation and impunity when both integrity and social fabrics are at stake.

#### **RESEARCH QUESTIONS:**

In the proposed academic exercise a modest attempt has been made to examine the following research question

1. What is the main reason behind the imposition of AFSPA in J&K and other north-eastern part of India?
2. Does the imposition of such an Act serve the purposes that it intends to?
3. Does the state's grant of impunity to its armed forces have any implication on the resolution of the conflict
4. What can be the possible solution to the ongoing crisis in the borderlands?

### **III. METHODOLOGY**

The study employs the descriptive and analytical method to bring out the regularities in the events. Historical method has also been employed to study the effects of past events and their bearing on the present. The study is based on the information based on primary as well as secondary sources of materials such as reports, interviews, scholarly works and research papers etc. Moreover newspapers, articles, internet archives have also been utilized to a great extent in this research exercise.

### **IV. A BRIEF ANALYSIS OF AFSPA**

**Armed Forces (Special Powers) Act (Act of parliament)** grant special powers to the Indian Armed Forces. The Armed Forces Special Powers Ordinance of 1942 was introduced by the British on 15 August 1942 and basic intension was to suppress the Quit India Movement.

There were four ordinances invoked by the central government to deal with the internal security situation in the country in 1947 which arouse out of Partition of India.

1. Bengal Disturbed Areas (Special Powers of Armed Forces) Ordinance;
2. Assam Disturbed Areas (Special Powers of Armed Forces) Ordinance;
3. East Bengal Disturbed Areas (Special Powers of Armed Forces) Ordinance;
4. The United provinces Disturbed Areas (Special Powers of Armed Forces) Ordinance

#### **Armed Forces Special Powers (Assam and Manipur) Act, 1958**

**Historical background:** In 1951, report came from Naga National Council (NNC) stated that it conducted a "free and fair plebiscite" in which about 99 per cent Nagas voted for a 'Free Sovereign Naga Nation'. The first general election of 1952 was boycotted, which later extended to boycott of government schools and officials. In order to deal with the situation, the Assam government in 1953 imposed the Assam Maintenance of Public Order (Autonomous District) Act in the Naga Hills and intensified police action against the rebels but later when the situation worsened, Assam deployed the Assam Rifles in the Naga Hills and enacted the Assam Disturbed Areas Act of 1955, and thus provided a legal framework for the paramilitary forces and the armed state police to combat insurgency in the region. But on the contrary Naga Nationalist Council (NNC) formed a parallel

government "The Federal Government of Nagaland" on 23 March 1956. On 22 May 1958, the President of India Dr. Rajendra Prasad promulgated Armed Forces (Assam and Manipur) Special Powers Ordinance and on September 11, 1958 it was replaced by Armed Forces (Assam and Manipur) Special Powers Act, 1958. Thus in 1958, 11th Sept AFSPA was passed which is now applicable to five states (Assam, Manipur, Meghalaya, Nagaland, Tripura, Arunachal Pradesh and Mizoram) of north-eastern region of India. Another passed in 1983 and applicable to Punjab and Chandigarh but was withdrawn in 1997. In 1990 another such Act was passed and now applicable to Jammu and Kashmir. As per this Act, governors of the States and the Administrators of the Union Territories can declare areas in the concerned State or the Union Territory as 'disturbed'. The words, "The Armed Forces (Assam and Manipur) Special Powers Act, 1958" were substituted by "Armed Forces (Special Powers) Act, 1958", or AFSPA, 1958. However recently the Tripura state government has decided to withdraw the controversial act citing significant reduction in the extent of terrorist activities in the state but in June 2015, AFSPA was extended in Nagaland for one more year. In 12 August 2004 after the killing of Thangjam Manorama in Manipur, the government decided to withdraw the controversial Armed Forces Special Powers Act from seven assembly constituencies in Imphal areas in spite of the Centre not favouring it.<sup>ii</sup> In case of Jammu and Kashmir this Act is still applicable in full-fledged manner.

