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United Nations Human Rights: The Manipur Experience
(This write up is the speech delivered by Babloo Loitongbam at the 14th Arambam Somorendra Memorial Lecture organised by The Arambam Somorendra Trust held at Lamyamba Sanglen Palace Compound, Imphal East)

Universal Declaration of Human Rights

The first session of the General Assembly also initiated the process of creating one 18 member UN Human Rights Commission¹ with Eleanor Roosevelt, wife of late President Roosevelt, as the chair. Its first task was to draft the International Bill of Human Rights. After much heated initial debate on the contents of human rights and in recognition of the complexity of the issues, the Commission sought assistance from UNESCO. UNESCO set up the Committee on the Philosophic Principles of the Rights of Man, which analyzed written comments from 150 different people from all over the world (including Mahatma Gandhi), directly asking them about their thoughts on some of the specific philosophical questions raised by international human rights.

Heated debates in the Commission and later in the third Committee of the General Assembly continued. Eleanor Roosevelt played a key role in bringing everyone together. Till the last moment USSR wanted to postpone the resolution for one more year and still insisted on minor changes. But when the draft resolution was put for vote on the evening of 10 December 1948 at the General Assembly, held at the solemn chamber of Palais Chaillot in Paris, forty-eight countries voted in favour, none opposed, and eight countries abstained. The entire Assembly gave a standing ovation to Eleanor Roosevelt. UN has proclaimed a vision on behalf of all peoples in the world known as the Universal Declaration of Human Rights (UDHR).

UDHR enormously accelerated the evolution of international human rights. Despite many efforts to present and portray the document as a mere statement of principles with no legal binding authority at all, the vision proclaimed struck a chord amongst the people of the world and it rapidly began to take on a life of its own. It quickly came to assume a growing moral, political and even legal force through customary law. Ultimately it served as the seed for the other human rights instruments to grow.

When the UDHR was adopted, Manipuris also were enjoying the first sunshine of democracy and self-governance under its own post-colonial Manipur Constitution Act, 1947. Having elected a Popular Assembly through universal adult franchise and having established a Council of Ministers headed by a Chief Minister, the King of Manipur inaugurated the first democratically elected assembly in South and South East Asia on 18 October 1948. Manipur Constitution Act also guaranteed certain fundamental rights and duties of the citizens. A proper study to compare the fundamental rights of Manipur Constitution with those of the UDHR will make an interesting study.

However, this sunshine in Manipur's political history was short-lived. The sky of Manipur was soon darkened with the merger of the kingdom into the Dominion of India in 1949. The hegemonic control

and policy of isolation sneaked in and Manipur was fully eclipsed from all the exciting developments that were taking place in the world of human rights. It took almost half a century for Manipuri to gain access to the UN human rights processes. The expansion of the international human rights activities during the post-Vienna World Conference on Human Rights, 1992 and the declaration of the Decades of Indigenous Peoples (1995 to 2004) as well as India's own liberalization processes, probably paved the way for Manipur civil society to step into the UN human rights mechanism.

ENGAGEMENT WITH TREATY BODIES

Slowly but surely the adoption of UDHR was followed by adoption of many legally binding international human rights instruments by the General Assembly. In 1965 the Convention on Elimination of Racial Discrimination (CERD) was adopted. It was soon followed by the adoption of two Covenants – the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) in the year 1966 and both the covenants came into force in 1976. The Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) came into force in 1981. Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment (CAT) came into force in 1987, followed by Convention on Rights of the Child (CRC), Convention on Protection of All Persons From Enforced Disappearances (CED), Convention on Persons with Disabilities (CPD), etc.

The governments can become party to these treaties by signing and ratifying these treaties. Once the government becomes a state party it has to submit periodic reports to the Committee of independent experts monitoring the treaty. The Committee would examine the report and give their concluding observations and recommendations. Civil society can submit well researched and brief alternative or parallel report to the committee to assist them to better understand the human rights situation in the country.

UN Human Rights Committee
India signed and ratified ICCPR in 1979. The initial report of India was discussed in 1983. The second periodic report was discussed in 1991 and the third one was discussed in 1997.

Committee on Human Rights (COHR), Manipur prepared an alternate report to the Government of India's report and submitted it to the secretariat of the HR Committee. A two-member team COHR also went to Geneva and personally briefed the Committee members of the human rights situation in Manipur. The Committee in its concluding observation made some sharp remarks specifically referring to the situation in.

