

Armed Forces (Special Powers) Act 1958: A Source of National Disintegration

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*Some say the world will end in fire,
Some say in ice.*

- Robert Frost

Abstract:

The notion of Indian national integration has been threatened time and again, particularly in Kashmir and the Northeast States. There might be many factors regarding the issue but Armed Forces Special Powers' Act (AFSPA), 1958 has played a helping hand in this process. The Jeevan Reddy Committee recommended the repeal of AFSPA but the report has neither been accepted nor rejected by the government yet. Irom Chanu Sharmila has been fasting since November 2000 to repeal the Act from Manipur but the Chief Minister Mr. Okram Ibobi says the condition is not yet conducive for repeal of AFSPA. UN Human Rights Council recommends the repeal of AFSPA. Omar Abdullah, the Chief Minister of Jammu and Kashmir, has been in most of the headlines for he seems bent on the repeal of AFSPA. In the meantime, the Home Minister says that his ministry has sought amendments in the AFSPA which are pending before the Cabinet Committee on Security, and the political debate goes on. The fact remains that to repeal AFSPA and bring all the people of India under the right to equality and the right to life, both the State Government and the Centre need to join hands and work together.

Keywords:

Armed Forces (Special Powers' Act), power, fundamental rights, Human Rights, disturbed area status.

India has been called 'a land of unity in diversity' but the very notion of national integration has been threatened time and again, particularly in Jammu and Kashmir, and the North-East states. There might be many factors regarding the issue – geographical, political, cultural, or others – but it cannot be denied that the Armed Forces (Special Powers') Act, 1958 (hereafter AFSPA) has played a helping hand in this process of struggles for whatever reason it is named. The origin of the act dates back to the colonial times of the British India who imposed it to suppress the 'Quit India' Movement. It is the Indian *avatar* of the Armed Forces (Special Powers) Ordinance, 1942 enacted by the British to brutally suppress the Indian struggle for independence in the wake of the widespread 'Quit India' Movement of 1942. The Ordinance was promulgated by Lord Linlithgow, the then Viceroy and Governor General of British India on the 15th August 1942 (Gazette of India, 15th Aug. 1942). History

shows what followed after the promulgation of the Ordinance and how the Indian movement was brutally suppressed.

The British might be forgiven for the sufferings of the Indian people under the Ordinance as they were a foreign power suppressing Indians but AFSPA lets Indians torture its own citizens. AFSPA gives the armed forces the following special powers:

Any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces may, in a disturbed area,-

- (a) if he is of opinion that it is necessary so to do for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire-arms, ammunition or explosive substances;
- (b) if he is of opinion that it is necessary so to do, destroy any arms dump, prepared or fortified position or shelter from which armed attacks are made or are likely to be made or are attempted to be made, or any structure used as a training camp for armed volunteers or utilized as a hide-out by armed gangs or absconders wanted for any offence;
- (c) arrest, without warrant, any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest;
- (d) enter and search without warrant any premises to make any such arrest as aforesaid or to recover any person believed to be wrongfully restrained or confined or any property reasonably suspected to be stolen property or any arms, ammunition or explosive substances believed to be unlawfully kept in such premises, and may for that purpose use such force as may be necessary (AFSPA sec.2).

As Lord Acton said, "Power tends to corrupt and absolute power corrupts absolutely," (Acton, 364) wherever AFSPA has been in operation, enforced disappearances, extra-judicial executions, torture, rape and arbitrary detention are routinely reported. Such incidents of the armed forces' excesses are many and frequent in Manipur. To mention a few major incidents, there were the massacre of civilians at Heirangoithong (Manipur) on 14th March, 1984 which left 13 civilians dead and many injured; the massacre at the Regional Institute of Medical Sciences (then Regional Medical College, Manipur) on 7th January, 1995 which left 9 innocent civilians dead; and at Malom (Manipur) on 2nd November, 2000 leaving 10 civilians dead including a 60 year old woman and a boy who had been awarded the bravery award by the former Prime Minister Rajiv Gandhi. The horror of torture and violence continues in the North-East and the list includes:

1. The Operation Blue Bird (Manipur) in 1987;
2. Operation Rhino (Assam) in 1991;

3. Indiscriminate firing on civilians by armed forces personnel when a tyre of their own vehicle burst in the town of Kohima (Nagaland) in March 1995;
4. The shelling and destruction of the town of Makokchung (Nagaland) in 1994;
5. The enforced disappearances of Loken and Lokendro (Manipur) in 1980, of C. Paul and C. Daniel (Manipur) in 1982, and of L. Bijoykumar (Manipur) in 1996;
6. Sexual assault on women at Ujanmaidan (Tripura) in 1988, at Namtiram (Manipur) in 1995, the gang-rape of Mrs. Ahanjaobi Devi in front of her disabled young son (Manipur) in 1996, and the rape of Miss N. Sanjita (who subsequently committed suicide) (Manipur) in 2003 (Akoijam, 2005:482).

