

**STUDY ON THE ARMED FORCES SPECIAL POWERS ACT (AFSPA) AND
HUMAN RIGHTS VIOLATIONS IN INDIA**

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ABSTRACT

The Armed Forces Special Powers Act (AFSPA), which was passed in 1958, has proven to be a contentious piece of legislation throughout the years, and has been condemned by various segments of society since its passage. This act grants unrestricted authority to soldiers serving in armies to shoot and kill any individual if they have any reason to believe that person poses a threat in any way. It has been and continues to be utilized by the armed services, in direct violation of Article 21 of the Indian Constitution, which is a serious breach of international law. The statute that was established even grants immunity or protection to armed personnel from any form of legal action or punishment. AFSPA has been the subject of heated controversy since its inception, and it should be repealed because it is being abused by the public to a significant amount.

KEYWORDS: Critical, Armed Forces, Human Rights

1. INTRODUCTION

The growing incidences of violence in India's North-Eastern regions had prompted the two houses of Parliament to introduce and approve the Armed Forces (Special Powers) Bill, which was signed by the President on September 11, 1958, and became effective the following day. The Armed Forces (Special Powers) Act 1958 went into effect in North-East India in 1958, and in Jammu and Kashmir in 1990, and it is still in effect today. Officials of the Armed Forces are exempt from working in any capacity in the specified disturbed regions under the provisions of this Act. In recent years, this Act has been the subject of numerous disputes and has been roundly attacked by human rights activists who believe that it poses a threat to the inhabitants of India whom it is intended to be safeguarding. Similar to the way in which our Indian legal system presumes an offender to be innocent until proven guilty, this Act authorises officials of the armed forces to shoot anyone who is suspected of committing

an offence on the eve of a mere suspicion of doing so. Providing unconditional protections to the acts of the armed and paramilitary forces is the purpose of this Act. On the other hand, it was implemented in order to improve the administration of uprising rebellious movements in particular states.

2. REASON FOR THE STUDY

The researcher's curiosity led him to look for an alternate approach to finding answers to the political challenges that a nation was confronting rather than establishing an inquiry panel and waiting years for suggestions that would then be rejected by the government. The cases of victims of collateral damage were brought to our attention, and we decided to investigate this subject.

3. OBJECTIVES OF THE STUDY

The following are the primary objectives of the investigation:

- To critically examine the consequences of the (AFSPA) Act.
- To investigate the consequences of the (AFSPA) Act as well as the factors that contribute to human rights breaches.
- It is also necessary to examine the state's political and socio-economic situation, both in the past and present, to determine whether the act is in any way detrimental to the well-being of the society.

4. SIGNIFICANCE OF THE STUDY

This research will highlight the violations of the human rights element and shed light on the influence and merit of this particular act on the various states of India. It will also demonstrate the violations of the human rights aspect. As a result of this study report, an unbiased debate and analysis of the delicate issue of the army's presence in different states of India would be available to the public for the first time.

5. Questions for further investigation

The following are the primary research questions that will be addressed in the study:

- How has the Armed Forces Special Powers Act impacted human rights in various Indian states?
- The Armed Forces Special Powers Act has several sections that you should be aware of.
- What could be the reparation procedures or alternatives that could be used to rehabilitate those who have been victimized?

6. METHODOLOGY OF THE STUDY

The doctrinal approach would be the most appropriate methodology to use for this particular research because it would entail substantial reading and critical thinking. Books by prominent writers, essays in peer-reviewed journals, and media reports have all been examined and studied as a secondary source of information for this research. A review and study of the legal literature available in India has been conducted, and a large number of sources have been cited. In order to maintain the study up to date, a number of web databases and internet search engines were utilized.

6.1 SCOPE OF THE STUDY

Accordingly, a social, political, legal, and economic examination of the Armed Forces Special Powers Act would be included in the scope of the research project. Additionally, the research would include an investigation into the origins, history, and development of this statute.

