



# Engaging Armed Forces (Special Powers) Act in Manipur: What happen to Human Rights?

## ABOUT THE AUTHOR

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## ABSTRACT

The following discourse is an attempt to look at the predicament and the anomalies of Armed Forces (Special powers) Act, 1958, (AFSPA) while engaging human rights in the state of Manipur. History of AFSPA has shown that its enforcement in the state has done more harm than good. The real concern of AFSPA has been the utter violation of human rights in the state because the provision of the very Act shielded the armed forces to go on rampage while in operation. Scores of human rights abuse by Indian security forces have been reported in the state since the enforcement of AFSPA in 1970 in some parts of the state and in 1980 when the whole state was brought under the Act. Therefore, the general conception of the people towards this Act is that it is anti-people and hence a draconian law. The present write up, therefore, attempts to look at the effects of AFSPA on the status of human rights and also to critically look at AFSPA and thereby see if there is any possible way of doing away with this predicament and perhaps give AFSPA a more humane face.

**KEY WORDS:** AFSPA, human rights, insurgency, disturbed area, torture, impunity

## I. INTRODUCTION

The story of human rights movement in India emerged during the emergency period of 1975-1977 and the post emergency period. During the emergency civil liberties were hugely curtailed by the government of the day. Right to individuals' freedom was encroached upon and even the basic tenets of democracy were challenged. It was during this time that human rights movement groups such as National Federation for Indian Women (NFIW), People's Union of Civil Liberties (PUCL), People's Union for Democratic Rights (PUDR), Naga Peoples Movement for Human Rights (NPMHR), Human Rights Forum Manipur (HRFM) etc., began to mushroom in India. Since then the movement for restoring civility in the country gained great momentum. The story of human rights movement in the north east, especially Manipur, is related with the imposition of the Armed Forces Special Powers Act, 1958 (AFSPA) which give the legitimate power to the security forces to arrest without any warrant or shoot and kill anyone on mere suspicion of terrorist act in the area that has been declared as 'disturbed' by the government.

Since the declaration of the whole of Manipur as “disturbed area” and AFSPA being clamped upon in September 1980, the state of Manipur has been in turmoil and AFSPA has proved to be an anathema to civil rule. The armed forces, in the name of counter insurgency, have committed a number of crimes since then. Basic human rights violations like rape, torture, detention, fake encounter, custodial death, forced disappearance, etc., have been committed a thousand times. The mainstream Indian political class considers the situation in Manipur as a law and order problem that needs to be solved through bringing central army and police forces to control the situation. But the problem seems to be much more than that. There are historical, cultural and political narratives attached to this whole of Manipur scenario.

## II. THE ARMED FORCES (SPECIAL POWERS) ACT AND ITS ANOMALIES

Historically speaking, the precursor of Armed Forces Special Power Act (AFSPA) 1958 was the Armed Forces (Special Powers) Ordinance, 1942 that was promulgated by the then Viceroy Lord Linlithgow on August 15, 1942 which conferred to the armed forces a vaguely defined special powers to arrest and use force (even kill) civilians on mere suspicion. This ordinance was basically promulgated by the British so as to curb the rising prominence and activities of the Congress and subsequently Congress was declared illegal organization. A mass movement in the form of Quit India Movement took place where many Congress leaders were arrested and jailed and the British had to resort to the use of this Ordinance in order to contain the mass upheaval of the people. But in 1958, after 9 years of India's independence, a new incarnation of this Ordinance resurfaced on the table of the Indian parliament called Armed Forces Special Powers Act (AFSPA), 1958 with certain modifications. Some of the modifications that we see today are: (a) the provision for declaration of emergency was replaced by the term ‘disturbed area’; (b) more vaguely defined powers were added (including the power to use force to even kill any person on suspicion of disturbing public order or carrying weapons, to search any place without warrant or destroy any place on suspicion of being used by armed groups) to the old Ordinance; (c) the power to take action, given to an officer of the rank of captain and above in the old Ordinance, was delegated to lower ranks including Junior Commissioned officers and Non-commissioned officers; (d) the area of operation was confined to ethnically distinct North East region; unlike the 1942 Ordinance, which was applied to the whole of India (Combat Law, 2003). The new ordinance was adopted by the government of India in May 1958, the parliament endorsement was then given in August 1958 and the presidential assent was given on September 11, 1958. With this new modification the Ordinance of 1958 became more stringent and in fact it gave the armed forces the ultimate license to perpetrate or violate the basic rights of the people in the name of counter insurgency. The new law which permits the armed forces maximum amount of freedom became a facilitator of human rights violation in the north east region of Indian Union. AFSPA was initially implemented in the states of Assam and parts of Manipur to counter the armed rebellion of the Naga militants. But by 1972 it was extended to all the newly created north eastern states namely Assam, Manipur, Nagaland, Meghalaya, Tripura, Mizoram and Arunachal Pradesh. Punjab came within the purview of AFSPA from 1985 to 1994 during the heights of its militancy. AFSPA has been active in Jammu and Kashmir since 1990.

The whole state of Manipur was brought under AFSPA in 1980. When the state or the central government declares an area as “disturbed”, the armed forces immediately begins to exercise its powers as per the guidelines of the AFSPA. What is most shocking about this Act is the fact that the right to life guaranteed by the constitution of India under Article 21 is bluntly violated by section 4 (a) of the AFSPA. This particular section permits the armed forces to fire upon or shoot anyone if they think the people in the disturbed area are acting in contravention to any law. This is an abject violation of Human Rights. Again the right to liberty and security of person is violated by section 4 (c) of the AFSPA because the Act permits the armed forces to ‘arrest, without warrant, any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest’ (AFSPA, 1958 section 4, c). The Act also provides those army officers who abuse their powers with impunity from legal proceedings. It simply implies that the perpetrators of human rights violation go scot-free even if they have deliberately committed crimes and their actions are not held accountable by the state. The state government cannot even initiate legal proceedings against armed forces on behalf of the people without central government approval. Since such a sanction is seldom granted, it

has in effect provided a shield of immunity for armed forces personnel implicated in serious abuses.<sup>1</sup> From the day AFSPA was enacted and brought into effect, it has undoubtedly become a symbol of torture, abuse, fear and oppression for the people.

