

“Human Rights Vis-A-Vis Arm Forces Special Power Act and North East Experience”.

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Abstract:

When we talk about Human Rights we also talk about its violations. Human Rights, Arm Forces Special Power Act and North North East India are seen as the three aspects which cannot be separated. In this article I discuss the basic principles of Human rights in line with the Universal Declaration of Human Rights. I also write something about the National Human Right Commission. Further, the very popular Arms Act of India, the Armed Forces Special Power Act 1958 (AFSPA) which has been imposed in North Eastern Region of India has been widely discussed. Apart from all these, suggestion from various levels of organizations from across the globe about the Act has also been presented. In fact, being one of the greatest democratic country in the world, India need to uphold the principle of Gandhian non-violence, equality, freedom and democracy .

Key Words: Human Rights, Arm Forces Special Power Act (AFSPA) North East India, Violation, Security, Military, Democracy, Arms Group, Women, Torture, seven-sisters, eight-sisters, Christians, Tribal, 'Backward Tract', 'Partially Excluded Areas', 'Non-Regulated Areas etc.

INTRODUCTION:

When we talk about Human Rights we also talk about its violations. In the same manner, when we talk about Human Rights violations we can't just left out the Armed Forces Special Power Act 1958 untouched. Further, when we study these two aspects, the North-east region of automatically come into existed India as an inseparable body from one to another. The region was known as the land of the seven-sisters states comprises the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura. Now, it has been changed as the eight sisters states by adding the state of Sikkim. The region is known for its ethnic diversity, linguistic diversity, cultural diversity, religious and physiographical diversity. The administration in the region during the period between 1874 and 1935 gave the areas of the Northeast a distinct identity. The British administration initially treated the hill areas as 'Non-Regulated Areas', later declared this area as 'Backward Tract' and, eventually categorised this hill areas as 'Excluded Areas' and 'Partially Excluded Areas'. As natural diversity see the region we also see the diversity of cultures, races, tribes and their sub-tribes, ethnic groups, religions, languages and dialects. However, we can broadly classify the people of North East into three

distinct groups of people viz- the hill tribes, the plains tribes and the non-tribal people of the plains. The majority of those people who live in the plains belong to Hindus- non tribal and Muslims while almost 100 % of hill tribes in the said four states are Christians. Now to introduce our topic, we have a general observation and experience that when someone happen to study or refer any part of the North-East India may be for its developmental activities, living condition of the people, low and order or anything about North East India, the Human Rights and its violation through the Armed Forces Special Powers Act 1958 click their mind first.

CONCEPTUALIZATION OF HUMAN RIGHTS:

Human Rights are understood as those rights which are inherent to the human being. The concept of Human Rights acknowledges that every single human being is entitled to enjoy his or her Human Rights without distinction as to race, colour, sex, religion, language, political, national or social origin, property, birth or other status. These rights are universal rights which are inalienable, indivisible, interrelated and interdependent. On December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights. Against the backdrop of increasing violations of Human Rights, the National and State Human Rights Commission of India were also set up.¹ In this way, Human Rights are considered as the highest rights in which every human being is include under this umbrella not because of his or her effort but only because of being as human irrespective of sex. In order to understand the concept Human Rights some of the main features of the Universal Declaration of Human Rights are also given as under; All human being are born free and equal in dignity and rights in a spirit of brotherhood. Everyone is entitled to life, liberty security and freedoms without distinction of race, colour, sex, language, religion, political opinion, national or social origin, property, birth or other status. No slavery or servitude, torture or cruel, arbitrary arrest, detention or exile. All are equal before the law. Everyone has the right to freedom of movement and residence within the borders of each state, freedom of thought, opinion, expression, conscience and religion without any discrimination. There shall be Right to equal pay for equal work, the right to form and join trade unions etc.