The list continues and seems like a never ending episode to the people of the North-East. There had been protests, rallies, debates and many committees set up to look into the matter, but the story remains the same – AFSPA always remains the champion. The state of Manipur has been in the forefront in the news for struggle to repeal AFSPA since the last many years. There had been a widespread protest against the act and its atrocities in Manipur in 2004 in the aftermath of the rape and murder of Thangjam Manorama at the hands of the Assam Rifles personnel. As a result, the Central Government set up a committee headed by the former Supreme Court judge Justice Jeevan Reddy to review AFSPA and its report was duly submitted to the government in June, 2005. The report recommended the repeal of AFSPA and says:

The Armed Forces (Special Powers’) Act, 1958 should be repealed. Therefore, recommending the continuation of the present Act, with or without amendments, does not arise. The Act is too sketchy, too bald and quite inadequate in several particulars (Reddy, 74).

But the report has neither been accepted nor rejected by the government yet. Irom Sharmila has been fasting since the incident of Malom massacre in November 2000 that claimed 10 civilian lives in Assam Rifles firing. Manipur has removed AFSPA from seven assembly constituencies of Imphal and Chief Minister Okram Ibobi says “the condition is not yet conducive for repeal of AFSPA from the rest of Manipur” (Sunil, Interview). Manipur Government has extended the disturbed area status of the state (except seven assembly constituencies in Imphal) by “another year till November 30, 2013” (Disturbed, *Indian Express*)– as one basic necessity for AFSPA to be effective is to declare the area/state as ‘disturbed’ and the state governments in the North-East and Jammu and Kashmir have been doing it obediently for the last many decades. Besides Manipur, AFSPA is also in force in Tripura, Assam and Nagaland, and in the Tirap and Changlang districts of Arunachal Pradesh, apart from Jammu and Kashmir. Again, there is a hitch in this area. The sole authority to declare a state/area as disturbed lies not with the state government but with the Governor appointed by the Central Government for the Act says:

If, in relation to any state or Union Territory to which this act extends, the Governor of that State or the administrator of that Union Territory or the Central Government, in either case, is of the opinion that the whole or any part of such State or Union territory, as the case may be, is in such a disturbed or dangerous condition that the use of armed forces in aid of the civil power

is necessary, the Governor of that State or the Administrator of that Union Territory or the Central Government, as the case may be, may by notification in the Official Gazette, declare the whole or such part of such State or Union territory to be a disturbed area (AFSPA sec.3).

Here, the state government must work in hand with the Governor, or there would be a constitutional hiatus.

On 23rd March 2009, UN Commissioner for Human Rights Navanethem Pillay asked India to repeal the AFSPA. She described AFSPA as “dated and colonial-era laws that breach contemporary international human rights standards” (Pillay, *Statement*). Recently, Omar Abdullah, the Chief Minister of Jammu and Kashmir, has been in most of the headlines for he seems bent on the repeal of AFSPA from at least downtown Srinagar. The reservation of the Army which fears that the insurgents in Jammu and Kashmir as well as the Northeast states might take advantage once the empowering law disappears has kept everything in a void. As Edward Mead said:

Whatever the risk of power may be, the risks of not having power are greater (Mead, 145-146).

So, the armed forces are afraid of losing their power infinite and would go to any excuse to keep the ball rolling. Another empowering element that AFSPA gives them is total impunity under the Indian laws (AFSPA sec.6). That is why, no one has been punished so far even though so many atrocities had been committed. They are authorized to do anything – arrest, search, or kill – even on mere suspicion, under the protective umbrella of AFSPA. That is why Christof Heyns, UN Special Rapporteur on extrajudicial, summary or arbitrary executions recommends:

India should repeal, or at least radically amend, AFSPA and the Jammu and Kashmir AFSPA, with the aim of ensuring that the legislation regarding the use of force by the armed forces provides for the respect of the principles of proportionality and necessity in all instances, as stipulated under international human rights law. It should also remove all legal barriers for the criminal prosecution of members of the armed forces (Heyns,19).

In the meantime, P. Chidambaram said that his ministry had sought amendments in the AFSPA which were pending before the Cabinet Committee on Security (CCS), and the political debate goes on (Amendments, *Bharat Defence Kavach*). Meanwhile, various civil organisations continue to fight for the revocation of AFSPA. There had been even a “Srinagar to Imphal rally” (Akoijam, *Kangla Online*) but the incident was marred with some activists of the Akhil Bharatiya Vidyarthi Parishad (ABVP) attacking the peaceful rally in Delhi. There lies a doubt with regard to the credibility of those activists who attacked the rally as to what motivated their action. In Srinagar, Chief Minister Omar Abdullah seems to be weary of AFSPA and says that the situation is conducive for removal of AFSPA, at least from downtown Srinagar. He further says that he “will continue to pursue the mission of withdrawal of the AFSPA even if Army has publically expressed its reservation for lifting the law. ...for the phased withdrawal of the law from some parts of the state” (Pandit, *The Times of India*). But the sincerity of Abdullah could be doubted as he has done nothing till date like

the removal of AFSPA from seven assembly constituencies of Manipur. Indian politicians change their remarks any moment and his cry against AFSPA might also be only for winning ballot papers.

