

ARMED FORCES SPECIAL POWERS ACT-VIOLATION OF HUMAN RIGHTS UNDER THE INDIAN CONSTITUTION

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“It takes us a long time to raise our children. Then, when they grow up, they are shot. This cannot go on. We no longer want to look for our children in the morgue.

*—Yumlembam Mema, women’s rights activist in Manipur”.*¹

The Armed Forces (Special Powers) Act, 1958² is the oldest, most arbitrary legislations which exists in India. Its origin is the British colonial ordinance which was initially intended to begin the Indian independence movement³. The Special Forces are given, under this act, unlimited powers that are unrestricted, once there is a declaration of insurgency, for carrying out their operations. In order to maintain public order and safety, on mere suspicion, even a non-commissioned officer has the power to shoot and kill⁴

The armed forces⁵, in the name of “aiding civil power” are given wide rights to shoot, search and arrest. It was earlier applicable to the North Eastern States only i.e. Assam and Manipur⁶, but was extended even to Tripura, Meghalaya, Arunachal Pradesh, Mizoram, Nagaland⁷. There has been countless incidents after the enforcement of AFSPA regarding detention, torture, rape, looting and arbitrary acts in the North Eastern States by such Armed Personnel. This particular legislation has always been defended and supported by the Government of India itself by

¹ "The Killing of Thangjam Manorama Devi". Human Rights Watch. Aug 2009. <http://www.hrw.org/reports/2008/india0908/3.htm>

² The Armed Forces Special Powers Act, 1958

³ “The Armed Forces (Special Powers) Act- Repressive Law,” *Combat Law: The Human Rights Magazine*, vol. 2(1), April/May, 2003. Also Amnesty International, “Document - India: Briefing on The Armed Forces (Special Powers) Act, 1958,” ASA20/025/2005, May 9, 2005, <http://www.amnesty.org/en/library/info/ASA20/025/2005>

⁴ § 4, The Armed Force (Special Power) Act, 1958

⁵ Supra footnote 2

⁶ Ibid.

⁷ The Armed Forces (Assam and Manipur) Special Powers (Amendment) Act, 1972

contending that it is to prevent the North Eastern states from seceding away from the Union of India.

Relation of AFSPA and Human Rights

Supreme Court is overburdened and flooded with several cases that challenge the very existence and constitutionality of AFSPA itself. In *Inreajit Barua vs. The State of Assam And Anr*⁸: AFSPA was held to be constitutional but the High Court of Delhi. It is extremely disappointing and highly surprising that the High Court of Delhi found such an arbitrary legislation to be constitutional since it clearly contradicts and violates some of the most important Articles enshrined in the Constitution of India, one of them being guarantee of basic human rights.

Article 21 of the Constitution:

Article 21: Right to life. "No person shall be deprived of his life or personal liberty except according to procedure established by law"⁹. It was held in a landmark judgment of *Maneka Gandhi vs Union Of India*¹⁰ that "procedure established by law means a fair, just and reasonable law".

The Section 4(a)¹¹ gives unrestricted powers to the armed forces to shoot and kill anyone arbitrarily which violated the right to life¹². Such a legislation is by no means fair and reasonable since it gives unrestricted powers to the armed forces to use any amount of force, which might be disproportionate. The Offences under 4(a) are: "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 fire-arms, ammunition or explosive substances".¹³ In the offences stated above, none of them necessarily involve the use of force, but even then the armed forces are allowed to use disproportionate forces with any kind of offence.

⁸ *Indrajit Barua V. The State of Assam And Anr*, AIR 1983 Delhi 513

⁹ Article 21, The constitution of India

¹⁰ *Maneka Gandhi v. Union Of India*, 1978 AIR 597, 1978 SCR (2) 621

¹¹ The Armed Force (Special Power) Act, 1958

¹² Article 21, The Constitution of India

¹³ § 4(a), The Armed Force (Special power) Act, 1958

There are many cases that show us the true picture about how Border Security Force (BSF) and the army misuses their power which is vested by them through this legislation in the North East that undoubtedly results in the violation of human rights. In a recent incident in April 1995, in West Tripura a localite was reading a book near the border post when he was asked to stop by a soldier and when the villager refused to stop, he was shot dead by the soldier. There was an even more grave killing on the 5th of March 1995, when the Rastriya Rifles thought that the tire blast was a bomb explosion and shot people dead randomly in Kohima. This shooting went on for an hour that resulted in 7 deaths and 22 injured which included 2 young girls and 7 children. These regular incidences show the level of arbitrary killings in the North East.

