ARMED FORCES SPECIAL POWERS ACT (1958); MERITS & DEMERITS[1]

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ABSTRACT

The concept of this research paper is to scrutinize the validity of the Armed Forces Special Powers Act, 1958 in so far as the allegations of human rights violations go. After providing the gist of the powers authorized by this Act, we aim to elaborate on the merits and demerits of this Act and bring into account the numerous controversies and protests that have been staged against it, and furthermore, to bring to light the egregious cases of torture and homicide that have been perpetrated by personnel of the armed forces. Lastly, we will go on to provide our personal implications on this Act, as to whether it should be repealed, amended or be allowed to stay as it is.

INTRODUCTION

For nearly more than five decades, the Armed Forces (Special Powers) Act, 1958 has been in force in Manipur, one of the seven states of the northeast region of India. By conferring broadly defined powers to shoot to kill on the armed forces, this law has fostered a climate in which the agents of law enforcement use excessive force with impunity. A pattern of apparently unlawful killings of suspected members of armed opposition groups has resulted from the systemic use of lethal force as an alternative to arrest by the security forces. Civilians, including women and juveniles, have been among the victims of killing or wounding by security forces.

As well as providing powers to shoot to kill, the Armed Forces (Special Powers) Act provides virtual immunity from prosecution to those forces acting under it. Despite consistent allegations of widespread human rights violations in areas of the northeast of India where the Act is in operation, to Amnesty International's knowledge, no member of the security forces has been prosecuted for a human rights violation.

In so far as our personal opinion goes, the Armed Forces Special Powers Act of 1958 is a ***double-edged sword***. On one hand it confers upon army personnel the authority to take legally

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appropriate, pertinent measures apropos to the prevalent conditions in the so called "*disturbed*" areas, but on the other hand, they indirectly allow and authorize unrestrained freedoms to said personnel, thereby leaving loopholes which are exploited and in turn lead to gross human rights violations.

There is no doubt that the armed forces operate in difficult and trying circumstances in the areas afflicted by internal armed conflicts. It is in these situations that the supremacy of the judiciary and the primacy of the rule of law need to be upheld. Violence became the way of life in north-eastern States of India. State administration became incapable to maintain its internal disturbance. Armed Forces (Assam and Manipur) Special Powers Ordinance was promulgated by the President on 22nd May of 1958. In which some special powers have been given to the members of the armed forces in disturbed areas in the State of Assam and the Union Territory of Manipur. For the purpose of convenient referencing, the bare act has been provided below.

The Armed Forces (Special Powers) Act, 1958 Act 28 of 1958, 11th September, 1958

An Act to enable certain special powers to be conferred upon members of the armed forces in disturbed areas in the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura.

Be it enacted by Parliament in the Ninth Year of the Republic of India as follows:

1. Short Title and Extent –

(1) This Act may be called [The Armed Forces (Special Powers) Act, 1958].

(2) It extends to the whole of the State of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura.

***2. Definitions** – In this Act, unless the context otherwise requires:*

(a) "armed forces" means the Military forces and the air forces operating as land forces, and includes any other armed forces of the Union so operating;

(b) "disturbed area" means an area which is for the time being declared by notification under section 3, to be a disturbed area;

(c) all other words and expressions used herein, but not defined and defined in the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950) shall have meanings respectively assigned to them in those Acts.

3. Power to Declare Areas to be Disturbed Areas *– If, in relation to any State or Union territory of which the Act extends, the Governor of that State or the Administrator of that Union territory or the Central Government, in either case, if 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 powers in 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.*

4. Special Power of the Armed Forces *– 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.

5. Arrested Persons to be made over to the Police – *Any person arrested and taken into custody under this Act shall be made over to the officer-in-charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest.*

6. Protection to Persons acting under Act – *No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.*

7. Repeal and Saving – *[Repealed by Amending and Repealing Act, 1960 (58 of 1960), First Schedule, sec. 2 (26-12-1960)].*[2]

ORIGIN

The Armed Forces (Special Powers) Act (hereinafter "the Act" or "AFSP Act") has been in force in several parts of India, including the state of Manipur in the northeast of the country, for more than 50 years. The vaguely formulated provisions of the Act grant extraordinary powers to the Indian armed forces in the so-called "disturbed areas" where it is applicable. The AFSPA was adopted by the Indian parliament in 1958 to provide legal support for the army operations against independent Naga rebels. Initially applied to the then state of Assam and the Union Territory of Manipur, the original law has been amended a number of times to accommodate changes in the names and the number of states in Northeast India.

