

PROTECTION OF LIFE AND LIBERTIES OF THE CITIZENS OF INDIA: A STUDY WITH SPECIAL REFERENCE TO THE ARMED FORCES (SPECIAL POWERS) ACT, 1958.

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ABSTRACT

The most questionable in this 21st century is how life and liberties of a person can be sustained alive without violating the very pinnacles and basic kernels of the human rights. Among the tools for aggravating life and liberty of the person under domestic law and international law, AFSPA 1958 is one. It leaves the pothole in the fundamental rights of Indian constitution. Nevertheless the Supreme Court of India recommended multiple guidelines to protect the life and liberty of a person and reduce the Human Rights violation mainly in the Disturbed Area declared by the Central Government, the human rights violation is skyrocketed perpetually. The most affected and vulnerable sections of the places are specially the North Eastern part of India. No sign of improvement is displayed in the current scenario instead of deteriorating the value of human. Considering the facts of danger, the protection of life and liberties are the main concern of this research.

This Act should be repealed at the most present adaptable environment. All the agencies and institutions of Government should be complied with the provisions or guidelines of the Supreme Court strictly. The judiciary should be allowed to review the case to protect the life and liberties of a person.

KEYWORDS: AFSPA Act, life and liberties, human rights, disturbed area, North Eastern Part of India and judiciary.

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SOME PEOPLE SAY THE WORLD WILL END IN FIRE;

SOME SAY IN ICE

ROBERT FROST

INTRODUCTION

India takes the stand proudly for having the largest democracy in the world .Moreover, it has acclaimed that it respects “unity in diversity”. Here the question arises that whether India has the true democracy or not and whether India has acquired the basic maintenance of different religions and cultures of the

minority sections. When it hits in our head, AFSPA¹ excruciates the true democracy ensured by Abraham Lincoln that democracy is for the people, by the people and of the people. Due to this reason, most of the non democratic countries would like to adopt the democratic form of government. But when it comes in the scenario of Indian Government, they follow the democracy in the blue eyes but renders the play game of dictatorship in the different corners of the princely state. They apply a new form of democracy in the heart of the people and they make discriminating and torturing the different forms of human structure especially in the state of Jammu and Kashmir and North Eastern Part of India in the name of controlling and curbing the insurgent outfits. In India, it remains a wasteland in contributing the protection of life and liberty. It is abrogating the protection of Life and liberty enshrined in the Fundamental Rights of the Indian Constitution. This Act is extended power to the armed forces to infringe the Fundamental liberty so as to curb the terrorism and insurgents in NES² of India. Behind at this backdrop, this makes the conflict between Fundamental liberty and this Act. It is high time for Indian Government to look into the provisions of AFSPA so as to ensure and maintain the protection of life and liberty. It should be repealed in keeping the preservation and protection of life and liberty along with Human rights at its first priority. If not repealed, people of NES are living in such a pathetic life and tortured environment. They feel like they are under the 21st colonial rule after British leaving their place. In national law, Article 14, 19, 21 and 22 are violated by this Act in which fundamental rights of the citizens are clearly specified to ensure the dignified life. These Articles are the basis for making any statutes and legislation but AFSPA has the sovereign power itself in which the judiciary can't interfere into the provisions of this AFSPA. It arises that who will administer the AFSPA. The answer is that the executive only outlines and changes the structure. So the apex court of India Supreme Court becomes the advisor not the enforcer. The agitation made by the NES to repeal the AFSPA shows like that Churchill quoted that "This is not the end, it is not even the beginning of the end, but it is perhaps, the end of the beginning"³. It should not be taken as a starter because people are fighting for their life and liberty in this tech-savvy world. It becomes bizarre in the life of the NES. Besides, in international platform, Article-3 of UN Declaration of Human Rights talks about the right to life, liberty and security should be appropriated in a high enforcement to achieve the goals of this human society⁴. Then, Article-7 entails that arrest and detention should not be arbitrary⁵. On the basis of this Declaration, all mentioned about the life and liberty in Indian Constitution but in actual reality, Human Rights are being infringed everyday in NES due to the prevalent of AFSPA which clashes with the protection of life and liberty mentioned under Article-21 of the Indian Constitution. The object of Article 21 is to emphasise the laying down of procedure for deprivation of life or personal liberty. It would be erroneous to assume that but for Article-21, the state authorities would be free to interfere with liberties of people without authority of law⁶. Right to live with human dignity is a Fundamental Right⁷. The discussion is dropped that "Everything has been said already; but as no one listen, we must always begin again" said by French writer thinker, Andre Gide⁸.

