

Study of Armed Forces Special Powers Act in Assam, Nagaland & Jammu & Kashmir

Vinod Kumar. M,
Assistant Professor, Department of Management,
Center for Management Studies, JAIN (Deemed-to-be University), Bangalore, India
Email Id: vinod_km@cms.ac.in

ABSTRACT: *The Armed Forces Special Powers Act was enacted to maintain public order and ensuring the safe and secure life of citizens in the disturbed area. Since its enactment, it was always alleged that Army personnel misuse the power and duties provided to them that resulted in the human right violation. With the changes in the socio-political scenario in the country, many states uplifted the application of the AFSPA Act in the states. For instance, Punjab and Chandigarh lifted AFSPA in 1983, and recently in 2015 Tripura had lifted the application of the AFSPA Act from the states. Still, there is a lot of debate on the applicability of the Act in other states on the grounds that it violates the Human Rights of the citizen residing in that state. It was alleged that the arbitrary power given to the armed personnel was continuously misused by them. The author in this review paper will discuss the brief history and reason for the enactment of the AFSPA Act. The author will further critically analyze the impact of the Act in the state of Assam, Nagaland, and Jammu & Kashmir and even deal with the political socio-economic scenario which leads to the upliftment of the AFSPA Act in the state of the Punjab and Tripura.*

KEYWORDS: *Arbitrary, Disturbed Area, Human Rights, Public Order, Socio-Political Scenario.*

INTRODUCTION

Human right have been widely accepted and recognized concept in this 21st century. The end of discrimination on the racial grounds, independence of various countries from the colonial rules; growth of the concept of democracy; human dignity; and fundamental rights have laid down the foundation of the Human Rights. The importance of the Human Rights was recognized when world witnesses two World War; atomic bombings of Hiroshima and Nagasaki; child slavery in the Lord's Resistance Army; transgender fights around the world for their identity and recognition. Though the traces of Human rights can be found in the 1215's Magna Carta, it was universally recognized and accepted by a way of the Universal Declaration of Human Rights in the year 1948. UDHR is the list of 30 rights available to the person of every age group without any discrimination.

Now the states were responsible for protecting and securing the human rights of every citizen. However, a legal instrument like Armed Force Special Powers Act has always been in conflicts concerning their scope and arbitrary power to fire upon or uses other force for maintaining public order, even if it causes death. The Act ends up opposite to its objective and makes the life of people miserable, insecure, and unsafe. Further, the act provides the protection to the Army personnel from any criminal prosecution. This was alleged that such provision incorporated in the act in the name of maintaining peace and social order was a sheer violation of the Article 21 of the Indian Constitution.¹

Indian and International Human rights activist, NGOs and advocates are always being in support to repeal the law. They have also started campaign against the government to completely eradicate the application of the law from the states. However, state government were very strict and determined with their decision of not uplifting the AFSPA act.

1. Brief History of the AFSPA Act

The Armed Force Special Powers Act is enacted during the Colonial rule by the Britishers.² The act has its root in the 1942 Ordinance known as Lord Linlithgow Ordinance which was enacted to face the Quit India Movement. As a result of 1942 ordinance four different Ordinances for Bengal, Assam, East Bengal, and

¹Heba Ali, 'Armed Forces Special Powers Act, 1958: Necessity or Misuse of Power' available on <https://blog.ipleaders.in/>

² www.thehindu.com

United Provinces was enacted to curb the problem. Though when enacted the objective of the act was different, it was still applicable in some part of the North East and Jammu and Kashmir.

After the independence many communities were not interested being part of the Union and resisted to join Indian Federation. One of such communities were Nagas who considered themselves different and separate identity and denied to be part of the post-colonial Indian Union. As a result, they opposed first general election held in 1952. They show their anger against the government officials and schools. Initially in the year 1953 they enacted Assam Maintenance of Public Order (Autonomous District) Act and strengthened police action against the protestors. The 1953 Act was followed by the Act of 1955 and ultimately the government who were thinking that their revolt would be easily suppressed has to enact AFS (Assam and Manipur) Act 1958 to curb the problems. The Act provides special provisions that allowed the Governor to declare area as a "disturbed" area. The act has its constitutional validity under Article 355 of the Indian Constitution. Further, the scope of the act was extended to other states including Meghalaya, Tripura, AP, Mizoram and Nagaland, In the same year the act was replaced by the AFSPA Act. Recently in the year 2015 the applicability of the act was lifted from the Tripura. The Tripura State government official stated that the reason for the upliftment of the AFSPA Act was the decline in the terrorist activities followed in the state and there is no further need of the act in the state.