## **V. STATE VIOLENCE AND IMPUNITY IN THE STATE OF JAMMU AND KASHMIR**

Pending the promised referendum, Kashmir has since 1947 been a focal point of conflict between India and Pakistan.<sup>iii</sup> Many call it a nuclear flashpoint, a probable site of a future nuclear adventure between the hostile states of India and Pakistan.<sup>iv-v</sup> The conflict emerged with the partition of the Indian sub-continent in the wake of British withdrawal from the Indian empire in 1947. At the time there were more than 550 princely states that were hitherto governed by the local princes who acknowledged the suzerainty of the British crown. With the dissolution of the empire and the consequent lapse of British paramountcy, the princes were technically independent and absolutely sovereign.<sup>vi</sup> However, to avoid adding a several hundred tiny independent states to the map of the world, a contrivance of 'accession' was arrived at. The princes were required to sign an 'instrument of accession' in favour of the either Dominion. Almost all states, except three, had acceded to either India or Pakistan by August 15, 1947. Ian Copland, quoting H. V. Hodson, states, "when Patel went to see Mountbatten his demand was for 'a basketful of accessions', and 'this Mountbatten was almost able to give him. Only three apples ... were left out of the basket on August 15, 1947.'"<sup>vii</sup> The state of Jammu and Kashmir was one among the three states that didn't accede to either Dominion by the time the British had completely withdrawn from the subcontinent. While the other two states, Hyderabad and Junagarh, were later annexed by India, Kashmir remained a sole bone of contention between the two successor states. On October 27, 1947 the Maharaja of Kashmir Hari Singh made an accession in favour of India in the aftermath of the tribal unrest in the Poonch area and the consequent incursions from across the border. The accession was contested by Pakistan as being fraud since the accession was to be based upon the geographical contiguity, and religious composition. On both counts accession towards Pakistan seemed to be a reality. The outcome didn't augur well with Pakistan that sought to change it with any means at hand. Thus Kashmir became a source of conflict between India and Pakistan and a "vital object of competition, coveted with equal fervor by both new states."<sup>viii</sup>

The claim to the sovereignty being contested intensely, violence has since become the hallmark of the state of Jammu and Kashmir. The people of the state have become the grist to the mill of this violence of India and Pakistan. According to official reports, since 1947 47,000 persons have been killed in the conflict.<sup>ix-x</sup> The number of enforced disappearances has been pegged at 8000+ by various organizations.<sup>xi</sup> The report of the 'The International Peoples' Tribunal on Human Rights and Justice in Indian-Administered Kashmir' (IPTK) and the 'Association of Parents of Disappeared Persons' (APDP) documents the extra-judicial killings of 1080 persons and disappearance of 172 persons and numerous cases of torture and sexual violence. The violence has engulfed the whole of Kashmir as a wild fire.

The violence has been directed at the people of Kashmir in a systematic way by various state as well as non-state actors. The most pronounced and the most manifest violence has been directed by the state of India in Kashmir through its myriad organizations like the army, the intelligence organizations, the state police forces, the Ikhwanis (the former militants who collaborated with the Indian army in its counter-insurgency operations, and were later organized in its present form as the Special Operations Group), and various other paramilitary groups. These armed forces have been given free hand in the state to curb anti-state forces or the armed secessionists. Armed Forces (Special) Powers Act has been enacted by the parliament of India that gives complete impunity to the armed forces. The wording of the act is brutal at best and can be compared to the worst of colonial acts to curb 'terrorism'.

The Act says, "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 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 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 utilised as a hide-out by armed gangs or absconders wanted for any offence;(c) arrest, without warrant, any person who has committed a cognisable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognisable 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 that Purpose use such force as may be necessary.”This and other Acts of similar nature like the Disturbed Areas Act, have created an environment of impunity in which the armed forces are handed the license to kill and go on rampage at will. Contrary to the declared intent of curbing the terrorism, the Act has rigidified the stand of the common people and has resulted in the general apathy towards Indian institutions. The powers flowing from the Act have been used in a most deplorable way by the armed forces that have shown scarce restraint in using the might of the gun in the civilian areas, and have deliberately used the force against the civilians believed to have connections with the militants.<sup>xii</sup> Thus where for example a single militant is trapped in a civilian building, no attempt is made to save the building rather it is razed to ground with most modern bombshells without looking for the alternatives. The army has been accused of being involved in the multiple crimes such as rape, torture, assault on the civilians, extra-judicial killings, etc.<sup>xiii</sup>

### **SOME CASES**

The violence in Kashmir has been used in a systematic way and has received the full support of the state institutions. This becomes manifest when we study the specific cases of violence by the armed forces of the state. Some cases have been discussed, though the list by no means is exhaustive.

