
INSURGENCY IN INDIA AS A NON-INTERNATIONAL ARMED CONFLICT

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ABSTRACT

The extreme-left Naxalites in India guaranteeing to address the indignity caused to the country's tribal community (Adivasis) throughout decades, have been carrying on insurgency against the Indian government since 1967. The insurgency has amounted to numerous deaths ranging in several thousands in the past decades¹, with as recent as encounters taking place in February 2022, where in a gunfight in Chhattisgarh's Bijapur district, near Jabeli village, two women naxals were killed². The time scale, intensity and geographic spread of the insurgency movement has been so grave and violent that it has been characterized as India's "biggest internal security challenge"³ by a former Prime Minister of the country. The operation by these non-state actors in the Red corridor engaging in armed conflicts on one hand, and the Indian military on the other hand, have raised concerns and questions for its legal classification. The question whether it is a purely law and order issue within India for the police and paramilitary forces to act upon, subject to domestic laws or it is something greater than an internal disturbance, namely an armed conflict or a civil war, warranting application of international humanitarian law, has gained substance in the given context. However, for the application of international law, the insurgency has to meet the required twin criteria i.e., organization and the intensity of violence, which has been further discussed in detail in the article. My aim through the article is thus to figure out the character of the Maoists led insurgency and the possible consequences of classifying it as a non-international armed conflict on both state and non-state actors in operation. Data for the research study has been collected through secondary sources, and is primarily a doctrinal work.

Keywords: *insurgency, armed conflict, civil war, international humanitarian law, Maoists, naxalism, red corridor, internal security*

¹Uppsala Conflict Data Program (UCDP) Battle Related Deaths Dataset, 2015
<https://ucdp.uu.se/downloads/brd/ucdp-brd-codebook.pdf> (Last accessed May 3, 2022)

²<https://economictimes.indiatimes.com/news/defence/chhattisgarh-2-women-naxals-killed-in-encounter-with-security-forces/articleshow/89864467.cms>(Last accessed May 3, 2022)

³<http://www.thehindu.com/news/national/naxalism-biggest-threat-to-internal-securityNmanmohan/article436781.ece>

INTRODUCTION

The Naxalite insurgency has been declared a law and order situation in India by the government. The central and state governments have been engaging in various counter-insurgency activities, by deploying the military and paramilitary forces to contain the movement, with the latest being *Operation Parahar* and an offensive *Operation Green Hunt*. The above mentioned UCDP data reveals that thousands of deaths have taken place in the wake of the whole movement, in which the ten years between 2005-2015 were peculiarly violent with the number of deaths ranging from 3000-6000. The pronouncement of the whole issue as a law and order situation has raised concerns and has given rise to the need for its proper legal classification.

Classification, as a whole, has pertinent ramifications, as a mere law and order situation or internal disturbances are made subject to the domestic criminal law, however an armed conflict calls for the subjection to international humanitarian law.

EVOLUTION OF NAXALISM IN INDIA

The warfare has an unsymmetrical arrangement involving Naxalites on the one hand, and the government's security forces on the other hand. The evolution of Naxalism in India can be traced back to the Naxalbari incident of 1967, and the subsequent formation of the splinter group of Communist Party of India (CPI) namely the Communist Party of India(Marxist), CPI-M. An armed rebellion was thus launched by the landless peasants against the landowners to curb their exploitation at the hands of such owners. The leaders of the movement Charu Majumdar, Kanu Sanyal and Jangal Santhal were convinced that the situation could be handled only through a revolution, and thus resorted to Marxist ideology of revolution.

Marx and Engel's *dialectical materialism* offers a significant piece on the understanding of wars in world politics and class struggles. Thus, the Marxist theory of armed struggle as a tool to expedite social change, became the central theme of the CPI-M faction and the maoists. This conflict that arose from a class struggle, as understood through Marxist ideas, has resulted in multiple deaths, approximately 12,000 casualties in the past twenty years, including 2,700 military personnel who have also been killed⁴, with Chhattisgarh being the most affected state⁵.

⁴<https://economictimes.indiatimes.com/news/defence/naxal-violence-claims-12000-lives-in-20-years/articleshow/59521195.cms>

⁵ <https://theprint.in/india/3700-killed-naxal-violence-since-2010-chhattisgarh-worst-hit/312385/>

The Indian government, with the help of Indian military and paramilitary forces has launched various counter insurgency operations and opted various strategies under its offensive “SAMADHAN”⁶ strategy to efficiently deal and contain the movement. The government has proclaimed that the situation is a law and order issue, which has given rise to the corollary question of scope of conflict.

