

FIFTY YEARS OF ARMED FORCES (SPECIAL POWERS) ACT IN INDIA: A CRITICAL REVIEW

Khrukulu

Center of Human Rights, University of Hyderabad
Hyderabad, India
khrukulu@gmail.com

Abstract: In India's northeast, the armed forces have been involved in fighting armed insurrection for almost six decades. There have been innumerable instances where the Indian armed forces empowered by special laws behaved like occupational force and subjected entire Naga villages to intimidation and torture. These actions of the Indian army are being justified that it is necessary to do so to maintain law and order. The leaders of the country view the Naga conflict as a perpetual national challenge and resort to military means to tackle this challenge. Therefore a good number of repressive laws were enacted in the post independent period. These laws have resulted in the imposition of a virtual military rule not only in the Naga areas but in many parts of India. The laws were subsequently formulated to give the security forces the legal sanction to violate rights of its citizens. With its dismal human rights record and stagnant economic growth rates, northeast is a counterpoint to India's image as a mature democracy, a dynamic economy and an emerging major power.

Keywords: armed forces, human rights, insurgency, Nagas, special laws, violations.

I. INTRODUCTION

The strategies and tactics used by governments throughout the world to counter terrorism and insurgency over the past few decades include declaration of states of siege or martial law, enactment of anti-terrorist legislation and strengthening of judicial powers.¹ Some of these measures taken have been more successful than the other, but some have proved counterproductive, alienating the public from the authorities and further polarizing an already fractured political environment. Such cases of alienation and polarization can be seen in the northeast India.

Since early 1950, Nagaland in the northeast India has been the site of a vicious conflict between the Indian security forces and the Naga insurgents who are demanding independence from the Indian union. In their effort to crush insurgency in the state, the Indian state have engaged in massive human rights violation, including extra-judicial execution, rape, torture and deliberate assaults on local population. The conflict in Nagaland that has its origin in the state's disputed accession to India in 1947, erupted soon after India's independence when Indian government launched a brutal crackdown on rising violence by the Naga insurgents.

When other efforts at subjugating their resistance against inclusion in the Indian union failed, extreme military repression was sanctioned. The entire Naga areas was under siege with population being relocated through the practice of village

grouping, civilians being arrested and killed, women were raped and molested. In the process, human rights were completely disregarded. Since then Nagaland has been under military rule. Insurgency got further push due to repressive policies of the Indian government.

II. ARMED FORCES (SPECIAL POWERS) ACT AND ITS APPLICATION

The Armed Forces (Special Powers) Act, 1958, initially known as Armed Forces (Assam and Manipur) Special Powers Ordinance, came into force in May 1958, and was passed by the parliament on 11 Sept 1958. It is one of the most controversial legislations that the Indian parliament has passed in its sixty years of parliamentary history. It is an extraordinary law under which all security forces are given unrestricted and unaccounted power to carry out their operation, once an area is declared as "disturb." The architect of this act was the British during their reign in India. In 1942, when the Quit India Movement was at its height, the British passed the Armed Forces (Special Powers) Ordinance, 1942 on 15th August 1942, to suppress the movement and to bring the situation under control. Thus, this act is a reinvention of the colonial Armed Forces (Special Powers) Ordinance, 1942 and should not have been reenacted in the post independent India. This act was first applied in Assam and Manipur, and was amended in 1972 to extend to all the other states in the region including the newly created states.

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. Under section 3 of the act, the Governor or the central government has to form an opinion that the use of armed forces "in aid of civil power" is necessary in an area and then notify it as a disturbed area. However, army personnel acquire wide powers under section 4 immediately on notification of an area as a disturbed area. Thus declaration of an area as disturbed often results in the virtual handing over of the civil administration to the army. The act does not lay down any procedure for the aid to be provided by the armed forces to the civil power.²

Under section 4, any commissioned officer, warrant officer, non-commissioned officer or any person of equivalent rank in the armed forces is granted the right to "fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or the order, if he is of the opinion that it is necessary to do so for the maintenance of

public order, after giving such due warning as he may consider necessary.”³ According to Noorani, “Section 4(a) of the Act is a statutory obscenity. It occurs in no statute anywhere in any democracy.”⁴ In his words, this act has been aptly called a “license to kill.”⁵

