



ARMED FORCES SPECIAL POWERS ACT 1958 (AFSPA) AND HUMAN RIGHTS VIOLATIONS: A CRITICAL ANALYSIS

Mohd Aqib Aslam

Ph. D Research Scholar, Department of Law
University of Jammu, Jammu and Kashmir, India

Abstract

Armed Forces Special Powers Act (AFSPA), 1958 has been a controversial act over the years and has been criticized by different sections of the society since its enactment. This act gives unfettered powers to people deployed in armies to shoot and kill any person if they have any doubt that the person is a threat in any manner. This law has been and continues to be used by the armed forces which are a sheer violation of Article 21 of the Constitution of India. The law enacted even gives immunity or protection to the armed personnel against any type of prosecution. AFSPA has been a topic of debate since its inception and it should be struck down because it is misused by the people to a great extent.

Keywords: Human Rights, Critical, Armed Forces, Safeguards.

Introduction

The increasing instances of violence in the North-East states of India had made the two houses of the Parliament initiate and pass the Armed Forces (Special Powers) Bill which received the presidential assent on 11th September 1958. The Armed Forces (Special Powers) Act 1958 was put into effect in North-East India from 1958 and Jammu and Kashmir from 1990. This Act provides an exemption for the officials of the Armed forces for working in any way in the prescribed disturbed areas. This Act has been the center of several debates and has been highly criticized by human rights activists as they believe that the act introduces threats towards the citizens of India that it is supposed to be protecting. Just like our Indian legal system presumes an offender to be innocent until proven guilty, this Act, on contrary, allows the officials of the armed forces to shoot anyone on the eve of a mere suspicion of the commission of an offence. The Act providing unconditional safeguards to the acts of the armed and paramilitary forces. Whereas it was introduced for better management of uprising rebellious movements in certain states.

Reasons for Study

The motivation for the research comes from the curiosity of the researcher to seek an alternative solution to seek answers to the political questions facing a nation than to set-up an inquiry commission and wait years for recommendations and then not implement them. The cases of victims of collateral damage and hence chose to research this issue.

Objectives

The chief objectives of the research are as follows:

1. To critically analyze the impact of the (AFSPA) Act.
2. To study the impact of (AFSPA) act and the reasons that causes human rights violations.
3. To look into the past and present political and socio-economic condition of the state and whether the act is in any way detrimental to the well-being of the society.

Significance of the study

This research will illustrate the violations of the human rights aspect and throw light on the impact and the merit of this particular act on the different states of India. This research paper will also be a source of an unbiased discussion and analysis of the sensitive issue of the presence of the army in the different states of India.

Research questions

The main research questions for the research would be the following:

1. What is the impact of the Armed Forces Special Powers Act concerning human rights in different states of India?
2. What are the provisions of the Armed Forces Special Powers Act?
3. What could be the redressal mechanisms or the alternatives that would rehabilitate the victims?

Methodology

The doctrinal method would be the preferred methodology to be followed for the said research as it would involve extensive reading and critical analysis. As a secondary tool for study, books of eminent authors, articles in research journals, newspaper reports have been scanned and analyzed. Review and analysis of legal literature available in India have been made and referred to extensively. Several online databases and internet search engines have been used to keep the study updated.



Review of literature

Apart from extensive criticism from the media, the act has not attracted much attention from the academic community in India. There are no prominent authors for the same but a comprehensive list of appropriate books and authors have been referred for this research paper and are as follows:

Human rights watch organization has authored a book with a detailed overview of the armed forces in the state of Jammu and Kashmir titled *Everyone Lives in Fear: Patterns of Impunity in Jammu and Kashmir, Volume 18*.¹ It discusses the Legal causes of abuses and impunity. Section 45 of the Criminal Procedure Code - Preventing prosecution: Section 197 of the Criminal Procedure Code - The Jammu and Kashmir Disturbed Areas Act and Armed Forces (Jammu and Kashmir) Special Powers Act. It throws light on the weaknesses in military court jurisdiction. It goes on to discuss the recent abuses and continuing impunity i.e., Killings, disappearances, torture, and cruel, inhuman, and degrading treatment. Politically motivated killings, summary executions, and intimidation. Ted Svensson in his book *Production of Postcolonial India and Pakistan, 2012*² tries to look at the occasion and simultaneous move that the introduction of India and Pakistan as "postcolonial" states in August 1947 constituted and effectuated, analyzing India and Pakistan together in a parallel and commonly dependent perusing, and using essential information and archival materials, Svensson offers new experiences into the current writing, trying to conceptualize freedom through segment and decolonization as far as variety and as a 'restarting of time'. Through his investigation, Svensson shows the constitutive and unyielding thought. The Human Rights Crisis-A Pattern of Impunity,³ June 1993 by Asia watch, a division of human rights watch compiles a comprehensive scope of the conflict in the state and the applicable international laws. It gives a detailed analysis of the violations by government forces. Another noted author M.S. Chitkara in his book titled *Human Rights: Commitment and Betrayal*,⁴ 1996 talks about the human rights violations by the armed forces in the state of Jammu and Kashmir. Professor of Political Science SumitGanguly in his book *India and Counterinsurgency: Lessons Learned*⁵ talks about filling a reasonable hole in the writing, this book concentrates on India's encounters pursuing counterinsurgency crusades since its autonomy in 1947. It addresses the pressing military and citizen needs in the counterinsurgency enclosure by concentrating on the lessons that might be taken in by different states from India's broad attempts.

