

BACKGROUND GUIDE



**DON BOSCO LILUAH MODEL UNITED NATIONS CONFERENCE 2016
PARLIAMENTARY AD-HOC COMMITTEE**

FROM THE EXECUTIVE BOARD

Dear delegates,

It is our pleasure to welcome you all to the Parliamentary Ad-Hoc committee at Don Bosco Liluah MUN 2016.

We'll start off by answering a few common, yet pertinent questions raised before or during committee. We would be allowing the use of laptops during the committee to make work easier for you, and to save you from carrying enormous amounts of paper, however the use of internet, need we say it, is strictly forbidden inside council and any infringement of this rule will make you liable to be thrown out of committee. The facts stated in the Background guide too cannot be used as an answer to a particular question or claim, because a background guide is supposed to guide you, and be the bedrock of your research but should not form the corpus of it.

We hope you will have enough research walking into committee and hope that you will carry it through the council sessions with élan. We will be looking forward to seeing you at DBLMUN 2016 and hope to have a brilliant time, learning, debating and knowing each other. Needless to say, any questions can be directed to us anytime you wish and we promise we will answer it as soon as possible.

All the best!

Rohan Joshi

Siddharth Sonkar

INTRODUCTION

The Armed Forces (Special Powers) Act of 1958 (AFSPA) is one of the more draconian legislations that the Indian Parliament has passed. It is a law with just six sections granting special powers to the armed forces in what the act terms as "disturbed areas". Even a non-commissioned officer is granted the right to shoot to kill based on mere suspicion that it is necessary to do so in order to "maintain the public order". The AFSPA gives the armed forces wide powers to shoot, arrest and search, all in the name of "aiding civil power." It was first applied to the North Eastern states of Assam and Manipur and was amended in 1972 to extend to all the seven states in the north-eastern region of India. They are Assam, Manipur, Tripura, Meghalaya, Arunachal Pradesh, Mizoram and Nagaland, also known as the "seven sisters". The enforcement of the AFSPA has resulted in innumerable incidents of arbitrary detention, torture, rape, and looting by security personnel. Its continued application has led to numerous protests, notably the longstanding hunger strike by Ms. Irom Chanu Sharmila in Manipur. This legislation is sought to be justified by the Government of India, on the plea that it is required to stop the North East states from seceding from the Union of India.

The Armed Forces (Special Powers) Act, 1958 (AFSPA) a law operative in "disturbed areas", including large parts of the Northeast region of India and Jammu Kashmir, has facilitated grave human rights abuses, including extrajudicial execution, "disappearance", rape and torture by bestowing sweeping powers on the armed forces in these areas.¹ The Act violates non-derogable provisions of international human rights law, including the right to life, the right to remedy and the rights to be free from arbitrary deprivation of liberty and from torture and cruel, inhuman or degrading treatment or punishment (ill-treatment) as enshrined in the International Covenant on Civil and Political Rights (ICCPR), to which India is a state party since 1979, and other treaties and standards. The AFSPA empowers security forces to arrest and enter property without warrant and gives the security forces power to shoot to kill in circumstances where members of the security forces are not at imminent risk. It facilitates impunity because no person can start legal action against any members of the armed forces for anything done under the Act, or purported to be done under the Act, without permission of the Central Government.

¹ The Armed Forces (Special Powers) Act, 1958 is in force in parts of the Northeast. In 1990, a version of the Armed Forces (Special Powers) Act was brought in force in parts of Jammu and Kashmir.

In its concluding observations on India in 1997, the Human Rights Committee (HRC) recognized that “terrorist activities in the border states that have caused the death and injury of thousands of innocent people, force the State Party to take measures to protect its population” yet emphasised that “[a]ll measures adopted must be in conformity with the State Party’s obligations under the Covenant”.²

The international community is concerned at the high incidence of custodial deaths, torture, rape, extrajudicial killings and “disappearances” in the Northeast and Jammu and Kashmir in general and those among them which are facilitated by the AFSPA in particular. While some action has been taken in recent years to bring perpetrators of human rights violations in these areas to justice, the organization remains concerned that the AFSPA has enabled many perpetrators to escape punishment. The international community appreciates the efforts of the Supreme Court of India to limit the excessive powers granted to the military by the AFSPA, in particular by ruling that a declaration under Section 3 of the AFSPA is to be reviewed every six months, strengthening the safeguards for the rights of arrested persons and determining that a list of pre-existing “do’s and don’ts” are legally binding. However, even with these improvements, the AFSPA falls far short of international standards, including provisions of treaties to which India is a state party. The United Progressive Alliance which came to power in May 2004 repealed POTA after recognizing “concerns with the manner in which POTA ha[d] been grossly misused”.³ Similar concerns exist with regard to the AFSPA.

EVOLUTION OF THE ACT

At the beginning of the century, the inhabitants of the Naga Hills, which extend across the Indo-Burmese border, came together under the single banner of Naga National Council (NNC), aspiring for a common homeland and self-governance. The Naga leaders were adamantly against Indian rule over their people once the British pulled out of the region. Under the Hydari

² Concluding observations of the Human Rights Committee: India, Report of the Human Rights Committee, UN Doc. A/52/40 (1997), paras. 416-450, at para. 419.

³ *Common Minimum Programme of the United Progressive Alliance*. May 2004. The misuse of POTA was recognized in the United Progressive Alliance’s Common Minimum Programme; the terrorism prevention act was repealed in late 2004.

Agreement signed between NNC and British administration, Nagaland was granted protected status for ten years, after which the Nagas would decide whether they should stay in the Union or not. However, shortly after the British withdrew, independent India proclaimed the Naga Territory as part and parcel of the new Republic. The NNC proclaimed Nagaland's independence. In retaliation, Indian authorities arrested the Naga leaders. An armed struggle ensued and there were large casualties on either side. The Armed Forces Special Powers Act is the product of this tension.

