

Manipur and Armed Forces (Special Powers) Act 1958

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Introduction

The recent developments in Manipur have once again brought into focus the question of application of the Armed Forces Special Powers Act 1958 (AFSPA) in Northeast India. On July 11, 2004, the alleged rape and killing of Thanjam Manorama, suspected to be a cadre of the People's Liberation Army (PLA), sparked agitations throughout Manipur for the withdrawal of the AFSPA Act from Manipur.

Due to the disturbance and insurgency in the state, the Government of India promulgated the Armed Forces Special Powers Act 1958 in Manipur State. Since 1980, the whole of Manipur has been a "disturbed area"¹ under the Act. Vide this Act,² the security forces have been given some extra powers so as to operate against the insurgents in the disturbed areas.

Feeling Among People of Manipur

The 1972 amendments to AFSPA extended the power to declare an area disturbed to the Central Government whereas in the 1958 version of AFSPA, only the state Governor had the power. A section of the Manipuris feel that power should remain only with the state government. They also feel that the Section 3 of the AFSPA does not specify any time limit. The notification in Manipur issued in 1980 still continues even after 24 years, and thereby they feel that they have been deprived of the spirit of liberty, freedom and democracy for too long a period. The exercise by the armed forces of the unchecked powers to arrest, search, seize and even shoot to kill conferred under Section 4 of the Act has resulted in large-scale violation of the fundamental rights of the citizens under Articles 14,19,21,22 and 25 of the Constitution. The power under the Section 4(a) of AFSPA Act³ has hurt the citizens of Manipur the most as they feel that the Act confers the armed forces with broadly defined powers to shoot to kill and that this is a law, which fosters a climate in which the agents of law enforcement are able to use excessive force with impunity

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It is alleged that security forces have destroyed homes and other structures presuming them to be used by insurgents under provisions of Section 4(b) of AFSPA.⁴ Manipuris also feel that arrests without warrants⁵ is a serious encroachment on the right to liberty of a person. The power of search and seizure under Section 4(d)⁶ has been extensively used by the armed forces in cordon and search operations leading to widespread violation of fundamental rights of citizens and the forces have kept arrested persons (Section 5)⁷ for several days in their custody.

Due to protection under Section 6 of the Act,⁸ some security force personnel even violated the human rights of people and left the victims without any effective remedy. The failure to identify those responsible for human rights violations and to bring them to justice has meant that some members of the security force continue to believe that they are above law and can violate human rights with impunity. The cases of Naga boys of Oinam village being tortured before their mothers by Assam Rifles jawans in July 1987; the killing of Amine Devi and her child of Bishnupur district on April 5, 1996 by a CRPF party; the abduction, torture and killing of 15-year-old Sanamacha of Angtha village by an Assam Rifles party on 12 February 1998; the shooting dead of 10 civilians by an Assam Rifles party in November 2000 are some of the glaring examples that are still fresh in the minds of Manipuris. Now the case of Manorama has led to a complete collapse of the administration in the state. Apunba Lup, a conglomeration of 32 organisations in Manipur, is spearheading the current stir, which has put the Government of India under tremendous pressure to repeal the AFSPA Act. Leaders of Apunba Lup had met the Prime Minister in New Delhi and were assured that the Act would be reviewed.

Why Are Special Powers Essential

Every country dealing with insurgency or with terrorism has its own laws and legislations to tackle the menace. Likewise, India has laws to fight insurgency and terrorism, and has given legal powers to armed forces operating in 'disturbed' areas under AFSPA 1958.

The power to declare an area 'disturbed' lies with the Governor or the Central Government, who have to form an opinion that the use of armed forces in the aid of civil power is essential and then notify it as 'disturbed area'. The declaration of an area as a 'disturbed area' is for a limited duration and review of the declaration before the expiry of six months has to be undertaken by the executive.