### III. THE LEGACY

When the Indian Government passed the bill in the parliament called the Armed Forces (Assam & Manipur) Special Powers Act in 1958, the general conception among the mainstream Indian political set up was that it would help contain the rising hostile activities of the Nagas. History tells us that the Nagas had, by then, become quite discontent as they wanted to stay away from the Indian dominion and in fact they had resorted to arm uprising against the Indian state. Perhaps India was satisfied that such enactment would suppress the Naga secessionist tendency. But after 60 years of its enforcement the conviction of the Indian state has seemingly gone into oblivion. What we see in the course of these long drawn years of enforcement of AFSPA are a series of events that have unfolded. Numerous insurgent groups from different parts of the northeast have surfaced. More importantly the enforcement of AFSPA has given birth to many human rights movements in this part of the land. The hegemonic tendency of AFSPA is seen as another form of enslavement for the people of the northeast, especially Manipur. The Act is seen as another extension of India's quest for imposition of alien cultures to the people of Manipur.

Therefore, the human rights movement/groups in Manipur underscore the bottom line of socio-cultural narratives. The critical narrative of this whole exercise is that the mongoloid-featured racial groups are a lesser human race in this whole scheme of so called 'Indian nation-state' and in its long historical process of nation making that has culminated to the formation of a politically defined boundary called India. And perhaps they constitute a "fractured identity" within the Indian Nation. Then seemingly the most baffling questions such as what constitute the idea of a nation; is homogeneity a pre-requisite of a nation-state, is it race alone that defines the idea of a nation or is it language or religion that forms the sole idea of a nation suddenly pops when we try to contextualize India at this juncture. Apparently then the metaphor of our physical appearance seems to have created a cleavage in that it has further compounded the whole idea of nation building in India. And so it is argued that the Indian State, in order to perpetuate its hegemonic sway in this region which is culturally altogether different from the rest of India, imposed its own culture in the form of AFSPA. Then there is the emotion attached to the perception of the alleged abuse of AFSPA. There are contempt, distrust, helplessness and anger towards the Armed Forces for their occupation in this part of the land. One will not forget the act of Meira Paibis on July 11, 2004 where 12 Manipuri women stripped naked in front of the Kangla Fort, the headquarter of Assam Rifles, and chanted slogans such as "Indian army come and rape us all".

There is a general perception within the political set up of a higher political echelon or political class that political solution in Manipur has failed and that the army should be brought in to deal with this complex situation. But there is anger everywhere because people feel that the nature of the problem is not that of law and order situation. The legacy of Armed Forces (Special Powers) Ordinance, 1942 that was promulgated by the then Viceroy Lord Linlithgow on August 15, 1942, has become a reality in the form of AFSPA. The ordinance did not die away with the end of the British rule in India but it reincarnated into a more deadly Act known as AFSPA, enacted in the year 1958 that which even the democratic principles enshrined in the constitution of India became toothless when it comes to dealing with this new law.

### IV. AFSPA AND HUMAN RIGHTS IN MANIPUR

The promulgation of Armed Forces Special Powers Act (AFSPA) 1958 in Manipur in 1980 turned the state into turmoil. The Act was basically enforced to contain the growing militancy/insurgency in the state. But unfortunately, the Act turned out to be an abomination to civil liberties. The enforcement of AFSPA had led to rampant abuses or violations of human rights in the form of torture, rape, burning down of villages, killings in fake encounters and other forms of extra judicial killings. Unceasing combing operation by the army has made Manipur a militarized zone. Rights of the people were suppressed. Civil liberties were curtailed. Widespread reports of abuses of

human rights in Manipur began since 1950s when Indian paramilitary forces were sent into the states of Nagaland and Manipur. Since then violation of human rights went unabated whenever the security forces were attacked by the insurgents, immediate combing operation was conducted in all the adjoining areas. And when such operation was conducted, the innocent villagers were always at the receiving end. Sometimes villagers had to flee from their villages in order to escape from the brutalities of the army. Torture, rape, illegal detention, grouping them in the church or local playground became the order of the day. This instills fear into the minds of the people. They were virtually living in an ocean of fear as the military forces unleashed terror in the length and breadth of Manipur. Civil administration had totally collapsed or failed as the dictums of the Armed Forces were at the upper hand. Youths suspected to be members of the underground groups when arrested are subjected to third degree methods by the army to extract information on the activities of their groups and many of these youths died in custody; others just 'disappeared'; yet others survived but often maimed and handicapped (Combat Law, 2003). AFSPA has exposed the true colour of Indian democracy who claimed to be the largest practicing democracy in the world where one of its defining principles 'right to life' seems to be at stake at one corner of the so-called Indian nation. The absolute power given to the armed forces has led to the blatant violation of human rights in this part of the country and no wonder the ethics of humanity is slowly eroding. Of all the victims of human rights abuses in Manipur perpetrated by the Indian Army under AFSPA, the women folk are the worst affected lot (See Table no. I). While the youths are simply arrested on ground of mere suspicion and are put or kept in detention in the army lock up for days. Such detention could either result into the disappearances of the youths or are subjected to third degree torture that sometimes leads to the death of the person or are physically crippled for the rest of his life. For in the eyes of the Indian army, all the youths were/are purportedly sympathizers of some underground groups and thereby in order to extract information about the activities of the undergrounds they resort to extreme form of torture. Women became easy prey for the security forces as they are physically the weaker sex that they are easily manhandled. Sexual molestation and rape were the order of the day when any combing operations were conducted. The security forces believed that by resorting to extreme form of repression, they could instill fear into the very fabric of the society but it only helped people to pour scorn on everything that are India. When AFSPA became fully operational in 1980 in Manipur, human rights violation by the paramilitary forces increased double fold. In the name of counter insurgency, they could commit most heinous crime that humanity could never imagine. Their language of humanity was repression. But in the face of all the atrocities that the army perpetrated, there were people who steadfastly hold onto the principles of human rights and its ethics. They were able to keep on track and record all the violations that the Indian security forces had perpetrated. Through an unrelenting demand of various human rights forum in Manipur, the Government of Manipur has taken up Various Official Inquiry Commissions (See Table no. II& III). Some instances of such human rights abuses that the army/security forces had committed are being documented under the aegis of Independent People's Inquiry Commission (IPIC) that testify some chilling testimony of how brutal Indian army were. It also looks into the cases taken up by the State Human Rights Commission and those referred to the National Human Rights Commission (See table no. IV). There is no denying the fact that the story of Human Rights Movement in the state of Manipur emerged with the introduction of Armed Forces (Special Powers) Act, 1958 (AFSPA) in the year 1980. The law that was passed in 1958 in the parliament known as AFSPA gave the outright power to the armed forces to even shoot and kill any person under any suspicious circumstances with the sole view of containing the growing forces of militancy or insurgency. There is a continuous tussle going on between the state actors (Indian security forces) and the non-state actors (different political armed groups). The result of the tussle therefore, is a conflict situation.