Another notable author Yash Ghai, in his book *Practicing Self-Government 2013*,⁶ elucidates the institutional and political conditions for a workable arrangement without an army. Victoria Schofield in her research book *Kashmir in Conflict*,⁷ 2010 with the help of numerous interviews she takes into accounts the hopes and fears of the people when it comes to the presence of the army in the state.

Scope

The scope of the research would include a socio, political, legal, and economic analysis of the Armed Forces Special Powers Act. The origin, history, and development of this act would also fall within the scope of the research.

Importance of research

1. **Social welfare:** social welfare can be achieved through socio-legal research.
2. **Comparative study:** it helps in research to find out what the law is in other States.
3. **Law reform:** research is a tool for any project of Law reform.

Limitation

The chief limitation for the dissertation would be the availability of the research material, as the very little academic discussion has taken place over the years on this topic. The topographical limitation has limited the source of information. Another limitation would be the time allotted for the research, which may be hard to manage. The lack of access to certain commission reports would also be a minor limitation to the study.

History of Armed Forces (Special Powers) Act 1958

Pre-independence

With the establishment of the Quit India Movement in 1942 and the merger of the Indian National Army and the Japanese soldiers approaching the eastern border of the country, mass violent movements broke out. The All-India Congress was declared

¹ Meenakshi Ganguly (2006). *Everyone Lives in Fear: Patterns of Impunity in Jammu and Kashmir, Volume 18*. India: Human Rights Watch.

² Ted Svensson (2012). *Production of Postcolonial India and Pakistan*. India: Routledge.

³ Human Rights Watch (1993). *The Human Rights Crisis in Kashmir: A Pattern of Impunity*. USA: Human Rights Watch.

⁴ M.G. Chitkara (1996). *Human Rights: Commitment and Betrayal*. India: APH.

⁵ SumitGanguly, David P. Fidler (2009). *India and Counterinsurgency: Lessons Learned*. US: Routledge.

⁶ Yash P. Ghai, Sophia Woodman (2013). *Practicing Self-Government*. US: Cambridge University Press.

⁷ Victoria Schofield (2010). *Kashmir in Conflict: India, Pakistan, and the Unending War*. US: I.B.Tauris.



illegal. Famous leaders were arrested, people were imprisoned, mob violence broke out, and the whole situation went out of control. Lord Linlithgow, the then Viceroy of India, declared emergency all over India and thereafter, initiated the Armed Forces (Special Powers) Ordinance 1942. This Act deliberated powers to the Commissioned Officers to act in any manner and apply force when required. It didn't matter even if it resulted in someone's death who didn't work according to the officers when he was asked to stop or ventured to destroy property that was to be protected by such officers. These officers also had the unconditional power of arresting anyone.

Post-independence

Even after the independence of India, this Act was re-enacted in 1958 in the form of the Armed Forces (Special Powers) Act, 1958. Nagaland saw the rebellious uprisings introduced by the Naga National Council (NNC) against the 'Indian armed forces' set up in Nagaland to function after 1950. The necessity of a legal base to support the armed forces led to the establishment of Armed Forces (Special Powers) Regulations 1958 by the Congress Government at that time. This was quite similar to the Armed Forces (Special Powers) Ordinance of 1942. But certain changes were made. The part of the declaration of emergency now had disturbed areas. The powers to kill a person based on suspicion of being against public safety or carrying arms and ammunitions, searching a place without a warrant and destroying it as being or was used by such rebellious militant's groups and so on, were made more definite and specific. Junior commissioned officers had strong powers as well. This Act only applied to the North East region of India, unlike the British ordinance that applied to the whole of India.