In the similar principle, in India, the National Human Rights Commission, as an autonomous body was constituted on 12 October 1993, under the Protection of Human Rights Ordinance of 28th September 1993. It has been given a statutory basis by the Protection of Human Rights Act, 1993. Thus, “the National Human Rights Commission (NHRC) is responsible for protection and promotion of human rights, as defined and guaranteed by the Constitution of India or embodied in the International Covenants”². In short, the constitution of India has clearly indicated about the rights and freedoms of a citizen of India from article 14 to 32 under Fundamental Rights of the constitution

ARMED FORCES SPECIAL POWER ACT 1958 (AFSPA):

In order to understand the historical background of the popular Act, the Armed Forces Special Power Act 1958 (AFSPA), we can look at the following few points. For the first time, the Armed Forces Special Powers Ordinance in India was promulgated by the British on August 15, 1942 to suppress the Quit India Movement.³ That was later declared into four ordinances—to be

imposed in 1, the Bengal, the Assam, the East Bengal, the United provinces in 1947⁴. In 1951, the Naga National Council (NNC) reported that they had conducted a 'free and fair plebiscite' in which almost all the Nagas voted for a 'Free Sovereign Naga Nation'. It is also reported that the Naga National Council (NNC) boycotted the first general election of India conducted in 1952. Considering the then prevailing situations, the AFSPA was passed on 11th September, 1958 by the Parliament of India and extended to the whole areas of North East region as an indispensable condition. Now what is AFSPA in practical sense. The Armed Forces Special Powers Act, known by AFSPA in short is an Act which empowered certain special powers to the members of the armed forces of India in disturbed areas which is the entire North Eastern State of India. According to this principle, the "armed forces" means the Military forces and the air forces of India which are operating as land forces, any other armed forces of the Union so operating in this region. And the "disturbed area" means an area which is for the time being declared by notification under Section 3 of this Act,⁵ to be a disturbed area. as per the bill passed by the Parliament of India on September 11, 1958. This Act empowers the governor of the state, or the central government to declare any part of the state as a 'disturbed area', if in his opinion there exist a dangerous situation in the said area. In the similar way, the central government enacted the Armed Forces Special Powers Act on October 6, 1983 in Punjab and Chandigarh too.

GENERAL RULES OF ARMED FORCES SPECIAL POWERS ACT (AFSPA):

According to the Armed Forces Special Powers Act 1958 (AFSPA), if an area is proclaimed as "disturbed area", a commissioned officers posted at that area, or another person of equivalent rank of the armed forces has the following powers;

1. After giving such due warning, can fire upon or use other kinds of forces even if it causes death, against the person who is acting against the law for maintenance of public order.
2. Destroy any arms dump, hide-outs, prepared or fortified position or shelter or training camp from which armed attacks are made by the armed volunteers.
3. To arrest without a warrant anyone who has committed cognizable offences.
4. To enter and search any premise in order to make such arrests, or to recover arms, ammunition or explosive substances and seize it.
5. Stop and search any vehicle reasonably suspected to be carrying such person or weapons.
6. Army officers have legal immunity for their actions. There can be no prosecution, suit or any other legal proceeding against any army officer acting under that law.
7. Protection of persons acting in good faith under this Act from prosecution, suit or other legal proceedings, except with the sanction of the Central Government, in exercise of the powers conferred by this Act.⁶

LEGAL PROVISIONS of AFSPA :

The Supreme Court has upheld the constitutionality of AFSPA in its judgement as;

- (a) The state government should be consulted by the central government before making the declaration as disturbed Area;
- (b) AFSPA does not confer arbitrary powers to declare an area as a 'disturbed area';
- (c) The declaration has to be for a limited duration and there should be a periodic review in 6 months and
- (d) The authorised officer should strictly follow the 'Dos and Don'ts' issued by the army.

However, the security forces are very much aware that they should be given certain amount of legal protection in the exercise of the Act in national interest. for there are adversely affects in organizational flexibility and in the utilization of the security capacity of the state in the absence of such a legal protection. In such a way, the army officer posted at the so called disturb areas have been given freedom to a great extend in the name of security of the country and safety of the people. At the same time, government have to be watchful about any misuse of the power by any armed officer against the citizens in their own interest.

1. DEPLOYMENT OF ARM FORCES AND VIOLATIONS OF HUMAN RIGHTS:

India is one of the world's largest standing armies. In the past, unlimited number of India army, paramilitary forces, border security force, police commandos etc. have been deployed in Northeast India. To cite some facts, Manipur though one of the smallest is the most militarised state in North East India. The security situation and arrangement of this state is completely different from the rest of the country. The strength of military and security personnel posted in Manipur is more considerably high. Apart from deployment of those state and central forces there are also State-sponsored Village Defence Forces (VDFs) in Manipur. Number of human rights violations cases have occurred in Manipur, Nagaland, Assam etc, not just to militants but even to several political leaders, social activists and innocent civilians. This is the prevailing situation in Northeast India. In 2009 media and human rights organisations in Manipur reported more than 300 extrajudicial killings, Thus, Due to AFSPA, widespread human rights abuses including extra-judicial killing, torture, forced disappearances, rape, detention without trial, restrictions on freedom of assembly, expression and movement existed.⁷