EVOLUTION OF AFSPA IN NORTH EAST STATES

In India, the Armed Forces Special Powers Ordinance was promulgated by the British, Lord Linlithgow, the then Viceroy and Governor General Of British India on 15th August, 1942 (Gazette of India, 15th August, 1942) to curb and control the Quit India Movement launched by Mahatma Gandhi. This was the yesteryear for this Act to step in the veins of the Indian Society. Lord Acton conveyed that "Power tends to corrupt and absolute power corrupt absolutely."⁹ Then this draconian and barbaric Act was promulgated post independence in 1947 to control the internal security in Bengal, Assam, East Bengal and United Province. These were the descriptive how India was bolstering the blistered strategy. Later, it was becoming an Act which was repealed in 1957. Then, it was prevailing in Assam and Manipur by re-enacting the Act as Armed Forces (Assam and Manipur) Special Powers Act 1958 to leverage the

¹ Armed forces special power act, 1958.

² North Eastern States

³ Dr. Subhash C. Kashyap, Constitution of India, Review and Reassessment, universal law publishing co, P-61, para-5.

⁴ Every person has the right to life, liberty and security of person.

⁵ No man shall be subject to arbitrary arrest and detention.

⁶ Haji Ibrahim v. State of M.P., 1975 M.P.L.J. 440.

⁷ Vikram Deo Singh Tomar v. State of Bihar, AIR 1988 S.C. 1782 at P.1783.

⁸ Supra notes-2, P-54

⁹ Galaxy: International Multidisciplinary Research Journal, Dr. YUmnam Oken Singh and Dr. Gyanabati KHuraijam, Armed Forces (special powers) Act 1958: A source of National Disintegration, page-2.

Naga insurgency and later it was spread to the whole North East of India. This is a legislation to stop the North East States from seceding from the Indian Union. Again, it was amended in 1972 which provided the slight changes that Central Government has been given more power instead of state government.

On 22nd February, 2019, the centre has empowered the Assam Rifles along the Myanmar Border to arrest anyone and search a place without warrant in the border district of Assam, Arunachal Pradesh, Manipur, Nagaland and Mizoram. An Officer of the rank corresponding to that of the lowest rank of member of the Assam Rifles was given power under Code of Criminal Procedure of section 4(1), 47, 48, 49, 51, 53, 54, 149, 120, 151 and 152 within the local limits of the area. Earlier, Assam Rifles was making arrest only in area where the AFSPA was in effect.¹⁰ On next day, the Home Ministry has kept in abeyance its order. In this notification, it is not clear why Assam as the state does not share its border with Myanmar. It became after the bilateral agreement between India and Myanmar on Land Border Crossing which was finalised in 2018. It ensures the Free Movement Regime. This will require giving suitable power to Border Guarding Forces under the Foreigner Act 1946 and Passport Act 1967 and Passport Entry into India Act, 1920 which was stated by the official.¹¹

REVISITING THE PROVISIONS OF AFSPA ACT

Since 1980 Manipur is under “the Disturbed Area” under this Act. Before 1972 Amendment, the Governor or the central government is of the opinion that an area is in such a disturbed or dangerous state that the use of armed forces in aid of civil power is necessary, then either of them can declare it to be disturbed area by notification in the state. This Act extends some extra power to the armed forces to kill the people if they feel suspicious on any person so as to function against the insurgent in the disturbed area.¹² Post Amendment 1972, AFSPA Act extended the power to declare an area disturbed to the central government in which people condemn for this and ask for the power should be handed over to the State/ Governor.¹³

Section-6 provides protection of the Army Forces against the prosecution before the court. Due to this reason, this Act is independent from the Judicial Independence. The judiciary can't obstruct its recourse though the recommendation can be availed. Sometimes police personal of state forces take the advantage in which they don't have the power under the AFSPA Act.

Section-3 of this Act entails no time limit. For every legal procedure, it should be done under the time bound structure. Even during emergency, article 20 and 21 are not suspended. It means that the basic structure of the Indian constitution is being made equivalent. The court held that by virtue of Article 355, the union owed a duty to protect the state against the internal disturbances.¹⁴ However, the legal procedure must be completed within the time framed structure.

Section-4 provides the unchecked power to the armed forces to arrest, search, seize and confine any suspected house or place of the insurgent group. It exacerbates the large scale violation of Human rights under article 14, 19, 21 and 22 and 25 of the Indian constitution. section-4(a) empowers excessive use of force to fire or kill any person if they feel suspected any person. section-4(b) extends in destroying house or structure which is presumed to be the house of insurgent by armed forces. Arrest without warrant amounts the violation of right to liberty which is given under article 21 of the Indian constitution which is well empowered to the armed forces under section 4(c). Further, section 4(d) sounds power of search and seizure without warrant by armed forces in cordon and search operation which violates the fundamental rights.

Section-5 gives the arrested person to be kept for several days without legal proceeding which encroach the fundamental rights given under article 22 of the Indian constitution.

¹⁰ The Hindu Newspaper -22nd Feb-2019

¹¹ Ib -23rd Feb, 2019.