1. The first case being that of the alleged mass rape on February 23, 1991 by the Fourth Rajputana Rifles in the twin villages of Kunan-Poshpora in the border district of Kupwara. Rape has been used by the armed forces throughout India as a weapon to intimidate, coerce, and force the civilian populations into submission or to teach them a ‘lesson’. It is not common to Kashmir only.<sup>xiv</sup> In this village, the women of the whole village were subjected to mass rape by the armed forces during a search operation. Later when the complaints were made by the village elders, the charges were denied and no formal and independent inquiry was made. In response to the mounting domestic and international criticism, the army requested the Press Council of India to form a committee to investigate the matter. The committee it becomes clear was more concerned with covering up the issue rather than uncovering the truth. It dismissed any evidence that seemed to corroborate the happening of rape. The manner in which the charge was discredited and the absence of any impartial and independent inquiry establishes that the state has tried to shield its armed forces and thus encouraged the crimes it perpetrates in the valley.

2. The armed forces have more often than not resorted to the killings of the suspected militants in their counter-insurgency operations, many of which later turn out to be staged or fake encounters. In Kashmir these have been used on countless occasions. The Machhil fake encounter is the one of them that we have selected to discuss here because this is the exceptional case where army personnel were punished. On 30 April 2010, the security forces killed three Kashmiri innocent civilians namely Shahzad Ahmad Khan (27), Riyaz Ahmad Lone (20) and Mohd. Shafi Lone (19) of Nadihal village of Baramulla district. Seven army personnel were tried and punished by the Court Martial for falsely dubbing these innocents as Pakistani insurgents and killing them in a fake encounter. There have been many other encounters of the similar nature where the perpetrators are either shielded by the state itself or they escape the system of justice. For example in Pathribal encounter, the state not only did cover up the issue but also the perpetrators were congratulated by none other than the then Dy. Prime Minister L. K. Advani on his visit to Kashmir. This blatant impunity granted to the armed forces is a worst example of the denial of justice.

3. Enforced disappearances in Kashmir are a prime feature of the state sponsored violence. There have been a number of cases where the victims were picked by the armed forces in presence of their family members or friends ostensibly for the regular questioning, but were never returned back to the families. The armed forces later denied of having picked them. In practice they were either killed right away or tortured to death for having links with the militants. While there have been thousands of such cases, some examples are that of the

disappearance of Raja Mardan Ali Khan of Boniyar, Baramulla; Mohd. Shafi Dar of Tengpora, Srinagar; Latief Khan, Bashir Khan both residents of Boniyar, Baramulla; Samad Saraf of Sangri Colony, Baramulla; Fayaz Shalla and Bashir Shalla of Habba Kadal, Srinagar; Malik Nisar Ahmad Shah of Verinag, Anantnag, and the list goes on.<sup>xv</sup> The common understanding is that none of the disappeared persons is alive and have been tortured to death by the forces in the infamous detention centres like the Papa 2. This is corroborated by the finding of the unmarked mass graves at various places including the recent one at Kupwara.