The AFSPA, 1958 is a law in force in large parts of the Northeast that gives armed forces special powers in a locality declared as “disturbed areas”.⁴ It was originally introduced in the Northeast region of India including the state of Assam and the Union Territory of Manipur in response to armed political activity in that region. The Act was to remain in force for one year. Tensions in that region originated in demands for self-determination by the Naga people in the post independence period which led to an armed struggle. The AFSPA has its roots in British colonial legislation dating back to the mid-19th century. More directly, it was based on a British colonial ordinance, called the Armed Forces (Special Powers) Ordinance promulgated in 1942 to assist in suppressing the “Quit India Movement”, a phase in the movement for Indian independence. The AFSPA itself began as the Armed Forces (Assam and Manipur) Special Powers Ordinance, 1958 that came into force in May 1958, and was passed by parliament in September. In 1972, the AFSPA was amended to confer the power to declare an area “disturbed” on the Union government, specifically the Governor who is appointed by the President and represents the Union in states. This power was previously vested in the state government. The amendment also extended the AFSPA to other states in the Northeast.⁵ A version of the same law was introduced in Jammu and Kashmir in December 1990 and six districts in the Kashmir Division and two districts in the Jammu Division were declared “disturbed areas”. The term “armed forces” refers to both armed and paramilitary forces operating in “disturbed areas”, such as the Border Security Force (BSF), Assam Rifles, Rashtriya Rifles, Sikh Regiment, National Security Guards (NSG), and others.

State and army officials consider the Act necessary to protect the state against what are known as internal disturbances, uphold the “integrity of the nation”, “fight terrorism and insurgency” and protect “sensitive border areas”.⁶ On 3 January 2005, General Officer Commanding in Chief

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⁵ Following the 1972 amendment, the Act extended to the States of Assam, Manipur, Meghalaya, Nagaland and Tripura and the Union Territories of Arunachal Pradesh.

⁶ *Naga People's Movement of Human Rights v Union of India* [1997] ICHRL 117 (27 November 1997); Presentation by Lt. General V.K. Nayar, Former Governor Manipur, at People's Tribunal on The Armed

(Eastern Region) Lt. General Arvind Sharma reiterated that the AFSPA is “absolutely essential” to tackle insurgency in the country “...without the AFSPA, the Army will not be able to function in insurgency situations...”⁷ Army officials also cite the need to protect the morale and integrity of the army as reason not to scrutinize allegations against army personnel.

For decades, human rights groups and women’s organizations in the Northeast have expressed opposition to human rights abuses in the region and to the AFSPA. In the late 1990s, an India-wide campaign was initiated in opposition to this Act, and mobilised support for its repeal.⁸ Activism aimed at the repeal of the Act was reinvigorated following the alleged sexual assault and death in custody of a woman named Thangjam Manorama in Imphal, Manipur, India in July 2004. A group of 32 civil society organizations based in Manipur formed a coalition called the Apunba Lup to protest abuses under the AFSPA and call for its repeal. Members of Apunba Lup publicly protested for months following Thangjam Manorama’s death. Others from the Northeast have expressed their opposition to the AFSPA through more extreme protests such as self-immolation, a fast until death or naked protests.⁹ In response to protests in Manipur, the Act was withdrawn from the Greater Municipal District of Imphal. Human rights activists and academics from across India have also called for the total repeal of the AFSPA, raising concerns that the Act violates basic rights and international human rights and humanitarian law. They have recorded serious human rights abuses and charge that there was inadequate debate in Parliament when the Act was initially introduced.¹⁰

AN OVERVIEW OF THE ACT

Forces Special Powers Act, 1958. New Delhi, 19 February 2005; *The Economic Times* “Army opposes review of special powers, says Act is essential”, January 2005.

⁷ *Economic Times*, 4 January 2005 in *The AFSPA: Lawless Law Enforcement According to Law?* Asian Centre for Human Rights. 21 January 2005.

⁸ See India: Official sanction for killings in Manipur. AI Index: ASA 20/014/1997. The campaign was known as the “National Campaign Committee Against Militarization and Repeal of Armed Forces (Special Powers) Act”.

⁹ A woman named Irom Sharmila began a fast until death on 2 November 2000 after an Assam Rifles unit killed 10 people just outside Imphal. She was arrested on the charge of attempted suicide and as of February 2005 was being forcibly fed. On 15 August 2004, Chittaranjan Mangang, a Manipur Students Federation (MSF) advisor attempted to self immolate and later died. In July 2004, women protested naked against the alleged rape, torture and murder of Thangjam Manorama by paramilitary soldiers during a demonstration outside the Assam Rifles base in Imphal, Manipur.

¹⁰ See *The AFSPA: Lawless Law Enforcement According to Law?* Asian Centre for Human Rights. 21 January 2005, *Why the AFSPA Must Go: A Fact Finding Report*. Committee for the Repeal of the Armed Forces (Special) Powers Act. February 2005, *Combat Law: License to Kill Armed Forces (Special Powers) Act*. Vol. 2 Issue I. April – May 2003, *People’s Tribunal on The Armed Forces (Special Powers) Act, 1958*. Human Rights Law Network – Tribunal Secretariat. Publication forthcoming.

The introduction of the act states that it is enacted to assist state governments which are incapable of maintaining internal stability.

Section 1 of the Act states the name of the Act and the areas to which it extends. This includes Assam, Manipur, Meghalaya, Nagaland, Tripura, Arunachal Pradesh and Mizoram.

Section 2 defines the Act. Section 2(a) defines 'armed forces' as military forces and the air forces operating as land forces, and includes any other armed forces of the Union so operating. This definition is very ambiguous. In the 1958 version of the act, armed forces was defined as the "military forces and the air forces operating as land forces". Section 2(b) defines the term 'disturbed areas' as areas which are, for the time being, listed under section 3 of the act. Lastly, Section 2(c) states that the definitions of all those terms that are used in the Act, which are provided in the Air Force Act, 1950 or the Army Act, 1950 as the definitions which are given to them in the respective acts itself.

