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THE ARMED FORCES (SPECIAL POWERS) ACT, 1958: VIOLENCE BECAME THE WAY OF LIFE

AUTHORED BY - SWINI

ABSTARCT

This paper focuses on “The Armed Forces (Special Powers) Act, 1958” (hereinafter referred as AFSPA). The paper includes a brief of what AFSPA is, AFSPA was put into effect to prevent internal unrest in every state. AFSPA was put in effect for decreasing violence and disturbances in a state but rather than effective there is a rise and unrest between citizens and AFSPA. Armed forces are using AFSPA as a shield and committing a lot of violence, violating Human Rights. Government and newspapers show people’s movement as a crime and that for decreasing these crimes AFSPA is a best solution. But they are just raising their voices against things which are against their rights. Section 4 of AFSPA given immunity to armed forces that is more than needed and Armed personnels used their power in a wrong way. It violates article 21 of Indian Constitution. When this case reached to Supreme court, it said that AFSPA is constitutionally legitimate. As Supreme Court is the one who provides justice to people has put his hand in its pocket. I have tried to show the faults in AFSPA and how people are against it in the paper. The paper also includes how government give justification for not repealing or amending this act. People are being treated unfairly without using the court process. Security forces has not record of any human rights abuses because of these armed forces did not accept that they are violating the law. UN has also recommended the Indian government to remove AFSPA several times. AFSPA is no more needed because peace has started to emerge in the north-eastern states. It will take time but condition will surely improve. AFSPA is no more an act or a law there is no need for this now and it should be removed, so that no more rights could be violated.

INTRODUCTION

The AFSPA was first used for the Armed Forces (Assam and Manipur) Special Powers Act, 1958. At first, it covered the Union Territory of Manipur and the State of Assam. President Dr. Rajendra Prasad signed the Armed Forces (Assam and Manipur) Special Powers Order 1958 on May 22. The Military Forces (Special Powers) Bill was adopted by both Houses of Parliament and the President on September 11, 1958. The ARMED FORCES (SPECIAL POWERS) ACT, 1958 was passed into law and added to the Statute Book (28 of 1958).

Assam, Manipur (except Imphal Municipal Council District), Nagaland, Arunachal Pradesh, Mizoram, Sikkim, and Meghalaya are included in AFSPA. It was put into effect to prevent internal unrest in every state. The AFSPA is divided into seven sections: Section 1¹ discusses the Act's short title and scope; Sections 2 and 3² discuss definitions; Sections 4 and 5³ discuss the armed forces' special powers; Sections 6 and 7⁴ discuss repeal and savings; and Sections 7 discusses the power to declare areas disturbed areas.

Armed Forces Union is granted extensive powers under AFSPA, such as Section 4, which if used to its full extent could result in a person's death. Only in really dire circumstances and in unrest-ridden places can these powers be used. In locations designated as "disturbed" by the home ministry, the army, state, and central police forces are empowered to search homes and destroy any property that is "likely" to be utilized by rebels. The AFSPA is activated when there is militancy or insurgency when there is a threat to India's territorial integrity. Security forces have the authority to "arrest a person without a warrant" if they have committed, are attempting to commit, or simply have "reasonable suspicion" that they will soon do so. It also gives security forces legal protection for actions they take in regions prone to conflict. Although the government and military contend that it is imperative to take such action to quell militancy and insurgency, others have pointed out instances in which it may have infringed against human rights.

AFSPA: VIOLENCE BECAME THE WAY OF LIFE

Nehru introduced AFSPA in 1958 to decrease the amount of disturbance in naga districts, but it provides Armed Forces great immunity which led the withering away of accountability and because of which the protectors are perpetrators. Armed men are now protected by this act and AFSPA is being used as a curtain to hide the violence used by armed forces to handle the situation. Peace as suggested by Mahatma Gandhi can be a way to resolve issues, and now violence has taken place over peace to resolve disturbances, issues. It became a daily going thing for the citizens now. Human rights are continuously being violated by Armed forces in the guise of AFSPA. AFSPA led to increases in cases of judicial killings, abduction, torture, rape and other abuses done by the armed personnel. AFSPA violates article 21 of constitution⁵ and some articles of United Nations Declaration of Human Rights. The International Covenant on Civil and Political Rights⁶

