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The Impact of Armed Conflict on the Environment in North East India: Legal and Non-Legal Dimensions to the Internationalized Internal Conflict

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Introduction: With king Darius the Great of Persia rapidly advancing in the 5th Century BC, the Scythians, who were on the back foot, retreated, and while doing so retreated wiped out vegetation and poisoned wells owing to which Darius, whose forces are now without food and water, had to concede defeat. The army of Torquato Conti in 1630, while retreating against the army of Swedish Gustavas Adolphus, decided to leave behind nothing but ruin burning and destroying the unfortunate environment, which happened in their path of retreat. During the Vietnam War (1961-71), the US Army used chemical warfare in the form of Agent Orange, which caused irreversible damage to the forests, and the attempts to alter environmental conditions to cause floods thereby disrupting a smooth North Veitnamese supply chain, voices were raised for environment protection during armed conflict. These voices grew louder after the Iraqi army set ablaze Kuwaiti oil wells in 1991, a manifestation of their scorched tactics. It was this horrific act, which was later held to be unnecessary and instead seemed to be a deliberate ploy to damage and destroy the environment, which sent shockwaves through the international community. The issue of safeguarding the ecological environment during armed conflict thus emerged in the crucible of international deliberations.

“War changes our parameters. In the face of actual or perceived threat, acts that would normally be abhorrent become acceptable and even routine. One of the first of our sensibilities to be discarded is the protection of the environment”

It seems to be a human tendency to reflect upon the effects of war and conflict as a measure of the number of people injured or killed, and the number of cities razed. As a result, a silent and unreported casualty of conflict has been

the environment. History has provided us with numerous situations where the natural environment has been modified thus enabling it to be utilized as a weapon. In addition to such modification, armed forces have intentionally left behind a trail of environmental destruction, especially the destruction flowing out of scorched earth policies.

The natural environment and populations, which require resources provided by nature for their survival and sustenance, are especially affected by war. Destruction of forests for example, leads to a loss of habitat for wild animals, which consequently disappear. Insurgents to finance military activity frequently sell body parts of these animals. Belligerents and armed forces often fight wars without thinking about the environment and cause damage to the same. Such attitudes adopted by warring parties have severe consequences on ecosystems. The horrific effects of armed conflict are both short and long term and are felt not only on socio-economic development, on humans but also on the silent victim, the environment. Ultimately, it results in the degradation of the environment, loss of life and in the destruction of physical and social capital thereby halting the march of humanity towards our cherished goal of sustainable development.

Scope and Aims of the Paper: The issue that must be raised is whether the present situation of counter-insurgency measures either legal or non-legal, are effective in dealing with the present condition of conflict zones that are biodiversity hotspots. If such measures are incapable of effectively countering the problem of these armed groups, it is important for us to examine the reason as to why the demands of these groups and the solutions provided by Governments are not coinciding. This requires an inquiry into the nature of the conflict, especially in the context of the North East, the kind of solutions proposed thus far and how they fall short of expectations. We would then have to inquire into how a middle path must be reached whereby the insurgents and the Governments may bring to close *the* conflict. It is only when the root of the conflict is solved that it shall be feasible to put to action conservation measures, restoration procedures and rehabilitation programmes for the natural environment and elements of the ecosystem thus destroyed by the armed conflict.

In the interest of finding a solution to the damage caused by armed militia upon the environment and the problem of insurgency, it is important to look at national laws on the environment and administrative frameworks to implement environmental policies in these conflict zones. The concept of environmental In the interest of finding a solution to the damage caused by armed militia upon the environment and the problem of insurgency, it is important to look at national

laws on the environment and administrative frameworks to implement environmental policies in these conflict zones. The concept of environmental crimes must also be looked at from the point of war-time criminal liability. It may also be of merit to examine whether international legal regimes may be applied to the cases of environmental crimes committed by insurgent groups in the North East, comparing the situation to other international conflicts that caused environmental damage. Since the conflict in North East India is an internationalized internal conflict, we could see how international intervention could affect the present situation in the North East, where the legal status of the insurgents and the States in which they occur are not clearly defined.