The significance of research

- The first is social welfare, which can be accomplished through socio-legal research.
- Comparative study: It aids in the research process by allowing researchers to learn about the laws of other states.
- Law reform: research is a valuable instrument for any undertaking involving legal change.

7. RESULTS AND DISCUSSIONS

7.1 CASE LAWS

In the Naga People's Case, the courts considered a number of problems, including the question of arbitrariness and the question of unconstitutional powers, which were both determined by the courts under the Armed Forces Special Powers Act (AFSPA). The right to shoot under the Armed Forces Special Authority Act, the immunity conferred under the AFSPA, and the powers granted by the Centre for prosecuting armed personnel have all been the subject of heated debate. However, even after so many objections of this act, there were no arguments raised in support of the rights of those living in such places, other than the suggestion that it should be less rigorous in order to prevent people from being harassed. The American Freedom to Practice Act (AFSPA) must be examined from the standpoint of constitutional morality, while also taking into consideration other ways that the Supreme Court has deemed important in a democracy. This ultimately means that, under the AFSPA, the governor of a state and the central government has the authority to declare any section of the state, or even a minor part of the state, to be a disturbed area at their discretion. The Supreme Court of India ruled that the Armed Forces Special Powers Act (AFSPA) was constitutionally lawful in this case. According to Entry 1 of the State List and Article 248 of the Union List, which is read with Entry 97 and Entries 2 and 2-A of the Union List, Parliament has the authority to implement the act in its entirety, and it did so in the year 1958 as a result of this.

Similarly, in the well-known case of IndrajitBarua v. The State of Assam and Anr, the court found and concluded that the state is responsible for protecting its inhabitants and their rights granted under Article 21, which is also given to persons in areas where the AFSPA is in effect. In that area designated as "disturbed areas," the people are denied any type of protection for their lives and liberties, including the protection of the Criminal Procedure Code and even the right to approach the courts and seek redress, which is a violation of Article 14 of the Indian Constitution, which was given by the constitution's framers and is guaranteed to the country's people. By taking a look at the situation in the North-Eastern part of India, it is possible to assume that the people who live there would eventually be subjected to army rule.

The Shopian Case, for example, included two ladies who went missing while returning home from the orchards. Their bodies were discovered the next day, and it was believed that they

were raped and killed by the armed personnel who had been stationed nearby. In the end, the injuries on the girls' private parts that were supposed to be mentioned in the post-mortem reports were not included, allowing the armed forces to avoid being blamed, questioned, or brought into the matter; even though such a horrifying incident occurred, no FIR was filed in this case as a result of this. Next came the case of Luithukla v. Rishang Keishing, in which the army was ordered to abide by the Code of Criminal Procedure after a writ of habeas corpus was issued. However, there was no enforcement, and nobody paid attention to what the Guwahati High Court had said in that instance. Armed forces officers had, in turn, charged that judges on the Supreme Court were attempting to curtail their ability to command military personnel stationed in the country's northeastern region.

7.2 CAMPAIGNS TO REPEAL AFSPA

People and human rights activists have launched efforts to get this abusive law, known as the Armed Forces Special Powers Act (AFSPA), repealed. Despite the efforts launched by a variety of international and domestic human rights organizations, the Indian government is unwilling to repeal the legislation, according to human rights campaigners. There have been committees established in the past, such as the Justice Jeevan Reddy Committee, which was established in 2004 following the killing of Thangjam Manorama Devi, and Dr. Manmohan Singh publicly promised to examine the AFSPA following the killing of Thangjam Manorama Devi in the year 2004. It was a committee established with Justice Jeevan Reddy, a former Supreme Court judge, as its chairman to evaluate the Armed Forces Special Powers Act, 1958, which was passed in 1958 and is still in effect today. It was intended to determine if it should be repealed and replaced with a more humanitarian statute, while also taking into consideration the government's responsibility to preserve the fundamental human rights given to its citizens. On the 6th of June, 2005, the committee presented its reports to the Home Ministry for consideration. Nevertheless, an accident occurred when a leaked report, which had not been made available to the public, was discovered and made available to the entire public on the Internet. The findings revealed that they had suggested that the act be repealed and that they had also reached the judgment that it was a terrible act. And now that it has been implemented in so many areas of the country, it has evolved into a tool of discrimination and violence against women.