On the other hand, for the Punjab and Chandigarh region Central Government enacted AFSPA Act in the year 1983. The act was enacted because during 1983-1997 there was insurgency by the Sikhs rebellion. The major cause of the revolt was the Operation Bluestar which according to Sikh Community is the attack to their religion. As a result, then Indian Prime Minister Indra Gandhi was assassinated by their two Sikh Bodyguard. The Act enables the central armed forces to operate in the concerned areas. The act was primarily based on the AFSPA Act implemented in the State of Assam and Manipur. It only differs in ways which are classified as follows:

- Another sub-section was added to the Section 4 providing powers to the army personnel to search the vehicle if there is any suspect
- Another section was added which provides power to break any locks [Section 5]

With the passage of time insurgency faded over time and finally ended in the year 1997. In the northern part of the Indian subcontinent, Armed Force (Jammu and Kashmir) Special Powers Act 1990 was enacted. There has been always conflict between Indian Administration in Jammu Kashmir and Kashmiri People. This conflict turned into insurgency in the year 1989 and as a result AFSPA Act was enacted. It was alleged that power given to the army personnel was misused during the insurgency. Militant were immediately executed rather than bringing to the trail and it was opposed by the Human Right Activist. The official told them keeping them in jail is quite risky and it is better to immediately execute them. Since the insurgency began more than 1,000 of people were disappeared and was alleged that they were buried as militants. The human rights violation at this level is the reason, it is always being opposed and there is demand to repeal the act. In the next section we will discuss the impact of the AFSPA Act in Assam, Nagaland and Jammu & Kashmir.

2. Provision giving arbitrary power to the Armed Forces

Due to some provisions which are arbitrary in nature the act was opposed by the citizens and Human rights advocates. The two main sections are Section 4 and 6 of the AFSPA Act. These provisions provide to fire (even if it causes death), arrest and search without any warrant. Further section 6 provides immunity to the Armed Forces that they cannot be prosecuted for any act committed under this act.

3. Impact of the AFSPA Act

3.1. In Assam:

Since 1990 there was dissatisfaction and protest against the act and army personnel for arbitrarily exercising their power. The local student's organization, Human Rights Activist around the world, NGOs started protest against the repealing of the act. It was alleged by them that for getting promotion Army personnel were conducting fake operation and kills innocent people. One of the recorded incidents was published in the newspaper in the year 2011. The newspaper article published in the *Asomiya Pratidin* states that Army

personnel kills three youths on the ground that they were ULFA activist. The army official states that they got the information from the intelligence agency. However, intelligence agency denied that they give any information regarding ULFA activist on that day. Immediately, army officials change their statement and communicated that they got the information from the Arunachal Pradesh Government Intelligence. However, Arunachal Pradesh Government also denied communication of any such information. This clearly depicts the picture that Armed forces killed innocent people for getting promotion and thus violated fundamental human rights enshrined under Article 21 of the Indian Constitution i.e. rights to life.

In the year 2016 Irom Sharmila Chanu breaks her 16 years of a hunger strike in protest against AFSPA Act. She was socio-political activist also known as 'Iron Lady of Manipur'. In the year 2000 when the army personnel shoot 10 people standing at the Bus stations waiting for their buses threatens Sharmila and she began hunger strike to repeal the AFSPA Act. However, in the year 2016 while ending upon her hunger strike she said "Nothing had changed in people's mindsets after 16 years".

On the other hand, Armed Forces are of the view that violent activities were not decreased in the region of the Assam and thus there is no need to repeal the law. In support of their view they mention that when the act lifted in the city of Imphal in 2004 the rate of insurgency increased.

As per Assam Police Government report near about 4,000 civilians were killed during the period of 1991-2012 by the Armed Forces. Further, during the interrogation it was alleged that army personnel were using different method of torture which is violation of the Human rights of the people. The filed study data conducted by the researcher reveals that methods applied by the Armed Forces includes- Beating, hanging, electric shock, burning. Sometimes these torture by the Armed forces results into death of the person. It was also alleged that army personnel were also involved in the rape cases during the Operation Rhino and Bajrang in 1990 against Assam separatist groups.

The cases of Tulumoni Devi, Bhanimai Dutta, and Raju Boruah can be cited where army personnel raped and murder female civilians. Many of the rape cases were admitted by the Government. Deaths in encounter were frequently exercised by the Army personnel and the cases of the Nitu Rajbangshi, Khireswar Borah, and Kiran Saikia can be cited as alive example of the death encounter.

There were many incidents where civilians were killed by the army personnel as a revenge, suspecting them as insurgent or militants. In this way the above cited cases were sufficient in establishing the fact that AFSPA act violates Human Rights as well as Article 14, 19, 21 and 22 of the Indian Constitution.