India has significant human rights problems despite making commitments to tackle some of the most prevalent abuses. There are increasing cases of violation on individual freedom, continued marginalization of Dalits, tribal groups, and religious minorities. Such persistent abuses of Human Rights have lead to further establishment of insurgencies in Manipur, Nagaland and Assam. The security forces were responsible for killing of innocent civilians in dubious encounters. Today, North East India is facing number of such challenges. Seventy more years of conflict in Naga inhabited areas of North-East India has led to a stronger military presence and become a culture of violation. The Northeast is the most ethnically diverse region in India. It is home to around 45 million people including 213 of the 635 tribal groups listed by the Anthropological Survey of India.⁸

A renounce Justice J.S. Verma, former Chairperson of the National Human Rights Commission (India) once said that the law enforcement agencies are the biggest violators of human rights in the country. His statement is highly relevant to what is happening in Manipur and the other neighbouring militarized states of Northeast India. Northeast Indian women faced the most severe form of such kind of human rights violation. Among other forms of violence, rape is

considered to be the most cruel and inhuman form of torture to the women of North East India. The fear of rape by the security personnel among the Northeast Indian women are heightened by the situation in which they live. Several number of women have suffered from the horror of physical assault, the subsequent social stigmatization, mental trauma, lost of virginity, possible physical injury, and possibilities of sexually transmitted diseases like HIV/AIDS etc.

In north east India, 90% of the rapists are from the Indian armed forces being deployed for curbing insurgency in this region. As such, taking the undue advantage of the Armed Forces Special Act (AFSPA), the security forces enjoy the elated status in the mids of the innocent civilian in North-east India. They mostly carry out rapes during combing operations in residential areas, when they force the males to come out of their homes and gather them at one place, while women are forced to stay indoors. Anyone who tries to intervene is severely beaten. Most of the rape cases went unreported for obvious reasons. The victims receive no compensation. On the contrary, the military tribunal even blamed against the victims women.

To highlight some long time back incidents, the Central Reserve Police Forces (CRPF) picked up two sisters of Pukhao Ahallup Awang Leikai, Imphal, Manipur on 14 January 1999, falsely accusing them of sheltering underground activists. In such a situation of psychological pressure most of the women committed suicide like that of Rose of Kumram village Ukhrul District of Manipur and Miss Luingamla of Ngainga village of Ukhrul District Manipur. Both of them committed suicide for they were raped by the Assam Rifle. Later in such a helplessness condition the women themselves formed several groups known as Torch – Bearers to take responsibility to prevent themselves from such rape and violations.

RECOMMENDATIONS FOR REPEAL OF AFSPA:

1. **Jeevan Reddy Commission's Recommendations;** There was a mass protest for several days in Manipur in the year 2004 following the rape and murder of miss Thangjam Monorama Devi by the India army under the sponsorship of several civil societies. The subsequent indefinite fast unto dead started by Irom Chanu Sharmila, led to the setting up of the Justice B P Jeevan Reddy Commission. The 147-pages report submitted by the commission in 2005 recommended the repeal of AFSPA based on the provisions of the Unlawful Activities (Prevention) Act, 1967. It also recommended for set up of the Grievances cells in each district where the armed forces are deployed." however, these recommendations have not been implemented.
2. **View of United Nations;** India presented its second periodic review report of AFSPA to the United Nations Human Rights Committee in 1991. Some members of the United Nations Human Rights Committee asked several questions about the validity of the AFSPA in India. They questioned the constitutionality justification of the AFSPA under Indian law and also justified in the light of Article 4 of the International Covenant on Civil and Political Rights, ICCPR. On 23 March 2009, UN Commissioner for Human Rights Navanethem Pillay asked India to repeal the AFSPA. She termed the law as "out-dated and colonial-era law that breach contemporary international human rights standards."⁹ The United Nation in 2012, ALSO asked India to revoke the Arm Forces Special Power Act by justifying that the said Act has no place in Indian democracy.