Section 3 of the Act grants powers to declare areas to be disturbed. If the Governor of the State or the Administrator of the Union Territory, to which the act extends to, is of the opinion that the whole or part of the State or Union Territory is in a disturbed or dangerous condition to such an extent that the use of armed force or civil power is necessary, then the Governor or Administrator of the State or Union Territory respectively has the power to declare the whole or part of the State or Union Territory as disturbed by a notification in the Official Gazette. This definition was granted to be very vague. The vagueness of this definition was challenged in *Indrajit Barua v. State of Assam*¹¹ case where the court held that "The Governor is empowered to declare any area of the State as "disturbed area". It could not be arbitrary on ground of absence of legislative guidelines". Thus, it was exempted from judicial scrutiny. The 1958 amendment gave power only to the State Government to declare an area disturbed. The 1972 amendment extended the power to declare an area disturbed to the Central Government. The Lok Sabha Debates of 1972, they argued that by extending this power to the Central Government, it would limit the authority of the State Government to do the same. The 1972 amendment clearly shows that Central Government is no longer concerned with the State's powers. Now, the Central Government has the power to overrule the opinion of the State Governor in declaring an area to be disturbed.

¹¹ AIR 1983 Del. 514

Section 4 deals with the special powers given to armed forces which are granted to the commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces. This provision gives the personnel of the armed force the power to use force for a variety of reasons. Section 4(a) gives the power to fire upon or use force, even if it results in death, against a person who is acting in contravention to any law and order that is at that time being in force in the disturbed area. The officers are allowed to prohibit, by the use of fire or force as stated above, the assembly of five or more people or the carrying of weapons or of things that are capable of being used as weapons or of fire-arms, ammunition or explosive substances. The officer, however, needs to be "of the opinion that it is necessary to do so for the maintenance of public order" and give "such due warning as he may consider necessary". Section 4(b) gives the power to armed force personnel to destroy any property that he detects to be an arms dump or a prepared or fortified place or shelter from where armed attacks are made or likely to be made or attempted to be made. The officer can also destroy any property that is used as training camp for armed volunteers or utilised as a hide-out by armed gangs or absconders wanted for any offence. Section 4(c) gives the officers, the power to arrest, without warrant, any person who has committed a cognizable offence or even against anybody whom the officer has reasonable basis to suspect that he has committed or is about to commit a cognizable offence. He can also use the necessary force required to effect such an arrest. Section 4(d) gives the armed force personnel to enter and search without warrant to make an arrest or to recover any property including arms, ammunition and explosives which are believed to be unlawfully kept on the premises. The search can also be administered to recover any person believed to be wrongfully restrained or confined or any property that is believed to be stolen property. This section even permits the use of force to execute such search.

Section 5 of this Act deals with the arrest which are to be made over to the police once completed. Under this section any person arrested and taken into custody under any provision of this act, shall be made over to the officer-in-charge of the nearest police station with "the least possible delay". The phrase "least possible delay" has been left undefined and is left to the discretion of the army personnel.

Section 6 gives complete immunity to the officers who work under this Act. Under this section, no prosecution, suit or legal proceeding can be instituted against any person with respect to

anything done or claimed to be done in exercise of the powers conferred under this Act, except with sanction from the Central Government.

AFSPA IN INDIAN STATES

Arunachal Pradesh

In Arunachal Pradesh, the areas that border with Assam have been declared disturbed. Violence in the state is largely directed toward the Chakma and Hajong tribal populations that migrated from Bangladesh (then East Pakistan) in the 1960s. In addition to the local anti-immigrant movement, insurgent groups from neighbouring Assam and Nagaland reportedly have a significant presence, particularly in the Changlang district. Many civilians have been victims of violence committed by militants from neighbouring states and by the security forces. For example, Indian security forces assaulted villagers of Borduria during a search for National Socialist Council of Nagaland (NSCN) militants on June 5, 2002.

Assam

Although parts of Assam came under AFSPA in 1958, the entire state of Assam was declared a disturbed area in November 1990 when fresh violence started in the state. Militancy first broke out in 1979 with the emergence of the United Liberation Front of Assam (ULFA), established in reaction to large-scale immigration from Bangladesh. ULFA remains the principal insurgent group in Assam. A second round of insurgency emerged in the 1980s with the Bodo tribal groups calling for a separate state. This movement is led principally by the National Democratic Front of Bodoland (NDFB). Despite peace processes engaging insurgent groups and the Indian government, violence remains common in Assam. The armed forces carry out abuses in the name of counterinsurgency operations and are shielded from accountability by the AFSPA. One of the starkest abuses under the AFSPA in Assam has been the imprisonment of young children. Children between the ages of four and twelve have languished in different jails across the state. The unarmed children and their mothers were first detained by Bhutanese soldiers in a 2003 counterinsurgency operation against militant bases in Bhutan. They were then handed over to Indian authorities and jailed. The children have grown up behind bars with their only crime being that they are children of suspected separatists.

Children have also suffered sexual violence at the hands of the armed forces. A 12-year-old girl was raped by a member of the Assam Rifles in Karbi Anglong on February 7, 2005. Medical tests confirmed that the abuse was sustained after the child was sedated with sleeping tablets. Fearing a backlash against the military and the AFSPA similar to that which followed the death of Manorama Devi in Manipur, police arrested the accused and his accomplices. Local women's groups are demanding justice emphasizing that the usual token monetary compensation for such heinous crimes committed by security personnel is unacceptable. Assam accounts for nearly half of the country's encounter deaths registered by the National Human Rights Commission, government statistics show. Of the 183 alleged fake encounter deaths (by the police, army and paramilitary forces) registered last year, 87 took place in Assam. Besides, recorded cases have increased considerably in the past three years. The 31 cases registered in 2009-10 rose to 54 in 2010-11, which again rose by over 50 per cent to 87 cases.