3.2. In Nagaland:

AFSPA Act in the Nagaland was enacted after the Naga National Council stands against the Armed Forces. The implementation of the act was opposed by few members of parliament on the grounds that it imposes arbitrary power on the army personnel. There were several reports and cases which clearly represents that AFSPA Act has violated human rights.

Like the case Miss Mayangkoka, who were brutally raped and beaten by the Army personnel in the open public on the neck of guns. It was also alleged that she was even raped in the military camp where she was taken with her brothers. Similarly, in 1971, four girls were raped in the Church. In another incident which took place in the year 1974 crowd of local people was attacked by the Armed forces who were there to catch one of the army personnel accused of committing rape.

In another incident Army Jawan was removed from the service and was sentenced to 8 years' imprisonment after being held guilty for the rape of 12-year-old girl. The victim's father filed writ petition against the order of the Civil Court. As a result, High Court of Guwahati gave 5 lakhs as compensation to the victim. There are only few examples of many atrocities leading to the violations of human rights committed by the armed forces in Nagaland.

3.3. In Jammu and Kashmir:

There were thousands of cases where armed forces violated human rights. One of the incidents took place in the year 2006 where a soldier shot four boys playing cricket in a doubt that they were militants. There are many other cases where civilians were shot without giving any warning.

And the army has acknowledged that having exceptional shooting powers has resulted in "mistakes." The army called the July 2005 killing of three teenage boys in Kupwara, who had sneaked away to smoke a cigarette late at night and were shot without warning by troops, a "error of judgement." Such blunders, which are all too frequent, inflame public rage in Jammu and Kashmir.

4. Upliftment of the AFSPA Act in Punjab and Tripura

As discussed above during 1983-1997 there was insurgency in the Punjab by the Sikhs rebellion. However, it was observed by the government that with the passage of time insurgency faded over time and finally ended in the year 1997. As a result, the government is of the view that there is further no need of the AFSPA Act in the state and thus it was revoked in the year 1997. Similarly, in the year 2015 the applicability of the act was lifted from the Tripura. The Tripura State government official stated that the reason for the upliftment of the AFSPA Act was the decline in the terrorist activities followed in the state and there is no further need of the act in the state.

5. Judicial Pronouncement concerning AFSPA Act

The following landmark judicial pronouncement concerning the validity and arbitrary power given in the AFSPA act can be discussed here as follows:

5.1. *Naga People's Movement of Human Rights v. Union of India*

In this case the validity of the AFSPA act was challenged on the ground that it provides arbitrarily and unconstitutional power to the armed forces. The court here unanimously upheld the validity of the act. From the Human Right perspective many arguments were raised against the arbitrary power given to the Armed Forces to shoot any people and immunity given to the armed forces from any prosecution³.

However, despite being badly criticized they did not able to establish any positive right of people in that areas against the AFSPA except that it should be less rigorous so that people will not be harassed by the Armed forces.

And as a result, AFSPA was declared constitutionally valid by the SC. The court further affirming the validity of the act held that parliament is competent to enact the law by the virtue of Entry I of State List and Article 248 r/w Entry 2, 2A, and 97 of Union List.

5.2. *Indrajit Barua v The State Of Assam And Anr*

In this case, the court opined that the State is constitutionally bound to assure the protection to its citizens and fundamental rights guaranteed under the Indian Constitution. The court further laid down that article 21 is also available to the citizens residing in the disturbed area declared under the AFSPA act. The court observed that civilians residing in the disturbed areas are denied any type of protection of their lives and liberties⁴.

They were also restricted to approach the court to seek remedy and thus violates the Fundamental rights particularly Article 14 and 32 of the constitution of India. By looking at the situation the court is of the view that it can be said that people in the disturbed areas are under the army rule and under the light of the AFSPA Act their Human rights and fundamental rights were violated.

³ (1998) 2 SCC 109

⁴ AIR 1983 Delhi 513

5.3.Shopian Case

In this case the Shopian Case, two women went missing while returning home from the orchards, and their bodies were discovered the next day. It was suspected that they were raped and killed by armed forces stationed nearby. The injuries on the girls' private parts that were supposed to be reported in the post-mortem reports were eventually cleared off, so the armed forces could not be blamed, challenged, or brought into the matter, even though no FIR was filed in this case where such a horrifying incident occurred.

5.4.Luithukla v. Rishang Keishing

Then there was the case of Luithukla v. Rishang Keishing, in which a writ of habeas corpus was filed and the court directed the army to obey the Code of Criminal Procedure rules, but there was no compliance and no one listened to the Guwahati High Court's words. In response, the army officers accused the judges of the High Court of undermining the armed forces stationed in the country's northeastern region⁵.