The nature of the movement thus can be categorised as conflict-induced human rights movement. This conflict situation further gave rise to repeated occurrence of human rights violations. Such continuous violation of human rights in the state gave rise to movements that would safeguard the basic rights of the people. Therefore, it is politically correct to say that human rights movement in Manipur is actually a backlash against the enforcement of AFSPA. Thus as long as the enforcement of AFSPA perpetuates in the state, there is every possibility that the people's movement against AFSPA will continue because the enforcement of this law has brought about series of human rights violation in the state time and again. Ordinary citizens have been always at the receiving end. There is a sense of denial among the people, where in a democratic country like India who steadfastly upholds the democratic principles of equality, justice and liberty, that such a draconian law as AFSPA should be clamped upon its own people. Therefore the only way to redress this issue for the people is to embark upon mass movement, a movement that would give them

self respect and integrity. The conflict between the state actors and the non-state actors (politically armed groups) has been viewed as something social and political in nature and perhaps the government of India should rather take a very pro-active step to tackle the issue of militancy in the state in a more humane way than possibly through coercive way. In fact demanding for the repeal of AFSPA, human rights activist Irom Chanu Sharmila had gone on hunger strike for more than fifteen years.

**Table no. 1**

**Documentation of Victims of rape committed by Armed Forces and others (1974-2013)**

S/no	Date of incident	Name of the victim	Place of incident	Accused	Nature of the case
1.	3 <sup>rd</sup> March to 5 <sup>th</sup> March 1974	Ngashingla (23yrs)	Grihang Village Ukhrul District	95 BSF	Tortured and rape
2.	4 <sup>th</sup> March 1974	Miss Rose (19 yrs)	Ngaprum Village, Ukhrul District	95 BSF	Rape, committed suicide after the rape
3.	1 <sup>st</sup> May 1991	KS Martha	Huining Village, Ukhrul District	Ganesh Prasad of 4 AR	Rape
4.	24 January, 1986	Luingamla (19 yrs)	Ngaimu Village, Ukhrul District	AR	Killed for resisting rape
5.	July-October, 1987	At least 3 women of Oinam	Oinam and its surrounding 30 villages of Senapati District	AR	Rape
6.	19 <sup>th</sup> September, 1995	Mrs Torhing Anal (25 yrs)	Chandel District	JK Rifles	Rape
7.	1 <sup>st</sup> July, 1996	Mrs Elangbam Ongbi Ahanjaobi	Takyel Khongban, Imphal West District	2 MR	Rape
8.	04 <sup>th</sup> April, 1998	Ningthoujam Ongbi Pramo	Keirenhabli, Bishenpur District	6 Bn JK Rifles	Rape
9.	27 <sup>th</sup> June, 1998	Naorem Ongbi Thoinu	Kakching, Thoubal District	Rifleman N. Pratap Singh of 5/5 GR	Rape
10.	19 <sup>th</sup> July, 2000	Mrs Mercy Kabui (25 yrs)	Lamdan Village, Churachanpur District	112 Bn CRPF	Rape
11.	6 <sup>th</sup> Oct, 2001	Mrs Meinam Ongbi Bina	Luwangsangbam Matai Village, Imphal East District	25 Bn CRPF	Rape
12.	4 <sup>th</sup> Oct, 2003	Miss Nandeibam Sanjita (15 yrs)	Uchathol Jiribam, Imphal East District	12 GR	Rape, committed suicide after rape
13.	14 <sup>th</sup> January, 2004	14 yrs old domestic helper (name not disclosed)	Chandel Police Headquarter, Chandel	Pol- CDL	Rape
14.	11 <sup>th</sup> July 2004	Thangjam Manorama (32 yrs)	Ngariyan Mapao village Bamon Kampu, Imphal East District	17 AR	Rape and murder
15.	22 <sup>nd</sup> January, 2004	Name not disclosed	Wangban Canal, Thoubal District	3 MR	Rape after kidnapping
16.	13 <sup>th</sup> March, 2007	Miss Nengneikim Haokip (18 yrs)	Veitun khullen Village, Kotlein, Senapati District	32 AR	Rape
17.	2007	Name not disclosed	T- Phajo Village, Churachanpur District	Not documented	Rape
18.	7 <sup>th</sup> Oct, 2008	12 yrs old	Not documented	1 IRB	Rape
19.	9 <sup>th</sup> November, 2010	36 yrs old	Ukhonsang Awang Leikai, Thoubal District	AR	Rape