In May 1958, Dr. Rajendra Prasad, the then President of India, in response to the continued unrest in the north-eastern territories of the union, including self-determination activities by Naga tribes that spilled over into the state of Manipur, promulgated the Armed Forces (Assam and Manipur) Special Powers Ordinance. The ordinance entitled the Governor of Assam and the Chief Commissioner of Manipur to declare the whole or any part of Assam or Manipur, respectively, as a "disturbed area". The AFSP Act replaced the ordinance later that year. The Act was passed by both Houses of Parliament on 18 August 1958 and received presidential assent on 11 September 1958. Subsequent amendments to the Act, which mainly dealt with the territorial

[2] Sourced from http://www.satp.org/satporgtp/countries/india/document/actandordinances/armed_forces_special_power_act_1958.htm on 17.09.'14.
SATP: South Asia Terrorism Portal.

scope of its application, were enacted in 1960, 1970, 1972 and 1986.[3] Even though there was some resistance within the parliament against the passing of the Act, the majority prevailed and the law was passed. Today the Act is applicable to the north-eastern territory of India, comprising of seven states, namely, Assam, Manipur, Tripura, Meghalaya, Arunachal Pradesh, Mizoram and Nagaland.

Two virtually identical laws were subsequently enacted: one in 1983 to apply to Punjab and Chandigarh, and the other in 1990 to apply to Jammu and Kashmir. Considering that the powers given to the armed forces by the AFSPA, in effect, suspend fundamental freedoms in an area, the AFSPA regime arguably amounts to a localized form of emergency rule. But it does not invoke the emergency powers of the Indian Constitution. The Indian Supreme Court has held the AFSPA 1958 to be constitutionally valid.[4]

THE MERITS

The use of Armed Forces in aid of the Civil Powers

The formulation used in the AFSPA has long been a part of public order policing in India. The doctrine is by no means unique to India. Countries like Canada and the United Kingdom also have some versions of that doctrine, though custom and common law place limits on it in all three countries. India resorts to the practice more often than the other two countries. Yet the relevant sections of the British Defence Doctrine would resonate with those familiar with the official Indian arguments in support of the AFSPA. At the core of the "legal doctrine governing the domestic use of military personnel" in the UK is said to be "the absolute primacy of civil authorities; when Armed Forces personnel are used on domestic tasks they are only employed in support of relevant and legally responsible civil authorities".[5]

The roots of the AFSPA and of the doctrine of the army coming to the aid of civil power lie in the history of colonial policing. In British colonial India, the army and the police were "complementary rather than alternative agencies of control". Internal security took up as much as one-third of the resources and manpower of the army. "In all countries the soldier when in barracks may be regarded as available in the last resort to deal with domestic disturbances with which the policeman cannot cope," observed the Simon Commission Report of 1929, "but the

[3] The Repealing and Amending Act, 58 of 1960; The Armed Forces Special Powers (Extension to Union Territory of Tripura) Act, 1970; The Armed Forces (Assam and Manipur) Special Powers (Amendment) Act, 7 of 1972; The State of Mizoram Act, 34 of 1986; The State of Arunachal Pradesh Act, 69 of 1986.
[4] Naga People's Movement v Union of India
[5] Jonathan Stevenson, *The Role of the Armed Forces of the United Kingdom in securing the State against Terrorism* [2006]

case of India is entirely different. Troops are employed many times a year to prevent internal disorder and, if necessary, to quell it".