Post-1958

The AFSPA 1958 was strongly supported by the then home minister G.B Pant who believed states required protection from some Nagas indulging in murder, arson, dacoity, etc. Critics sitting in the Parliament opposed this bill as it was violative of the Fundamental Rights provided to every Indian. Without the declaration, imposing an Emergency in these areas would invalidate the powers of the civil authority concerning the Indian Army. However, no opposition could stop the bill from receiving the presidential assent and being changed into an Act. The Act was again amended in 1972 where K.C. Pant, the new Home Minister, put forth the objectives of the Act specifying that the Armed Forces (Assam and Manipur) Special Powers Act, 1958 should have consistent application in all the North Eastern States. The Governor of these States and the administrators of the two Union Territories were conferred with the power of deciding upon the disturbed areas. This amendment also authorized the Central Government of India to apply this Act.

Armed Forces (Special Powers) Act, 1958

The AFSPA, put to force in 1958, confers paramount powers on the Armed Forces to control the rebellious and violent uprisings in certain states of the country. This Act was meant to help the armed forces for acquiring control over violent internal demonstrations and unrest organized by underground combative aggressors to continue their illegal and unconstitutional activities and influence more people. The AFSPA was initially introduced to fight against the Naga uprisings following which it was applied to the prescribed disturbed areas as per the Act which was at that time the North-Eastern states of India mainly.

The State Government's power of declaring an area disturbed was altered in 1972 and the Central Government was added in the scope too. After a few years, the parliament came up with the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990, applicable to areas within 20 kilometers of the Line of Control. Places like Rajouri, Poonch, Baramulla, Budgam, Pulwama, and so on were declared as disturbed areas. Almost 20 districts of Jammu & Kashmir have been under the control of AFSPA since 1990. Along with the North-Eastern states and Jammu and Kashmir, it was also implemented in Punjab, but in 2008 it became the first state from which the AFSPA was removed.

Important provisions

The application of AFSPA to an area would only happen if the system of law and order of that area has gone much beyond the control of the State Government disrupting the peace of the society. Whenever the deployment of the armed forces is requested and the AFSPA is put into force in that state, the governance of that state remains in the civil administration and is not taken away. According to Section 1(2) of the Act, the scope of application of the Act lies within the North-eastern States of Assam, Manipur, Meghalaya, Nagaland, Tripura, Arunachal Pradesh, and Mizoram. Some of the important provisions of the Act are:

1. Section 2 of the Act puts forth certain definitions relating to this Act. Section 2(a) notifies that the term "armed forces" includes the military forces as well as the air forces which are considered as land forces. It could constitute any other armed forces of the Union as well. Section 2(b) further defines a "disturbed area" as an area that has been notified or declared as a disturbed area under Section 3 of the Act.



2. The Central Government, the Governor of a state, the administrator of Union Territories, it is under the opinion of the whole or part of a State or Union territory being under dangerous conditions and requiring the aid of the Armed forces, then they can declare that area as a “disturbed area” under Section 3 of the Act.

3. Section 4 of the Act notes down the special powers given to the commissioned, non-commissioned, warrant, or any other officers of the prescribed rank. One of the powers give the authority to the officers of firing or using force, even if it caused the death of the person contravening law and order against whom such steps were taken or even in disturbed areas where even after the assembly of five or more people or the possession of arms or explosive substances are prohibited, it takes place after ignoring the warnings.

4. The officers can arrest a person without a warrant if he/she commits a cognizable offence or if there is a suspicion of such a person going to or already have committed such an offence. The force required for the arrest can be applied as the officers deem fit. Officers can even enter and search places without warrants if they believe some property is being used for illegal purposes, used for storing arms, unreasonably confining people, and so on.

5. According to Section 6, no prosecution or legal proceedings can be furthered against a person acting under the powers given by this Act. It can only be instituted with authorization from the Central Government.

Working of AFSPA in Nagaland

The implementation of the Act in Nagaland has shown to the world the instances and cases of human rights violations, particularly by law enforcement agencies. A report was given by the Village Panchayat of Khuivi under Zunobetuo district on how the families of National workers were taken to the army concentration at Atukuzu under Zunobetuo district. They were punished and tortured for 8 months. A report filed by the Naga Hills Rehabilitation Committees in 1960 noted that several Christian Churches were damaged and destroyed in different areas of Nagaland by the Armed forces.