Moreover, the committee recommended that some of the provisions be transferred to the Unlawful Activities (Prevention) Act of 1967, and it also requested the establishment of an independent cell, to be known as the "grievance cell," which will be responsible for investigating complaints filed against officials for violations of fundamental human rights. Not only has this committee suggested that the Armed Services Special Authority Act, 1958 be repealed, but other committees, such as the Justice Verma Commission, which reported in 2013 that the armed forces had abused their powers, have also urged that the act be repealed. Furthermore, according to other accounts, the killing of Thangjam Manorama Devi by the Assam Rifles in the year 2004 was not made public by the government.

7.3 INTERNATIONAL LAW AND AFSPA

Indian citizens' rights and liberties are widely regarded as important in the country, and the country is frequently cited as an example of this around the world. However, what appears to be happening in the states of Manipur, Jammu & Kashmir, and Nagaland appears to be that the legislation is making a mockery of the human rights that its residents are promised by the law. The recent violence that has transpired in Jammu and Kashmir has prompted many people to believe that we urgently want the abolition of the Armed Forces Special Powers Act (AFSPA), which has now become a hot topic for national debate. The Armed Forces Special Powers Act, 1958, was first implemented in the state of Arunachal Pradesh, and it has since been implemented in the states of Assam, Manipur, Meghalaya, Mizoram, Tripura, and Nagaland, and, most recently, in the state of Jammu and Kashmir, which became effective in July 1990. It is a form of law that grants enormous power to the military forces, and the people who are suffering as a result of it perceive it to be a harsh piece of legislation. People have campaigned for the repeal of the act over the years, and international organizations such as Amnesty International have called on Indian courts to look into the matter thoroughly and conduct investigations into widespread misuse of power by the armed forces and other government officials, which has resulted in numerous cases of human rights violations, according to reports. Numerous people have even compared the Armed Forces Special Powers Act, 1958, to the Rowlatt Act, under which the British gave themselves unbridled powers to imprison anyone on the suspicion that they were involved in any terrorist activity against British India for up to two years without giving them a chance to be tried.

Furthermore, it is crucial to note that the Indian Army, which is the group that has been charged by the people with carrying out horrible atrocities in the state throughout the years, has never appeared in front of the public to express their viewpoints and take a position on this vital topic. And, according to the data, the army is never called into question except in circumstances where the administration, the police, and other officials are unable to handle the matter themselves.

7.4 HUMAN RIGHTS VIOLATION AND AFSPA

Because of the prevalence of violence that has occurred in the past and continues to occur even now, it is past time for the government to take a serious look at the AFSPA and consider repealing it. Operation Bluebird, which was also reported by some of the prominent international organizations, took place in the month of January in 1987 in the state of Manipur and involved the committing of violence in almost 30 villages occupied by the Nagas, including torture and mass killings, as well as heinous acts of sexual harassment, theft, and other criminal activities, all of which were carried out in the name of defending the Nagas' rights. The fact that even the authorities were not permitted to enter the locations where such actions were taking place should not be overlooked. The AFSPA is harsh because it has made people's lives seem as if they have been subjected to curfew-like conditions for the entirety of their lives. Generally speaking, this act does not adhere to the principles of constitutional morality and is arbitrary in its application. The judgments of the government in situations involving the disturbed areas are final and cannot be challenged in a court of law under any circumstances. Furthermore, many incidents that are specifically related to these locations where such operations are being carried out do not receive adequate attention, and the victims do not receive adequate restitution. As a result, it will be beneficial to all parties if the AFSPA is viewed from the same perspective as other current techniques that the Supreme Court believes are vital for a democratic society, such as constitutional morality and non-arbitrariness, as well as other contemporary approaches. AFSPA would have to be abolished as a result of the findings given by numerous committees and incidents that have occurred since the early 1990s, according to this interpretation. As a result, if the armed forces are held accountable for activities that they took while operating under the AFSPA, only their morale will be undermined. The most important thing to remember is that simply modifying the