Manipur

Sections of Manipur were declared disturbed areas after the 1958 adoption of the AFSPA, and the entire state of Manipur was brought under the act on September 8, 1980.²⁵ While Naga tribes in Manipur supported the Naga armed rebellion, other ethnic groups in Manipur also began a separatist campaign against the merging of their state with the Indian Union in 1949. The conflict has evolved to include numerous insurgent groups with various ethnic and tribal affiliations. Conflicts between different tribal and ethnic groups have also emerged, leading to devastating attacks upon civilians and rampant extortion. Conflict triggers include perceived threats to land distribution, rises in taxes and perceptions of inequity between tribes. Human rights violations by security forces engaged in counterinsurgency operations in Manipur have occurred with depressing regularity over the last five decades. Torture, which includes beatings, electric shocks, and simulated drowning, is common. Arbitrary arrests and extrajudicial executions continue. New "disappearances" stopped after the Manipur government introduced a system for providing "arrest memos" but at least people remain missing since they "disappeared" in the 1980s and 1990s. In Manipur in July 2012, an organisation of widows and mothers of those killed in 'encounters' with security forces, the Extra-judicial Execution Victim Families Association, Manipur (EEVFAM), with Neena Ningombam as secretary, appealed to the Supreme Court of India for justice for the innocents killed by police commandos and security forces such as the Assam Rifles, under cover of the immunity provisions of AFSPA. The organisation has asked for an independent probe into

1,528 cases of extra-judicial execution by security forces in Manipur (*North East Sun*, November 15, 2012). It is alleged that 1,528 people including 31 women and 98 children have been killed in the name of ‘encounters’ with militants by security forces between 1979 and May 2012. Of these, 419 were killed by Assam Rifles and 481 by combined teams of Manipur police commandos and central armed police forces. Ningombam’s husband Michael was killed on November 4, 2008 by Manipur police commandos who branded him a terrorist. A district judge appointed by the Guwahati High Court has found that Michael was not guilty of initiating the firing as alleged by the Manipur police commandos. Manipuris have long campaigned for the repeal of the AFSPA, a few engaging in acts of desperation including self-immolation and stripping naked in front of an army camp. Irom Sharmila, a human rights activist, has been on a fast until death since 2000, kept alive by being force-fed by doctors while in judicial custody. Opposition to the AFSPA came to a head following the killing of Thangjam Manorama Devi in July 2004. After being arrested by members of the Assam Rifles, Manorama was found dead near her house in the Ngariyan area the next morning. She had been shot through the lower half of her body, leading to suspicion that bullet wounds had been used to hide evidence of rape. For several weeks following Manorama’s killing, ordinary Manipuris joined in protest demonstrations calling for repeal of the AFSPA.

Meghalaya

The roots of discord in Meghalaya can largely be attributed to rivalry between tribal residents and the mostly non-tribal immigrants from Bangladesh that began trickling in after the 1947 partition of India. Militancy erupted in the late 1980s. A 20 kilometre wide belt in Meghalaya bordering Assam was declared a disturbed area in November 1990. The armed forces have committed numerous atrocities against civilians in Meghalaya under the auspices of the AFSPA. During “Operation Birdie” in 1997-98, many Khasi tribal women were reportedly raped. The Assam Rifles also used women as human shields, in violation of the laws of war, in a retaliation attack on the NSCN. The soldiers placed the muzzle of their guns on the women’s shoulders as they battled with the rebels. While the violence in Meghalaya has largely died down, widespread allegations of arbitrary detention, rape, and torture have never been properly investigated.

Mizoram

Mizoram was declared a disturbed area in January 1967. Following the signing of a peace accord in June 1986, the AFSPA is no longer applied in Mizoram, though it remains a “sleeping” law. A devastating famine in the early 1960s and perceived government neglect resulted in an armed independence struggle by the Mizo National Front (MNF), which was initially formed as a relief organization. During the 20-year conflict the rights of Mizos were restricted and violated under cover of the AFSPA with widespread allegations of torture, rape, extrajudicial killings, and arbitrary detention. As in other areas militarized under the AFSPA, women in Mizoram were particularly vulnerable to violations by security personnel, including rape, sexual violence, and arbitrary detention. For example, a woman named Lianthangvuanga was raped by five soldiers when she was 13 years old. She managed to escape but then suffered the further trauma of witnessing her father being tortured by the army. He died as a result of his injuries. In recounting what had happened 30 years before, Lianthangvuanga revealed that for years she had not talked about her experience with anyone because family members and her community had chosen to “forget” the experience. She was left feeling shameful of herself for being violated by the officers.

Nagaland

Many ethnic Nagas opposed Indian rule following the British withdrawal from the region in 1947. Initially seeking political means to secure self-governance, people of the Naga Hills united under the banner of the Naga National Council (NNC). While India proclaimed the Naga Territory as part of the Indian Union, the NNC declared independence for Nagaland and embarked upon an armed struggle. The AFSPA was enacted in 1958 to end the separatist armed campaign. The NNC later fractured and was eventually overshadowed by the National Socialist Council of Nagaland (NSCN), which became the main insurgency group in the northeast by 1980. The NSCN has since split into two key opposing factions, the NSCN-IM and the NSCN-K, with clashes between the two resulting in many deaths. The Nagaland population has suffered the most from the armed forces and militant groups operating in the state.³⁹ As Naga writer Temsula Ao put it, “There are no winners, only victims and the results can be measured only in human terms. For the victims the trauma goes beyond the realm of just the physical maiming and the loss of life—their very humanity is assaulted and violated, and the onslaught leaves the survivors scarred both in mind and soul.” Civilians in Nagaland complain of the misuse of the AFSPA under which they have lived for 50 years. The presence of the armed forces is a part of their everyday life. Violence has affected almost every family. Soldiers

have been responsible for untold killings and “disappearances,” and for sexual abuse and rape of women. A particularly disturbing example of the volatile environment that has developed in areas militarized under the AFSPA is the 1995 killings in Kohima city. Soldiers began shooting indiscriminately after mistaking the sound of a tire bursting for a bomb attack. Seven civilians, including girls age three and eight, were killed in the hour-long firing that ensued. A further 22 were seriously injured, including seven children.