20.	20 <sup>th</sup> January, 2011	Ronjana (3 yrs)	Seinoujang Village, Churachanpur District	BRTF	Rape and murder
21.	14 <sup>th</sup> July 2011	Babina (18 yrs)	Kongba khunou, Mayai Leikai, Imphal East District	IRB	Rape
22.	22 <sup>nd</sup> March 2012	Jangthailu Kamei (40yrs) from Tamenglong	Meijirao Agriculture field, Bishnupur District	Four men including two IRB	Gang rape

**Source:** A memorandum submitted to Rashido Manjoo, Special Rapporteur on Violence against women, its causes and consequences, United Nations on 28 April 2013 on Manipur: Perils of War & Womanhood by Civil Society Coalition on Human Rights in Manipur and the UN.

**TABLE no II**

**Assessment of the outcome of the Inquiries instituted by the Government of Manipur under the Commission of Inquiry Act, 1965**

Incident	Facts	The Inquiries conducted under the Commission of Inquiry Act		Findings	Action Taken	
		Conducted by	Armed Forces		Ex-gratia	Prosecution
RMC Massacre of 07-01-1995	CRPF shooting, killed 9 and injured 1 civilian inside Regional Medical College Hospital	Shri. D.M. Sen, Retired Judge, Calcutta High Court	Attended	Confirmed the arbitrary and intentional shootings by the CRPF personnel	Killed: Rs 25,000/- Injured: Rs 5000/-	Nil
Amina Killing of 05-04-96	CRPF shoot a young mother with her infant baby inside her house	Shri. C. Upendra, Retired District Judge, Manipur	Attended	Confirmed the arbitrary and unnecessary firing	Nil	Nil

Kangujam Ojit Custodial Torture and Death 20-02-1997	Army arrest Ojit on 16-02-1997;  Handed over to the police on 19-02-1997, admitted in JN Hospital the same day;  Died in the hospital due to blunt force injury on 20-02-1997.	Shri L. Rabindra, retired judge of family court, Manipur  Vide Government order no. 7/1(1)/97-H dated 21-02-1997	Moved the High Court to stop the proceedings of the inquiry on the ground that the State Government has no jurisdiction over their act.	No report as the High Court stayed the proceeding vide its order dated 25-04-1997	Nil	Nil
Sanamacha disappearance of 14-02-1998	17 <sup>th</sup> Rajputana Rifles of Indian Army abducted a school boy from his house and disappeared	Shri. C. Upendra, retired District Judge, Manipur	Not attended	Report not made public	Nil	Nil

The above table indicates the inquiries conducted by the Government of Manipur as per the Commission of Inquiry Act, 1956. All of the cases had occurred before the setting up of the Manipur Human Rights Commission. **Sources: Independent People's Inquiry (IPI)**

**TABLE no III**

**The Judicial Inquiries conducted under the instruction of the Supreme Court and Gauhati High Court**

Incident	Facts	The Inquiry under the instruction of Supreme Court and High Court		Findings	Action taken by the Court	
		Findings	Armed Forces		Compensation	Prosecution
Loken & Lokendro Disappearance case	Army abducted 3 youths on 23-09-1980;  I was released but not the other two  The 2 youths disappeared	C. Upendra Singh, District Judge, Manipur vide SC order dated 24-04-1990	Attended	No cogent evidence of releasing Loken and Lokendro by the Army	Rs. 1,25,000/- each	Nil
C. Paul & C. Daniel Disappearance case	Army arrested 2 youths on 10-03-1982  The two youths disappeared	C. Upendra Singh, District Judge, Manipur vide SC order	Attended	No cogent evidence of releasing Paul and Daniel by the Army	Rs. 1,00,000/- each	Additional Registrar, SC lodge an FIR on 18-05-84 but no further progress
L. Bijoykumar Disappearance case	Suspected Army abducted Bijoy from home on the night of 05-06-96;	M. Bijoykumar Singh, District Judge, Manipur East	Attended	The report disappeared from the High	Nil	Nil

	He disappeared thereafter.	Vide HC order		Court		
Y. Sanamacha Disappearance case	Army arrest 3 boys from their homes on the night of 14-02-1998;  Two were released the next day;  The other disappeared.	M. Bijoykumar Singh, District Judge, Manipur East Vide HC order dated 23-07-1998.	Attended	Sanamacha was never released after arrest nor handed over to the police nor escaped from the army.	Ordered payment of Rs, 3,00000/- vide HC order dated 29-11-2001	Nil

The above table indicates the cases where the Supreme Court of India had directed the Guahati High Court to make a judicial inquiry and thereby do the needful. The High Court ordered compensations in some cases to the nearest kin of the deceased. **Sources: Independent People's Inquiry (IPI)**

<p align="center"><b>TABLE no IV</b> <b>Cases Concerning Atrocities by Armed Forces in Manipur taken up by the Manipur State Human Rights Commission</b></p>						
Slno.	Ref. no	Type	Date of Application	Name and address of Complainant & Victim	Subject Matter	Date Referred to NHRC no. Follow up by MHRC (case no)
1.	Of 1999	C.C.	22-01-99	Complainant & Victim: Yambem Laba, Hon'ble Member MHRC	Illegal arrest and detention by major Abujam Pratap officiating C.D, 17 <sup>th</sup> Assam Rifles on 9-12-1998, Reply: Major Pratap charged with (a) criminal conspiracy (b) Misuse of official power (c) Violation of the direction of the Hon'ble Supreme Court of India (d) Maligning the usage of MHRA and the PHR Act, 1993 Defence Secy., for covering him up.	22-1-99
2.	2 of 1999	C.C.	22-1-99	Complainant: Yambem Laba Hon'ble Member MHRC, Victims: 1) Laishram Bimola 2) Manishing Devi	Two sisters Laishram Bimola and Manishang Devi aged 32 and 29 years respectively were stripped naked and beaten by personnel of the 31 <sup>st</sup> Bn. CRPF at their headquarter at Pangei Imphal East on 14-1-99. They were picked up from their residence at Pukhao Ahallup Awang Leikai.  Reply: CRPF misleading the NHRC by concealing facts	22-1-99