¹ Armed Forces (Special Powers) Act, 1958, § 1

² Armed Forces (Special Powers) Act, 1958, § 2-3

³ Armed Forces (Special Powers) Act, 1958, § 4-5

⁴ Armed Forces (Special Powers) Act, 1958, § 6-7

⁵ India Const. art.21

⁶ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171

is flagrantly broken by the Act. According to Article 2(3) of the Covenant, any State that is a party to the Convention is required to Ensure that anyone whose rights have been violated may file a lawsuit with the proper court. Additionally, it breaches Article 6(1) of the Covenant, which states that no one shall be arbitrarily deprived of their right to life, and Article 6(3), which states that only the appropriate court may impose the death penalty. Since it grants protection from prosecution to any member of the armed forces who kills someone while acting within the scope of their authority under this Act, Article 4(a) of the AFSPA clearly contradicts it either personal or for the purpose of preserving public order.

DRACONIAN LAW

The "draconian law" label is given to the AFSPA under Section 4 of the Act. According to Section 4(a), military troops are allowed to open fire on anyone after giving them warning to maintain public order, perhaps killing them. This sentence is untrue. Article 21 of the Indian Constitution, since it allows for the arbitrary taking of a person's life without following the proper legal process. It endows the employee with authority that he is free to exercise in an excessive manner without fear of repercussions. Owing to the unrestricted authority this clause grants, there Military Forces troops have had numerous unauthorised confrontations in the troubled areas. Section 4(a) is replaced with Sections 4(c) and (d), bringing the Act manifestly at odds with the concepts of natural justice. According to Section 4(c), anyone who has committed a crime that is punishable by law or who has a good faith without a warrant, can be detained. Clearly, the natural justice standards are violated in this passage.

It transgresses Article 21 of the Constitution and the concept of Audi alteram partem (right to a fair hearing). The Armed Forces personnel may enter and examine any premises to investigate, according to Clause 4(d). obtaining unlawfully possessed weapons or ammunition, or making an arrest. This section gives unrestricted permission to enter any place without a warrant, which is a violation of the right to privacy granted by Article 21 of the Indian Constitution. Be aware of the callousness. The power's amplitude is unrestricted. Even the causing of death is included. but without restriction or restriction not even a pretence of force appropriate to the situation is offered in relation to its exercise.

SUPREME COURT ON ARMED FORCES ACT

Supreme court of India declared this act valid in Naga People's Movement of Human Rights v Union of India, this act breach article 21 of Indian Constitution but court said its constitutionally

legitimate. The Court referred to the Army's comprehensive dos and don'ts. The Army Act makes it illegal to deviate from the directives of the Headquarters, which are binding on all Army employees. The continuous infractions committed by army authorities twenty years after the Supreme Court's ruling demonstrate that the personnel do not adhere to these dos and don'ts.

Justice S. C. Agrawal delivered the Supreme Court's decision on behalf of a unanimous Constitution bench of five judges. Federalism has a definite advantage.

The state and federal governments have the authority to declare any portion of the state to be "a disturbed area" under Section 3. "We are unable to view Section 3 as providing an authority to issue a proclamation without any time-limit," the court stated in its decision.

Section 2(b) of the Central Act defines "disturbed area" as "an area which is for the time being notified by notification under Section 3 to be a disturbed area" (emphasis added).

The phrase "for the time being" implies that the declaration made pursuant to Section 3 must be for a brief period, and cannot be a pronouncement that is perpetual in nature. It is unquestionably true that Section 3 does not stipulate how often the declaration must be evaluated. Yet, because the declaration is only meant to be in effect for a short time and only when a serious violation of the law or order exists, the preparing of the declaration comes with it a requirement to assess the seriousness scenario from time to time and the continuation of the statement must be decided to conduct such a recurring evaluation of the magnitude of the situation.

While the union retains its rights, the court ruled authority over its armed troops stationed in the they cannot replace or take the place of the government civic authorities. They must act. in support of the state's civil authority so that restoration of its power rather than supplanting.