¹² Anil Kamboj, Manipur and Armed Forces (Special Powers) Act, 1958

¹³ Ibid

¹⁴ Naga People Movement of Human Rights v. Union of India, AIR 1998, 2109

RIGHT TO LIFE AND AFSP ACT

On July 2017, the Supreme Court showed the painstaking over the reduction of the National Human Rights Commission who protects the right to life to a Toothless tiger. The citizens of Indian lose hope from the commission. Right to Life is impliedly defined under Article 21 of the Indian constitution. The term life does not include individual status enjoyed by a person,¹⁵ but it includes the right of every person to the possession of each of his organs.¹⁶ Further, personal liberty includes within its ambit the right to go abroad. The expression “personal liberty” can’t be so interpreted as to avoid overlapping between Article 21 and 19(1). The expression is of widest amplitude covering a variety of rights going to constitute personal liberty of man.¹⁷ The expression life is not limited to bodily restraint or confinement to prison but something more than mere animal existence.¹⁸ The concept of right to life and personal liberty guaranteed under Article 21 would include the right to live with dignity.¹⁹ The right to life in English law is enshrined in early legislation and is protected by the sanction of the criminal law. The death penalty for all but a few offences has been abolished.²⁰ Jurisprudence of rights in India has a constitutional status and sweep by virtue of Article 21 so that this Magna Carta may well toll the knell of human bondage, beyond civilised limits. The writ of Habeas corpus has a functional plurality and capacity to test human decency and dignity, and the court can issue writs to meet new challenges.²¹ Citizens have no fundamental rights either under Article 19(1) (a) or 21 to enter into jails to interview prisoner.²² The words “life and personal liberty used in article 21 as compendious terms to include within themselves all the varieties of life which go to make up the personal liberties of a man and merely the right to the continuance of a person’s animal existence. All those aspects of life, which makes a person with human dignity is included within the meaning of the word life. The right to life and personal liberty is paramount.²³ Deprivation of personal liberty has not the same meaning as restriction of free movement in the territory of India.²⁴ Under Article 21 these words are of deep meaning for all lovers of liberty and judicial sentinels.²⁵ With the above analysis, AFSP Act is not complied with the provisions of the Indian constitution under Article 21. It makes them an oxymoron.

Let’s have a glance in the provisions of AFSP Act. The use of force which is defined under section-6 of this Act. The Supreme Court has interpreted the right to life to include to live life with human dignity whereas, the “dignity as used in the provision, is something more than mere freedom from physical restrains or the bounds of prisons.²⁶ It imposes a duty on government to protect by law all illegal, arbitrary and summary executions as well as to ensure that such specified execution are recognised as criminal offences and punished with penalties.²⁷ Justice also requires that every individual accused be given all the protections of due process of law fair, just and reasonable procedure has been interpreted to include the right of speedy trial.²⁸ Under section 6 of this act, Immunity has been conveyed to the armed forces for the investigation. To invoke section-7 of AFSP Act 1958, the army claimed that the High Court does not have even the power or jurisdiction to entertain Habeas Corpus petition against it, without ascertaining whether the victim’s family have obtained the government permission to institute it.²⁹

¹⁵ M. kishta Reddy v. Collector, Karimnagar Panchayat(1970)1 Andh W.R 370:I.L.R(1970) Andh Pra 144: A.I.R 1970 A.P. 180.

¹⁶ Kharak Singh v. State of U.P.,1963 A.L.J. 711: 1963(2) Cr.L.J. 329:(1964) 2 S.C.J.107:(1964)1 S.C.R. 332: AIR 1963 S.C. 1295

¹⁷ Maneka Gandhi v. Union of India,(1978)2 S.C.J 312:(1978)1 S.C.C 248:(1978)2 S.C.R. 621:AIR 1978 S.C. 597 and A.K.Gopalan v. State of Madras,AIR 1950 S.C.27:1950 S.C.R 88

¹⁸ Kharak Singh v. State of U.P; AIR 1963 SC 1295

¹⁹ Daniel Latifi v. Union of India (2001)7SCC 740

²⁰ Halsbury’s Laws of England, 4th Ed., Vol.8; Para- 831

²¹ Sunil Batra(II) v. Delhi Administration (1980)3 S.C.C.488:1980 Cr.L.J.1099:AIR 1980 S.C.1697.

²² Sheela Barse v. State of Maharastra, (1981) 1S.C.C.748

²³ State of W.B v. committee for protection of democratic rights(2010)3SCC571(paras 60,61,62,63)

²⁴ A.K. Gopalan v. State of Madras AIR 1950 SC 27 (Para 12)

²⁵ M.H. askot v. State of Maharastra AIR 1978 SC 1548; (1978)3 SCC 544

²⁶ Sunil Bhatra v. Delhi Adminstration,AIR 1978,SC 1675.