3.	3 of 1999	S.M.	26-3-99	Victims: 1) Jangminthang Haokip 2) Joshua Angom sapermeina P.S. Kangpokpi	Arrest of two persons namely Jangminthang Haokip and Joshua Angom of Sapermeina P.S. Kangpokpi by personnel of 12 Kumaon Regiment 57 Mountain Div. Further the custodial death of Jangminthang Haokip. The other arrested Joshua Angom handed over to the police.	5-5-99
4.	4 of 1999	C.C.	1-4-99	Young Lawyer's Forum, Manipur	Necessary actions for the excesses & atrocities committed by security personnel under the guise of AFSPA 1958 as amended by the Armed Forces (Assam & Manipur) Special Powers (Amendment) Act 1972.	1-4-99
5.	8 of 1999	C.C.	12-7-99	Shri Babloo Loitongbam, Executive Director, Human Rights Alert.	Harassed and intimidated by Capt. Chandan Bajaj of 7 <sup>th</sup> Battalion of Assam Rifles, PO Yairipok for giving guidance to villagers to file a complaint to MHRC, 20-7-99	20-7-99
6.	6 of 1999	C.C.	17-3-99	Oinam Sona Singh, Secretary United Clubs of Thanga	Harassment and misery caused due to the 6 day long combing operation conducted by security forces of 57 <sup>th</sup> Mountain Division of the Indian Army at Loktak (Thanga Island)	26-4-99
7.	6 of 99	S.M.	27-4-99	Meira Paibi Bishnupur, ward no. 4	Injury of 3 women 'Meira Paibis' by Army Dogs of 18 Rashtriya Rifles posted at Lotak	27-04-99
8.	19 of 99	C.C.	13-12-99	S. Nimaichand Singh, President Social Integrity Organizing Club Mongjam, PO Mantripukhri, Manipur	Torture to workers at Thoiba brick field by personnels of 25 CRPF battalion camped at ThangaChingjin following bomb blast near KoirengeiLamkhai. Serious injuries caused to the victims.	20-1-2000
9.	30 of 99	C.C.	24-04-99	Ch. Shantipur Singh, Yairipok Bishnu Naha, Maya iLeikai, PO Yairipok, Thoubal	Arrest and torture on false charge by personnel of the 7 <sup>th</sup> Assam Rifles. Mental harassment & threats to daughter (14 yrs) followed by suicide.	28-05-99, case taken up, complainant...by NHRC
10.	64 of 99	C.C.	25-08-99	Shri L. Nimai, Meitei, Angtha Mayai Leikai, PO & PS Yairipok, Thoubal	Medical treatment provided for injuries of UTP caused by 18 RR as a result of heavy torture to his son Loitongbam	14-10-99, treated at state expenses at Guahati Medical College, Assam upon MHRC recommendation
11.	114of 99	S.M.	10-08-99	Haominlun, Haokhosai Shomam & Hatsing from Motbung Sadar Hills, Manipur	Opened unprovoked firing and terrorized villagers ofMotbung by Personnel of 21 Assam Rifles under the influence of liquor	10-08-99, case taken up. Registered by NHRC

12.	115 of 99	C.C.	10-08-99	A.C. Shidam, general secretary United Chingtam Club, Sagolmang, Imphal East	Threats, bounded hardships and missing of property while fleeing due to fear of the 112 battalion CRPF on the villagers of Ishikha, Yumnam Patlou	10-08-99
13.	124 of 99	C.C.	20-08-99	Smt. Mina Khatum, Kairang Muslim village, Mayai Leikai, PS Heingang, Imphal East	Release of Mohammed Tayub Ali. Arrested by 17 <sup>th</sup> Assam Rifles from Poumai Colony Lamkhai, Sangakpham	25-10-99, NHRC case No 31/14/99-2000
14.	20 of 99	C.C.	26-04-99	Yangleman Mani, son of YaimaToubul, Awang Leikai, Bishnupur	Arbitrary arrest and torture by personnel of 32 Rashtriya Rifles led by Major Sharma	26-11-99
15.	58 of 99	C.C.	3-4-99	H.Sharad Singh, Khurai Lamlong Bazaar, Imphal	Ransacked by CRPF personnel at Khurai Lamlong Bazaar, Imphal	7-06-99
16.	9 of 99	C.C.	24-6-99	Moirangthem Mohan Singh, son of M. Thoiba Singh, Kouchak Mayai Leikai PO & PS Mayang Imphal	Torture by Army personnel belonging to 14 Punjab Regiment under 57 Mountain Division located at Mayang Imphal	13-07-99

The above table shows some of the cases of atrocities perpetrated by the armed forces being investigated by the Manipur Human Rights Commission and being forwarded to the National Human Rights Commission. **Sources: Independent People's Inquiry (IPI)**