CRIMINALIZING PEOPLE'S PROTEST

"Protest beyond the law is not a departure from democracy; it is absolutely essential to it" - Howard Zinn.

The protests in eastern India are a big issue but these protests signify that India is a democracy and people has a right to voice against the government. Despite this, India has struggled to maintain its claim that it is the largest functioning democracy in the world. Such a space was systematically destroyed for the people. Today, this area has been symbolically reduced to a few

small, designated areas in each state capital where displeased citizens congregate and shout incessantly just to hear themselves. Very dissimilar to jails, with their barbed wire walls and posse-heavy narrow openings.

The government prevents widespread public dissent by using armed police officers. The police sub-inspector who is waiting to collect their memorandum is the furthest the protesters can get from these locations. Indian democracy has not been satisfied with this general stifling of political space; By filing criminal charges against the protestors, it frequently goes on the attack. The recent proceedings against Irom Sharmila, the iron lady of Manipur, who was transported to Delhi to stand trial for her "crime of trying suicide" at the Jantar Mantar, best exemplify this trend, though there are other examples.

It has been in place for more than 50 years, and it permits the army to be stationed in India's north-eastern Naga Hills by allowing people to demolish property based on mere suspicion. According to a report by the United Nations and the Civil Society Coalition on Human Rights in Manipur named "Manipur: Memo random on Extrajudicial Summary or Arbitrary Executions," security forces killed 1,528 people in fake encounters in Manipur alone between 1979 and May 2001, including 31 women and 98 children. The Assam Rifles killed 419 of them, while Manipur's combined teams killed 481 of them. the centralised security force and the police.

Could there have been a more vivid expression of public angst than the promi- same throughout the first few decades of its members' post-Independence India? In fact, the demonstrations were responded to by the state with colonial politeness, with the women of Manipur disrobing in front of the Army Head Quarters and yelling "Indian army" at a time when the classes had not yet formed. Nonetheless, by the middle of the 1970s, a repressive rape us," this in response to the rape to unconstitutional After a period of emergency was imposed and Thangiam Manorama was killed in Ambedkar's warning of political unrest, the nation entered 2004?

This era's implementation of the TADA (Terrorist and Disruptive Activities (Prevention) Act) in 1985⁷, POTA (Prevention of Terrorism Act) in 2002, and UAPA (United States Anti-Piracy Act) in 2004 should be viewed in the context of the global "security syndrome" that 9/11 unleashed.

Although the government occasionally acknowledges it, the much-maligned Maoist movement is fundamentally a form of public protest, regardless of how it is expressed. However, the

government has chosen to criminalise the movement, branding it "the biggest internal security threat" and waging a full-fledged war against it. Currently, it has started to demonise civil rights campaigners and paint them as Maoist supporters. These campaigners and numerous legal experts have been warning that any type of illegal action can be stopped by regular laws when they are applied fairly. Although there is no proof that special laws with harsh restrictions work, they give the impression of security. They have always been used as oppressive instruments against defenceless individuals, aggravating the very issue they were meant to address. People are driven to extremes by their perception of the state's injustice. By ignoring the serious ramifications for democracy, the ruling classes' paranoia is demonstrating their short-sightedness.

Should people silently put up with the oppression of their elected officials who act as if they have a right to take advantage of them till the next election? What promise does the system still offer to regular people after five years? The political class has "fixed" the flawed game, thereby preventing entry from anyone outside the club.

CALL FOR REPEAL

The North Eastern region (which includes the states of Mizoram, Nagaland, Assam, and Sikkim) as well as Jammu & Kashmir put the Act into effect. The conflicts in India's North East late 1950s were widespread. The Naga rebels were engaging in murder, looting, and burning. Hence, it was decided that the forces needed to be deployed. However, the late 1980s saw a surge in Kashmir's militancy due to widespread infiltration from the surrounding nations. As a result, in 1990, the state of Jammu and Kashmir received an extension and implementation of the AFSPA. This paper examines the effects of the AFSPA on several states and questions whether it is still essential. Concerns over potential human rights violations by the security forces because of this Legislation have prompted calls for an end to the Act. The AFSPA has drawn criticism for having several confusing clauses that give the armed forces arbitrary authority. From the standpoint of human rights, these sections go against the right to life and the right to freedom of expression that are guaranteed by the Indian Constitution. As stated in Article 22 by the Indian Constitution⁸, a person who has been held must appear before a judicial magistrate within 24 hours of the confinement. Every citizen of India is given this fundamental right, which is protected by the Indian Constitution.

