

ARMED FORCES (SPECIAL POWERS) ACT, 1958 IN NORTH – EAST INDIA : AN ANALYSIS

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Abstract : The Armed Forces (Special Powers) Act, 1958 is an act that is implemented in areas that are declared as ‘disturbed’ either by the Central Government or the State Government under the Act. Once AFSPA is imposed in a region, security forces are deployed there and these forces enjoy special powers and immunity under the act empowering them to kill, arrest, search without warrant etc. This wide range of powers bestowed upon them is often allegedly abused resulting in abhorrent human right violations. This article talks about the origin, implementation and its abuse at the hands of the armed forces in the North – East region of India comprising of seven neighbouring states where it has been in force for more than 50 years now and how it has affected the livelihood of the inhabitants living there.

Introduction

AFSPA was first enacted as the Assam and Manipur Special Powers Act in 1958. It was amended in 1972 and 1987, and applied to all the North East states. AFSPA has been in existence for the last 58 years. It is pertinent to note that this law was meant to be a temporary measure and it is unsettling to know that despite claims of normalcy by almost all political parties of the different states of the North-east, this law continues to be in existence.³

History

The armed conflict in North-East is a long drawn one. On August 15, 1942, Lord Linlithgow, the then viceroy of India, promulgated the Armed Forces Special Powers (Ordinance) as a means to subdue Quit India Movement that was launched by Mahatma Gandhi a week earlier ultimately leading to the imprisonment of Gandhi, Jawaharlal Nehru and other prominent leaders of the Indian National Congress. Linlithgow responded with violence to the Indian revolt, 2,500 were killed in police shootings on Indian protesters, thousands were arrested, protesters were beaten and tortured and rioting villages were burnt.

In August 1947, India gained freedom from British rule. A few years after India's independence, Jawaharlal Nehru, the then Prime Minister was acquainted with the first instance of rebels clashed in the Naga districts of Assam, along the Burmese border. Most of the ethnic Nazis had been converted to Christianity by the missionaries and the educated leadership had emerged in the form of the Naga National Council. In the meetings between the Nagas and Indian leaders, Mahatma Gandhi theoretically considered the possibility of independence of the Naga, but Nehru vehemently rejected the idea and offered Nagas autonomy in India.⁴

In 1955, an armed struggle began in the Naga Hills, then a part of the state of Assam. To counter this, AFSPA was enacted in 1958. Following this, Nagaland was carved out of Assam and granted full statehood on December 1, 1963, as the 16th state of India. In

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³ Available at : <https://www.countercurrents.org/avery270313.htm> (Last visited on 23 February, 2018)

⁴ Available at : <http://america.aljazeera.com/articles/2014/3/8/armed-forces-specialpowersactabriefhistory.html> (Last visited on 23 February, 2018)

1975, prominent Naga leaders held talks with the Government of India which formed what came to be known as the Shillong Accord. The Shillong Accord was inked between the Government of India and the Naga leader. However, the Naga leaders who did not agree to the terms of the Shillong Accord took up arms and vowed to fight for 'Naga Sovereignty'. Isak Chisi Swu and Thuingaleng Muivah together formed the National Socialist Council of Nagaland (NSCN) and on February 2, 1980 proclaimed a new Government of the People's Republic of Nagaland with Isak Swu as chairman, Khaplang as vice-chairman and Muivah as general secretary.

In 1988, the Government agreed for talks within the constitutional framework which was rejected by the Naga Socialist Council of Nagaland (Hereafter, NSCN). In the meantime, internal conflict erupted in the NSCN camp which resulted in the splitting of the group into two groups. One was headed by Khaplang and came to be known as NSCN - K while the other one was headed by Swu and Muivah and came to be known as NSCN - IM. There was hostility between the two factions and both would regularly engage in armed encounters. All this while, both the factions would also engage in armed shootings and encounters with the Indian Armed Forces. Finally, in 1997, a ceasefire agreement was signed between NSCN (IM) and Government of India. This ceasefire was extended without any time limitation in 2004 in 'all Naga inhabited areas'. This ceasefire still continues today.

Manipur was a historically a flourishing kingdom. It had already signed the Jiri Boundary Treaty in 1835, Kubo Valley Treaty on January 9, 1834 and Kubo Valley Compensation Treaty on January 25, 1834 etc. with the British concerning its territorial integrity till it was invaded on March 24, 1891 and the palace of Manipur was occupied in 1891. In 1907, the British decided to formally restore the Kingdom of Manipur, with the *Maharaja*. The people of the valley, predominantly the 'Meitei', remained discontented with the British paramountcy. There were sporadic protests all over the kingdom from 1904 to 1932 including agitation by women traders protesting against prohibition on open sale of rice, which the Britishers had strategically claimed monopoly over.