In his classic work on Imperial Policing published in 1934, Maj. Gen. Sir Charles Gwynne divided "the police duties of the army" into three categories (a) small wars with definite military objectives but ultimately aimed at establishing civil control; (b) situations where "normal civil control" breaks down and the army becomes "the main agent" for maintaining or restoring order, including martial law when military authority temporarily supersedes civil authority; and (c) situations where the police forces under the control of civil authorities are inadequate for the challenges at hand and the army is called upon to help. The three types of interventions differ in terms of the kinds of authority that the military exercises: the army exercises full authority in the first type of intervention, and different levels of shared authority with the civil officials in the latter two types of intervention. However, situations where such interventions occur are fluid: an incident "may pass from one category to the other".

In independent India, the army has been called upon to deal with internal security matters with remarkable frequency. An article published in 1992 provides some quantitative data. While that evidence is dated, it is quite telling. From 1951 to 1970, over a twenty-year period, there were 476 occasions when the army was called upon to deal with matters of internal security. Such interventions became even more frequent after that. From June 1979 through December 1980 - an eighteen-month period – there were as many as 64 such occasions, and there were 369 such instances between 1981 and 1984. There is no reason to believe that the pattern would be very different for the years since then. Most of these interventions were in cases of communal riots. Because the state police forces are often seen as partisan, the need for the army and paramilitary forces under the central government's control to step into such situations is widely accepted by officials and citizens alike. The practice is so well established that a commission inquiring into the Bombay riots of 1992-93 warned against local administrations delaying the decision to call upon the armed forces when the situation demands it. Most interventions by the Indian army in matters of internal security are quick "in and out" operations". Yet in terms of Indian policing practices those operations and the ones enabled by the AFSPA are sub-types of the same kind of public order policing: those that involve the army's aid to civil powers. Indian official arguments in support of AFSPA therefore rarely elaborate on the specifics of security challenges to make the case for the AFSPA. That the powers available to the army for controlling a riot are inadequate is seen as enough of an argument in favor of the AFSPA. As the Reddy Committee's report tries to explain, the relevant sections of the CPC are "meant to meet situations where an unlawful assembly

endangers the public security," which is the case during a communal riot. In such a situation the authority of the state is not challenged, which is not the case with situations that the army faces in the Northeast. To the Reddy Committee, this difference makes the case for the AFSPA seem self-evident.

The report spells out the difference between the two types of situations as follows: Such situations must be distinguished from those arising in the North Eastern States like Manipur, Nagaland or Assam where the militants not only challenge the authority of the State but by their composition, strength, aims and objectives present a problem which is spread over a large geographical area and is long term in nature. In situations of the latter kind, the provisions of the Criminal Procedure Code would not be adequate. *A permanent legal provision would be required which permits the army and the other Central forces to operate over an extended area and time period - of course, consistent with the rights and interests of the citizens and the security of the State.* The report simply asserts that the powers designed for the purpose of controlling a riot are insufficient. Since the situation that the army confronts in Northeast India is not a riot, from the Reddy Committee's perspective, the case for "a permanent legal provision" permitting the army and the other Central forces "to operate over an extended area and time period" is self-evident. However, if one considers the peculiarities of the "insurgencies" of Northeast India, as I have described earlier in this paper, as a rationale for the AFSPA, this would hardly be convincing to anyone who does not accept what has become the official common sense of public order policing in postcolonial India.

Every country dealing with insurgency or with terrorism has its own laws and legislations to tackle the menace. Likewise, India has laws to fight insurgency and terrorism, and has given legal powers to armed forces operating in 'disturbed' areas under AFSPA 1958. The power to declare an area 'disturbed' lies with the Governor or the Central Government, who have to form an opinion that the use of armed forces in the aid of civil power is essential and then notify it as 'disturbed area'. The declaration of an area as a 'disturbed area' is for a limited duration and review of the declaration before the expiry of six months has to be undertaken by the executive.

A non-commissioned officer has also been conferred with the powers under the Act because it is he who is the commander of a section and leads it for any operation. While exercising powers under Section 4(a), the armed forces should use minimum force required for effective action. This force is to be used against armed militants.