CLASSIFICATION AS A NON-INTERNATIONAL ARMED CONFLICT

In the ruling of the International Criminal Tribunal of Former Yugoslavia (ICTY) in *Prosecutor v. Dusko Tadic*⁷, it was observed that an armed conflict is a “resort to armed forces between states or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state”. In clearer terms, a non-international armed conflict (NIAC) is an armed conflict where at least one of the involved parties is a non-state entity.

International humanitarian law hugely rooted in international customary law and the three Geneva Conventions alongwith the Additional Protocols is generally applicable to the International Armed Conflict, however Common Article 3 provides for a framework for the responsibilities of parties in a non-international armed conflict. Furthermore, Additional Protocol II also details upon the obligations of parties in NIACs.

As mentioned, IHL would allow the application of rules of international conventions and protocols on the involving warfare, thus barring the application of domestic laws like the Indian Criminal Code. Furthermore, terming the insurgency as a Non-International Armed Conflict(NIAC) being dealt under the International Humanitarian Law would require combatants from both ends, including the military and the maoists, to be subjected to the human rights jurisprudence.

Application of international law would not only keep the insurgents in check but also lead to accountability on the part of the military and Indian government, as there may be involvement of use of disproportionate force to quell the movement. This becomes an apparent and justifiable reason for the implementation of the IHL as it establishes a cogent distinction

⁶ SAMADHAN stands for Smart leadership, Aggressive strategy, Motivation and training, Actionable intelligence, Dashboard Based kpis (key performance indicators) and kras (key result areas), Harnessing technology, Action plan for each theater, and No access to financing.

⁷ (1996) 35 ILM 32

between an armed conflict, whether international or non-international in nature and other kinds of civil unrest or internal disturbance.

CRITERIA FOR DETERMINATION: *DUSKO TADIC'S* RULING

However, to determine an internal disturbance situation as a non-international armed conflict, some bare threshold must be achieved. The 1997 ruling of ICTY in *Dusko Tadic* laying down the distinction between internal disturbances and NIACs, though not binding, offers a non-binding, persuasive and informative guidance⁸ for the legal analysis of such conflicts. The judgment provided two criteria for such classification—namely, the **intensity** and the **organization**. Hence, for the conflict to be classified as an NIAC and to be thus subjected to international humanitarian law, the violence should have achieved some measure of intensity and the non-state parties must be functional and operative within an organized framework.

These two elements of intensity and organization were further given an expansive reading in another judgment by the ICTY in *Prosecutor v. Limaj*⁹, wherein the Tribunal held that for an armed conflict to have the sufficient intensity would mean that “a periodic and escalating set of continuous armed clashes that are neither regionally disparate and temporally sporadic nor one-sided” took place. Other things to take note of would include displacement of civilians, the type of armaments and weapons used, physical destruction, deployment of troops and government forces, or other bilateral negotiations. As for the element of organization of the non-state party, the Tribunal weighed in a few factors to hold that Kosovo Liberation Army was organized, including the hierarchical structure, for instance the power of general staff to deliver orders, to pass communiques, supply of armaments and command subordinates, KLA’s role in international negotiations and its acceptance internationally as a key negotiating party. In another ruling of the ICTY, *Prosecutor v. Haradinaj* proffered a few more elements to the criteria, like the presence of a command structure and disciplinary rules and mechanisms; territorial ownership of the organization; easy access to weapons, and other military equipment, recruits and military training.¹⁰

⁸ Gilbert Guillaume, The Use of Precedent by International Judges and Arbitrators, 2 *J. Int. Disput. Sett* 5, 5–23 (2011).

⁹ *Prosecutor v. Limaj*, Case No. IT-03-66-T (hereinafter referred to as the *Limaj* judgment)

¹⁰ *Prosecutor v. Haradinaj*, Case No. IT-04-84-T (hereinafter referred to as *Haradinaj* trial judgment)

Even though the expansive features provided in *Limaj* and *Haradinaj trial* judgments can not be individually and exhaustively determinative, it may be helpful in determining if the non-state party is organized enough to result in an NIAC.