Section 6 of the act states that “no prosecution shall be instituted except with previous sanction of the central government for anything done or purported to be done in exercise of powers conferred by this act.”⁶ Human Rights Watch notes, “besides using lethal force against unarmed person who have merely violated laws, the security forces are not required to provide any report of deaths caused by the resort to force, or explanation of the decision that lethal force was necessary even though section 176 of the Criminal Procedure Code requires inquest and autopsy into all cases of death by extraordinary circumstances.”⁷ It is a stark violation of Articles 14, 21 and 22 of the Indian constitution. Human Rights Watch has rightly termed Armed Forces (Special Powers) Act as a “tool of state abuse, oppression and discrimination.”⁸ According to a fact finding team of journalists, lawyers and human rights activists, “the security forces under Armed Forces (Special Powers) Act have blatantly violated all norms of decency and the democratic rights of the people of the region.”⁹

Significantly, many members of the ruling party opposed the imposition of the Armed Forces (Special Powers) Act. In the words of Prabhakara, Armed Forces (Special Powers) Act is “a truly nasty and terrifying piece of legislation.”¹⁰ Former Prime Minister of India Nehru has clearly reminded about winning the hearts of the people. He wrote, “there is something much more to it than merely a military approach...there can be no doubt that an armed revolt has to be met by force and suppressed. There are no two options about that and we shall set about it as efficiently and effectively as possible. But our whole past and present outlook is based on force by itself being no remedy. We have prepared this in regard to the greater problems of the world. Much more must we remember this when dealing with our countrymen who have to be won over and not merely suppressed”¹¹ But as far as the Naga revolt was concerned, no such consideration was shown.

III. ARMED FORCES (SPECIAL POWERS) ACT AND NAGA EXPERIENCE

The Armed Forces (Special Powers) Act has been in force in several parts of India, including the state of Nagaland for almost five decades. The act has been at the heart of concerns about human rights violations in the northeast India, such as arbitrary killings, torture, rape, inhuman and degrading treatment and enforced disappearances. Its continued

application has led to numerous protests, notably the longstanding hunger strike of Irom Chanu Sharmila in Manipur, who continues to be on her soul-wrenching Satyagraha since Nov 4 2000, refusing food and water against the draconian act. The provisions of the act have been, and reportedly continue to be routinely, applied in practice. The overall practical effect of the act has been the de-facto militarization of the states in northeast India. In the region, the Indian government has manifested its presence through its military expedition and operations. Speaking on this, Dolly Kikon notes, “Continued militarization has re-enforced people’s view that the government is not committed to protect the rights of citizens especially during civil conflicts.”¹²

The policy makers and their dependence on military to deal with the Naga political problem demonstrate their lack of political will to address the root cause of the conflict. This has resulted to excessive militarization of the state with the imposition of Armed Forces (Special Powers) Act. This act is best known as one of the most repressive laws passed by Indian Parliament since 1947. Contravening all democratic norms, this act gives the central government, in consultation with the governor of the state, the right to declare an area “disturb” and impose the act, even if the state government does not consider such action to be necessary.

In late 1950’s, human rights condition further deteriorated as Indian armed forces embarked on village grouping to paralyze the Naga national movement. In the process, rape and sexual harassment have increased sharply. As Sanjoy Hazarika has noted, “in 54 years, not a single army, or paramilitary officer or soldier has been prosecuted for murder, rape, destruction of property (including the burning of villages in the 1960’s in Nagaland and Mizoram).”¹³ There have been no discussions on the regrouping of villages, which has taken place in both the states. Under this strategy, villagers were forced to leave their homes at gunpoint, and move to a common site where they were herded with strangers and established new villages. During this period, the villagers could go out and cultivate their fields under strict surveillance and had to return before nightfall. As recorded in history, “in Mokokchung district, almost every village was burnt, not just once but several times as a prelude to regrouping. Army personnel would come and inform the Gaon Bura or village headman that the village would be burnt. Mongjen village was burnt seven times and Mamtong 19 times before the villagers were forced to leave.”¹⁴

The forcible resettlement shattered the very foundation of the economic and social structure of the Nagas. In the words of Sajal Nag, “the group villages were like an open jail. Curfew was enforced from dawn to dusk to avoid absenteeism and any movement in the night. Such constant surveillance for years had a psychological impact on the villagers. The dislocation disrupted the social practices and hindered the reproduction of

traditions.”¹⁵ The trauma caused by the grouping of villages has been movingly captured in Naga folk songs, which were composed during post-grouping period. Temsula Ao, a Naga poet notes, “it was the most humiliating insult that was inflicted on the Naga psyche by forcibly uprooting them and confining them in an alien environment, denying them access to their fields, restricting them from their routine activities and more importantly, demonstrating to them that the freedom they enjoyed could so easily be robbed at gunpoint by the invading army. For the victims the trauma goes beyond the realm of just the physical maiming and loss of life – their very humanity is assaulted and violated, and the onslaught leaves the survivors scarred both in mind and soul. It transformed people into beings almost unrecognizable even to themselves. It revolutionized the Naga group psyche. The oppressive measures adopted by the army to quell the rebellion backfired and even those villages, which were till now not directly involved in the conflict, became more sympathetic towards the underground forces when they heard of the atrocities committed by the armed forces on the villagers.”¹⁶