While executing action under powers conferred under Section 4(b) of the Act during operations against militants, there are chances that a few houses may get damaged where the militants take shelter. Section 4(d) is essential, so as to search out the militants or any other equipment hidden in villages or in residential areas. Innocents are likely to be harassed during cordon and search operations. Though, the security force personnel are protected under Section 6 of the Act, but if they violate the law they are severely punished under the respective laws of Army and the Armed Forces. The powers conferred under the AFSPA have been upheld by the Supreme Court in 1998.[6]

The people influenced by the militants are concerned about human rights violations by security forces, but what about the violations committed by the militants? As per a police report, during 2000-2004, militants killed more than 450 civilians and kidnapped several senior government officials. In practice, there are hundreds of armed encounters each year. Not every armed encounter is questioned. However, when people, whether innocent civilians, suspects or members of armed oppositions groups are captured from their houses or villages and routinely killed in fake encounters, allegations of extrajudicial killings surface. Yet, there has been little or no documentary evidence to prove that the victims were indeed arrested as no arrest memo is issued, not to mention about evidence to prove subsequent extrajudicial executions.

Initially, there were only three militant groups in Manipur; today, there are at least 26 militant groups operating in the small state. Most of the groups operate under the influence of external directors. There is also the menace of drug trafficking in the state. Overall, the situation in Manipur is alarming and to counter this, the armed forces operating in the state require special powers to support them.

According to India's army chief, *General V.K. Singh*, the AFSPA is "misunderstood" by the public. For him the issue is quite simple: "soldiers need legal protection to ensure that they perform their tasks efficiently". In this context it is hard to disagree with the Indian commentator Siddharth Varadarajan who believes that "given the balance of political and institutional forces in India today" the idea of simply getting rid of the AFSPA does not make perfect sense.

General Effect, if AFSPA is repealed in Manipur

[6] Article "*An Illusion of Justice (Supreme Court Judgement on the Armed Forces Special Powers Act)*" http://education.vsnl.com/pudr/illusion.html

1. It will cause a chain reaction in all states where the Act has been enforced.
2. No armed force would like to carry out any operation in the insurgent affected areas without proper legal protection for its personnel.
3. It will demoralize the armed forces and all initiative will be lost.
4. Whenever any offensive action is taken by armed forces, the militant groups will instigate the people/local authorities to initiate legal cases against the armed forces. Justice may be biased under the influence of militants.
5. The militants will get an upper hand and may be difficult to contain.
6. Incidents of extortion from the civilian population/government organizations will go unchecked.
7. Civil administration will be overrun by the militants and there will be chaos all around.

The aforementioned text puts forth the simple fact, with ample perspicuity, that there is a pertinent need for an Act that provides certain "non-restrictive" powers to the army personnel which ensures that there is no impediment in their task, especially in the line of duty.

THE DEMERITS

There have been powerful public protests against the AFSPA in regions where the law is in force. The killing of unarmed civilians by security forces has provoked particularly intense public anger. During the past couple of years, there have been widespread anti-AFSPA protests following the murder of civilians in "fake encounters." In 2004, emotions against the AFSPA exploded in the Northeast Indian state of Manipur after the abduction, suspected rape and killing of a woman, *Thangjam Manorama*, by security forces. An act of exceptional courage and eloquence marked those protests. In response to those public protests, the Indian government appointed a committee to review AFSPA 1958, headed by a former Supreme Court Judge, B.P. Jeevan Reddy. Human Rights Watch includes this decision among the positive achievements of the first Manmohan Singh government that came to power in 2004 (Human Rights Watch 2005). The Reddy Committee submitted its report on June 6, 2005.

India is a signatory to the International Covenant on Civil and Political Rights [ICCPR] (hereinafter referred to as the '*Covenant*'). As far back as 1997, the Human Rights Committee established under the Covenant, expressed its dismay that "some parts of India have remained

subject to declaration as disturbed areas over many years." India, in effect, said the report uses emergency powers for long periods without following procedures spelt out in a Covenant to which it is a signatory. The reference is to Articles 3 and 4 of the ICCPR. In Article 3 the state parties "undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant." But in times of "public emergency which threatens the life of the nation," they may "take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation."