## V. MANIPUR THROUGH THE EYES OF INTERNATIONAL COMMUNITY

It was only in the early 1990s that the international community began to seriously take note of the excesses of the armed forces when Kashmir also came under the purview of AFSPA. The Indian project of containing insurgency under the guise of AFSPA came under heavy scrutiny of the UN Human Rights Commission and in fact it found mention in its debates and in reports of the Thematic Special Rapporteur. The Amnesty International had in fact come out with a report on Manipur entitled 'Operation Bluebird: A Case Study of Torture and Extra judicial Executions in Manipur' (AI Index: ASA 20/17/1990) that meticulously studied the atrocities meted out by the Indian military forces in the aftermath of the Oinam incident. In 1991, when the UN Human Rights Committee was considering the Government of India's Second Periodic Report under ICCPR, human rights activists from Manipur grab the opportunity to highlight the Committee on the anomalies and indignancy of AFSPA. The Human Rights Committee, after minute discussion on the issues appraised by the human rights activists, had to stringently advice the representatives of the Indian Government to repeal the AFSPA and Terrorist and Disruptive Activities (Prevention) Act (TADA). It was a humiliation on the part of the Indian Government for not handling the issues of human rights abuses properly especially at the backdrop of the Amnesty International Report on "Operation Bluebird". This eventually led to the formation of National Human Rights Commission (NHRC) in 1993. TADA, which was imposed in all the territory of India, was scrapped following a nationwide campaign against its enforcement. But unfortunately AFSPA, which is enforced only in the North East and Kashmir continued to remain in force in spite of all its inhumane elements.

In 1996, the UN Committee on the Elimination of all forms of Racial Discrimination brought up the issue of AFSPA again while discussing about India and in its concluding observation contained in UN document CERD/C/304/Add. 13 of 17 September 1996, the Committee made the following remarks:

*“The Committee is seriously concerned that the Kashmiris as well as other groups (read, the Manipuris), are frequently treated, on account of their ethnic or national origin, in ways contrary to the basic provisions of the Convention.....Clause 19 of the protection of Human Rights Act prevents the National Commission on Human Rights from directly investigating allegations of abuse involving the armed forces. This is a too broad restriction on its powers and contributes to a climate of impunity for members of the armed forces.”<sup>iii</sup>*

Again a most detailed discussion of AFSPA took place in July 1997 in Geneva when the UN Human Rights Committee considered the third periodic Report of India. Human Rights activists from Manipur and Assam were able to present a detailed report of human rights abuses under AFSPA to the members of the Committee. After much deliberation on the human rights scenario of Manipur, the Committee questioned the representatives of the Government of India on the impunity of the armed forces and the state of emergency like situation in Manipur. The Committee had to make a concluding observation in the following words:

*“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 Article 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 Article 1, 19 and 25 of the Covenant, the Committee endorses the view of the National Human Rights Commission to the effect 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.*

*The Committee regrets that some parts of India remain 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.*

*The Committee recommends that the application of these emergency powers be closely monitored so as to ensure its strict compliance with the provision of the Covenant.”<sup>iii</sup>*

The UN Human Rights Commission was kept in the dark on the actual situation in the North East by the Government of India, despite repeated official requests from Mr. Leandro Despouy, the UN Special Rapporteur on States of Emergencies, who was conducting a study for the Commission.<sup>iv</sup> Even as the Indian Government kept denying the fact that there was an ‘undeclared state of emergency’ existing in the North East under AFSPA, Mr. Bacre Waly Ndiaye, the then special Rapporteur on Extra Judicial, Summary or Arbitrary Executions, [UN Document E/CN.4/1998/68/Add.1 of 19 December 1997 (para.203)] reported as follows:

*“.....The Special Rapporteur’s attention was particularly drawn to reports indicating the existence of a pattern of killings in the state of Manipur. Civilians, including women and children, as well as suspected members of the armed opposition groups are reportedly killed by members of the armed forces, many of them allegedly , deliberately and arbitrarily. The Armed Forces (Special Powers) Act of 1958 reportedly gives them the widespread powers to shoot to kill and protect them from prosecution for any acts carried out under its provisions. The situation is further aggravated by the restrictions placed on access to the region by the Government. The result of this policy is a climate in which security forces are able to use excessive force with impunity.”<sup>v</sup>*

This kind of report indicates the fact that the whole world is watching the manner as to how India is tackling human rights issue in the north east and perhaps the UN Commission on human rights is aggravated by the fact that India is not complying with the standards of the UN Convention on the Elimination of all forms of Racial Discrimination of which India is a signatory to it.

## VI. ARMED FORCES SPECIAL POWERS ACT (AFSPA) – A CRITIQUE

That the content and the provision of AFSPA contravene the basic principles of Fundamental Rights which are enshrined in the Indian constitution is a stark reality. In spite of the fact that the constitutional validity of AFSPA has been upheld by the Supreme Court, the perception of the people in the Northeast towards AFSPA did not budge a little at all. It is a draconian law and that civility has lost its value and integrity as long as such law perpetuates. And that as long as AFSPA is enforced upon its people, India cannot deny the fact that a de facto emergency like situation is going on in that particular area where the ‘disturbed area’ tag is being given. The general perception of the people is that AFSPA empowers/gives the armed forces the license to kill and so it is anti-people. What surprises all the more is the fact that the Act exempts the armed forces operating in any of the disturbed areas from any penalty, even if they commit heinous crimes such as rape. Impunity is the word that is being used to describe such exemption of the armed forces from facing a punishment in spite of the enormity of the crime. This provision has therefore bolstered and shielded the armed forces to commit innumerable human rights violations in the course of their counter insurgency operation. The question thus arises thereof is as to whether such law was required at all to contain the rising insurgency. Isn't there any other alternative means to subside or control militancy and the growing discontentment of the people of the North East?