In conflict situation, women are the worst sufferers along with children and aged. Women continue to be target of violence by both state and non-state actors. Frequent incidences of rape by Indian security forces in Nagaland emerged soon after the Indian government began its crackdown on insurgency in the 1940s. There were credible reports of rape and sexual violence against women during the armed conflict between the Indian armed forces and the Naga insurgents from 1940’s, and especially during the period from 1950’s to late 1980’s. During that period, the Indian armed forces empowered by Armed Forces (Special Powers) Act, reportedly dragged women and girls out of their homes and public areas. Women were raped, some were held sexual slavery and many were killed under the custody of the Indian armed forces. As one Naga villager noted, “...In those days, women would smear soot over their faces and act as though they were mad so that they would not be raped.”¹⁷ The trauma inflicted on the Naga people remains in the minds of the people till today. Hence a strong resentment has not been erased from their psyche.

In India, security legislation has encouraged abuses by authorizing security personnel to use lethal force even against unarmed combatants and destroy property of its citizens. Besides, it has insured that the security forces cannot be prosecuted for any abuses committed under this law unless such proceedings receive the prior sanction of the government. For the last five decades, India has been charged for committing many human rights violations against the Nagas. Unfortunately, all this has happened without the knowledge of the outside world, either because it was deliberate on the part of the Indian government or because of the inaccessibility of the region and backwardness in many respects, specifically, in the media world. Except for a few cases of human rights violations being given justice under the judicial system of India, many

cases are still unattended to. Despite evidences that Indian army and paramilitary forces were engaging in widespread abuses, few cases were investigated and fewer still resulted in criminal prosecution of the security personnel involved. Inaction on the part of the state had often encouraged the culprits to take law into their hands, which further increase violence in the state. Military courts in India have proved incompetent to deal with cases of serious human rights abuses and have functioned to cover up evidences and protect offenders involved.

In fact, there was a large-scale human rights abuse, including killing, torture and extrajudicial executions committed by the security forces under the shadow of Armed Forces (Special Powers) Act. Human rights groups, non-governmental organizations and well-wishers intervened and took up the cases in various courts of India. However, it was rather irresponsible on the part of the government of India so that human rights abuses continued unabated in one form or the other under the garb of certain acts and regulations like the Armed Forces (Special Powers) Act of 1958, Assam Maintenance of Public Order Act (1953), Nagaland Security Regulation Act (1962), etc. Even today, after decades, the judgment has not been delivered which is quite questionable of the functioning system, execution and motive of the Indian judiciary.¹⁸

While the Indian state introduced Armed Forces (Special Powers) Act with the benign intension of curbing insurgency and ensuring law and order, those who were empowered with usurped power and tend to be truculent to the weaker section of the society. The exploitative attitude of the Indian security forces towards the public in general and women in particular have generated fierce local protests against Armed Forces (Special Powers) Act, bringing the whole issue to a dead end.

Despite the escalation of violence, the Naga insurgent groups continue to command popular support throughout the state, not necessarily for ideological reasons but because they are seen to represent the only alternative to the government’s repressive measures and widespread abuses by the Indian security forces. With the signing of ceasefire agreement between the government of India and the Naga insurgent groups, abuses of civilians by the Indian security forces have reduced to some extent. However, human rights abuses by the security forces are likely to happen in future if peace breaks down in the state.