In the meantime, Army officials are reluctant to give in and are meeting with the Prime Minister and the Home Minister to seek support of AFSPA. They are afraid that huge protests would be orchestrated in Kashmir if the Act is repealed now and re-imposed later when the need arises (Gupta, *The Hindustan Times*). Even though Omar Abdullah is raising his voice against AFSPA, no Chief Minister from the North-East seems to be concerned even though it is the region that has been terrorised by the Act for the longest period. In the region, it is only the civil organisations raising their voice and most of them are being accused of being handiworks of armed militants and some vested interests. The parliamentary debate on AFSPA on 17-18 August, 2004 is very interesting indeed (Ningthouja, 98-99). Most of the Ministers in the debate seem very much concerned for the welfare of Indian sovereignty and integration apart from the welfare of the patriotic armed forces and their families living miles away. But a closer look in the argument shows the loophole in their patriotism for they show no concern for the civilians in the North-East and Kashmir who are also very much Indians. They argue only for the morale booster of the armed forces. Defence Minister A.K. Antony also says that the Government “cannot take a decision on AFSPA in a hasty manner because (they) are very serious about that” (Decision, *Imphal Free Press*). The Minister’s words show that more than half a century of torture and a decade of parliamentary debate is not enough for taking a decision on a pre-colonial act burrowed from the British. The action so far from the Government of India seems still unblemished from the views held by Sardar Patel, the Iron Man of India, who said of the North-East people in the following words to Jawaharlal Nehru:

The contact of these areas with us is by no means close and intimate. The people inhabiting these portions have no established loyalty or devotion to India. Even Darjeeling and Kalimpong areas are not free from pro-mongoloid prejudices (Patel, *Letter*).

The Assam Rifles, the most active force in the North-East, with a history of working so long in the region apart from a history of so many allegations of misuse of AFSPA seems to have the same ideology. The former Director General of Assam Rifles (DGAR) Lt. Gen. K.S. Yadava advocated the continuation of AFSPA and said:

Our forces fighting insurgency in the hostile and sensitive region need protection given by such an act like AFSPA (Yadava, *WebIndia123*).

These views are just one sided and need to be rectified for they seem to forget that it is the civilians, not the so called militants, who are the majority of the victims under AFSPA. The people of this region are living in an emergency-like situation for more than half a century even though there is no ‘emergency’ declared under the democratic constitution of India. There is no country in the world where a state of emergency had been declared for long periods. It is only in the North-East where there has been a situation of an ‘unofficial emergency’ under AFSPA for more than 54 years at a stretch. As a result, the fundamental rights assigned in the constitution of the largest democracy in the world are still a far cry for the people of the North-East. The constitution of India allows its citizens certain ‘fundamental rights’ under Article 12 to 35 under part III of the constitution, including ‘right to freedom’ and ‘right to equality’, but under AFSPA all are of no value. Even Article 21

(right to life and liberty) is of value in the North-East and Kashmir. Here, it may be noted that the Supreme Court had observed that Article 21 will apply even to foreigners. Because of sec. 6 of AFSPA that allows the security personnel total impunity for their actions or atrocities, even 'the right to constitutional remedies' envisioned in the fundamental rights has no significance to the people of North-East.

Another important aspect worth mention is the quality of the armed persons of the country. India claims to be the largest democracy in the world with one of the largest strength of the army. If a closer look is made into the required educational qualification of the personnel, it is just matriculation – a far cry from the graduate personnel of neighbouring China (China's PLA, *Sina English*). This may be one of the major reasons why there are so many atrocities committed during armed operations in the region. There seems to be an urgent need to rectify this policy of giving deadly weapons and total impunity to persons with little education.

There is no co-ordination between the state civil government and the armed forces during most of the major operations, and the colonial law continues to prey on the innocent civilians who are all Indians. Indian armed forces need better education and training to counter the raising threat – not better protection from the rule of law. They should be taught how to fight the miscreants without AFSPA and respect the civil rights of the innocent civilians. As John Scales Avery says:

The attention of international human rights groups would help to hasten the repeal of the unjust Armed Forces Special Powers Act. With its repeal, the states of Northeast India could become equal partners in a democratic India. At present they are terrorized and unwilling colonies (Avery, AFSPA in North East).

The Government needs to understand that such Acts and its fallouts have adverse effects on the psychology of the people. No one needs to ask why there are so many cries and anti-Indian slogans coming from the region when the atrocities continue. AFSPA will only bring frustration and alienation to the people of the North-East and may act as a source of national disintegration. The fact remains that to repeal AFSPA and bring all the people of India under the right to equality and the right to life, both the state Government and the Centre need to join hands and work together. The purpose of AFSPA is to curb terrorism that is has failed to do. It does not mean that revoking AFSPA will increase or decrease the terrorist activities in the region but that time has proved AFSPA to be a failure to its main purpose.

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