Article 22 of the Constitution:

Article 22 of the Indian Constitution states that "(1) No person who is arrested shall be detained in custody without being informed, as soon as maybe, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice. (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate."¹⁴ The other sections are dealing with the limits and extent on these two sections in cases of Preventive Detention. Prima facie, AFSPA is not preventive detention legislation, therefore the limitation of (1) and (2) would not always be applicable but should be guaranteed to the arrested victims under AFSPA.

Sub clause (2) had been a subject matter of debate when the Constitutional framers were drafting the Indian Constitution. There was an elaborate discussion regarding whether there should be a time limit specified or whether “with the least possible delay” should be used and leave it at the discretion of the armed forces. Dr. Ambedkar, stated that “with the least possible delay” would lead to the accused being held for a shorter period of time, while “24 hours’

¹⁴ Article 22, The constitution of India

would lead to him being in custody for maximum 24 hours¹⁵. It can now be said that a specified time frame would have been a better option which would constitute a greater safeguard.

The use of “least possible delay”¹⁶ under the AFSPA, has given free space to the armed forces to keep accused people under custody for days, months and even years sometimes. In *Nungshitombi Devi v. Rishang Keishang*¹⁷, the victim was arrested by CRPF on 10th January 1981 and the complaint was filed by his wife since he was missing till 22nd February 1981. He was arrested under section 4(c)¹⁸. The court held that such unnecessary delays are illegal and too long even under section 5¹⁹. In the case of *Civil Liberties Organisation (CLAHRO) v. PL Kukrety*,²⁰ people were arrested in Manipur’s village; Oinam, and held in custody for 5 long days even before they were presented before the magistrate which is a clear cut violation of Article 22 of the Constitution.

Arbitrary and illegal detention of innocent people is blatantly being practiced by the armed forces in India because they get protection under AFSPA. Though there is a contention that the provisions under AFSPA are preventive detention laws, it would be a clear violation of Article 22²¹. Any person can be arrested for 3 months under the preventive detention laws²². But for any detention that would be longer than 3 months, it is necessary that the Advisory Board reviews it²³. Article 22(5) says that when any detention is done under any preventive detention legislation, the authority that passes such an order has to communicate the grounds of such detention to the person detained as soon as possible and shall give him ample opportunity to make his presentation against such an order²⁴. But AFSPA is contrary to such laws, it says that any person can be arrested by armed forces even without issuing any warrant, on mere suspicion that the person is going to commit any offence²⁵. The armed forces do not have any obligation to communicate the grounds for such an arrest nor is there any provision for an

¹⁵ Vol IX, *Constituent Assembly Debates (Proceedings)*,
<http://164.100.47.132/LssNew/constituent/vol9p8.html>

¹⁶ § 5, The Armed Force (Special Power) Act, 1958

¹⁷ *Nungshitombi Devi v. Rishang Keishang* (1988) 2 Gauhati LR 137

¹⁸ The Armed Force (Special Power) Act, 1958

¹⁹ *Ibid.*

²⁰ *Civil Liberties Organisation (CLAHRO) v. PL Kukrety* (1988) 2 GLR 137

²¹ The Constitution of India

²² Article 22 (4), The Constitution of India

²³ Article 22 (4) (a), The Constitution of India

²⁴ Article 22(5), The Constitution of India

²⁵ § 4(c), The Armed Force (Special Power) Act, 1958

advisory board. These arbitrary and unrestricted arrests are volative of the Fundamental Rights enshrined in the Constitution of India²⁶. These armed forces have very precisely and systematically tortured the innocent people that they arrest in the North East²⁷. The International Covenant on Civil and Political Rights (ICCPR) prohibits the use of torture of any kind and has termed it as a non derogable right²⁸. During the Operation Bluebird, there was an extensive abuse of the rights conferred to the armed forces and arbitrary atrocities and torture was committed by the Assam Rifles in Manipur. Just within the initial few days of this operation, there were incidences of villagers being treated with all kinds of cruelty and inhuman treatment that degraded human life by the Assam Rifles²⁹. The armed forces then retaliated by inferring the same kind of atrocities on the villagers of Oinam³⁰. More than 300 villagers were beaten and tortured according to the Amnesty International Report³¹

The following extracts are taken from "OPERATION BLUEBIRD" AND THE STRUGGLE FOR LEGAL JUSTICE.³²

*“From August 22, 1988 the Sessions Judge at Imphal, Shri C. Upendra Singh, began recording evidence of the NPMHR witnesses. Here are extracts of what they told the court:
” I was taken to Oinam Post and beaten severely during interrogation ...I was beaten with sticks and iron rods all over my body and given electric shocks in my private parts...”*

Ng. Khailang ,Ngamju Sha Village-

” I was arrested by the Assam Rifles on 30th August 1987 and taken to their camp till 3rd September 1987. On 4th September I was taken to a Magistrate at Imphal and forced to put my signature on a false affidavit prepared by Assam Rifle

²⁶ Article 22(5), The Constituion of India.