Even after India became independent on August 15, 1947, Manipur remained an independent state with constitutional monarchy. An instrument was signed by the king of Manipur, Maharaja Bodhchandra Singh and the dominion of India which empowered the first democratic election of Manipur which was held in August 1948 in accordance with the Manipur Constitution Act, 1947.

A communist group led by Hijam Irabot Singh insisted on maintaining the status quo and keeping the independent political identity of Manipur intact. The Indian Government reacted to this stance by inviting the King of Manipur to Shillong to sign the merger agreement in 1949 and it is alleged that no consultation took place with the Council of Ministers or the elected Assembly and that the King of Manipur was forced to sign the agreement. Thus, Manipur became a 'Part C' state of the Indian Union under the administration of a Chief Commissioner. In 1963, Manipur was made a Union Territory and then in January 20, 1972 it became a State with its own Assembly and an elected government.

Disgruntled, Hijam Irabot Singh, the founder of Communist Party of Manipur went to Burma and set up the first underground outfit to fight for Manipur's independence leading to the formation of the United National Liberation Front in 1964 and the Revolutionary Government of Manipur (RGM), with its base in Sylhet. In 1968 the People's Liberation Army was formed. Pursuant to this, Manipur valley was declared as a 'disturbed area' on September 9, 1979 and since then AFSPA has been in force and has remained a 'disturbed area' ever since.⁵

Assam was declared as a 'disturbed area' in 1955. Subsequently, AFSPA was enacted in 1958 to counter insurgency in the Naga Hills (now Nagaland). The *de facto* existence of armed conflict is evident from the fact that Government of India is constantly undertaking military operations and related activities under different operational code-names, such as, *inter alia*, operations 'Blue Bird' (1988), 'Sunny Vale' (1993), 'Loktak' (2005), 'Tornado' (2005), 'Dagnet' (2006), 'Somtal I' (2006) and 'Somtal II' (2008),

⁵ *Ibid*

and 'Summer Storm' (2009). In Assam, as pointed out earlier, operation 'Rhino I' (1991-1992) and operation 'Bajrang' (1990) were carried out in 1991-1992.⁶

Imposition of AFSPA

There has been heavy deployment of armed forces in this region since insurgency erupted in the 1950s. About 121 companies of Central para-military forces operating under the Armed Forces (Special Powers) Act of 1958 are deployed in Assam. In addition to this, there was recruitment of additional 6,000 policemen, two battalions of Armed Police, 4,000 Home Guards and 5,000 Village Defense Party personnel. It is now estimated that there is one member of the security forces for every 20 persons in Manipur, which has a population of 2.5 million. The Police- population ratio in Manipur is 554 per 100,000 (the national ratio is 126) and a Police density (policemen per 100 square km area) of 63.8 (the national average is 44.4).⁷

In 1947, to tackle the situation arising in certain parts of India on account of the partition of the Country, the Government of India issued four Ordinances viz., the Bengal Disturbed Areas (Special Powers of Armed Forces) Ordinance, 1947 (Act 11 of 1947); the Assam Disturbed Areas (Special Powers of Armed Forces) Ordinance, 1947 (Act 14 of 1947); the East Punjab and Delhi Disturbed Areas (Special Powers of Armed Forces) Ordinance, 1947 (Act 17 of 1947); and the United Provinces Disturbed Areas (Special Powers of Armed Forces) Ordinance, 1947 (Act 22 of 1947). All these Ordinances were replaced by the Armed Forces (Special Powers) Act, 1948 being Act 3 of 1948 and although it was a temporary statute enacted for a period of one year, it continued till it was repealed by Act 1958.

Several legislations have been enacted in India since independence to deal with insurgency, terrorism and secessionist movements. Security laws in India have always been topics of debate and are often subjected to criticism by activists, academicians, journalists and concerned people. Apart from provisions in the Indian Penal Code, special laws like the Seditious Meetings Act 1911, Nagaland Security Regulations, 1962; Unlawful Activities (Prevention) Act, 1967, amended in 2004; and, the National Security Act, 1980, Punjab Security of the State Act 1953, Assam Preventive Detention Act 1980, Meghalaya Preventive Detention Act 1980, Code of Criminal Procedures (Manipur Amendment) Act 1983, and (ix) National Investigation Agency Act 2008 (NLA) etc. were passed. The Terrorist and Disruptive Activities (Prevention) Act, 1985 and the Prevention of Terrorism Act (POTA), 2000 have been repealed though the cases registered under the two laws continue to be prosecuted. The Orissa Preventive Detention Act, 1970 was also enforced in Manipur.