A reporter of the “Nagaland Post”, a local daily, had witnessed the 16th Punjab Regiment of Indian armies rounding up the villagers of the Kanjang village, separating the men and beating them mercilessly. In the other half of the day, women and children were sent to the forests and the men of the village were beheaded and burnt. One of the men was the father of the reporter. Four minor girls were forced and taken to the Yankeli Baptist Church by the officials of the Contingents of the 1st Maratha Regiment. The girls were raped in the most sacred part of the church. Such an inhumane activity in a holy place was ruthless and this was considered to be the action against the Naga uprisings but completely deviant of the actual goal of controlling the uprising. Several such incidents have been reported over the decades but without any justice or solution.

But again, as believed, the AFSPA has helped to keep the violent uprisings under control but yet it has been retained for ages even after the ceasefire agreement in 2015. In December 2019, according to the Central Government, as killings, extortions and dacoity were increasing in several parts of the state, it required the security forces to operate there. The Central Government notified that the state would be under the category of the ‘disturbed area’ for six months beginning from 30th December 2019 as per Section 3 of the Armed Forces (Special Powers) Act, 1958.

This went on to the Chief Minister of Nagaland, Neiphiu Rio who notified in February 2020 that the state would remain as a ‘disturbed area’ under the AFSPA till the Naga political issue had a solution and the peace accord was established. The chief minister notified this in the fifth session of the 13th Nagaland Legislative Assembly (NLA). But the opposition, the Naga People’s Front, spoke in the House that the State Government had been creating confusion and false hope among the people about the peace accord between the Naga political parties and the Centre.

Meghalaya and certain places of Arunachal Pradesh free from AFSPA

Even though the Tripura Government had revoked AFSPA from the state after 18 long years, it was on 30th September 2017, that areas constituted within the 20-km belt in Meghalaya bordering Assam were declared as “disturbed areas”, although this was reduced to a 10-km belt on 1st October 2017. This wasn’t operational in Mizoram. In 2018, Meghalaya, Tripura, and certain stations in Arunachal Pradesh had recorded an almost 85 percent dip in militancy and uprising levels after which the AFSPA was almost in force for 27 years in Meghalaya and Arunachal Pradesh was removed by the Centre. AFSPA was removed from 8 out of 16 police stations in Arunachal Pradesh.

The Act was re-issued for another six months in 3 eastern districts of Arunachal Pradesh bordering Myanmar and other such stations bordering Assam. These 3 districts have been under the control of AFSPA since 2016. Two parts of Arunachal Pradesh and Meghalaya had been declared as “disturbed areas” in 1991 for preventing these places from getting affected by the militancy and insurgency by organizations like the United Liberation Front of Asom (Ulf) of Assam.



Jammu and Kashmir and AFSPA 1990

The medium of war between India and Pakistan, Jammu and Kashmir came up with its uprisings and separatist development movements in and around 1989. The involvement of Pakistan in encouraging these militants and directing Islamist jihadists in reclaiming the land by organizing more movements worsened the condition of the state. The AFSPA was put to effect with the establishment of the Jammu and Kashmir Disturbed Areas Act, 1990. This was set to expire in 1992 but was re-enacted in the form of the President's Act, 1992 under Article 356 of the Indian Constitution authorizing the parliament to legislate on Jammu and Kashmir. The Armed Forces (Jammu and Kashmir) Special Powers Act 1990 installed in Jammu and Kashmir received the presidential assent on 10th September 1990 and was put to effect on 5th July 1990. This Act would apply to areas declared 'disturbed' by the state or the central government and it would require land forces to be deployed for the implementation of the Act. This saw the Governor's administration declaring all the six districts namely Anantnag, Baramulla, Badgam, Kupwara, Pulwama, and Srinagar in Kashmir disturbed alongside areas at a distance of 20 kilometers from the LoC near Poonch and Rajouri.

This Act authorizes officers to fire or use any force against persons held to be contravening the laws in the disturbed areas. They wouldn't even require any warrants to arrest someone who has, had, or has the probability of committing a cognizable offence under the Act. No legal proceedings against army personnel could be furthered even in case of any violation or breach of laws. These powers conferred on the armed forces for a different use have been utilized time and again to make the lives of innocent civilians miserable and it has also facilitated the commission of brutality against them by such officials. Chief Minister Omar Abdullah during his term had consistently asked for the withdrawal of AFSPA from certain areas of Jammu and Kashmir which accordingly did not need it. The army along with fighting against infiltrators have also caused brutalities against civilians in the name of protection and duty.