Tripura

The AFSPA was extended to Tripura state in November 1970.⁴⁴ At present, the hill district of the state, the Tripura Tribal Autonomous District Council, remains declared a “disturbed” area. Insurgency in Tripura developed in response to an influx of immigrants from Bangladesh. The indigenous tribal population was reduced to 31 percent by 1991, and forced into the hilly interior regions, while immigrants dominated government jobs and local businesses. A tribal insurgency, led by the All Tripura Tiger Force (ATTF) and the National Liberation Front of Tripura (NLFT), continues to the present. Crimes against tribal women by the security forces have been a feature of the conflict in Tripura. One of the most widely known incidents was the 1988 gang rape of 14 tribal women in Ujanmaidan by the Assam Rifles. Rape and sexual violence have continued in Tripura state. Three tribal women were allegedly gang raped by the Assam Rifles in Dhalai district during a search operation on February 9, 2006. Several girls were also molested. One of the rape victims was pregnant and suffered a miscarriage following the incident.

THE REVIEW COMMITTEES

The Reddy Review Committee

After months of protests and *bandhs* (strikes) in the state of Manipur calling for repeal of the AFSPA, the erstwhile Prime Minister of India, Manmohan Singh, visited Manipur in November 2004. A day before the visit, his government appointed a five member committee to review the AFSPA. The then Prime Minister promised that the “government would consider

replacing the Act with a more ‘humane’ law that would seek to address the concerns of national security as well as rights of citizens”.¹² The Review Committee has since “called for representations on whether it should recommend to the Government of India to:

- i. amend the provisions of the Act to bring them in consonance with the obligations of the Government towards protection of Human Rights, or
- ii. replace the Act by a more humane legislation”.¹³

The committee has held hearings, including in the Northeast, and has invited comments from individuals, organizations, institutions and all non-governmental organizations.¹⁴ A number of groups calling for repeal of the Act have rejected the Review Committee and refused to participate in the process because of its limited mandate of amending or replacing – not repealing – the Act. During the course of its work, the committee members met several individuals, organizations, parties, institutions and NGOs, which resulted in the report stating that “the Act, for whatever reason, has become a symbol of oppression, an object of hate and an instrument of discrimination and high handedness.”¹⁵ The report clearly stated that “It is highly desirable and advisable to repeal the Act altogether, without of course, losing sight of the overwhelming desire of an overwhelming majority of the North East region that the Army should remain (though the Act should go).”¹⁶ The panel gave its report in June 2005 but the then Government has neither officially accepted nor rejected its findings with AFSPA still in continuance in the Northeast and now in Jammu & Kashmir too. Reason may be that with rapid rise in terrorism throughout the country in the past couple of months coupled with terrorist violence in many places, especially in the Northeast, the government of India cannot take a hasty decision on the removal of this Act, as it could spell several dangers to the strategic security and territorial integrity of the country.

In addition to the Jeevan Reddy Committee, the Second Administrative Reforms Commission headed by Veerappan Moily in its Fifth Report in June, 2007 has also recommended the repeal

¹² “Former SC judge to head AFSPA review committee”, *Outlook* 19 November 2004. Also according to *Outlook*, the committee is headed by Justice BP Reddy a retired Supreme Court judge and comprised of SB Nakade, a jurist, Dr. Shrivastha, former Special Secretary in the Home Ministry, Lieutenant General NR Raghavan, former Director General Military Operations in the Army and Sanjay Hazarika, a journalist.

¹³ *The Hindu*, 10 December 2004.

¹⁴ *The Hindu*, 10 December 2004.

¹⁵ Report of the Committee to review the Armed Forces (Special Powers) Act, 1958, Government of India, Ministry of Home Affairs (June 2005). <http://notorture.ahrchk.net/profile/india/ArmedForcesAct1958.pdf>.

¹⁶ *Ibid*.

of the AFSP Act. The Commission stated that “after considering the views of various stakeholders came to the conclusion that AFSP Act should be repealed”.¹⁷

The Justice Verma Committee

The Committee on Amendments to Criminal Law (popularly referred to as the Justice Verma Committee) was a three-member committee headed by Jagdish Sharan Verma, a retired Supreme Court judge, set up by the central government in December 2012 to review laws against sexual assault. The committee was formed a week after the gang rape and murder of a 23 year-old woman on 16 December 2012. The incident was a flashpoint in India, causing thousands to protest in the streets, clashes with riot police, and backlash from the media and human rights groups against the government’s initial response to the incident, and the public’s anger. The committee’s 657-page report included a section on sexual violence in conflict zones, in which the committee said that the AFSPA legitimized impunity for sexual violence, and recommended immediate review of the continuance of the AFSPA in internal areas of conflict.

