

AFSPA, 1958 and Violation of Women Rights in North-East India: With Special Reference to Manipur

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Abstract:

Violence against women violates the very fundamental human rights and is an insult to women's inherent human dignity. Physical, psychological, and sexual violence against women and girls, public and private, plagues all societies and classes and poses serious obstacles to the achievement of equality, development and peace. The insurgency movements led to the violation of women's rights in diverse ways. To counter the insurgents, armed forces are deployed in the region with a maligned law which conferred special powers upon armed forces in the 'disturbed areas' in the states of Arunachal Pradesh, Manipur Assam, Mizoram, Meghalaya, Nagaland and Tripura. It was later extended to Jammu and Kashmir. Armed forces special Powers Act, 1958 (AFSPA) is absurdity of law in action which violates the very fundamental rights of life, liberty and equality enshrined in the constitution of India. This paper seeks to analyze issues pertaining to gross human rights violation, especially on women.

The insurgency issues are somehow directly related to the violation of women rights. The armed forces carry out house to house searches especially in nights and harasses women. Women are being harassed physically, mentally and sexually. The women are accused of protecting the boys and that itself is a potential ground for the armed forces to violate the rights of the women. The case of Manorama Devi needs special mention here. Thangjam Manorama Devi, A Manipuri woman who was arrested on flimsy charges, raped, tortured and shot dead in cold blood by personnel of the 17th Assam Rifles in 2004 is an instance in the endless killing spree continuing in the region since 1958.

Key Word: 1. Dignity, 2. Human Rights, 3. Insurgency, 4. Psychological, 5. Plague

1. Introduction:

"Our Government keeps telling the insurgents to give up arms and move forward to non-violence. But in order to tell others to take the path of non-violence, one has to first of all adopt the path of non-violence"

-Irom Sharmila Chanu.

From the above statement of Irom Sharmila, who was 28 at the time of Malom Massacre, began to first to protest unto death for years in protest against the Armed Forces Special Powers Act, one can easily understand the crux of the problem of insurgency in North East India. Her primary demand to the government of India has been the repeal of the Armed forces special Powers Act, 1958, (AFSPA). Insurgency in North East is not a new phenomenon. Since Independence, the region has experienced

insurgency in one form or the other. The states of Manipur, Nagaland, Assam and Mizoram experienced bitter taste of insurgent movement often rooted in ethnic and cultural identities seeking autonomy or independence. The government of India has used AFSPA to counter these insurgencies, deployed the army and granting it significant powers. It is difficult to pinpoint one reason for the endemic conflict in the region but lack of economic development to benefit native peoples, the impression that outsiders exploit the natural resources, the growth of ethnic/linguistic nationalism, and the lack of serious efforts at nation building through education and other institutions are pivotal factors.

2. Discussion:

The AFSPA of 1958 has been a contentious piece of legislation in North-East India due to its impact on human rights and its connection to violence against women, amidst insurgencies. AFSPA imposed in this area where they don't feel safe or secure in their own houses. Human rights organizations and local communities have reported numerous instances of sexual violence against women by security forces in the North-East under the cover AFSPA.

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To counter the insurgents, armed forces are deployed in the region with a maligned law which conferred special powers" upon armed forces in the 'disturbed areas' in the states of Arunachal Pradesh, Manipur, Assam, Mizoram, Meghalaya, Nagaland and Tripura. It was later extended to Jammu and Kashmir. Under this act the security personnel exercises unrestrained power and enjoy impunity in their operations in the region. They are allowed to shoot with impunity. The act has provided the special powers to any Commissioned Officer, Warrant Officer, Non-Commissioned Officer or any other person of equivalent rank in the armed forces in a disturbed area:-

- a) If he is of opinion that, it is necessary so to do for the maintenance of Public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire-arms, ammunition or explosive substances,
- b) If he is of opinion that it is necessary so to do, destroy any arms dump, prepared or fortified position or shelter from which armed attacks are made or are likely to be made or are attempted to be made, or any structure used as a training camp for armed volunteers or utilised as a hide-out by armed gangs or absconders wanted for any offence,
- (c) Arrest, without warrant, any person who has committed a cognisable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognisable offence and may use such force as may be necessary to effect the arrest;
- (d) Enter and search without warrant any premises to make any such arrest as aforesaid or to recover any person believed to be wrongfully restrained or confined or any property reasonably suspected to be stolen property or any arms, ammunition or explosive substances believed to be unlawfully kept in such premises and may for that purpose use such force as may be necessary.

The preceding clauses of the act speak volume and needs little elaboration. The Central Government deploys Para-military forces into the North East to tackle the problem of insurgency. The militarization has tremendously impacted upon the life of the people especially on women. But AFSPA has been criticized for facilitating human rights abuses, including extrajudicial killings, torture, and sexual violence with a lack of accountability for security forces. A huge chunk of the young population who dreamt of an independent homeland for their fellow persons or communities joins insurgent groups with an aim to bring about autonomy and independence. More than hundreds of insurgent groups are functioning in the North East India. Insurgency is a big hurdle in the path of development in the region. The insurgency issues are somehow directly related to the violation of women rights. This point needs little explanation. Militant political organizations motivated by the desire for self-determination, recruits youths from the villages. This leads to unrest in the villages and intrusion of the armed forces where pressurize the villagers to reveal the names and whereabouts of the insurgents. The family as well as the neighbor of the suspected insurgent suffers most in these cases. The armed forces carry out house to house searches especially in nights and harasses them. Women are being harassed physically, mentally and sexually. The women are accused protecting the boys and that itself is a potential ground for the armed forces to violated rights of the women. The case of Manorama Devi needs special mention here. Thangjam Manorama Devi, A Manipuri woman who was arrested on flimsy charges, raped, tortured and shot dead in cold blood by personnel of the 17th Assam Rifles in 2004 is an instance in the endless killing spree continuing in the region since 1958.