However, the right to life and the norms regarding the prohibition of torture, slavery and servitude are non-derogable. A state "availing itself of the right of derogation" is required to "immediately inform the other State Parties" through the intermediary of the UN Secretary General about "the provisions from which it has derogated and of the reasons by which it was actuated." The ICCPR assumes that such measures are exceptional and temporary. Governments therefore are required to communicate the date when such derogation is terminated.[7] The Human Rights Committee recommended that AFSPA and its use "be closely monitored so as to ensure its strict compliance with the provisions of the Covenant".[8] India has steadfastly opposed efforts by UN human rights institutions to monitor the AFSPA regime.

India's position is that the AFSPA does not invoke the emergency powers of the Indian Constitution, and the armed forces *assist* civil powers, and they do not *supplant* them – and that it does not come under the jurisdiction of Article 4 of the ICCPR. Indian officials have never tried to argue that the particular challenges it faces in any part of India meet the Covenant's test of a "public emergency which threatens the life of the nation." They make a somewhat circular argument that AFSPA and the legal immunities for armed forces are necessary so long as there are situations that, in the government's judgment, require the "use of armed forces in aid of the civil powers." They argue that the army's standard internal mechanisms are good enough to safeguard against human rights violations.

Among the most controversial clauses of the AFSPA is the one that requires "the previous sanction of the Central Government" for the "persecution, suit or other legal proceeding against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act". This immunity provision is not unique to the AFSPA. Many Indian statutes have some version of it. Its roots lie in the common law doctrine of sovereign immunity and the idea

[7] United Nations Convention, 1966.
[8] United Nations Convention, 1997.

that public officials are entitled to the presumption of good faith vis-à-vis acts performed in the course of their official duties.

There is no doubt that the armed forces operate in difficult and trying circumstances in the areas afflicted by internal armed conflicts. It is in these situations that the supremacy of the judiciary and the primacy of the rule of law need to be upheld. However, if the law enforcement personnel stoop to the same level as the non-State actors and perpetrate the same unlawful acts, there will be no difference between the law enforcement personnel and the non-State actors whom the government calls "terrorists".

The Act grants extraordinary powers to the military, including the powers to detain persons, use lethal force, and enter and search premises without warrant. These powers are formulated very broadly and framed in vague language. For example, the Act under section 4(c) and (d) allows the military officers involved to "use such force as may be necessary" to effect arrests and to enter and search any premises. *Despite the inherent risk of abuse in such broad powers, the Act contains no effective safeguards to protect rights.*

Section 4 of the Act grants the following powers to any military officer, including any commissioned officer, warrant officer, non-commissioned officer and any other person of equivalent rank in the military forces, air forces operating as land forces, and other operating armed forces of the union:

Use of lethal force: If a military officer is of the opinion that it is necessary to do so for the maintenance of public order, he or she can, after giving warning, fire upon or otherwise use force, including lethal force, against any person who is acting in contravention of any law or order. This applies in particular if five or more persons assemble together or if the targeted person carries weapons or any other objects that can be used as weapons.

Arrest: A military officer can arrest, without warrant, any person who committed a cognisable offence [an offence against which ordinarily police are authorized to act without requiring prior consent from a court] or against whom a reasonable suspicion exists that he or she has committed such an offence or is about to commit it. When effecting arrest, the military officer can use such force as may be necessary. Any person who is arrested pursuant to the AFSP Act shall be handed over by the military officer to the officer-in-charge of the nearest police station as soon as possible.

Enter and search: A military officer can enter and search, without warrant, any premises in order to carry out an arrest, or to recover any person believed to be wrongfully restrained or confined or any property reasonably suspected to be stolen or any arms or explosives. When entering and searching, the military officer can use such force as may be necessary.

The risk of abuse inherent in these provisions is further heightened by the all-embracing immunity covering all military officers involved. In particular, the Act provides in section 6 that: "No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act".

The 1972 amendments to AFSPA extended the power to declare an area disturbed to the Central Government whereas in the 1958 version of AFSPA, only the state Governor had the power. The notification in Manipur issued in 1980 still continues even after 24 years, and thereby the people of Manipur feel that they have been deprived of the spirit of liberty, freedom and democracy for too long a period. The exercise by the armed forces of the unchecked powers to arrest, search, seize and even shoot to kill conferred under Section 4 of the Act has resulted in large-scale violation of the fundamental rights of the citizens under Articles 14,19,21,22 and 25 of the Constitution.