For instance, in the firing in Shopian district of Jammu and Kashmir by the armed forces for saving army officers and their arms from a violent mob, three civilians had been killed. An FIR was filed against the armed forces under Sections 302 and 307 of the Indian Penal Code for an attempt to murder and murder. But it was held that the army could use their special powers under the AFSPA and also it was notified that the state police department couldn't have filed an FIR against army personnel. Then the report of a youngster of Anantnag in Kashmir was tortured and interrogated as he was under the suspicion of being a militant. One minor girl from Palhalan was brought in for interrogation of the whereabouts of her neighbour and in that process, she was stripped naked and almost beaten to death. The list of such brutalities that go unchecked is never-ending to date. More than 90 percent of such brutalities are ignored and not reported.

Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 was enacted to enable certain special powers to be conferred upon members of the armed forces in the disturbed areas in the State of Jammu and Kashmir. With the enactment, the Union Government sought to control the law and order situation in the State of Jammu and Kashmir. There has been a re-established civil argument over Armed Forces Special Powers Act, in the late months. The course of this talk has seen the solidifying of positions from the State government in Jammu and Kashmir (J&K), human rights activists, certain non-administrative associations (NGOs) dynamic in J&k and Manipur; and the individuals who help its maintenance, including political gatherings, service of the guard (Mod) and the armed force. The government has been holding discussions with different stakeholders, however, an official choice on the issue is even now pending. The strongest resistance has hailed from J&k, where the AFSPA is seen as a real hindrance in the method for peace and compromise in the locale. Then again, the armed force, sees it as a vital empowering system, to not just guarantee peace and security in the state, additionally to annihilation the substitute war points of Pakistan.

Armed Forces Special Powers Act, 1958 and Its Impact

AFSPA had its roots in the Lord Linlithgow Ordinance 1942 which was enacted to curtail the Quit India movement and Nagaland was one of the first former states to demand the withdrawal of itself from India. After this, the government enforced AFSPA which is a law that was used back then by the Britishers to curb the movement of a struggle for freedom because of which many Indians were killed, imprisoned, and many families were destroyed. AFSPA is the same as other colonial laws that were enacted and enforced onto the people before independence. Now, it is even more arbitrary in nature than it was before because earlier the power to shoot was given to only the officers who were of the rank of captain in 1942 before independence. But now it is extended to even the non-commissioned officers and thus making it arbitrary in nature.

AFSPA gives power to the people who are in the army to shoot a person if they believe or have any thought that the concerned person may cause a threat. The law even gives immunity to the armed personnel before getting prosecuted along with other types of immunity. AFSPA has been enforced in different parts of India after it has come into force in different states of India like in almost all the North-eastern States, Punjab, and also many times in the state of Jammu & Kashmir. AFSPA is often referred to as a bad law since the time it was enacted because of its arbitrary nature. People in the past as well as now have many times protested against this law especially because of the problems and incidents of human rights violations in the states like Kashmir, Nagaland,



Manipur, and other north-eastern states. It has been years since this act came into being in India but the conflicts related to the law have not changed and have remained the same till now. There have been incidents like in Kashmir where a large number of civilians were injured and many were killed and blinded for their whole life because of the use of pellet guns in the year 2016 and because of this people have been agitated of the government at the Centre than ever before because of their inability to take strict actions against such offences which outrageous in their nature.

If one goes through the data and situation prevailing then will notice that there are people as young as between the age group of 12-17 years who have been booked under the Public Safety Act, 1978 which is a state law that gives powers to the police to detain any person for months without taking his case to trial. Like, there have been several cases of fake encounters in Manipur as it was claimed in the case of **Extra-Judicial Execution Victim Families Association and Anr. v. Union of India**⁸ Rapes and other incidents of sexual harassment have become common and even though such incidents are happening then also the voices of people in the region of Kashmir and Northeast have not been heard and taken into account by the concerned people.

The Supreme Court in its decision in the case of **Naga People's Movement of Human Rights v. Union of India**⁹ upheld the constitutional validity of AFSPA but laid down certain guidelines in the form of do's and don'ts. The do's and don'ts are a range of duties and responsibilities such as a person should not be detained for more period than what is required and then he should be handed over to the nearest police station and no force should be used on that person who is arrested except when he is trying to escape. No persons are allowed to use third-degree torture on the person arrested or against the person who is under suspicion that will cause pain to him to get information or make the person confess and only the armed personnel are allowed to arrest the person.