This act has often been grave human rights violations, including extrajudicial killing and torture by security forces, especially in states like Manipur and Jammu and Kashmir sparking national and international criticism. The most infamous law in operation in North East is Armed Forces Special Powers Act. This Act is identified with terror, arrest, killing, rape and with manifold violations of human rights. The Act has been dubbed as Draconian Law or Black Law by many including the lawyers, intellectuals etc. This Act was introduced in the hill area of Manipur in the sixties to suppress the then 'Naga Hostiled. In the late seventies and early eighties, the Act was extended to the whole of Manipur. The AFSPA, 1958 has been termed as draconian and wide spread protest has been carried out against the law. A protest on July 15, 2004 made Manorama's killing national news. A group of elderly women gathered in front of the 17th Assam Rifles headquarters and then stripped their clothes off, calling the army to come and rape them as Manorama had been raped. It is to be noted that those women who protested against the draconian law belonged to the "Meira Paibi" literally "Torch Bearers" and also known as Mother's Front. They had started to launch a widespread movement to address the social issues, particularly problems of Alcoholism among men and drug abuse among children. But circumstances are such that the Mother's Front also has to involve in activities to prevent human right abuses and joined the campaign to repeal AFSPA.

The then Union Home Minister Mr. Shivraj Patil said, "a law in order to be effective must be just". In this context, one can immediately interrogate the basic assumption behind the 'justness' of the AFSPA. It is a law that virtually allows the Indian Armed Forces to place themselves above the rule of law. No legal proceedings can be initiated against them as per the provisions of the Act. The history of this Act has seen a total collapse of the rule of law keeping in view the numerous crimes committed by the Indian Armed Forces. In this custodial raping and killing of Thangjam Manorama Devi, he Assam Rifles have refused to respond to the Judicial Commission set up by the Manipur Government to probe the death. Summons after summons have been sent by the Judicial Commission to Assam Rifles to appear and

testify before the Commission. Instead the Assam Rifles have challenged the Manipur Govt.'s legality of instituting a probe in which they are involved. It is a clear signal that they are guilty and do not want the truth to be established in a court of law.

India has been questioned in various international as well as UN bodies about the justness of the Act in respect of Treaties and Covenants that India is a party. When India presented its second periodic report to the United Nations Human Rights Committee in 1991, members of the UNHRC asked numerous questions about the validity of the act. They questioned the constitutionality of the AFSPA under Indian law and asked how it could be justified in light of Article 4 of the International Covenant on Civil and Political Rights. The Attorney General of India responded that the AFSPA is a necessary measure to prevent the secession of the North Eastern states. He said that a response to this agitation for secession in the North East had to be done on a war footing. He argued that the Indian Constitution, in Article 355, made it the duty of the Central Government to protect the states from internal disturbance and that there is no duty under international law to allow secession.

There are several cases pending before the Indian Supreme Court which challenge the constitutionality of the AFSPA. It is surprising that the Delhi High Court found the AFSPA constitutional in the Indrajit Baruah Case. Let us briefly point out the constitutional rights of the citizens which are being violated by the AFSPA:

- **Article 21-Protection of Life and Personal Liberty**

Article 21 of the Indian Constitution guarantees the right to life to all people. It reads, 'No person shall be deprived of their life or personal liberty except according to procedure established by law'. This Fundamental Rights is application to all the citizens of India.

Under section 4(a) of the AFSPA, which grants armed forces the power to shoot to kill, the constitutional right to life is violated.

- **Article 22-Protection against Arrest and Detention**

Article 22 of the Indian Constitution states that “no person who is arrested shall be detained in custody without being informed, as soon as maybe, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice”.

This right is grossly violated by the AFSPA. Following are two pertinent points why AFSPA should be repealed:

(a) The act does not have the human face.

(b) It fails to serve its intended purpose of curbing insurgency, improving law and order. Instead it creates more insurgent groups.

3. Conclusion:

AFSPA is absurdity of law in action which violates the very fundamental rights of life, liberty and equality enshrined in the constitution of India. This act is the only law in the country which confers independent powers directly on army to shoot to kill arrest and search civilian Citizens. Every peace loving citizen of the region will be happy to see its repeal. An organized people's movement is the need of the hour. The people of the region do not want to see more bloodshed, violence of women's rights and dignity as well as children's rights. Lastly, AFSPA is imposed in Manipur, but not in all areas. Specially it has been extended to the entire state of Manipur, except for 13 Police Station areas in five valley districts. The extension is for another six months, starting from 1st April, 2025.



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