The above cases far from exhaustive are just to demonstrate the magnitude of impunity enjoyed by the armed forces in the border-states like Kashmir where the whole populations are perceived to be suspects and where anybody can be arrested, maimed, tortured or killed right away. However, a number of scholars have argued that minimum use of force in civilian areas would lead to better results than coercive steps which create fear among the masses. The acts which are purportedly used to provide order and security actually “produce state-sponsored disorders and insecurities among those segments of populations identified as threats to the nation.”<sup>xvi</sup> The state uses its might to delegitimize the valid and legitimate demands of the fringe territories which invoke their concerns on the basis of their history, ethnicity, etc. These claims and demands are condemned as a threat to the national order and the ethno-religious fabric of the nation. The populations of these fringe territories, who support their specific movements, are thus seen to be a security concern and these imaginations are perpetuated through the national media. Any violence by the state is thus justified and legitimized in the name of national security. The security apparatus of the state for the populations of these territories thus becomes an apparatus of insecurity. The result is that of burgeoning gap between the main state and the fringe territory. In Kashmir too the narrowing down of the physical gap has been at the cost of widening emotional gap from the centre. Indian state is seen in the common perception as the perpetrator of injustice and consequently as a state that has to be got rid of. The violence has thus in the words of Mary Kaldor contributed, “to the political polarizing of process of fear and hate.”<sup>xvii</sup> The purpose for which the violence is used in the first place serves only to negate it. The populations tend to move farther from the centre emotionally and tend to exploit any opportunity to distance themselves from it physically. It is pertinent to note that the February 23-24 (the date of alleged Kunan-Poshpora happening) is now remembered as the Kashmiri Women’s Resistance Day. The collective memories of the violations of basic human rights have become ingrained in the social sphere. The memorials have been built for the militants and civilians killed by the security forces, the martyrs graveyards have become the common scene in Kashmir; the organizations like that of the Association of the Parents of Disappeared Persons (APDP) commemorate the persons who were disappeared by the known ‘unknown’ forces. These collective memories have been a rallying point for the common people and have given rise to the narrative of resistance to the Indian rule and the independence from it. Thus India, which was chosen by Kashmir in 1947, despite having an option of Pakistan, has failed to provide a breathing space for Kashmir and has strangulated Kashmir in its attempt to embrace it. The Kashmiris who willingly chose India in 1947 in order to enjoy a multicultural, multi-religious and secular freedom, have been left lurching from the want of it.

The current state of affairs is a dismal one. The need is to revive the democratic order, not merely minimalist democracy, but a substantive one in which the processes are seen to be just. The time is to provide justice to the people and bring to book the perpetrators of crimes in Kashmir. The violators of the basic human rights must be made to face trials in the common law courts or must be punished for their depravities by the special courts. The trust and confidence of the people in the system of India can never be expected to be won until the criminals enjoy the patronage of the state. The state institutions must be seen to be based on and serving the purpose of justice. The obligation of the people must not be expected unless the state itself is seen to be legitimate. The loss of legitimacy is followed by the corresponding loss of obligation. Thus every step must be taken to ensure justice to the people. AFSPA in its current form is totally unbecoming of a democracy and must be revoked or amended substantially so as not to be a hurdle in a democratic spirit. The previous wrongs done must be undone by meting out justice to those who have been affected. For this an independent Commissions should be made that would ensure the same. The Truth and Reconciliation Commission, for a start should be made to listen to the public affected by state violence and uncover the crimes committed by the armed forces. Another Commission should be made to investigate the crimes highlighted by previous commission. Courts of special nature should be formed to try the crimes investigated by the commission. This may be a very bold and long step to do away with the alienation of the people of Kashmir, and bring back the state of Jammu and Kashmir in the emotional circle of the Indian nation.

## **VI. STATE VIOLENCE AND IMPUNITY IN THE STATE OF MANIPUR:**

***“For most Indians Northeast India is on the map but off the mind”<sup>xviii</sup> – Sanjib Baruah***

India is a multi-ethnic society. Being a plural society, its diversities are hard to comprehend. India’s northeast is full of myriad linguistics and religious groups. The entire north east is a veritable heaven for multi-ethnic groups. Every ethnic group desires to preserve their distinct ethnic cum cultural identity. In terms of ethnic multiplicity the area is unique. North-East India has been occupying a unique position in India politics.