²⁷ Supra footnote 2

²⁸ § 7 , International Covenant on Civil and Political Rights (ICCPR) , 999 UNTS 171 and 1057 UNTS 407 / [1980] ATS 23 / 6 ILM 368 (1967)

²⁹ DOCUMENT - INDIA: TORTURE, RAPE AND DEATHS IN CUSTODIAL INDEX: ASA 20/06/92

³⁰ John Parrat, Wounded Land: Politics and Identity in Modern Manipur, Mittal Publications

³¹ Supra footnote 29

³² Naga Peoples Movement for Human Rights (NPMHR), Based on the 2nd & 3rd reports of The Co-ordinating Committee on Oinam Issue (COCOI).

http://www.npmhr.org/index.php?option=com_content&view=article&id=84:qoperation-bluebirdq-and-the-struggle-for-legal-justice-qcrying-for-justiceq&catid=18:npmhr

L. Jonathan, Phuba Thapham Village

“I was beaten very badly outside the Church, I got a severe injury in my pelvic bone and legs. I can no longer walk or sit.”

Thaiso, Sorbung Village

*“Ten houses were forcibly dismantled by the Assam Rifles in my village ... the Commanding Officer C. P. Singh was himself in the village when they dismantled houses ... I saw one villager, Sosang, being badly tortured. Later he was found dead.”*³³

The above cited statements clearly prove that how heinous crimes and tortures are being committed by the armed forces where there is an insurgency.

In another operation “Operation Rhino”, the village was surrounded by Rajputana Rifles in the village Bodhakors, Assam on October 4, 1991³⁴. During this operation Rhino, there are statements of eyewitnesses that there was a house to house search during which the women were sexually harassed and brutally raped while men were taken into interrogation camps³⁵. They were tortured and starved according to official reports when there were events that lead to the death of people captive by the armed forces³⁶

The above mentioned operations and unnecessary arrests by the armed forces clearly shows how the human rights guaranteed under Article 21 and 22 of the Constitution of India is violated in areas of insurgency

Conclusion:

The state has its own limitations and is absolutely justified in taking precautionary measures in order to overcome terrorism for protecting its civilians, maintain law and order and bring culprits of such offences to justice. But in order to serve justice, it should always be in a

³³ Ibid.

³⁴ No End in Sight: Human Rights Violations in Assam, Vol. 5 Issue 7, Human Rights Watch

³⁵ Khatoli Khala, The Armed Forces Special Powers Act (AFSPA) and Its Impact on Violence Against Women in Nagaland

³⁶ A Report on Human Rights Violations and State Terrorism in Assam During Operation Rhino, September 1991, Manav Adhikar Sangram Samiti (MASS), pp. 9,12-13

reasonable and humane manner. Legations like AFSPA need to be reviewed and repealed if necessary since it was failed to achieve its very basic objective and is being misused by the armed forces. A state like Manipur is the perfect example since it is declared insurgent and according to its Chief Minister Ibobi Sing, 8,000 innocent villagers and 12,000 members of armed groups of opposition have lost their lives³⁷. Such armed groups have been increasing constantly from 4 in 1980 to 20 in 2014. Such incidences clearly indicates that AFSPA is a big failure and has violated human rights under its umbrella. But even after such statistics, if the Government of India is of the belief that North Eastern states can be controlled only by AFSPA, then there should be proper measures that all the armed forces should be properly trained according to the UN Code of Conduct for law enforcement personnel³⁸. The officials would have to respect the human dignity at all times and give highest importance to the human rights of all people³⁹. There should be proper training given to the armed forces which would be known to the public as well so as to maintain complete transparency regarding public accountability and human right issues. These changes would help the local villagers of North East who are stuck between insurgents and military troops.

³⁷ Ibobi unhappy over mushrooming growth of ultras' outfits, The Sangai Express, Imphal, 16 June 2003

³⁸ As per Code of Conduct for Law Enforcement Officials Adopted by General Assembly resolution 34/169 of 17 December 1979, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>

³⁹ Article 2, Code of Conduct for Law Enforcement Officials