There have been many human rights activists who have protested against such acts like Irom Sharmila where she followed the example of Mahatma Gandhi. She is a 39-year-old activist who was on a hunger strike in November 2000. She is protesting against this most controversial law in India which is AFSPA which was enforced in Manipur in the late 1980s, after the incident when several groups in Manipur began a movement to free themselves from the Indian subcontinent. There has been conflicting of interest with people residing in Manipur because of the political propaganda, which had eventually impaired the former princely state of Manipur when it was merged with India in the year 1949. Many people see the union of India is flawed and would prefer independence from it. Several other ethnic groups were fighting for independence from India like in the states of Nagaland, Assam, Tripura, and some parts of Kashmir which are under the control of India. AFSPA is considered a bad law and criticized so much because it indemnifies the Indian soldiers who are deployed to fight battles.

Need for A Transformative Law

Now, it's high time to change this law which does flagrant misuse of powers which in turn violates human rights. Also, the jurisprudence has changed on the fundamental rights given to us by the constitution itself. The rights guaranteed under Article 21 have been extended and now it includes multiple rights in it like the Right to privacy as held in the case of **K.S Puttaswamy and Anr. v. Union of India**¹⁰ The Supreme Court in India in various cases over the years has made it important for human rights protection in India as well as under International law.

The important thing to note is that the reports do not include the atrocities and violence committed by the militants. In the case of **Extra-Judicial Execution Victim Families Association v. Union of India**¹¹ where the court had laid down the guidelines regarding the inquiry to be conducted for the fake encounters in the state of Manipur. The Supreme Court held in its decision that the decisions taken by the Manipur Police in the exercise of force on to the people are not permissible even in the areas which were declared to be disturbed region and under the Armed Forces Security Act in the state of Manipur. Also, directions were given to conduct an inquiry regarding the encounters resulting in deaths of persons which were carried on by the police of Manipur and by the armed personnel deployed in Manipur.

The judgment given by the Supreme Court was largely celebrated by the families of the victims as well as by the human rights activists. This decision was given despite the fact of Section 6, AFSPA, 1958 the courts gave this decision because they had to enquire that whether there was an abuse of power by the people in the armed forces or not and whether the encounters have done were genuine or fake. This is not the first instance where the courts have taken such a decision because it was taken earlier by the Supreme Court in the **Naga People's Movement of Human v. Union of India**. This decision taken was necessary to check the facts that the government in power had continued to deny any such allegation made on the armed forces relating to the encounters done in the state of Manipur and flagrant violation of human rights.

⁸ (2013) 2 SCC 493

⁹ (1998) 2 SCC 109: AIR 1998 SC 431

¹⁰ (2017) 10 SCC 1

¹¹ (2013) 2 SCC 493



Apart from conducting the inquiries related to the death due to misuse of power by the police officials, the court also stressed the issue of re-affirming whether we need this act by going for the judicial review of AFSPA. Reports have been submitted to the Supreme Court on fake encounters committed in the state of Manipur since 1979 which includes nearly 1,528 cases. If one goes through the reports on the number of innocent people killed then will notice that nowhere people in Manipur are safe. Especially the data shows that most young men are killed because they are suspected of militants. The sad part is that these reports were submitted by the government only to the judges and a copy of the report was not given to the petitioners who were an important part of these cases. So they were unable to follow their case and know the status of the case. Despite all this order was passed that the strength of the team investigating the case should be increased. It was also directed that the National Human Rights Commission (NHRC) should be involved as a part of the team doing the investigation.

Case Laws

In the Naga People's Case, the courts looked at different issues specifically on the point of arbitrariness and the unconstitutional powers as declared by the courts under AFSPA. Many contentions were raised against the power to shoot under AFSPA, the immunity given under AFSPA, and the powers granted by the Centre for prosecuting the armed personnel. But even after so many criticisms surrounding this act, there were no arguments related to the rights of people in such areas except that it should be less stringent so that people are not harassed. AFSPA needs to be looked at from the point of view of constitutional morality also taking into account other approaches available that the Supreme Court has made important in a democracy. This eventually means that under AFSPA the governor of the state and the central government has the power to declare any part of the state or any small part of the state as a disturbed area. AFSPA was held constitutionally valid in this case by the Supreme Court of India. Parliament in all its way is competent to enact the act in the view of Entry 1 of State List and Article 248 which is read with Entry 97 and Entries 2 and 2-A of Union List and by this Parliament had the power to enact this in the year 1958.