IV. CONCLUSION

In India, comprehensive political settlements to end armed conflicts have been very rare. As a result, armed conflicts are left to fester as we see cases in the northeast India. For instance, the Naga conflict that is known to be the longest running insurgency continues costing tens of thousands of lives. In India, there is no hesitation in using undemocratic and coercive forces on the part of the policy makers to settle political differences with its citizens. Therefore, demilitarization remains the most important issue that needs to

be addressed. Not because this strategy has failed but because this strategy rarely works. While negotiation between the government of India and the Naga insurgents have been going on for the last two decades, the continued enforcement of Armed Forces (Special Powers) Act continue to be a major hindrance for any settlement to be reached. Speaking on the continued enforcement of Armed Forces (Special Powers) Act, Dolly Kikon has strongly argued that, “this raises uncomfortable question about the psychological advantage enjoyed by Indian security personnel in a region where a citizen’s political rights can be revoked according to the whims of non-commissioned officers.”¹⁹This continued militarized environment further breed armed conflicts creating more insecurity for the citizens in the state. As long as the militaristic mindset prevails among the policy makers, life of the people will remain insecure in the state.

NOTES

1. Bruce Hoffman & Jennifer Morrison Taw, `A *Strategic Framework for Countering Insurgency and Terrorism* (California: RAND, 1992), 14.
2. People’s Union for Democratic Rights, 1998.
3. Government of India, 1958, Section 4.
4. A G Noorani, Armed Forces Special Powers Act: Urgency of Review, *Economic and Political weekly*, Vol. 44 no. 34 (August 2009): 9.
5. *ibid.*
6. Why the AFSPA must go, A Fact Finding Report Committee for the repeal of Armed Forces (Special Powers) Act, 2005, 18.
7. Kashmir Asia Watch, 9.
8. Human Rights Watch, 2008.
9. National Campaign Committee against Militarization and Repeal of Armed Forces (Special Powers) Act, 1996, 53
10. M S Prabhakara, “Burdens of the Past,” *Frontline*, Chennai, September 10, 2004, 12.
11. SajalNag, “A Gigantic Panopticon: Counter-Insurgency and modes of Disciplining and Punishment in Northeast India,” 3.
12. Dolly Kikon, “Engaging Naga Nationalism: Can Democracy Function in Militarized Societies?” *Economic and Political Weekly*, Vol. 40 No. 26 (June 2005): 2834.
13. Sanjoy Hazarika, “An Abomination called AFSPA,” *The Hindu*, February 12, 2013
14. Nag, “A Gigantic Panopticon: Counter-Insurgency and modes of Disciplining and Punishment in Northeast India,” 8.
15. *ibid.*, 13.
16. *ibid.*, 15.
17. *ibid.*, 12.
18. R. Vashum, *Nagas’ Right to Self-Determination: An Anthropological-Historical Perspectives* (New Delhi: Mittal, 2005), 95-96.
19. Kikon, “Engaging Naga Nationalism: Can Democracy Function in Militarized Societies?” 2836.

REFERENCES

- [1]. Hoffman, Bruce and Jennifer Morrison Taw. *A Strategic Framework for Countering Insurgency and Terrorism*. California: RAND, 1992.
- [2]. Luithui, Luigamand NanditaHaksar.*Nagaland File: A Question of Human Rights*.New Delhi: Lancer International, 1984.
- [3]. Vashum, R. *Nagas’ Struggle for Self-Determination-An Anthropological-Historical Perspectives*. New Delhi: Mittal, 2005.
- [4]. Government of India. (1958). The Armed Forces Special Powers Act, Section 4.
- [5]. Human Rights Watch (2008). India: Repeal Armed Forces Special Powers, accessed from <http://www.hrw.org/news/2008/08/17/india-repeal-armed-forces-special-powers-act>
- [6]. Kikon, Dolly. “Engaging Naga Nationalism: Can Democracy Function in Militarized Societies?”*Economic and Political Weekly*, vol. 40 no. 26 (2005): 2833-2837.
- [7]. Nag, Sajal. A Gigantic Panopticon: Counter-Insurgency and modes of Disciplining and Punishment in Northeast India, 2012, accessed from <http://www.mcrg.ac.in/PP46.pdf>
- [8]. National Campaign Committee against Militarization and Repeal of Armed Forces (Special Powers) Act, New Delhi, 1996.
- [9]. Noorani, A.G. (2009). Armed Forces (Special Powers) Act: Urgency of Review. *Economic and Political Weekly*, 44 no 34: 8-10.
- [10].Prabhakara, M. S. Burdens of the Past, *Frontline*, 2004.
- [11].People’s Union for Democratic Rights (1998). An Illusion of Justice: Supreme Court judgment on the Armed Forces (Special Powers) Act. Delhi: Nagari Printers.
- [12].Why the AFSPA Must Go. (2005). A Fact Finding Report Committee for the Repeal of Armed Forces (Special Powers) Act.Delhi: Hindustan Printers.