3. Views of N.G.Os on AFSPA; The Armed Forces Special Act (AFSPA) act has been criticized by many Non-Governmental Organizations. The Human Rights Watch organization termed it as a "tool of state abuse, oppression and discrimination". The South Asian Human Rights Documentation Centre also expressed that the use of AFSPA resulted more demand for autonomy and secession from a state. Amnesty International and many other human rights organizations condemned the human rights abuses in India like torture, arrest, kidnapping, shooting, killing, destruction etc through Armed Forces Special Act.
4. Santosh Hegde Commission on Manipur Encounter Deaths; in view of the increasing cases of fake encounter in Manipur, A high-power commission had been constituted. The high-power commission was in January 2013 headed by the retired Supreme Court judge justice Santosh Hegde and EX-Chief Election Commission of India J. M. Lyngdoh and a senior police officer as member. The committee was constituted in order to probe six encounter deaths in Manipur. The committee in its report said that none of the victims means those death in encounter had any criminal records. It simply indicates that a lot of innocent peoples have been killed in Manipur by the security personnel in the pretext of encounter under the draconian law the 'Armed Forces Special Powers Act 1958' (AFSPA). Despite all these evil effect of the Armed Forces Special Powers Act in North East India, the Nagaland Government has reintroduced the so called Dragonian law in Nagaland recently.

GENERAL OBSERVATION:

We must also think about the pros and cons of the AFSPA in the event of its repeals from this problematic region. despite all its violations, a series of threats listed below are also presumed to be happened;

- a. No armed force group of India would be willing to carry out any operation in the insurgent affected areas without proper legal protection for the security personnel.
- b. Whenever any offensive action is taken up by the armed forces, there is possibility of the militant groups to instigate the people/local authorities to initiate legal cases against those armed forces who involved in the action. In this regard, Justice may be biased under the influence of militants.
- c. There are also possibilities of militants to get upper hand and may be difficult to control.
- d. It is also considered that extortion from individuals and the government may also happen in this region.
- e. However, the AFSPA is considered no longer relevant in such a democratic country like India.

CONCLUSION:

Human Rights, Arm Forces Special Power Act and North North East India are seen as the three aspects which are inseparable. If anyone want to study, Arm Forces Special Power Act he or she has to study the living condition of the people of north east India. In view of the various forms of Human Rights violations in the areas covered by Armed Forces Special Power Act, there are fear from the people about the possible corrupt of the core concept and the principles of our democracy. Considering the helplessness condition, people defined our democracy as 'army democracy' meaning, government of the army by the army and for the army. Since, all those

rights guaranteed to the citizens under fundamental rights of the constitution of India are being enjoyed by the army by depriving the citizens. Today, India needs to study as to whether she is achieving the true spirit of democracy, upholding the Gandhian philosophy of non-violence and *Ahimsa*. Human rights are universal and the same is enshrined in the Constitution of India as the fundamental rights and directive principles of the state policy. If India even at its 80s of her independence fail to provide the basic fundamental human rights, equality and security to its citizens we can simply understand it as if there is mis-governance.

India as a member of UN Human Rights Council must go in line with the various international obligations to uphold human rights principles. However, if any country ignore about the suffering of its own citizens even today from rape, violence, environmental destruction, forceful resource exploitation, marginalization, distortion of history, torture, militarization, racism, socio-economic deprivation etc. no progress and development can be existed. For India, the 'shining India' will appear only when India fully expressed the meaning of democracy in practical without violence or arm force. I wish India continued be the biggest democratic country in the world and a major international player. As suggested by many, it will be wise on the part of the government of India to discontinue the policy of Armed Forces Special Powers Act in dealing with armed groups for 80 years of experiment tell us that arms invites arms.

FOOTNOTES:

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2. *The Protection of Human Rights Act, 1993, as amended by the Protection of Human Rights (Amendment Act, 2006)*
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6. *The Armed Forces (Jammu and Kashmir) Special Powers Act, 1990*" Indian Ministry of Law and Justice Published by the Authority of New Delhi.
7. Report of UN Special Rapporteur on Extrajudicial Execution to the UN Human Rights Council A/HRC/4/20/Add.1 (para. 18); Asian Centre for Human Rights (2010) *India Human Rights Report 2009*. AI ref in unruly hills note 48)
8. See *Anthropological Survey of India website*, available at: <http://www.ansi.gov.in/>. The Nagas were one of many self-determination movements.
9. "United Nations asks Indian govt to repeal AFSPA". IRNA. March 23, 2009
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