The Concluding Observation of the Human Rights Committee: India, CCPR/C/79/Add81, dated 04/08/97, stated as follows:

18. The Committee remains concerned at the continuing reliance on special powers under legislation such as the Armed Forces (Special Powers) Act, the Public Safety Act and the National Security Act in areas declared to be disturbed and at serious human rights violations, in particular with respect to articles 6, 7, 9 and 14 of the Covenant, committed by security and armed forces acting under these laws as well as by paramilitary and insurgent groups. The Committee, noting that the examination of the constitutionality of the Armed Forces (Special Powers) Act, long pending before the Supreme Court is due to be heard in August 1997, hopes that its provisions will also be examined for their compatibility with the Covenant. In this respect, bearing in mind the provisions of articles 1, 19 and 25 of the Covenant:

The Committee endorses the views of the National Human Rights Commission that the problems in areas affected by terrorism and armed insurgency are essentially political in character and that the approach to resolving such problems must also, essentially, be political, and emphasizes that terrorism should be fought with means that are compatible with the Covenant.

19. The Committee regrets that some parts of India have remained subject to declaration as disturbed areas over many years - for example the Armed Forces (Special Powers) Act has been applied throughout Manipur since 1980 and in some areas of that state for much longer - and that, in these areas, the State party is in effect using emergency powers without resorting to article 4, paragraph 3, of the Covenant. Therefore:

The Committee recommends that the application of these emergency powers be closely monitored so as to ensure its strict compliance with the provisions of the Covenant.

This is the first time the human rights issues of Manipur were specifically highlighted in the critical United Nations recommendations. Of the two member delegation of COHR, the house of one was raided by a combined team of Manipur police and the army hours before they left the country. And on return, the other person was summoned to the Imphal police station and questioned for seven hours.

On the positive side the writ petition pending before the Supreme Court of India challenging the constitutionality of AFSPA of the last 17 years was finally heard in the apex court in August and the judgment was delivered in November 1997. Manipur Human Rights Commission also started functioning the same year.

Government of India's fourth periodic review was due to be submitted in the year 2001. But even after 18 years there is not sign of making any submission soon. In March 2019 the Human Rights Committee decided to go ahead and review the Government of India's human rights records under the ICCPR without the report and decided to discuss the list of issues to be discussed in its 126th session from 1 to 26 July 2019.

NGOs can submit their own list of issues for the consideration of the Committee. A group of human right and other civil society groups of Manipur under the name and banner of Civil Society Coalition for Human Rights in Manipur and the UN (CSCRH) made a submission highlighting five key issues:

1. Suspension of Right to Life
2. Lack of Effective Remedy
3. Non-recognition of Ethnic

Minorities

4. Plunder of Natural Resources, and

5. Political Right to Self-determination.

Committee on Elimination of Discrimination of Racial Discrimination

Following the gang rape and murder of Ms. Thangjam Manorama, the unique naked protest of 12 Meira Paibi in front of Kangla Fort and the sustained people's uprising against the Armed Forces Special Powers Act, 1958 (AFSPA), the Prime Minister of India promised the people of Manipur that the law will be replaced by a more humane act in 2004.

A Committee was set up to review AFSPA headed by retired Justice Jeevan Reddy of the Supreme Court of India. The Committee submitted its report in 2005. But the report was never made public. In October 2006 when Irom Sharmila, who was on hunger strike for six years demanding the repeal of AFSPA, visited Delhi and demanded a copy of the report, it was leaked in the media. The report is found to have written that AFSPA has become a "symbol of oppression, an object of hate and an instrument of discrimination and high-handedness".

In February–March 2007, India's fifteenth to nineteenth periodic reports were getting reviewed by the UN Committee on Elimination of Racial Discrimination under the International Convention on Elimination of Racial Discrimination in its 70th session. The United NGO Mission Manipur (UNMM) has already made a detailed alternate report and submitted to the CERD Committee urging the Committee to invoke the Early-Warning and Urgent Action Procedure of the Committee pertaining to the unsustainable and destructive development projects carried out by the Government of India in the north east region and the militarization of the region. Human Rights Alert tied up UNMM, made copies of the leaked reports of the Jeevan Reddy, highlighted the discriminatory part and individually briefed the Committee experts on the discriminatory nature of the atrocities committed under AFSPA and the struggle to repeal the same. The Committee readily stamped AFSPA as a racist law and invoked the rule of procedure of CERD that empowers the Committee to urge the state party of CERD to repeal racist law within one year.

12. The Committee notes with concern that the State party has not implemented the recommendations of the Committee to Review the Armed Forces (Special Powers) Act (1958) to repeal the Act, under which members of the armed forces may not be prosecuted unless such prosecution is authorized by the Central Government and have wide powers to search and arrest suspects without a warrant or use force against persons or property in Manipur and other north-eastern States which are inhabited by tribal peoples. (Arts. 2(1)(c), 5(b), (d) and 6).

The Committee urges the State party to repeal the Armed Forces (Special Powers) Act and to replace it "by a more humane Act," in accordance with the recommendations contained in the 2005 report of the above Review

Committee set up by the Ministry of Home Affairs. It also requests the State party to release the report.