It is indeed a surprising thing to note that the Supreme Court of India validates or upholds the sanctity of AFSPA every time the constitutionality of AFSPA is being challenged. That the content and the spirit of the Armed Forces Special Powers Act contravene the basic fundamental rights of the citizens is well known. Because the fundamental rights that we find in the constitution of India uphold the equality of all individuals, the dignity of the individual and the larger interest of the people and that it is to prevent the establishment of authoritarian regime in the country. They are supposed to protect the arbitrary laws of the legislature. And it is here that the Armed Forces Special Powers Act comes into conflict with the fundamental rights mentioned in the constitution. Because the Act establishes authoritarian and despotic rule, the freedom and liberty of the people are totally curtailed. Whereas fundamental rights are meant to bring about peace in the country, AFSPA ushers in the reign of terror. Upon declaration of the area as disturbed by the Governor of the state, the Armed Forces after giving such “due warning” can fire upon and can kill anyone who they think are acting in contravention of any law [section 4 (a) of the Act] or arrest any person without warrant who has committed a reasonable offence or arrest on mere suspicion who they think is likely to commit such offence [section 4(c)] or enter and search any house without warrant and make arrest on the pretext of committing unlawful activities [section 4(d)]. These provisions vindicate the reality that tyranny has been imposed upon the people of North East. The legislature which is the parliament, the highest law making body of the country, is making arbitrary laws. How on earth would a constitution of a country allow the armed forces, which is to protect its people, to fire upon its own citizens on mere suspicions of a cognizable offence? This is absurd. This is a blatant violation of human rights and an abject abrogation of the fundamental rights guaranteed in the constitution of India. Simply put, the right to life guaranteed by Article 21 of the Indian constitution is at risk. It says that no person shall be deprived of his life or personal liberty except according to procedure established by law. This implies that for any offence of law or any crime he or she cannot be simply punished and put behind bars until the offence is proven legally. Further to say that the law is above everyone.

What is more shocking is that the Act gives complete immunity to the armed forces while exercising the powers given in the Act *per se* (section 6). Even in International law the use of lethal force can be justified only by principles of proportionality, necessity and last resort as self-defense.<sup>vi</sup> But it is a matter of shame that India which is the largest democracy in the world provides a law that gives an unlimited power to the armed forces whereby no legal proceeding can be initiated upon them for their acts and their acts are extremely disproportionate to the offence laid

down in the Act itself. This is the sole reason as to why innumerable crimes have been committed in this part of land by the armed forces during the course of their action. This is why AFSPA is considered as a draconian law and anti-people. And this is inhuman as well. No civilised nation in the world would ever contemplate of initiating such law. As a result of the implementation of AFSPA in the North East we have witnessed scores of human rights violation of which very sadly even the Supreme Court, which is the guarantor of the constitution, justifies the validity of such an inhuman law.

The rationale behind the declaration of a state or parts thereof as 'disturbed' is precisely because the normal functioning of the government has deteriorated and that the army is brought in to restore or bring back normalcy. But it is quite absurd and a bizarre scenario where the deployment of the army should prolong for an indefinite period of time in a democracy. It is also quite shocking that the Indian Government is still embarking on this draconian law where hostility between the insurgent groups and the army has considerably subsided. Seemingly then, the continual enforcement of AFSPA has become an excuse for poor governance and the failure of the respective state governments to enforce law and order properly. It is quite obvious that certain provisions should be made for the protection of the armed forces during operations or while engaging insurgency and militancy but that does not amount to arbitrary use of force or license to kill anyone on mere suspicion during such operation. Thus that becomes an abject violation of human rights. The authority of the armed forces to shoot on sight merely on suspicion is tantamount to assault on the fundamental right to life of every citizen irrespective of sex, creed and colour. The power to shoot on sight violates the sanctity of the right to life, making the soldier on ground the judge of value of different lives and people the mere subjects of an officer's discretion (Vivek Chadha, 2012).

## VII. CONCLUSION: TOWARDS A HUMANE FACE OF AFSPA

Since the inception of AFSPA, it has brought about provoking reactions from almost all sections of the people across the north eastern states of India. The general perception of the people towards this Act is that it is anti-people. The simple reason for pouring scorn on this is that AFSPA gives license to the armed forces to execute their duties with impunity. This has resulted to numerous human rights violations during their operation. There is no accountability on the part of the armed forces because their acts cannot be challenged in the court of law. Rights of the people are subdued and their grievances seemed to have gone to the deaf ears of the political elite class or who man the government. No doubt the armed forces of India-be it navy or air force or army-which is one of the finest forces in the world, is meant to protect its territory and integrity and also to protect its citizens from the enemy, of which every Indian citizens should really feel proud of. But here is where the paradox lies. What happened to our human rights and where are our human rights? The people who are protecting its citizens and guarding its borders are actually harassing its own citizens by depriving them of their rights and torturing them which the constitution guarantees. This is unbecoming of India as a democratic state that adheres to the principles of equality, justice, liberty and secularism.

It would be imperative on the part of the armed forces to always be conscious of themselves that they are being sent to the disturbed areas to maintain public order and not to harass people. This should be the most significant commandment of the armed forces. But because the legal framework of the Act justifies their act of commission of doing harm to innocent ordinary citizens where necessary, people's discontentment towards the state simply goes out of proportion. Suggestion such as that of Jeevan Reddy Committee, a high profile committee set up by the Parliament of India, to amend or repeal the prevailing AFSPA and bring in a more humane Act, perhaps needs to be appreciated by every right thinking Indians who value the rights and dignity of every human soul. It is not the matter of right that is in question here but rather it is the question of fairness. That the act of the armed forces in the disturbed areas is justified by the Act as right is quite well known but is it fair enough to be called right when somebody's liberty as a bonafide citizens of India is being curtailed and that the basic human rights that everyone enjoys by virtue of being human is being snuffed out. This is the dilemma that the Indian state needs to reason out.