The committee’s report, released in January 2013, was welcomed by several rights groups and organizations, including the UN High Commissioner for Human Rights. The report noted that in conflict zones legal protection for women in conflict areas was often neglected, and emphasized that women in conflict areas were entitled to the security and dignity afforded to citizens elsewhere in the country. In its recommendations, the committee said that sexual violence against women by members of the armed forces or uniformed personnel should be brought under the purview of ordinary criminal law, and urged an immediate review of the continuance of the AFSPA. The committee also recommended an amendment to the AFSPA to remove the requirement of prior sanction from the central government for prosecuting security personnel for certain crimes involving violence against women. In interviews to the media, J. S. Verma said that sexual violence could not in any way be associated with the performance of any official task, and therefore should not need prior sanction from the government.¹⁸

¹⁷ Second Administrative Reforms Commission, Government of India. (June 2007). *Public Order*, (Fifth Report, Chapter 7). p. 239. http://arc.gov.in/8threport/ARC_8thReport_Ch4.pdf,

¹⁸ Interview between (Retd.) Justice J.S. Verma and NDTV. 30 January 2013. <http://www.ndtv.com/article/india/your-call-with-justice-ret-d-js-verma-full-transcript-324315>

Following the committee's recommendations, new laws on violence against women were passed in April 2013. These included an amendment to the Code of Criminal Procedure which removed the need for prior sanction for prosecuting government officials for certain crimes involving violence against women, including rape, sexual assault, sexual harassment, voyeurism and stalking. However a similar amendment to the AFSPA that was proposed by the committee was ignored.¹⁹

The Justice Hegde Commission

In January 2013, the Supreme Court appointed a three-member commission headed by Santosh Hegde, a retired Supreme Court judge, in response to a public interest litigation seeking investigation into 1,528 cases of alleged extrajudicial executions committed in the state of Manipur in northeast India between 1978 and 2010. The commission was established to determine whether six cases identified by the court were 'encounter' deaths – where security forces had fired in self-defence against members of armed groups – or extrajudicial executions. It was also mandated to evaluate the role of the security forces in Manipur.

In its report submitted to the court in April 2013,²⁰ the commission found that all seven deaths in the six cases it investigated were extrajudicial executions, and also said that the AFSPA was widely abused by security forces in Manipur. The commission said that the continued operation of the AFSPA in Manipur has made "a mockery of the law," and that security forces have been "transgressing the legal bounds for their counter-insurgency operations in the state of Manipur." The commission echoed a statement made by the Jeevan Reddy Committee, a committee formed to review the AFSPA in 2005, which said that the law had become "a symbol of oppression, an object of hate and an instrument of discrimination and high-handedness." The committee's report recorded how security forces in Manipur were disregarding procedural

¹⁹ The Justice Verma Committee was not the first national body to recognize the plight of women in "disturbed" areas. Referring to 'Women in Disturbed' areas, the Planning Commission in its 12th Five year Plan, stated "Women in disturbed areas face special issues including continuous army presence, suspended civil rights and lack of normal access to facilities/services due to continuous violence. They are most vulnerable to atrocities and need special attention in areas like health care measures, schools, free legal aid and so on." The Planning Commission went on to say that it would conduct a gendered review of the AFSPA and document human rights violations under the AFSPA as they relate to women, and perform a needs assessment of women in disturbed areas.

²⁰ Although the Commission submitted its report to the Supreme Court on 4 April 2013, the Court refused to make the report public, claiming the media and human rights groups would "sensationalize" its contents, according to statements by the petitioners. The petitioners, a Manipur-based victims' group and a local human rights organization, only secured a copy of the report in July 2013.

safeguards set out in Supreme Court rulings and army directives to ensure that AFSPA powers were used with exceptional caution and with the minimum force necessary.

Neither the Justice Verma Committee nor the Santosh Hegde Commission was expressly mandated to consider the role of the AFSPA in violence against women or extrajudicial executions, respectively. However, both pointed to the AFSPA as being a key cause of both past and ongoing human rights violations. The Santosh Hedge Commission primarily criticizes the lack of enforceable safeguards against abuse of the AFSPA's provisions. For example, "though the Act gives sweeping powers to the security forces even to the extent of killing a suspect with protection against prosecution, etc., the Act does not provide any protection to the citizens against possible misuse of these extraordinary powers...normally, the greater the power, the greater the restraint and stricter the mechanism to prevent is misuse or abuse. But here in the case of the AFSPA in Manipur, this principle appears to have been reversed."²¹

Similarly, the Verma Committee concluded that the provision requiring sanction to prosecute allowed for crimes against women to be committed by security forces with impunity. The committee recommended that section 6 of the AFSPA, 1958 and section 7 of the AFSPA, 1990 be amended to waive the requirement for sanction if the armed force personnel were accused of crimes against women. The government and the armed forces rejected the recommendation.

INTERNATIONAL OPPOSITION

The AFSPA has also been subject recently to severe criticism by several UN experts, including the Special Rapporteurs on violence against women, its causes and consequences; on extrajudicial, summary or arbitrary executions; and on the situation of human rights defenders. Rashida Manjoo, the UN Special Rapporteur on violence against women, its causes and consequences, said after her visit to India in April 2013 that the AFSPA had "resulted in impunity for human rights violations broadly." She called for the repeal of the law, saying, "the interpretation and implementation of this act, is eroding fundamental rights and freedoms –

²¹ Commission of Inquiry. Santosh Hegde Commission Report. Page 93. 4 April 2013.

including freedom of movement, association and peaceful assembly, safety and security, dignity and bodily integrity rights, for women, in J&K and in states in north-east India. Unfortunately, in the interests of State Security, peaceful and legitimate protests often elicit a military response, which is resulting both in a culture of fear and of resistance within these societies.”²²

Cristof Heyns, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, visited India in March 2012. In his report to the UN Human Rights Council, he stated that “the powers granted under AFSPA are in reality broader than that allowable under a state of emergency as the right to life may effectively be suspended under the Act and the safeguards applicable in a state of emergency are absent. Moreover, the widespread deployment of the military creates an environment in which the exception becomes the rule, and the use of lethal force is seen as the primary response to conflict.”²³

Calling for the repeal of the law, he said that “retaining a law such as AFSPA runs counter to the principles of democracy and human rights.” Margaret Sekaggya, the UN Special Rapporteur on the situation of human rights defenders, who visited India in January 2011, also called for the AFSPA to be repealed in her report, and said that she was deeply disturbed by the large number of cases of defenders who claimed to have been targeted by the police and security forces under laws like the AFSPA. International and national human rights groups and activists, including Amnesty International, have called for the AFSPA’s repeal for years, with little purposeful response or definitive action from the government. The central government, and state governments of J&K and states in northeast India, has also failed to engage in meaningful debate on the Act despite well documented evidence of abuses. Amnesty International India welcomes the national and international attention being brought to the AFSPA and the violations it facilitates.