statute will not fix the problem because there are several holes that cannot be closed by altering the legislation alone. Abolition of the AFSPA is necessary in order for the government to understand how important it is to defend people's rights in this country. Not only are the fundamental rights of the citizens being infringed, but it is also in violation of the Universal Declaration of Human Rights, which India has signed and is therefore illegal. What has happened in Kashmir has also brought to light the condition of affairs that prevailed in the state from July 2016 to April of the current year. It also raises major concerns regarding the activities that Pakistan engages in certain portions of the Kashmiri territory.

8. CONCLUSION

To protect the country against enemies and anti-national upheavals, the AFSPA was enacted even after the end of colonial administration in the country. But, to date, has the Act been put into effect for that particular project? The number of crimes and heinous behaviors done by the Armed Forces has grown exponentially throughout the years, breaking all previous records. Instead of protecting the people of the country, the government has been mercilessly exploiting them. Even if it has been successful in preventing uprisings and adversaries from penetrating the country, on the other hand, it has become a reason for the people of the country to seek vengeance and has given birth to further anti-national upheavals.. As a result, it is necessary to maintain a good and strong check on government officials, change legislation, and impose severe penalties for officials who engage in such behavior. In order to achieve justice, it is also necessary to place restrictions on the Armed Forces' unfettered power and to give the Supreme Court a stronger role in the administration of justice. It is now critical to recognize that the time has arrived and that there is an urgent need to take into consideration the human rights violations that have occurred in the past and are still being carried out as a result of a conflict of interest in the present. Furthermore, any measures taken to resolve the current crisis should result in the cessation of violence, particularly in light of the ongoing political strife. The Office of the United Nations High Commissioner for Human Rights (OHCHR) states that there has also been a spike in violence, such as gunfire, which has resulted in civilian casualties and has forced many people who resided on the other side of the Line of Control to flee their homes.

REFERENCES

- Meenakshi Ganguly (2006). Everyone Lives in Fear: Patterns of Impunity in Jammu and Kashmir, Volume 18. India: Human Rights Watch.
- Ted Svensson (2012). Production of Postcolonial India and Pakistan. India: Routledge.
- Human Rights Watch (1993). The Human Rights Crisis in Kashmir: A Pattern of Impunity. USA: Human Rights Watch
- M.G. Chitkara (1996). Human Rights: Commitment and Betrayal. India: APH.
- SumitGanguly, David P. Fidler (2009). India and Counterinsurgency: Lessons Learned. US: Routledge.
- Yash P. Ghai, Sophia Woodman (2013). Practicing Self-Government. US: Cambridge University Press.
- Victoria Schofield (2010). Kashmir in Conflict: India, Pakistan, and the Unending War. US: I.B.Tauris.
- <https://blog.ipleaders.in/afspa-armed-forces-special-powers-act/>
- <https://blog.ipleaders.in/use-misuse-afspa-failed-application-60-years/>.
- [https://timesofindia.indiatimes.com/topic/Armed-Forces-\(Special-powers\)-Act](https://timesofindia.indiatimes.com/topic/Armed-Forces-(Special-powers)-Act).
- <https://www.thehindu.com/news/national/what-is-afspa-and-where-is-it-in-force/article23648102.ece>
- <https://www.hindustantimes.com/india-news/10-things-to-know-about-afspa/story-G6YYHw5s364LRfjTvg3HkK.html>
- https://idsa.in/strategicanalysis/ManipurandArmedForcesSpecialPowerAct1958_akam_boj_1004
- <https://blog.ipleaders.in/afspa-armed-forces-special-powers-act/>