The power under the Section 4(a) of AFSP Act3 has hurt the citizens of Manipur the most as they feel that the Act confers the armed forces with broadly defined powers to shoot to kill and that this is a law, which fosters a climate in which the agents of law enforcement are able to use excessive force with impunity.

It is alleged that security forces have destroyed homes and other structures presuming them to be used by insurgents under provisions of Section 4(b) of AFSPA. Arrest without warrants is a serious encroachment on the right to liberty of a person. The power of search and seizure under Section 4(d) has been extensively used by the armed forces in cordon and search operations leading to widespread violation of fundamental rights of citizens and the forces have kept arrested persons (Section 5) for several days in their custody.

Some of the most egregious events and occurring that have shown gross human rights violations by armed forces personnel under the protection of and wrongful exploitation of The Armed Forces Special Powers Act, 1958.

The widely reported events that took place on 5 March 1995 in Kohima, Nagaland, still stand out as one of the most glaring examples.[9] The military, while driving along the streets of the town, mistook the sound of a burst tyre from their own convoy for a bomb explosion and opened fire indiscriminately. Individuals who were considered to be terrorists' accomplices were dragged from their houses and arbitrarily killed. As a result, seven civilians lost their lives. In addition, 22 passers-by, including seven minors, were injured. A commission of inquiry set up by the Government of Nagaland found that there had been no reasonable ground for the use of any force in the circumstances.[10]

Another well-publicised case is the arrest and death of Ms. Thangjam Manorama Devi. On 11th July 2004, the 32-year-old was arrested under the Act at her house in Manipur by the Assam Rifles (part of the Indian armed forces). Three hours later her badly mutilated and bullet-ridden body was found by the roadside nearby.[11] No investigation followed, and the Indian Army Vice Chief of Staff explained that what happened to Manorama had been "unfortunate".[12] Her death, as well as the authorities' failure to investigate it, led to large-scale protests throughout Manipur, prompting the Prime Minister of India to visit the state. The Government of Manipur established a commission of inquiry headed by Justice C. Upendra, a former sessions judge, but the Assam Rifles challenged that decision before the courts claiming that the State government had no competence to investigate their actions. The ensuing prolonged litigation came to an end only in 2010 when the challenge was rejected. However, at no point during this period and thereafter have the authorities taken any measures to establish the circumstances of Manorama's abduction, possible torture and death and to identify those responsible. The enquiry report itself has not been made available to the public. Manorama's family approached the High Court to obtain a copy of the report. The Court agreed. However, the union government at the time filed a special leave petition against the order and the case is still pending before the court.

Another reported case of arbitrary killing by the military acting under the Act concerned Mr. Rengtuiwan, a 75-year-old retired school teacher, and his disabled wife, who were killed and injured, respectively, on 16 November 2004 when they were fired at by the Assam Rifles in Bungte

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[9] South Asia Human Rights Documentation Centre, *Armed Forces Special Powers Act: A Study in National Security Tyranny* http://www.hrdc.net/sahrdc/resources/armedorces.htm.

[10] R. Shukla, *Why Temperance Will Not Work With AFSPA*, Manipur Online (6/11/2010), http://manipuronline.com/edop/opinions-commentary/why-temperance-will-not-work-with-afspa/2010/11/06.

[11] G. Pandey, *Woman at the Centre of the Manipur Storm*, BBC World (27/08/2004), http://news.bbc.co.uk/1/hi/world/south_asia/3604986.stm.

[12] *Manorama Devi had links with terrorists: Army*, Times of India (11/12/2004), http://articles.timesofindia.indiatimes.com/2004-12-11/india/27149487_1_media-hype-terrorists-manorama-devi.

Chiru village, Manipur. Twenty or thirty Assam Rifles were searching for rebels in the village and reportedly considered the elderly couple as being part of them. The post mortem report revealed the following: "The bullet which killed Mr. Rengtuiwan went in through his chest and exited through his bottom. The pathway of the shot implies firing at a close range and that the person must have been in a kneel-down position as the shot must have been fired from above his head at a share angle or more than 60 degrees".[13] In other words, the evidence points to a cold-blooded execution rather than firing at a suspicious target.