6. Committee Report on the AFSPA Act

6.1.Jeevan Reddy Committee

Hunger strike by the Irom Sharmila and death of the Manorama Devi in the state of the Manipur initiated protest against the AFSPA act to repeal this draconian law. As a result of this opposition government had to establish Jeevan Reddy Committee to review the AFSPA Act. The committee was headed by the retired SC judge BP Jeevan Reddy. The committee in his report suggested to repeal the AFSPA Act, however it's almost 15 years from the date of publication of report and AFSPA is still in existence in some state of NorthEast and Jammu & Kashmir.

6.2.Justice Verma Committee

Soon after the gang rape and murder with 23-year-old girl a committee was formed to review Criminal law specifically with laws against sexual assault. The Committee was headed by the retired Supreme Court judge Jagdish Sharan Verma. Covering the whole scenario of the sexual assault it also comprises rape committed in the disturbed areas under the AFSPA Act. In his report the committee firmly suggested to review the AFSPA Act and its aftermath. The committee asserted that AFSPA Act legalizes sexual violence committed by the armed force under umbrella of AFSPA Act.

It was observed by the committee that condition of the women in disturbed areas are threatening and alarming. The committee said that women in those areas were always neglected and become victims of the sexual violence and assault committed by the army personnel. The report further proclaimed that women in the disturbed areas or conflict areas were also entitled for same respect and dignity as other women's in the country.

The report was highly praised by the Activist and organization particularly UNHCHR. The committee in their report recommended that any sexual assault with women in the conflicted areas committed by the army personnel or officials should be prosecuted under the criminal law. Further, the committee recommended that act should be amended to delete the prerequisite of prior approval from the Central government to prosecute the army personnel.

In an interview Justice Verma said that condition of prior approval from the government for the sexual violence is highly condemned as no sexual violence could be associated with the performance of any official task. As the result of the recommendation Criminal Law Amendment Act 2013 was passed. However, removal of sanction required before prosecution under AFSPA was ignored.

6.3.Justice Hegde Commission

In response to the PIL filed, seeking for investigating more than 1,500 cases of alleged extrajudicial execution during the period of 1978-2010 in the state of Manipur a commission was appointed. The

⁵ Civil Rule (IIC) No. 265/83/14/84

commission was appointed to investigate 6 cases acknowledged by the court to conclude that these were the cases of the extrajudicial execution or encounter deaths.

The committee submitted its report in the year 2013 where they were of the view that all the death was caused by the extrajudicial execution and said that AFSPA act was extensively misused by the armed forces in the state of the Manipur. They said that in the light of counter-insurgency armed forces have a mode of the 'mockery of the law' in the state of the Manipur.

The committee highlighted that armed forces in the state of Manipur were take no notice of procedural safeguards laid down by SC and army officials to make sure that power given under the AFSPA act were used with extreme caution and the least amount of force possible

The commission also condemns absence of strictly enforced protections towards violations of the AFSPA regulations. Like the act provides the power to armed forces to shoot on mere suspicion, on the other hand, it doesn't provide any protection or remedy to the citizens against any misuse of the power by the armed forces. Like Verma Committee, the Commission recommended that act should be amended to delete the condition of prior approval from the Central government to prosecute the army personnel.

CONCLUSION

Looking at the discussion made above and cited cases we can conclude that there are certain provision incorporated under the Act which provides arbitrary power to the armed forces. These powers were provided to the Armed forces to control the internal disturbance and public order. However, contrary to this it was extensively abused by the Armed Forces.

It is observed that the act was enacted during the British Colonial period by the Britishers to stop the protest made by the Indian freedom fighters during Quit India Movement. Thereafter in the state of the Assam, Nagaland and Jammu & Kashmir it was enacted due to the insurgency by the militants. Further, the arbitrary provision in the act which empowers the armed personnel to shoot any person without giving any warrant. The act provides the immunity to the armed personnel from the prosecution against any act committed under the preview of the AFSPA Act.

Whereas, the impact of the AFSPA Act in the State of the Assam, Nagaland, and Jammu & Kashmir. The cited cases (or example) where the civilians were brutally murdered, raped reveals that armed forces abuses their power in the disturbed area in the light of the AFSPA Act.

Hence, The AFSPA Act is evident from the above discussion that both the Committee and Commission have suggested to either amend or review the AFSPA act. To some extent Hegde Commission was able to identify that 6 murders were result of the extrajudicial execution but the Verma Committee not expressed that AFSPA act plays important role in the violence against women or in extrajudicial executions.

However, it is almost 15 from the first report and AFSPA is still in existence in some state of North East and Jammu & Kashmir. As a concluding remark it can be suggested that government should review the AFSPA act and removed the arbitrary provision given under the act. Further, if the government is in no attitude to review AFSPA act they must establish monitoring body which observed the action of the armed forces in the disturbed areas.