Armed Conflicts in the North Eastern Region: The nature of these conflicts range from assertion of ethno-linguistic claim to rights, which often transpose into rights over landed territory and the taking to arms in the absence of State protection of minorities within these States. One of the main reasons for the emergence of armed conflict in the North East is a feeling of dissatisfaction and a subsequent attempt by the population of the North East to assert their respective group identities. These feelings of discontent arose largely due to the way the territory of the North East is organised, and also because of the fact that the British labelled the North East as simply a '*frontier area*', As a result of such labeling, the region could not grasp the concept of centralized governance. Ever since the territory of India has reached its present state, feelings of allegiance to our nation on part of various communities of the North East has been missing. This conflict has exacerbated with various policies and actions of the Government, such as the notorious Armed Forces Special Powers Act, which though aimed at resolving the conflict, did the exact opposite, with the introduction of military repression in the North East. Allegations of human rights violations by the Army further instigated rebels to take up arms and resort to armed violence. However, "*though the conflict in the region is mired with complex political-economic issues, such as struggle over natural resources, migration related issues, displacement, social exclusion, and so on, according to Dr Clemens Spiess, the politics of identity lies at the heart of the bigger part of the current conflict constellations in the Northeast*".

Sometimes, armed insurgency has also arisen from nation-building measures by governments such as hydel power plant construction, dam-building and infrastructure development with lack of proper impact assessment. In 2003, the building of a dam across the Gumti River in Tripura

led to large-scale protest over inadequate Resettlement and Rehabilitation (R&R) programmes. The Environmental Impact Assessment (EIA) document that must be submitted was inaccurate to say the least; profiling of the social and environmental impacts were incorrect to the extent that the project was abandoned after resettlement of a large population of tribals. Given that, there is availability of land in the North East, most Governments overlook that resettlement takes place in regions where permanent cultivation is impossible and often, landed communities have historical control over swathes of land used for the displaced. This leads to dissatisfaction and hence, is often a cause for insurgent activities.

In the North East, there are four major armed conflicts that have been of considerable scale in Nagaland, Manipur, Assam and Tripura other than minor insurgencies in the three remaining States.

Nagaland: Soon after independence, the Naga insurgency became a serious problem in the North East. Though the population of Nagaland is merely two million, there has existed a, and were among the first tribes to revolt after Indian independence, when their demand for secession continuing problem of nationalist revolt. It is deemed by experts to be one of the world's most ancient armed insurgencies in the world having its origin in the demand for a new country in 1956 orchestrated by the Naga National Council. The fifteen tribes of Nagaland had no common Governmental authority and no common system of Government was denied. The conflict has continued with low intensity characterized by factional conflict between the Nagaland Socialist Council (NSCN) factions led by Isak & Muivah (NSCN-IM), and Khaplang (NSCN-K) over ethnic claim to rights and sole right to protection of the tribes.

Manipur: The armed conflict in Manipur has been classified as one with the most number of casualties and frequency of attacks by various organisations such as the People's Liberation Army (PLA), the Kuki National Front (KNF), the Kuki Liberation Army (KNA) which took to arms in 1982 over the Kuki-Naga conflict. The United National Liberation Front (UNLF) took to arms over the indignation to the Meitei community not being recognised as a Scheduled Tribe after Manipur decided to become a part of India. Manipur has been classified as a 'disturbed area' since the 1980s.

Assam: In Assam, the well-known United Liberation Front of Assam (ULFA) started out as a non-violent movement in the late 80s against the influx of immigrants into the State. Over the course of the 90s, they turned violent with

phases of escalation and de-escalation through mediation attempts. However, after failed mediation in 2005, the movement turned violent again and has been active sporadically to-date even after significant loss of power through various cease-fire agreements over the years.

In recent years, the Bodo Movement has been in the Limelight. Bodo leaders formed the Plains Tribal Council of Assam in 1967 to "*further the fight for full autonomy*" in Assam which later took the form of the National Democratic Front for Bodoland (NDFB). The movement consists of the plain tribes that were pushed to a state of alienation, which slowly built up to a stage where they broke out into violent insurgency with high intensity violence in the North Cachar Hills.

The Other States: Beside this, there also existed the Mizo movement, which also demanded an independent state. The Mizo people had since time immemorial lived independent of external control, until they were brought under British control in the winter of 1895.

There also exist various other ethnic conflicts such as in Meghalaya, where original tribal residents are always in conflict with the immigrant Bengalis. This sentiment of nationalist identity and ethno-linguistic claim also manifests itself in Tripura against Bangladeshi immigrants who flooded the State after Partition and the 1971 war. The Tripura National Volunteers (TNV) have been the cause of ethnic riots and armed conflict over claim to resources and rights of the indigenous population. Arunachal Pradesh, on the other hand has been witness what Cline observes is "*overflow insurgency*" due to the spillover effects of the Naga-Kuki forces operating out of bases in the State.