²⁷ Ralph Crawshaw and Leif Holmstrom, Essentials cases on human rights for the police, the Netherlands,2006,p-40

²⁸ Hussainara Khatoonand and others v. Home Secretary, State of Bihar, AIR 1979 SC 1360

²⁹ Ashok Agrawal in search of vanished blood: the writ of High Court in Habeas Corpus in J & K: 1990-2004, south Asia forum for human rights, Kathmandu, Nepal, 2008, p-65.

CRITICISM OF AFSP ACT 1958

1) Section 3 of AFSPA was overwritten by Article 355 of the Indian Constitution: The Governor or Central government is empowered to declare any area of the State as “disturbed area”. It could not be arbitrary on ground of absence of legislative guidelines; Section 3 cannot be construed as conferring a power to issue a declaration without any time limit. But actually Article 355 violates the rights of section 3 of AFSPA.

2) India is a member of UN Human Rights Council.

India violates the article 4 of the International Covenant on civil and political Rights.

3) This Act is a pre constitutional law (article 13(1)) which violates the fundamental rights and directive principles of State policy of the Indian Constitution (Article 21, 14, 19, 22 and 25).

4) This act is Neo colonial system which is the modern technique to grab the land. It is really and completely outdated in the missile stage of advancement. People are moving forward to scale the moon by using the latest technology. Now the people are living under the modern colonial area if this Act is prevailed or enforced.

5) Section-4 provides the unchecked power to the armed forces to arrest, search, seize and confine any suspected house or place of the insurgent group. It excruciates the large scale violation of Human rights under article 14, 19, 21 and 22 and 25 of the Indian constitution. section-4(a) empowers excessive use of force to fire or kill any person if they feel suspected any person. section-4(b) extends in destroying house or structure which is presumed to be the house of insurgent by armed forces. Arrest without warrant amounts the violation of right to liberty which is given under article 21 of the Indian constitution which is well empowered to the armed forces under section 4(c). Further, section 4(d) sounds power of search and seizure without warrant by armed forces in cordon and search operation which violates the fundamental rights.

6) Section 5 of the Act cannot be enforced effectively. It gives the arrested person to be kept for several days without legal proceeding which encroach the fundamental rights given under article 22 of the Indian constitution.

7) It gives a special power to the armies who are not allowed to be prosecuted in the court

8) It violates the Human Rights. Here the Fundamental Rights of the Indian constitution becomes the waste in which the preamble of our constitution targets to achieve.

9) Section 6 provides over power to the armed forces. Further, it gives the protection of the Army Forces against the prosecution before the court. Due to this reason, this Act is independent from the Judicial Independence. The judiciary can't obstruct its recourse though the recommendation can be availed. Sometimes police personal of state forces take the advantage in which they don't have the power under the AFSP Act.

RECOMMENDATION/ SUGGESTION

- 1) Grievances cell be opened to get the complaints from the aggrieved party to justify their detention or infringement of right before the court.(Jeevan Reddy committee)
- 2) The armed forces must follow the use of minimum force in apprehending the suspected persons.
- 3) While searching and operating duty, women folk must be highly kept respected in first priority.
- 4) When the women are arrested, the lady police will be accompanied.
- 5) State forces should not be involved while operating the search.
- 6) The conviction is allowed to lodge a complaint against the force personnel.
- 7) CCTV Camera is fitted in the interrogation room to maintain the dignity of person.
- 8) Warm interaction with the local people before operation.
- 9) The judiciary should be allowed to review the protection of the fundamental rights.
- 10) The armed personnel should follow the Supreme Court guidelines strictly.

CONCLUSION

This AFSP Act 1958 does not maintain both international and domestic laws. It is a draconian law which does not follow the rule of law. Justice Jeevan Reddy committee suggested that it be included in UAPA. The powers of armed forces should be defined and specified distinctly. In the dark shadow of the democracy, our country is still in the widespread poverty, lack of proper education even though every citizen has the right to have the social rights, economic rights, cultural rights, civil rights and political rights. Even the Indian constitution provides the fundamental rights and constitutional rights. But when the Judiciary comes into the light of giving justice. It remains silent just like a stone. And in our country, the justice system is the justice of the high profile tycoons and standard qualified persons. They draw the black spots on the face of the true democracy. To get the true democracy, citizens should be given protection of life and liberties. Though recommendation made, there is no sign of improvement in the status of human rights. Now the National human rights commission becomes the toothless tiger. So the citizens of India decried that to whom they would stand and go to ask the human rights. India is a democracy. so they should follow the very constitution of India. Now it is high time for India to review the AFSP act 1958 to keep in the platform of no violation of human rights so as to ensure the protection of life and liberties under the helm of this barbaric Act. Besides, the world should have a vigilant over the human rights protection collectively.