The AFSPA's provisions directly conflict with those of the Constitution. People have frequently

⁸ India Const. art. 22

been treated unfairly without using the authorised court processes. Forced kidnappings and disappearances have also happened. The armed forces enjoy immunity from prosecution under the terms of the AFSPA, which severely restricts the scope of participation from the regular judicial process.

There have been numerous occasions when the UN has recommended that the Indian government remove AFSPA. According to a report from a visit to Kashmir on March 31, 2012, the AFSPA is illegal under international law and has no place in a democratic society. Also, there were numerous critiques of the Act's provisions made in the parliament when it was first passed in 1957. Several committees, courts, and the Law Commission of India have stated time and time again that a statute like this is no longer necessary in India. India has a comprehensive criminal justice system and penal law that address all types of crimes and associated penalties. The Constitution contains provisions relating to the application of Emergency Rule and the various circumstances in which the army may be assigned and given extraordinary powers. Article 356 of the Indian Constitution⁹ is one example of its emergency provisions. It outlines the conditions that an emergency rule should fall under a state to impose.

There is currently no need for such an unusual statute to be in effect due to the return to routine. As a result, these locations should no longer be covered by the AFSPA. Due to this acquire the trust of the local population, which will help to restore long-lasting peace.

In 2005, the Justice Jeevan Reddy Committee was established to examine how the AFSPA operates. The Committee stated unequivocally that the Act "is too vague, too bald, and quite inadequate in several particulars," and that it should be repealed. Its members did not suggest the creation of new laws but rather the addition of pertinent elements to the 1967 Illegal Activities (Prevention) Act. Also, it suggested creating grievance cells to address the conduct of military personnel.

Union Home Minister Amit Shah has announced plans to revoke the Armed Forces (Special Powers) Act in Jammu and Kashmir. The government plans to withdraw troops from the Union Territory (UT) and leave law and order to the Jammu and Kashmir Police. The AFSPA, which grants armed forces personnel sweeping powers to search, arrest, and open fire, has been removed in 70% of northeastern states.

⁹ India Const. art. 356

The Supreme Court has directed assembly elections in the UT before September. The Modi government has given OBCs, women, and Pahadi reservations for the first time, with special provisions made to accommodate displaced people from Pakistan-occupied Kashmir. The Centre is determined to ensure these benefits percolate to the grassroots level.

Shah has accused National Conference leader Farooq Abdullah and PDP chief Mehbooba Mufti of creating acrimony on these reservations, but the people have now understood their intentions. He claimed that no other regime had ever matched the number of fake encounters during their time.

The Modi government has banned 12 organizations for their involvement in terror activities, designated 36 individuals as terrorists, registered more than 22 cases to stop terror finance, and seized properties worth ₹ 150 crore. The Hurriyat Conference has no place in the dialogue process, and the BJP and Parliament believe that the POK is an integral part of India.

Shah has also asked the youths of J-K to stay away from Pakistan's conspiracies and emphasized the importance of boosting the morale of security forces by giving jobs to the family members of martyrs.

CONCLUSION

AFSPA has created mutual unrest between the civilians and the armed forces. Civilians are demanding for its removal and armed forces want it to be continued. AFSPA has helped to maintain peace in disturbed areas but not this act is being exaggerated. The violating of civilians cannot be ignored at all Rather than armed forces police troops should work in the disturbed areas and government should call armed forces when they are most needed, government should not give armed forces much power. As India is a democratic country giving armed forces a special act and immunity is not at all healthy. Rather government should remove it or amended should be made in it which decreases the given power to armed forces. Moreover, crimes against women should be tried in regular criminal tribunals. While eliminating AFSPA is a step that will go a long way towards reducing the mutual mistrust it fosters and the anguish such violations inflict, a long way towards building up civilians' trust and assuring their cooperation with members of the armed forces.

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