Environmental Impact of Armed Conflict in North East India:

"The ethno-political unrest involving the proud, essentially peaceful, but headstrong and identity-seeking Bodo community has unleashed so much violence around Manas over the past decade that wildlife management and anti poaching activities have been thrown out of gear. Targeted violence involving more than 1, 000 encounters with forest staff have taken place. We are struggling to protect Manas.

While the focus has always been on the destruction of life and property of individuals in these armed conflicts, the silent victim has been the environment. As a result of greater consciousness of environmental damage, the conspicuous effects of climate change and global warming caused by modern warfare, and strategic use of the natural environment to aid the aims of such militant groups, the damage to the ecosystem has come to the fore in such conflict zones.

Strategic destruction of wildlife sanctuaries, poaching, deforestation and disruption of the food chain has commonly been used by insurgents to create turmoil in these States. The following section discusses certain instances that highlight the nature of such damage and destruction that is caused by insurgent militia in bio-diversity hotspots.

Manas National Park in Assam, suffered immensely at the heights of insurgency by the BDSF or NDFB. The armed conflict between the State and the Bodo militants destroyed not only the vegetation, but also took a severe toll on the wildlife population of the park. The park witnessed a decrease in the populations of Tigers, Wild Buffaloes Asian Elephants, Swamp Deer and especially Rhinos. In fact, due to the insurgency, a detailed survey regarding the population could not be carried out! In the years following 1980, 64 Rhinos were poached in Manas, and ultimately, in 1992 it was added to the List of World Heritage Sites in danger. Over the course of the conflict (1989-1994), Bodo militants ravaged the Panbari and Bhuyanpura ranges of Manas National Park, while Banshari, though severely damaged, survived the militant offensive.

The militants belonging to armed rebel groups are even trained in National Parks, The Bodo militants as mentioned earlier, often train in the Manas National Park, the Achik Liberation Army, a small branch of the National Socialist Council of Nagaland resides and are trained in the Balpakram National Park in Meghalaya. The United Liberation Army of Assam, one of the potent militant organisations in the North East of India also undergoes training in Manas National Park. It would be safe to assume that these militant organisations cause widespread damage and destruction to both the vegetation as well as the wildlife of these National Parks over the course of their habitation and training. in the parks. Attempts by the forces of the States to flush the militants out of these parks result in armed conflict, which consequently destroys the environment. For example, trees often have to be felled over the course of the advance of the State forces into these parks.

Not just the flora, there are grave threats to the region's fauna, especially the endangered species. A recent report by the National Tiger Conservation Authority (NTCA) in fact pointed out an alarming trend wherein tiger populations in states struggling to tackle insurgents were decreasing. According to officials of the NTCA, the tigers were being poached, for economic benefit, or simply killed as they often were within touching distance of the insurgents inhabiting the national reserves. In North East

India, this trend was observed in Nampdapha Reserve, in Arunachal Pradesh, amongst others.

Additionally, insurgent groups often damage forests in these very areas and armed rebels who decide to inhabit those areas. State forces in anti-insurgency missions then further destroy these very forests. Pledges regarding conservation of forested areas, and forest protection policies take a backseat, as resources provided by nature, such as timber and hardwood are lost. However, more importantly, the delicate ecology of North East India is faced with a serious hazard by such armed conflict.

One of the highlights of the seven sister states, in terms of tourism as well as revenue are its sprawling tea gardens. The insurgents too have not spared these tea gardens. Tea, which possesses a significant amount of biomass not only absorbs carbon dioxide, cleansing the environment, but also provides an impetus to animal biodiversity and decreases the temperature of its immediate environment. Further, armed conflicts prevailing in the North East have witnessed widespread usage of landmines, by groups like the ULFA and the NDFB. These armed rebel groups often target army convoys by planting landmines on the road the convoy is expected to traverse. However, apart from killing of human beings, landmines pose a grave threat to the natural environment. The immediate effect of landmine explosions is the destruction of surrounding vegetation and wildlife. Apart from this, the surrounding soil cannot be restored to its erstwhile state of purity thereby making it uncultivable. Finally, the landmines contain hazardous and poisonous substances such as mercury and lead, which are released on explosion. These substances then remain in the environment, posing serious dangers to the same.

The widespread damage caused to Manas National Park by armed rebels over the course of conflict is most widely covered and discussed. However, a "*spreading sea of violence*" to national parks, forests and sanctuaries of the North East has also been noticed. In Dampa (in Mizoram). Nampdapha and Manas itself, for example, timber, horns of rhinos and ivory are plundered by rebels. The invaluable hardwood trees of Assam have *also* been a victim of armed conflict, so much so that the idea of an Assam Forest Protection Force had to be floated. Moreover, the porous Myanmar border allows for a flourishing illegal trade in wildlife including ivory and rhino horns. The environment of North East of India, an area teeming with natural resources has been a silent victim of the continuous armed conflict prevailing in the

region. Armed insurgency in North East India has laid siege to every single aspect of the ecosystem, and if allowed to continue, threatens to dismantle the same.