²² Special Rapporteur on Violence against Women, its causes and consequences finalises country mission to India. 1 May 2013. Rashida Manjoo.

²³ Cristof Heyns observed that “impunity for extrajudicial executions is the central problem. This gives perpetrators a free rein, and leaves victims in a situation where they either are left helpless, or have to retaliate.” Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Cristof Heyns, Mission to India. 29 May 2013.

A 'DRACONIAN' ACT?

The provision of a “license to kill” has steered this Act to incur an odium that no other Act has incurred, both at a national and an international level. AFSPA grants the army, central police forces, and state police personnel in “disturbed areas” with “certain special powers,” including the right to shoot to kill, to raid houses, and destroy any property that is “likely” to be used by insurgents, and “to arrest without warrant” even on “reasonable suspicion” a person who has committed or even “about to commit a cognizable offence.”²⁴ It speaks a lot for the Court’s insensitivity to citizens’ rights in cases where “national security” is involved- that the judgments are short on legal analysis and rich on patriotic rhetoric, which is wholly out of place in judicial pronouncements.²⁵

The Act, though it had its own drawbacks, was enacted for just purposes, and was done constitutionally. It was enacted because of the duty imposed on the Union by Article 355 of the Constitution of India. The Article states: “*It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution*”. Originally, this Article was passed with the view of regulating federal Centre- State relations. Passing the Act was a measure to counteract insurgency in the north east, and would fall squarely within this provision. The same was contended by the Attorney General in 1991 when the Human Rights Committee questioned the validity of Section 2 of the Act.²⁶ In *Naga People's Movement of Human Rights v. Union of India*, the Supreme Court had to decide the question of the constitutionality of the AFSPA. After confirming the legislative competence of the Union vide Entry 2A of List I of the VI Schedule, the enactment was upheld with the observation that its provisions were enacted in order to enable the Union to discharge the obligation imposed on it under Art. 355 of the Constitution so as to protect States from grave situations of internal disturbances and to prevent such situations from escalating to such seriousness as would require

²⁴ India’s Controversial Armed Forces (Special Powers) Act by Sudha Ramachandran. Available at <http://thediplomat.com/2015/07/indias-controversial-armed-forces-special-powers-act/>.

²⁵ Armed Forces(Special Powers) Act: Urgency of Review. *Economic and Political Weekly*, [Online]. Vol. 44, No. 34. Available at: <http://www.jstor.org/stable/25663461> [Accessed 24/08/2015].

²⁶ Terrorism and Human Rights Laws: A Comment Author(s): U C JHA Source: *Economic and Political Weekly*, Vol. 44, No. 37 (SEPTEMBER 12-18, 2009), pp. 70-71.

invoking the drastic measures under Art. 356.²⁷ The Court held that by virtue of Article 355, the Union owed a duty to protect the states against internal disturbances.²⁸

The Act came into existence after several attempts of the State government to control the Nagas revolt against the unification of their territory with India. The region had always had a sense of disconnect with the rest of the Indian subcontinent. In order to deal with this rebellion, Assam came up with the Assam Maintenance of Public Order (Autonomous District) Act in the Naga Hills in 1953 and intensified police action against the rebels. The situation worsened nonetheless. The government then deployed the Assam Rifles and enacted the Assam Disturbed Areas Act, 1955 which was very similar to the Armed Forces Special Powers Act of 1958.²⁹ But neither of the empowered authorities was able to contain the rebellion. On the contrary, the violence spread. The consequence of the State governments request for the Centres assistance is the Armed Forces Special Powers Act, 1958. The Act must be understood in this context. The previously mentioned Acts had not achieved the degree of control they were meant to, and ultimately provisions like the ones in AFSPA came to be of great importance in combating such insurgencies. Deploying the armed forces without powers such as the ones in AFSPA would be detrimental to the cause, as the looming threat of legal proceedings as well as other legal binds would have prevented the armed forces from carrying out their functions to their full capacity. It would demoralise the Armed Forces.

A factor to consider, while specifically dealing with the issue of 'disturbed' areas, would be that no part or provision of any Act should be read or understood in isolation, without the object of the Act in mind. The statement of Objects and Reasons of the Act, reiterating the fact that the Act was indeed passed due to a constitutional duty, states that – "The Armed Forces [Assam and Manipur] Special Powers Act, 1958, empowers only the Governors of the States and the Administrators of the Union Territories to declare areas in the concerned State or Union Territory as "disturbed". Keeping in view the duty of the Union under Article 355 of the Constitution, inter alia, to protect every State against internal disturbance, it is considered desirable that the Central Government should also have power to declare areas as "disturbed" to enable its armed forces to exercise the special powers."

²⁷ Duty of the Union Under Article 355 of the Constitution - Remembering the Constitutional Ideal of Co-operative Federalism, Jaideep Reddy, 4 NUJS L. Rev. 371 2011.

²⁸ *Naga People's Movement of Human Rights v. Union of India* AIR 1998 2 109.