In another famous case of **Indrajit Barua v. The State of Assam And Anr**¹² where the court found and declared that the state has to assure the protection of its citizens and their rights guaranteed under Article 21 which is also given to people where the AFSPA is enforced. The people in that area which is assigned as 'disturbed areas' are denied any type of protection of their lives and liberties including protection of the Criminal Procedure Code and even the right to approach the courts and seek redressal which in turn has violated Article 14 of the Constitution of India that is given by the makers of the constitution and is guaranteed to its citizens. By looking at the situation in the North-eastern side of India it could be concluded that people living over there are eventually under army rule.

In other cases, like the Shopian Case, two women went missing while they were returning home from the orchards and the next day their dead bodies were found and it was alleged that they were raped and killed by the armed forces that were deployed nearby. Eventually what happened was that the injuries that were on the private parts of the girls that were supposed to be mentioned in the post-mortem reports were cleared off, so that the armed forces could not be blamed and questioned or brought into the matter, even no FIR was registered in this case where such horrifying incident took place. Then in the case of **Luitrukla v. Rishang Keishing**¹³ where a writ of habeas corpus was filed and the court ordered that the army should follow the rule of Code of Criminal Procedure but there was enforcement and nobody paid attention to the sayings of the Guwahati High Court. In return, the army officers had accused the judges of the High Court of weakening the powers of the military forces deployed in the northeastern part of the country.

Campaigns to Repeal AFSPA

There have been campaigns organized by people and human rights activists to repeal this abusive act which is known as AFSPA. Despite the campaigns organized by various international human rights activists as well as domestic ones, the Indian government is not willing to repeal the act. There have been committees in the past that were set-up in 2004 to repeal the act like the Justice Jeevan Reddy Committee which was set-up and Dr. Manmohan Singh formally agreed to review the AFSPA after the killing of Thangjam Manorama Devi in the year 2004. It was a committee set-up with Justice Jeevan Reddy, a retired Supreme Court judge as its head to review Armed Forces Special Powers Act, 1958. It was set to see whether it should be replaced with a more humane act while taking into account the duty of government to protect the basic human rights guaranteed of its citizens.

The reports were submitted by the committee to the Home Ministry on 6th June 2005. But an accident occurred when the report which was not made available to the public was leaked and was available to the general public on the Internet. The reports showed that they had recommended repealing the act and also made a conclusion that it was a bad act. And now when it has been enforced in so many parts of the country it has turned into a tool of discrimination and violence. The committee even recommended

¹² AIR 1998 Del. 513

¹³ (1982) 1 GLR 756



that some of the provisions should be transferred to the Unlawful Activities (Prevention) Act, 1967 and even asked to set up an independent cell which will be called as 'grievance cell' that will do the work to enquire into the complaints filed for violation of basic human rights. It is not only this committee that has recommended repealing Armed Forces Special Powers Act, 1958 but committees like Justice Verma Commission in the year 2013 had also reported that there has been an abuse of powers by the armed forces. Other reports show that the killing of Thangjam Manorama Devi by Assam Rifles in the year 2004 was not disclosed by the government.

AFSPA and International Law

India is often considered as a country around the world that gives significance to the rights and liberties of its citizens. But what is happening in the states of Manipur, Jammu & Kashmir, and Nagaland looks like the law is making a mockery of the human rights which are guaranteed to its citizens. In the recent past, the violence which had occurred in Jammu & Kashmir has made people start to think that we really need AFSPA and now it has turned into a hot topic for a national debate.

The first state where Armed Forces Special Powers Act, 1958 was enforced was the state of Arunachal Pradesh then it went on and was also enforced in the state of Assam, Manipur, Meghalaya, Mizoram, Tripura, and Nagaland, and later in July 1990, it was enforced in the state of Jammu and Kashmir. It is a type of law that gives excessive power to the armed forces and the people who are suffering because of it consider it a draconian law. Over the years, people have campaigned to repeal the act and even international organizations like Amnesty International have asked the courts in India to look into the matter deeply and conduct investigations regarding rampant misuse of powers by armed forces as well as by other government officials that led to many cases where reports show violations of human rights.

Many people even compare the Armed Forces Special Powers Act, 1958 to the Rowlatt Act, where the Britishers gave themselves unbridled powers to imprison any person based on any suspicion of them being involved in any terrorist activity against British India for up to 2 years without giving them a chance for a trial. Another important thing to note is that the Indian Army which is the organization being accused by the people for committing horrifying acts that were being carried on in the state over the years never came in front of the public to express their views and take a stand on this important issue. And data shows that the army is never called into question except in situations where it is beyond their capacity of administration, the police, and other officials.