Legal Dimensions: Possible Solutions under National or International Laws: While there are a number of reasons as to the damage that is currently being caused to the environment in the North East, a rather silent cause that is only seeing the light of day after years of having affected ecological hotspots in the region of the Seven Sisters. The armed conflict arises out of deep-seated socio-political turmoil, which is the effervescence of a larger geopolitical struggle that has emerged over the years. Manifested as the destruction of property, roads, communication networks that anyhow are scarce in this region, the armed conflict is laying waste to a bio-diversity hotspot that is a rich reservoir of resources, and hence a source of power. In most conflict zones, the vying for control of resources is rooted in the power that may be wielded whilst in the possession of said resources. This is why even though the Centre doles out large sums in every budget and at least 10% of all Budgetary allocations are reserved for the North East, the implementation of infrastructural, developmental and socio-economic benefit schemes and projects are few and far between. Add to that the ineffective Resettlement and Rehabilitation packages that the State Governments in the region offer, not taking into account the sociological and geographical hardships for people, who are disturbed, displaced and inconvenienced by development; it leads to a frustrating situation where indigenous cultures feel alienated as well as invaded in their struggle to survive, given their Circumstances.

Failure of Present Measures: However, in spite of having effective laws in place that are effective across the country, a fairly effective legal system that has in the recent past started taking up environmental issues seriously, enforcement is still a problem in bio-diverse conflict areas. This is where the peculiar nature of the North East arises. Till date, the measures to deal with them have been Limited to the Carrot and Stick approaches.

Through incentives, handouts and the projection of nation-building measures such as infra projects, telecommunications and reserved budgetary allocations, the Centre has tried to appease sentiments of alienation that lead to insurgencies. On the other hand, counter-insurgency techniques by staunch military opposition to these groups have also been launched. But if the past is something to go by, using the stick alienates these groups further and motivates them to take to arms even more. On paper, the jurisdiction of

national as well as international legal systems are binding on them, but are never enforced. This arises due to a host of reasons.

Cultural: The nature of armed conflict in the territories is heavily based on ethnic, religious and communal divisions. In most parts of the North East, tribes hold territory in common. As such, land is the common property of a tribe or a clan. Taking the case of the Bodo Conflict, in Assam, armed conflict is now becoming the norm due to encroachment of land by outsiders and is even taking the form of a religious struggle in order to garner support for the movement. The Bodo tribes lay claim to the land where many refugees and immigrants are making their homes in. Essentially, such conflicts go unheard by authorities so as to make proper provisions for migrants or check such invasion or encroachment as the case may be.

Geographical: The major reason as to why R&R programmes are ineffective is because of geographical considerations. EIA schemes are ineffective to say the least in determining the kind of damage or displacement that could be caused. It fails to take into account sociological factors that play such an important role in the dynamic of the NE as discussed above. Often, it would lead to resettlement of displaced persons in the territory of other tribes and clans that could be a bone of contention. Tensions also arise from the fact that while there are large swathes of land available to resettle and rehabilitate persons displaced due to infrastructure and development projects, most of it is uncultivable. The scope for permanent cultivation and re-establishing livelihood becomes unfeasible.

Political: The different tribes in the North East are governed locally and often are unaware of legislative frameworks that govern them. For instance, the Centre enacted the Scheduled Tribes and other Traditional Forest Dwellers Act in 2006. Most of the individuals who are the reason for the legislation often have no knowledge of the same. Also, due to political instability in regions where the only power rests in the hands of those with guns, the State machinery is ineffective in bringing a situation of common law and order under State or National legal systems. Political iusses always dissolve the lines of power and due to this military rule often is the only form of governance in many parts of the North East. In addition, due to the enforcement of the AFSPA in certain States, the framework of legislation, especially environmental laws can be overridden in the interest of the armed forces where the major concern is reducing human suffering and protection of private property.