INTENSITY AND ORGANIZATION OF THE INSURGENCY MOVEMENT IN INDIA

Thus, for the successful determination of the Maoists insurgency in India as an NIAC, the situation warrants fulfillment of the two elements, namely the organization amongst Maoist groups and intensity of violence taking place. Looking at it, the insurgency in India takes place through the Maoists of a banned organization, the CPI(Maoists) which function within a framework and is highly hierarchical. It includes a Central Committee, and is thus also centralized, along with its subordinate committees, further including the Revolutionary People's Committee (also referred to as the people's government). The Revolutionary People's Committee enjoys ever growing support of thousands of villages. The Central Committee in the hierarchical set up is responsible for laying down agendas and exercises control over the Central Military Commission that is further accountable for organizing the People's Liberation Guerrilla Army (PLGA), the armed wing of the CPI(Maoists). Furthermore, they have devised means to establish an independent state using military power.

As a response to the insurgency movement, the Indian Central government, along with various state governments, has launched various counter-insurgency attacks through its police and paramilitary forces. *Salwa Judum*, in Chattisgarh is an example of the above stated state-sponsored militia which was deployed to fight the violence against the Naxals in that region. In carrying out Operation Green Hunt, in the Red Corridor, launched in 2009, the CRPF was deployed in huge numbers in the insurgency-affected regions. Even though the Indian military has been denying direct participation, it is apparent that trainings of paramilitary forces and police, involved in counter-insurgency activities, have been taking place. The organizational and hierarchical setup of the Naxalites and their skills is also quite apparent along with the other factors weighing in like their ability to organize armed attacks, plan activities, and project control over a vast territory. Furthermore, the intensity of the violence that has led to thousands of casualties and displacements, also warrants that it is not merely a situation of civil unrest. The territorial extent of the '**Red Corridor**' also becomes significant in determination as it covers about nine states and more, extending to eastern, central and the southern parts of India. All the stated points, when read comprehensively, become compelling reasons to regard

the insurgency in India as an NIAC, thus making the situation a subject matter of the application of international humanitarian law.

The International Humanitarian Law was formulated to regulate the conduct of war (*jus in bello*) and to further establish the balance between military needs and humanity. However, it seems that the Indian government, by not ratifying the Additional Protocol II (APII) for the obvious reasons of avoiding responsibilities, has given up on its commitments toward humanitarian law. Nonetheless, the application of Common Article 3 and the principles of international customary law are still binding.

The Geneva Conventions Act, 1960¹¹, enforced to give effect to the 1949 Geneva Conventions in India, has failed considerably in providing protection to the victims of armed conflict. The Supreme Court of India in its judgment in *Rev. Mons Sebastiao Fransisco Xavier Dos Remedios Monterio v. The State of Goa*¹² made a stark observation pertaining to the Act and said that the act did not provide for any special remedy but only contained provision for the breach of convention and was further non-enforceable against the Government, thus the government would still enjoy immunity for its acts.

SUGGESTION

Determination of conflict as NIAC thus while placing limitations upon the actions of both or all parties to the conflict, would make both the Indian government and the naxalites subject to the international law. Both of them would be liable to be prosecuted and made subject to trial for their attacks upon each other, where the military in India under present circumstances enjoy certain privileges and immunity. Thirdly, under the customary principle of human treatment, obligations like prohibitions on collective punishments, prohibitions on violence to life and person, and the prohibition on outraging dignity of individuals will flow.

CONCLUSION

The Marxists in India have been revolting for decades, guaranteeing to address the indignity caused to the country's tribal community (Adivasis). As per facts reported above from various sources, the insurgency has led to thousands of casualties from both ends. Even though the intensity of the violence has decreased significantly in the past years, as also claimed by the

¹¹ Geneva Convention Act, 1960, Act No. 6 of 1960

¹² 1970 SCR (1) 87

Ministry of Home Affairs¹³, the issue still remains an issue of concern and debate. Hence, the need to study the Maoists insurgency in India as a wider issue involving application of international law gains substance, implying that the movement can be justifiably understood in reference to the principles of Common Article 3 to the Geneva Conventions and the customary international law. Whether it is about the territorial expansion by the insurgents in the Red Corridor, or their hierarchical setup or the deployed CRPF and other paramilitary forces, the determination of the conflict as an NIAC seems plausible. Even though India has not ratified the Additional Protocol II, yet India has its obligations to weigh into the human rights jurisprudence.

¹³<https://www.hindustantimes.com/india-news/80-reduction-in-insurgency-related-incidents-in-n-e-states-last-year-mha-data-101614676827488.html> (Last accessed on May 6, 2022)