AFSPA and Human Rights Violations

It's high time that AFSPA should be looked into seriously by the government and repealed because of the incidence of violence that had happened in the past and continues to take place even now. One of the incidences showcasing violence is Operation Bluebird which was also reported by some of the prominent international organizations which happened in the month of January in 1987 at a place called Oinam in the state of Manipur where almost 30 villages occupied by the Nagas were covered for committing violence that included torture, killing people in masses which also added to heinous acts of sexual harassment, theft and other criminal activities which were carried on for many days.

It is also important to note that even the authorities were not allowed to move into the areas where such activities were carried on. AFSPA is inhumane as it had made the lives of people as if they were in curfew-like conditions for their entire lives. This act overall does not abide by the principle of constitutional morality and is arbitrary in nature. The decisions of the government taken in cases that relate to the disturbed areas cannot be questioned in any court of law. And because of this many incidences that relate particularly to these areas where such activities are being carried on is not reported and justice is not given to the victims. So, it will be good for everyone if AFSPA is looked through the same perspective and constitutional morality and non-arbitrariness are taken into consideration with other modern approaches which the Supreme Court considers important for a democracy.

It would mean that AFSPA needs to be repealed because of the reports submitted by various committees and incidence happened from the early 1990s. This way only the morale of the armed forces will be broken if they are held accountable for actions, they had taken under AFSPA. The important thing to take into account is that just amending the act will not solve the problem as many gaps cannot be filled up by amending the act. The government needs to know that the rights of the people are to be protected and for that AFSPA needs to be repealed. It is not only that the fundamental rights of the citizens are violated but also it is against the Universal Declaration of Human Rights which India has signed. What has happened in Kashmir has also highlighted the situation prevalent in the state from July in the year 2016 to April 2018. It also raises serious concerns about the activities that Pakistan carries on in the parts of Kashmir.



Suggestions

Some viable suggestions for better working of the AFSPA could be

- i) Section 4(a) which is completely against the scope of international human rights that protects the right to live should be repealed or amended. It also violates the principles upheld by criminal justice that is the assumption of innocence until one is proven to be the offender. When the armed forces are called to take control of the disturbed areas, the power conferred upon them of using unconditional force as per Section 4, validates the commission of extrajudicial killings which is inconsistent with Article 246 of the Indian Constitution read with the 7th Schedule that places 'Law and order' under the State's list. Therefore, it is Ultra vires.
- ii) Section 5 of the Act should be consistent with Article 22 of the constitution under which it is compulsory to present an arrested person in front of the Magistrate within 24 hours.
- iii) The scope of Section 6 should be increased to keep a close check on the armed forces and stop them from committing inhumane and heinous crimes against innocent civilians. The sanction of the Central Government shouldn't be waited for, maybe a special committee could be formed to begin inquiries straight away without any delays or prejudices against anyone.
- iv) The suggestion put forth by the Sarkaria Commission of the states to develop their system of maintaining and dealing with public order and also as per the recommendations of the National Police Commission of deploying the Central Reserve Police force for day to day policing instead of engaging the army and paramilitary forces should be looked into and so on.

Conclusion

The reason for which the AFSPA was introduced even after the colonial rule was to protect the country from enemies and anti-national uprisings. But has the Act been implemented for that work to date? Through the years, the list of crimes and inhumane activities committed by the Armed forces has broken records. Instead of protecting the nation's people, it has been exploiting them ruthlessly. Even if on one side it has successfully stopped uprisings and enemies from infiltrating the country, on the other side it has become a reason to invite the vengeance of the people of the nation and give birth to greater anti-national uprisings. So, what needs to be done is keeping a good and strict check on the officials, amend the laws and introduce rigorous punishment for such offences. It is also important to introduce limitations for the unconditional power of the Armed forces and introduce a greater role for the Supreme Court to attain justice.

It is now very important to note that time has come and there is an urgent need to take into account the human rights violation that happened in the past and is still being carried because of conflict of interest. And any decisions taken to resolve the situation prevalent should lead to the end of violence especially keeping in view the political conflict. Office of the United Nations Human Commissioner (OHCHR) reports also shows the increase in violence like shooting that has led to the casualties that eventually injure the civilians and has displaced many people that lived across the Line of Control.

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