This multi ethnic society comprises the states of Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Tripura, and the Himalayan State of Sikkim. This region is surrounded by foreign territories like Bhutan, Tibet-China, Burma and Bangladesh on the north south and the east except for a long narrow passage in the west which connects the region with Bengal and rest of India. It is considered a cultural corridor between India and south-east Asia. North-east India the entire region is an area which is a house of many internal strife and conflicts. Pending border disputes, insurgencies and terrorist problems, resources sharing disputes are some common problem which has made this region quite turbulent. Besides the violation of legal and fundamental rights of the people of the regions under AFSPA imposition is much more significant. In the last few decades the politics of north east India in particular and politics of India in general has become increasingly designed by politics of identity. The identity assertion of various regions has been intentionally articulated through religion, language, culture, cast and so on. The diverse groups have been demanding either separate or autonomous state on the basis of their lingo cultural or religious identities or for special constitutional safeguard of their respective identities.<sup>xix</sup> But the imposition of AFSPA by the Indian government to suppress the voice of people and unexpected violence in AFSPA imposition areas made human rights activists to review this Act in present day context. In Several parts of India the Armed Forces (Special Powers) Act has been in force including the state of Manipur in the northeast of the country, for more than 50 years. The Act grant extraordinary powers to the Indian armed forces in the so-called “disturbed areas” where it is applicable. The Act has been at the heart of concerns about human rights violations in the state, such as arbitrary killings, torture, rape, inhuman and degrading treatment and enforced disappearances. Its continued imposition has led to protests, notably the longstanding hunger strike by Ms. Irom Chanu Sharmila in Manipur. The strike made many national and international human rights defenders to review the Act with India’s democratic practices. Manipur has been one of the states of north-eastern India with the longest history of the military abusing its powers under the Act and with a vibrant civil society who are denouncing those violations.

## **VII HISTORICAL BACKGROUND:**

Reference has been made to a kingdom named Manipur in the great Indian epic Mahabharata while describing the adventures of Pandava hero Arjuna who married to Chitrangada a princess of Manipur who gave birth to Babhruvahana who became the king of Manipur.<sup>xx</sup> In 1891 the Kingdom of Manipur came under British rule as a self-governed state. From 1947-1949 Manipur had the status of a constitutional monarchy, Later the Assembly of Manipur was dissolved and the state became part of Indian Union. In 1956 Manipur became a union territory. Since 1972 it has been a full-fledged state within the Republic of India. In May 1958, Dr. Rajendra Prasad, the then President of India, in response to the continued unrest in the north-eastern territories of the union, including self determination activities by Naga tribes that spilled over into the state of Manipur, promulgated the Armed Forces (Assam and Manipur) Special Powers Ordinance. The ordinance gave the Governor of Assam and the Chief Commissioner of Manipur the powers to declare the whole or any part of Assam or Manipur, respectively, as a “disturbed area”. The AFSPA Act replaced the ordinance later that year. The Act was passed by both Houses of Parliament on 18 August 1958 and received presidential assent on 11 September 1958. Subsequent amendments to the Act, which mainly dealt with the territorial scope of its application, were enacted in 1960, 1970, 1972 and 1986. Even though there was some resistance within the parliament against the passing of the Act, the majority prevailed and the law was passed. Today the Act is applicable to the north-eastern territory of India, comprising of states, namely, Assam, Manipur, Tripura, Meghalaya, Arunachal Pradesh, Mizoram, Nagaland and Sikkim. India is the largest democratic country in the world but despite this fact, violence in the regions under AFSPA imposition remains a usual strategy. Violence goes on in the name of investigating crimes, extracting confessions, fake encounter etc. Violence is also inflicted on women in the form of custodial rape, molestation and other form of sexual harassment. One such case is Thangjam Manoram of Manipur 2004. Victim’s family is still waiting for justice. Thangjam Manorama who was born in 1970 was a Manipuri woman. On 10<sup>th</sup> July 2004, she was picked up from her house by the Indian paramilitary unit because of uncertain allegations of being associated with People’s Liberation Army. Her bullet-ridden body was found in a field in the next morning. An examination of her dead body suggested rape and murder. As per the arrest memo, no incriminating items were found, at the time of her arrest but later it was stated that a grenade and other items had been seized from her home. She was shot while trying to escape stated by Assam Rifles. But interestingly no blood was found near the body despite of this fact that six bullet wounds even no soldier was identified as having tried to detain her. However in 2004 Manipur government set up an inquiry commission and in November 2004 its report was submitted. The Guwahati High court of Assam also looked into the matter and ruled that since the Assam Rifles had been deployed under the Armed Forces (Special Powers) Act, 1958, the state government did not have jurisdiction over them, and the case should be dealt with by the central government. Thus, the report was never released subject to this judgment. Thangjam Manorama case led to widespread protests in Manipur and Delhi. Just after five days of her killing, around 30 middle-aged women walked naked through Imphal to the Assam Rifles headquarters, shouting: “*Indian Army,*

rape us too... We are all Manorama's mothers. M. K. Binodini Devi a Padma Shree author returned her award in protest. Protests have continued in 2004 and over the years. In 2012, the Justice Varma committee includes made an attempt to review AFSPA as part of a set of steps to reduce violence against women. In December 2014, in a case filed at Supreme Court of India, the apex court asked the government to pay a compensation of Rs. 10 lakhs to Manorama's family and the case was accepted for hearing in the court but the doubt remains the same as even in past, compensations were declared for victims of AFSPA, but courts could not spell any judgement against culprits for awarding punishment.