19. The Committee notes that the State party does not fully implement the right of ownership, collective or individual, of the members of tribal communities over the lands traditionally occupied by them in its practice concerning tribal peoples. It is also concerned that large scale projects such as the construction of several dams in Manipur and other north-eastern States on territories primarily inhabited by tribal communities, or of the Andaman Trunk Road, are carried out without seeking their prior informed consent. These projects result in the forced resettlement or endanger the traditional lifestyles of the communities concerned. (Art. 5 (d) (v) and 5 (e)).

The Committee urges the State party to fully respect and implement the right of ownership, collective or individual, of the members of tribal communities over the lands traditionally occupied by them in its practice concerning tribal peoples, in accordance with ILO Convention No. 107 on Indigenous and Tribal Populations (1957). The State party should seek the prior informed consent of communities affected by the construction of dams in the Northeast or similar projects on their traditional lands in any decision-making processes related to such projects, and provide adequate compensation and alternative land and housing to those communities. Pursuant to Article 9, paragraph 1, of the Convention, and article 65 of the Committee's rules of procedure, as amended, the Committee requests that the State party inform it of its implementation of the recommendations contained in paragraphs 12, 15, 19 and 26 above, within one year of the adoption of the present conclusions.

The CERD Committee has also issued repeated communications to the Government of India on the Early-Warning Measures and Urgent Procedure of the Committee on Elimination of Racial Discrimination.² But there is no response from the Government of India.

Committees on Elimination of Discrimination Against Women

Committee on the Elimination of All Forms of Discrimination Against Women recommended the review/repeal of the AFSPA in 2000, 2007³ and 2014⁴. Relevant abstract of the 2014 concluding observation on Violence Against Women in Border Areas and Conflict Zones contained in UN document CEDAW/C/IND/CO/4-5 dated 24 July 2014 in reproduced herewith:

12. The Committee is deeply concerned about the reported high level of violence, including rape and other forms of sexual violence, enforced disappearance, killings and acts of torture and ill-treatment, against women in conflict-affected regions (Kashmir, the north-east, Chhattisgarh, Odisha and Andhra Pradesh). It is particularly concerned about the:

- a. Provisions of the Armed Forces (Special Powers) Act requiring prior authorization by the Government to prosecute a member of the security forces and the reportedly high risk of reprisals against women who complain about the conduct of the security forces;
- b. Significant number of displaced women and girls, in particular in the north-east, including as a result of sporadic communal violence, their precarious living conditions and exposure to serious

human rights violations and the lack of gender-sensitive interventions at all stages of the displacement cycle;

d. Lack of centres providing medical, psychological, legal and socioeconomic support to women and girls who are victims of sexual violence in conflict-affected areas;

e. Limited regulation of the arms trade and the proliferation of small arms and light weapons and their impact on the security of women;

f. Restrictions imposed on women human rights defenders, in particular those operating in conflict areas, including restrictions on international funding and the surveillance under which they are placed;

g. Absence of women in peace negotiations in the north-eastern states.

13. The Committee calls upon the State party:

a. To, in accordance with the recommendations of the Justice Verma Committee, promptly review the continued application of the Armed Forces (Special Powers) Act and related legal protocols and to enforce special powers protocols in conflict areas and assess the appropriateness of their application in those areas;

b. To amend and/or repeal the Armed Forces (Special Powers) Act so that sexual violence against women perpetrated by members of the armed forces or uniformed personnel is brought under the purview of ordinary criminal law and pending such amendment or repeal, to remove the requirement for government permission to prosecute members of the armed forces or uniformed personnel accused of crimes of violence against women or other abuses of the human rights of women and to grant permission to enable prosecution in all pending cases;

c. To amend section 19 of the Protection of Human Rights Act and confer powers to the National Human Rights Commission to investigate cases against armed forces personnel, in particular cases of violence against women;

d. To ensure that the security sector is subject to effective oversight and that accountability mechanisms, with adequate sanctions, are in place, to provide systematic training on women's rights to the military and other armed forces involved in security operations and to adopt and enforce a code of conduct for members of the armed forces to effectively guarantee respect for women's rights;

e. To ensure the full and effective implementation of the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, as soon as it has been enacted;

g. To ensure that women in the north-eastern states participate in peace negotiations and in the prevention, management and resolution of conflicts in line with Security Council resolution 1325 (2000) and the Committee's general recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations;

h. To remove restrictions on the work of human rights defenders, such as restrictions on their funding and by not placing them under surveillance.

Other Committees

The Committee on Economic Social and Cultural Rights also recommended repeal of AFSPA in 2008⁵.

(To be Contd)

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