The present AFSPA was first promulgated in independent India as the Armed Forces (Special Powers) Regulation, 1958 No. 2 of 1958, in July, 1958 which was later changed into the Armed Forces (Assam and Manipur) Special Powers Act in September 11, 1958. The Act immediately came into force in Assam and Manipur as a counter-insurgency measure.⁸

Abuse of AFSPA

As early as 1970, abuse of power granted under AFSPA was reported before the Supreme Court and redressal for violations of right to life was sought. *V.L.Rohlua v. DY. Commissioner, Aizal, Distt. Mizo*⁹ was arguably first case that reported abuse of AFSPA and raised questions on the relation between section 4 and 5 of the Armed Forces (Assam & Manipur) Special Powers Act, 1958 and

⁶ *Ibid*

⁷ Available at : <http://www.ifp.co.in/page/items/23335/56-years-of-afspa-legalising-rule-o-flaw/> (Last visited on 23 February, 2018)

⁸ *Ibid*

⁹ 1970 2 SCC 908

section 344 of Code of Criminal Procedure, 1898. In this judgment it was held that 15 days' delay is justified considering the distance and travel and other logistic problems. Ever since petitions alleging violations of right to life and other fundamental rights are being reported before the GHC and the Supreme Court.¹⁰

*Indrajit Barua v. State of Assam and another*¹¹ is another landmark case before the Delhi High Court that challenged the Assam Disturbed Areas Act (Act 19 of 1955) and sections 2 and 3 of AFSPA 1958 (as amended in 1972, Act 28 of 1958). It was held in this case that the width of power conferred by sections 4 and 5 of the two Acts do not make the sections suffer from the vice of being arbitrary.

Section 6 of the AFSPA too was reviewed in Indrajit Barua's case. The Delhi High Court justified this provision on the grounds that it prevents the filing of 'frivolous claims'. The court even said that this provision provides more safeguards, blatantly confusing safeguards for the military with safeguards for the victims of the military's abuses.

*Sebastian M. Hongray v. Union of India*¹² was a case of disappearance of person from the custody of armed forces. It was a rare case where a complaint was scrutinised by the Supreme Court. The apex court deliberately decided not to impose, even, a fine upon the Army though it concluded that everyone, from senior army officers to Defense Ministry bureaucrats, had lied on oath to protect themselves from the consequences of their illegal actions'.¹³

AFSPA entered public debate in 1980s and this debate gained momentum when Amnesty International released its first report on 'Operation Blue Bird' in 1993 as well as its 'application in Jammu and Kashmir, the hotbed of South Asia's politics'. The Report was on disappearance, summary and extrajudicial Executions in Manipur during Operation Blue Bird in 1983. Some students of Jawaharlal Nehru University, New Delhi filed a PIL challenging the constitutionality of the Act in 1980. Several writ petitions challenging the AFSPA and Assam Disturbed Areas Act 1955 was challenged before the Supreme Court and GHC from 1980 to 1991. All these petitions later were clubbed together and named a *Naga People's Movement for Human Rights v. Union of India*¹⁴ and judgment was delivered in 1997 withholding the hearing for long 17 years.¹⁵

In November 1997, the Supreme Court of India in this case limited the powers granted to the military under AFSPA, in particular by ruling that a declaration under Section 3 of the AFSPA, which relates to the determination of 'disturbed areas', is to be reviewed every six months, by strengthening the safeguards for the rights of arrested persons and by determining that a list of pre-existing 'Do's and Don'ts' were legally binding. However, Supreme Court upheld the constitutional validity of the Act.