Liability for Environmental Crimes under Indian Law: In most cases, criminal liability for environmental damage has been the onus of corporate organisations and individuals. The development of principles such as Polluter Pays, Responsible Corporate Official all point to corporate criminal liability for environmental damage. However, the contemplation of war-related or conflict related environmental damage has only begun to be contemplated recently. Internationally, there are various Agreements and Protocols enacted to preserve the environment and protect against sustained attack upon it, however the manner of legislation for environmental laws has taken a different route of development. Protection of the environment is a Fundamental Duty as enshrined in our Constitution under Article 51A(g), Article 48A, however, is a Directive Principle of State Policy and neither are legally enforceable. Though India has enacted over two hundred laws relating to the environment, they do not contemplate the impact of environmental damage by armed conflict. The 186th Law Commission Report even contemplated the setting up of Environmental Tribunals for enforcing compliance with various civil and criminal sanctions for environmental damage; however, the recommendations are still to materialise. It would reduce the burden of civil lawsuits on the Higher Courts in India for environmental legal enforcement and have appellate jurisdiction for impugned acts filed under various environment related statutes.

India, as a country has been instrumental in setting up effective environmental legislation such as the Water Act 1974, the Air Act 1981, the Environment Protection Act 1986 (in response to the Bhopal Gas Tragedy) and other legal instruments. Apart from these, the Ministry of Environment and Forests (MoEF), the Pollution Control Boards at the Central and State levels and other agencies take up the burden of environmental protection and pollution control. However, all these provisions are applied to mainland India and mostly relate to industrial and urban pollution control and environment protection.

Even with the implementation of the National Environment Policy of 2006 that aims at "*conservation of critical environmental resources, intra-generational equity, livelihood security for poor, integration of environment in economic and social development, efficiency in environment resource use, environmental governance, and enhancement of resources for environmental conservation.*", the application of such policies to armed conflict in the North East remains to be seen. Thus far, no national legislation has been invoked for the protection of the environment against the insurgent groups, and neither has such discussion come up in mediations.

Thus in a scenario such as this, we need to reevaluate how our perceptions of legal solutions to environmental damage in conflict areas require development and expansion. In the present scenario, with the application of AFSPA in these States, it may be a wise option to bring up such concerns in ceasefire mediation, or give powers, to the State military forces to engage in preservation and conservation measures.

Liability for Environmental Crimes under international Law: Being an internationalized internal conflict zone, the North East could see involvement of international actors in the present struggle. Thus, it may be of merit to see how international legislation for armed conflict environmental damage has been dealt with and developed over time.

International environmental law (IEL) deals with environmental damage liability in everyday peacetime settings. The question that must be explored is whether the same may apply in the paradigm of wartime activity or armed conflict. Since the time of the Vietnam War where the use of Agent Orange, a herbicide destroyed 14% of the forest cover and 50% of the coastal mangroves in the country, strategic use of environmental degradation has been used to weaken enemy forces in conflict zones. Public outcry about the effects of Agent Orange and the change in the manner of warfare induced the enactment of two legal instruments. The Environmental Modification Convention (ENMOD) was adopted in 1976 to prohibit the use of environmental destruction and modification methods as a means of warfare. Second, two Articles (35 and 55) of the Additional Protocol I to the Geneva Conventions, adopted the next year (1977), reiterated prohibiting warfare that may cause "*widespread, long-term and severe damage to the natural environment.*" However, their efficacy was called into question during the Gulf War in 1990-91. It was contemplated to introduce a fifth Geneva Convention to deal with such issues. The UN General Assembly convened a debate in 1992, on the protection of the environment in times of armed conflict that resulted in a resolution (RES 47/37) that urged Member States to ensure compliance with existing international law on the protection of the environment during armed conflict.

Examining another dimension on international criminal liability, the Rome Statute of 1998 governs and provides for original jurisdiction of the International Criminal Court in pre-trial matters to account for crimes against the environment under grave crimes falling within the ambit of War Crimes. Article 8 (b) (iv) reads:

*"Internationally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians Or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated"*¹

Even though such crimes against the environment may be classified here, it must also be an element of such crime, that it is (1) a grave crime, (2) part of an international conflict. Here is where the status of armed conflict in the North East may or may not fall under the ambit of the Article because there are blurred lines on the status of sovereignty, national identity of the insurgents and the States where the conflict zones are situated. As a result, prosecutors cannot extend a *prima facie* investigation into their crimes.

It must also be noted from a judgment of the Division Bench of the Rajasthan High Court in *Birma v. State* that *"Treaties which are part of the international law do not form part of the law of the land unless expressly made so by the legislative authority. In the present case treaty remained a treaty only and no action was taken to incorporate it in to a law. That treaty cannot therefore be regarded as part of the Municipal Law of the then Dholapur State and the practice of surrendering fugitive criminals, which was being "followed by the former Dholapur State cannot be deemed to be a law that could be continued under Article 372 of the Constitution of india"*

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