The more recent examples of the activities of the military in Manipur include indiscriminate use of firearms during the night of 2-3 April 2011, which led to the killing of Ms. Waikhom Mani in the village of Nongangkhong.

Proposed Remedial Measures

The general administration in Manipur is not able to give effective justice to the people, with the result that it has to depend on the security forces for its normal functioning. Therefore, the forces operating in the state have to be honest, law abiding and must respect the rights of the people of the state. The commanders at all levels should follow the principle of "use of minimum force" required for effective action. They should brief their men to respect all womenfolk. In case any woman is to be arrested, then it should be done with the help of a lady police/ force personnel, who should also remain present during interrogation. While carrying out search operations, the force personnel should associate a local respected person and also the owner of the house, and after the search, the owner should be permitted to search the search party is he so desires. One must challenge before opening fire and to ensure that one fires only in self-defence. A grievance cell should be opened at Sector Headquarters/ Battalion Headquarters so that the civilians can lodge complaints against the force personnel if they so desire and the commander should take necessary action as deemed fit. Police representatives must be associated with every operation conducted by the security forces.

The training should be of high level so that the armed force may be able to handle all types of situations with professional competence. It is high time that the state police is trained to take over operational responsibilities from the Army and the BSF. The normal operations may be conducted by the state armed police and only major and pinpointed operations be left for the

[13] Amnesty International, *Briefing on the Armed Forces (Special Powers) Act* (8/05/2005), http://www.amnesty.org/en/library/asset/ASA20/025/2005/en/41fc59d2-d4e1-11dd-8a23-d58a49c0d652/asa200252005en.html.

armed forces. Junior level personnel should be properly briefed to not to over react to any sensitive situation.

It is also important to evolve a mechanism to deal/ tackle with over ground support structures that are generally well-connected with local politicians and are regarded in the society. Everything depends on intelligence and hence we must sharpen the skills of the armed forces for collection of hard intelligence. Senior commanders should handle civil society sensibly so as to extract sympathy and maximum information from them. This will also help in changing the perception of the local population in the larger interest of the Government/ Nation.

CONCLUSION

As previously mentioned, the Armed Forces Special Powers Act of 1958 is a double-edged sword. If made use of judiciously and with benevolent intent, it can benefit the society and the country as a whole immensely. On the contrary, if misused and exploited, it can lead to serious human rights violations and gross injustices to innocents. Therefore, massive efforts need to be undertaken by the concerned authorities. On one side, senior officials in the armed forces must ensure that their subordinates duly discharge their duties and make responsible use of the power authorized and bestowed upon them by this Act. They must always keep in mind the entire society's interest at large and must never cause unnecessary harm. On the other side, the legislature must make suitable amendments to this Act wherein no scope for violations is left and all sorts of ambiguity is wiped out.

There can be no two ways with the fact that insurgency has to be put down with a firm hand within the provisions of law and not to be dictated by the militants. You cannot tie both hands of the security forces and then ask them to fight armed militants. The militants will keep on exploiting the sentiments of the local people and they (militants) will try to reap benefits from such situations. Avoid any tendency to carry out blind operations against militants without specific intelligence/information. Indiscriminate arrests and harassment of people out of frustration for not being able to locate the real culprits should be avoided.

Security forces should be very careful while operating in the Northeast and must not give any chance to the militants to exploit the situation. All good actions of the force get nullified with one wrong action. Any person, including the supervisory staff, found guilty of violating law should be severely dealt with. The law is not defective, but it is its implementation that has to be managed

properly. The local people have to be convinced with proper planning and strategy. The main idea behind the enactment of this Act has to be kept in mind: the benefit of the people in the "*disturbed*" areas where this Act has been enacted. Therefore we are of the opinion that that Act, in its current stage, is a diamond in the rough. With relevant amendments, this Act can be highly beneficial to the society, with little or no scope of misuse or exploitation.