²⁹ Dinesh Kotwal, "The Naga Insurgency: the Past and the Future," *Strategic Analysis*, Vol 24 (4), July 2000, p 751

A reasonable and sensible meaning must be found by the use of the text, context, subject-matter, purpose of the statute as a whole, including extrinsic aids or conditions surrounding its enactment and application³⁰. The argument for arbitrary scope for declaring ‘disturbed areas’ is hence weighed against the contention that it is the prerogative of Central Government, as it is the Centre’s duty to ensure internal disturbances and external threats. Therefore, if the central government is not given any power to decide what areas would fall under the ambit of the Act, it would not uphold its duty to its true sense. Various countries have resorted to such laws in time of need. United Kingdom, in the wake of the Birmingham bombings in 1974, enacted the Prevention of Terrorism (Temporary Provisions) Act, 1974, which gave unprecedented Executive and Police power to prevent the spread of the Irish terrorism in Britain. The Act gives powers to the Home Secretary to declare which organizations would fall under the ambit of the Act, and curtails public expression of support to such organizations. It also allows the police to arrest any person who they reasonably suspect that a person is concerned in the commission, preparation or instigation of acts of terrorism. The most recent example would be the new anti-terrorism law approved by the President of Egypt, Abdel Fattah el-Sisi, which empowers the military and police by granting them legal protection from the use of proportional force in the course of their duties. This is in the wake of growing terrorist activities in North Sinai with the increasing spread of support to the Islamic State of Iraq and Greater Syria (ISIS)³¹. There have already been arrests under this law³².

FAQS

1. What is the Armed Forces (Special Powers) Act?

The Armed Forces (Special Powers) Act, 1958, or AFSPA, as it is commonly known, has been a subject of intense discussion and debate. AFSPA has been in force in the North-East and Jammu and Kashmir, and the ‘draconian’ law has been the reason of wide protests. The Armed

³⁰ 5 Fordham L. Rev. 219 1936, Contextual Interpretation of Statutes by Frederck J. De Sloovre.

³¹ Egypt Adopts Controversial Anti-terrorism Law. Available at <http://www.aljazeera.com/news/2015/08/egyptadopts-controversial-anti-terror-law-150817042612693.html>.

³² Egypt arrests three under new anti-terror law fro spreading Islamic State, available at <http://www.foxnews.com/world/2015/08/23/egypt-arrests-3-under-new-anti-terror-law-for-spreading-islamic-state/>.

Forces (Special Powers) Act, 1958 (AFSPA) was preceded by the Armed Forces (Assam and Manipur) Special Powers Ordinance 1958. The Ordinance gave the armed forces certain special powers in the 'disturbed areas' of Manipur and Assam.

It was replaced by AFSPA on September 11, 1958. AFSPA was applicable to the seven states of the North-East, i.e. Assam, Manipur, Mizoram, Arunachal Pradesh, Meghalaya, Nagaland and Tripura. AFSPA empowers the governor of the state, or the central government to declare any part of the state as a 'disturbed area', if in its opinion there exists a dangerous situation in the said area which makes it necessary to deploy armed forces in the region.

2. When did the act cover Jammu and Kashmir?

In the backdrop of the growing insurgency in Jammu and Kashmir, the Central government issued a similar enactment known as the The Armed Forces (Jammu and Kashmir) Special Powers Act, 1990.

It empowers the governor or the Central government to declare any part of the state as a 'disturbed area' if in its opinion special powers are required to prevent (a) terrorist acts aimed at overthrowing the government, striking terror in the people, or affecting the harmony of different sections of the people or (b) activities which disrupt the sovereignty of India, or cause insult to the national flag, anthem or India's Constitution.

3. What are the special powers given to army officials?

Under Section 4 of the AFSPA, an authorised officer in a disturbed area enjoys certain powers. The authorised officer has the power to open fire at any individual even if it results in death if the individual violates laws which prohibit (a) the assembly of five or more persons; or (b) carrying of weapons. However, the officer has to give a warning before opening fire.

The authorised officer has also been given the power to (a) arrest without a warrant; and (b) seize and search without any warrant any premise in order to make an arrest or recovery of hostages, arms and ammunitions. Individuals who have been taken into custody have to be handed over to the nearest police station as soon as possible. Prosecution of an authorised officer requires prior permission of the Central government.

4. What has been the role of the judiciary?

There were questions about the constitutionality of AFSPA, given that law and order is a state subject. The Supreme Court has upheld the constitutionality of AFSPA in a 1998 judgement (Naga People's Movement of Human Rights v. Union of India).

In this judgement, the Supreme Court arrived at certain conclusions including (a) a suo-motto declaration can be made by the Central government, however, it is desirable that the state government should be consulted by the central government before making the declaration; (b) AFSPA does not confer arbitrary powers to declare an area as a 'disturbed area'; (c) the declaration has to be for a limited duration and there should be a periodic review of the declaration 6 months have expired; (d) while exercising the powers conferred upon him by AFSPA, the authorised officer should use minimal force necessary for effective action, and (e) the authorised officer should strictly follow the 'Dos and Don'ts' issued by the army.

5. Has there been any review of the Act?

On November 19, 2004, the Central government appointed a five member committee headed by Justice B P Jeevan Reddy to review the provisions of the act in the north eastern states. The committee submitted its report in 2005, which included the following recommendations:

- (a) AFSPA should be repealed and appropriate provisions should be inserted in the Unlawful Activities (Prevention) Act, 1967;
- (b) The Unlawful Activities Act should be modified to clearly specify the powers of the armed forces and paramilitary forces and
- (c) Grievance cells should be set up in each district where the armed forces are deployed.

The 5th report of the Second Administrative Reforms Commission on public order has also recommended the repeal of the AFSPA. These recommendations have not been implemented.

6. What is the present status of the Act?

In Manipur, Irom Sharmila has been on an indefinite fast for 11 years, seeking the repeal of the act in Manipur. Till date, the government has not agreed to this demand. Recently, the Jammu and Kashmir government has asked for some parts of the state to be removed from the list of

‘disturbed areas’. However, the army has opposed this and according to news reports, compromise formulae are being framed to be discussed at the meeting of the unified command (the highest decision making body on the security affairs of the state). At the time of writing this post, the matter was still under consideration.

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