## VIII. CONCLUSION

Given the different trajectories of social, cultural and political paths that these states have followed, it may be said that it is impossible to eliminate identity assertion completely from J&K and other north-eastern part of India including Manipur. Every group has the right to preserve its own distinct identity. Imposition of AFSPA is neither efficient nor necessary way to suppress the voice of people and eliminate insurgency problem. Hence our focus should be 'not to remove but to protect' the identity of each and every group on the basis of their respective region keeping with the view of nationalism. For this some measures we can discuss as follows:

**Role of the government:** Government should set up proper investigating committee to properly investigate each and every case occurs under the banner of AFSPA. False encounter, custodial rape, molestation and other form of sexual harassment which are going on under the banner of AFSPA should be properly investigate so that unity can be maintained in diversity.

**Role of the civil society:** Civil society can also play a positive role to highlight the cases happens in those areas where ARSPA is imposed. They are the prime motivating factor in our society which can bring justice towards innocent victims. In this regard mention can be made about Irom Sharmila, a social activist of Manipur who is still fighting through hunger strike for the withdrew of AFSPA from entire Manipur

**Peaceful negotiation with the insurgent or secessionist group:** Peaceful negotiation with insurgent or secessionist group is also important because this is the main reason for the imposition of AFSPA. Peaceful negotiation somehow can bring permanent peace in the entire north-eastern region and J&K. But to materialize this effort, the government as well as the representatives of these groups should come forward and take the initiative.

The political history of Northeast is full of turmoil and upheavals based on racial diversity, mutual doubt and future political uncertainty of people whose political goals are not yet definite. In case of Kashmir the situation is the same. India was willingly chosen by Kashmiris in 1947 instead of choosing Pakistan that was contiguous both in terms of geography as well as religion. Kashmir willingly chose India in order to enjoy a multicultural, multi-religious and secular freedom but now Kashmir has become such a turbulent zone where Kashmiris are unable to find out a space for breathing, and lament for their decision to accede to India. The attempt of 'integrating' Kashmir with India by scuttling whatever autonomy was given to it has clearly resulted in the rise of centrifugal tendency among the Kashmiris. Thus, this paper suggests that it is high time for the ruling party at centre to take positive initiative so that permanent peace and security can be secured in the Northeast and Kashmir when life and security of people especially in Kashmir Valley and unity of India are at stake.

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- [9] See for example 'India Revises death toll to 47000' [ <http://in.reuters.com/article/idINIndia-36624520081121> ] Accessed on 09-05-2016.
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- [11] See for example the report of the IPTK and APDP *Structures of Violence* (2015), p. 3
- [12] Militants are the armed groups of varying ideologies and goals who, however, share their basic aim of overthrowing the state of India from the state of Jammu and Kashmir. The exact number of such groups is not known but the most manifest one is the Hizbul Mujahideen with declared aim of the accession with Pakistan.
- [13] Various abuses of such nature have been documented in the Asia Watch/PHR Report, *The Crackdown in Kashmir: Torture of Detainees and Assaults on the Medical Community* (March 1993), in Asia Watch, *Kashmir Under Siege*, (May 1991), and in the APDP/IPTK report, *The Structures of Violence* (2015).
- [14] Amnesty International in one of its reports says that rape is so common in India that "a 1988 newspaper headline read: 'Another mass rape by Bihar cops' In September 1989 the Rajasthan government admitted that the police had been involved in the over 50 rapes. Delhi Police similarly admitted 14 cases of rape by the police officers." Amnesty International, *India: Torture, Rape and Deaths in Custody* (London: March 1992)
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