In July 2004, owing to a massive public outcry against ASFPA following the extrajudicial execution of a female combatant, the Government of India formed 'Committee to Review AFSPA' headed by Justice Jeevan Reddy to review the Act. The report of the Committee was not made public officially but was leaked to a newspaper, the Hindu in October 2006. The report recommended the repeal of the Act along with a suggestion of insertion of similar provision in the Unlawful Activities Prevention Act, 1967 (UAPA, hereafter) as amended in 2004. In 2007, the Administrative Reforms Commission too recommended the repeal of the

¹⁰ Available at : <https://thewire.in/law/bjp-modi-afspa-manipur-kashmir> (Last visited on 23 February, 2018)

¹¹ AIR 1983 Delhi 513

¹² 1984 AIR 1026

¹³ *Supra* note 10

¹⁴ AIR 1998 SC 431

¹⁵ *Supra* note 10

Act as well as making amendment in the UAPA, similar to that of the previous Committee.¹⁶

Manipur amongst the north-eastern states has borne the brunt of AFSPA the worst. All killings by the Armed Forces, Paramilitary Forces, Manipur Police and Commandos of Manipur Police have been described as encounters. In the last 10 years alone, atleast 2 individuals per week have been killed. The pretext for the executions have remained the same - that they belonged to insurgent groups like Kangleipak Communist Party (KCP), United National Liberation Front (UNLF) etc, and that these 'insurgents' were ambushed by the security forces. As per the FIRs filed by the security forces after the encounters, the allegations are almost identical in that the 'militants' opened fire with 9mm pistols and in self defense, the security forces killed them.

The state mechanism in the garb of encounters kills insurgents. The security forces of Manipur Rifles and the Commandos of Manipur police are used to carry out such 'encounters'. The Armed Forces Special Powers Act (AFSPA) is just the law they need to keep off the Judiciary to pry into such dubious killing.

As thousands of young men have died in the last decade, in a desperate bid the young Manipuri widows formed an association and moved the Supreme Court through Human Rights Law Network (HRLN). The Supreme Court was aghast at the extent of the killings and appointed a high powered commission chaired by former Supreme Court Judge Santosh Hegde and two other members, one being the former Chief Election Commissioner Shri Lyngdoh and the other being former DGP of Karnataka, Ajai Kumar Singh.

The Commission was asked to enquire into the first six cases of encounters from a plethora of cases included in the petition filed in 2012 by Extra Judicial Killings Victims' Families Association and Human Rights Alert, Manipur, with legal assistance from Human Rights and Law Network, New Delhi in which 7 persons were killed, namely Akoijam Priyoproto, Nobo, Gobind, Kiranjit, Oronjit, Umakanta and Md. Azad Khan. Azad Khan was just a school boy, aged 12 and studying in Class 8 and he was shot by atleast 20 police personnel in the field behind his house. These six 'encounters' had allegedly taken place between April 2009 and March 2010. This was a tiny snippet which the Supreme Court wanted to be inquired in to so that they could decide what is to be done with the massive number of such encounters which had killed over 1500 people in 10 years¹⁷.

Hundreds of widows had turned up in the inquiry conducted by the Justice Hegde committee. The report which was placed before the Supreme Court had declared that all six encounters were fake. The lawyer for the widows' association, Shri Colin Gonsalves demanded from the Supreme Court, the appointment of a number of Special Investigation Teams (SIT) to investigate into the scores of fake encounters to put the law into motion against the killings by the armed forces.

From Sharmila of Manipur began what could be the world's longest hunger strike in 2000 in protest of AFSPA. She started her fast after the 'Malom Massacre'. On November 2, 2000, in Malom, a town in the Imphal valley, the 10 civilians were allegedly shot and killed by the Assam Rifles while waiting at a bus stop. The incident later came to be known as the "Malom Massacre". The armed forces claimed that the killings were the result of a firing exchange between the forces and insurgents. Amongst the dead were a 62-year old woman, Leisangbam Ibetomi, and 18-year old Sinam Chandramani, a 1988 National Child Bravery Award winner.¹⁸

¹⁶ *Supra* note 10

¹⁷ Available at : http://www.univie.ac.at/bimtor/dateien/india_ai_2005_briefing_on_armed_forces.pdf (Last visited on 14 May, 2018)

¹⁸ Available at : <http://www.thehindu.com/opinion/op-ed/The-cause-is-AFSPA/article14545992.ece> (Last visited on 23 February, 2018)

Graphic images of their dead bodies were published by newspapers the following day. Around 42 people were then dragged out from their houses and cornered at a site and severely beaten up by the personnel of the Paramilitary Force after the firing.

Sharmila began her hunger strike in protest of the killings. Three days after she began her strike, she was arrested by the police and charged with an “attempt to commit suicide”, and was later transferred to judicial custody. Her health deteriorated rapidly, and the police then forcibly had to use nasogastric intubation in order to keep her alive while under arrest.

She ended her fast on August 9, 2016.