The Supreme Court, which is the guardian or the custodian of the fundamental rights, while upholding the validity of the Act should also try to see the other side of the same page that certain provision in the Act actually invalidates or negates the concept of right to life mentioned in Article 21 of the Indian Constitution. The constitution of India is not a mere piece of writings to be kept in the shelf for decoration but it is a living document, a practical

testament that needs to be followed in spirit and in letter. This is perhaps the main contention that reckons the think-tank of the Indian state. If only the parliament, which is the august house of the nation, gives a proper attention to the general perspective of human rights and its dignity as it were, then may be the whole content of the Act can become more humane and tolerable. This would then convey the message to the armed forces who are the machinery of maintaining the territorial integrity of the nation that their prime duty is to protect its citizens and not to harm them. This also gives another dimension when one tries to delve deeper into the position of AFSPA today. Time has come to relook and reassess the Indian federal system and the major issues relating to centre-state relation. It's not only about giving special economic packages to the states that shapes the cordiality between the centre and the state but it's also about understanding the social and cultural paradigm of respective states of the Indian Union and thereby redefining the federal set up and the security system of the country.

## Glossary

1. Meira Paibis: Meira paibis are the women folk of Manipur who patrols the night with burning torches. When it was initially formed in the 1970s, the meira paibi movement was basically to walk down the street at night and nab the drunkards who are a nuisance to the society. Their main aim was to keep their locality safe from the undue disturbances of the drunkards. But the nature of their work totally changed with the enforcement of AFSPA in 1980. The meira paibis became a reckoning force to counter the Indian security forces who are otherwise given the utmost freedom by AFSPA. And so from prohibitionist of drinking, the meira paibis became the vanguard of civil liberties in Manipur, especially in Imphal valley. The women folk are the ones who would come out first in the street to protest when a local youth is being arbitrarily arrested by the security forces.
2. Kangla Fort: It was once the royal palace of the Maharaja of Manipur in ancient days. But when the British annexed Manipur it became the residence of the British. After independence, Kangla became the headquarter of the Assam Rifles. But after the Manorama incident the Assam rifles have shifted its headquarter to another place and Kangla has now become a tourist spot where people can come and visit.

## REFERENCES

- [1]. Amnesty International, 1990, India – “Operation Bluebird” A Case Study of Torture and Extrajudicial Executions in Manipur, AI INDEX: ASA 20/17/90 DISTR: SC/CO/GR, International Secretariat 1 Easton Street, London WC1X 8DJ, United Kingdom, October.
- [2]. Combat Law, 2003, The Human Rights Magazine, Vol – 2, Issue 1, April – May.
- [3]. Dhanabir Laishram, 2007, *Northeast in Benthic Zone*, Akansha Publishing House, New Delhi.
- [4]. Grit and Defiance, 2015, 15<sup>th</sup> Year Sharmila Against AFSPA, Just Peace Foundation, Imphal
- [5]. Human Rights Watch, 2008, *Getting Away With Murder: 50 Years of the Armed Forces (Special Powers) Act*, August, India.
- [6]. Joint Stakeholders’ Memorandum on ‘Manipur: Perils of War & Womanhood’ submitted to Rashida Manjoo, Special Rapporteur on Violence Against Women, its Causes and Consequences, United Nations by Civil Society Coalition on Human Rights in Manipur and the UN, April, 2013
- [7]. Joint Stakeholders’ Report on ‘India Status of Human Rights in Manipur’ Submitted to the Office of the High Commissioner for Human Rights 2<sup>nd</sup> Cycle Universal Periodic Review, Human Rights Council, United Nations by Civil Society Coalition on Human Rights in Manipur and the UN, November 2011
- [8]. Luingam Luithui, Nandita Haksar, 1984, *Nagaland File: A question of Human Rights*, Lancer International Publication, New Delhi.
- [9]. Naga People’s Movement for Human Rights, Quarterly Publication of NPMHR, January 2006, New Delhi.
- [10]. Nandita Haksar, Sebastian Hongray, 2011 *The Judgment That Never Came: Army Rule in North East India*, Chicken Neck Publication, New Delhi.
- [11]. Naorem Sanajaoba, ed. 1994, *Human Rights: Principles, Practices & Abuses*, Omsons Publications, New Delhi.
- [12]. The Armed Forces (Assam and Manipur) Special Powers Act, 1958
- [13]. The Armed Forces (Assam and Manipur) Special Powers (Amendment) Act, 1972

- [14]. Vivek Chadha ed. 2012, *Armed Forces Special Powers Act: The Debate*, Institute for Defence Studies & Analysis Monograph Series, No. 7 November, Lancer's Books, New Delhi.
- [15]. *'Where Peacekeepers Have Declared War'*, 1997, Report on Violations of Democratic Rights by Security Forces and The Impact of The Armed Forces (Special Powers) Act on Civilian Life in The Seven States of The Northeast, Published by National Campaign Committee Against Militarisation And Repeal of Armed Forces (Special Powers) Act, April, New Delhi.
- [16]. Yambem Laba, 2009, *A Human Rights Story in Manipur*, Just Peace Foundation, Imphal.

## Notes

- <sup>i</sup>. UN Human Rights Committee, "Concluding Observations of the Human Rights Committee: India", CCPR/C/79/Add.81, August 4, 1997.
- <sup>ii</sup>. This is what the UN Committee on the Elimination of all forms of Racial Discrimination said about AFSPA when they discussed about India's status on human rights in its session in September 1996.
- <sup>iii</sup>. This statement was made when a detailed discussion of AFSPA took place in July 1997 in Geneva when the UN Human Rights Committee considered the third periodic Report of India.
- <sup>iv</sup>. While Mr. Leandro Despouy, the UN Special Rapporteur on States of Emergencies, was conducting a survey for UN Human Rights Commission on India, the Government of India was unwilling to concede the fact that emergency like situation was going on in the north east of India.
- <sup>v</sup>. The report of Mr. Bacre Walyn Ndiaye, the then special Rapporteur on Extra Judicial, Summary or Arbitrary Executions, simply indicates the truth that the whole world was getting impatient and irritated about the widespread abuse of human rights happening in the state of Manipur.
- <sup>vi</sup>. These include the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990; UN Code of Conduct for Law Enforcement Officials, 1979; and Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, 1989.