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

While executing action under powers conferred under Section 4(b) of the Act during operations against militants, there are chances that a few houses may get

damaged where the militants take shelter. Section 4(d) is essential, so as to search out the militants or any other equipment hidden in villages or in residential areas. Innocents are likely to be harassed during cordon and search operations. Though, the security force personnel are protected under Section 6 of the Act, but if they violate the law they are severely punished under the respective laws of Army and the Armed Forces. The powers conferred under the AFSPA have been upheld by the Supreme Court in 1998.⁹

The people influenced by the militants are concerned about human rights violations by security forces, but what about the violations committed by the militants? As per a police report, during 2000-2004, militants killed more than 450 civilians and kidnapped several senior government officials.

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

General Effect, if AFSPA is Repealed in Manipur

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

Remedial Measures

The general administration in Manipur is not able to give effective justice to the people, with the result that it has to depend on the security forces for its normal functioning. Therefore, the forces operating in the state have to be honest, law abiding and must respect the rights of the people of the state. The commanders at all levels should follow the principle of “use of minimum force” required for effective action. They should brief their men to respect all womenfolk. In case any woman is to be arrested, then it should be done with the help of a lady police/ force

personnel, who should also remain present during interrogation. While carrying out search operations, the force personnel should associate a local respected person and also the owner of the house, and after the search, the owner should be permitted to search the search party if he so desires. One must challenge before opening fire and to ensure that one fires only in self-defence. A grievance cell should be opened at Sector Headquarters/ Battalion Headquarters so that the civilians can lodge complaints against the force personnel if they so desire and the commander should take necessary action as deemed fit. Police representatives must be associated with every operation conducted by the security forces.

The training should be of high level so that the armed force may be able to handle all types of situations with professional competence. It is high time that the state police is trained to take over operational responsibilities from the Army and the BSF. The normal operations may be conducted by the state armed police and only major and pinpointed operations be left for the armed forces. Junior level personnel should be properly briefed to not to over react to any sensitive situation.

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

Conclusion

There can be no two options that insurgency has to be put down with a firm hand within the provisions of law and not to be dictated by the militants. You cannot tie both hands of the security forces and then ask them to fight armed militants. The militants will keep on exploiting the sentiments of the local people and they (militants) will try to reap benefits from such situations. Avoid any tendency to carry out blind operations against militants without specific intelligence/information. Indiscriminate arrests and harassment of people out of frustration for not being able to locate the real culprits should be avoided. Security forces should be very careful while operating in the Northeast and must not give any chance to the militants to exploit the situation. All good actions of the force get nullified with one wrong action. Any person, including the supervisory staff, found guilty of violating law should be severely dealt with. The law is not defective, but it is its implementation that has to be managed properly. The local people have to be convinced with proper planning and strategy.

References/End Notes

1. If the Governor of a state or the Central Government is of the opinion that an area is in such a disturbed or dangerous state that the use of armed forces in aid of civil power

is necessary, then either of them can declare it to be 'disturbed area' by notification in the state.

2. Notification of 'disturbed area'.
3. Section 4(a) of AFSPA states that if in his opinion, it is necessary for maintenance for public order to fire even to the extent of causing death or otherwise use force against a person who is acting in contravention of an order prohibiting the assembly of five or more persons or the carrying of weapons or of 'things capable of being used as weapons'
4. Section 4(b) states that if in his opinion, it is necessary to do so, then to destroy any arms dump or fortified position, any shelter from which armed attacks are made or are likely to be made, and any structure used as training camp for armed volunteers or as a hide out for armed gangs or absconders.
5. Section 4(c) states that arrest without warrant any person who has committed a cognisable offence or against whom a reasonable suspicion exists that he has committed or is likely to commit a cognisable offence and to use whatever force is necessary to affect the arrest.
6. Section 4(d) states that to enter and search without warrant any premises to make an arrest or to recover any person wrongfully confined or to recover any arms, ammunition, explosive substances or suspected stolen property.
7. Section 5 makes it mandatory for the Army to hand over a person arrested under the Act to the nearest police station with least possible delay.
8. Section 6 lays down that prosecution; suit or other legal proceeding can be instituted against a person acting under the Act, only after getting previous sanction of the Central Government.
9. Article "An Illusion of Justice (Supreme Court Judgement on the Armed Forces Special Powers Act)" <http://education.vsnl.com/pudr/illusion.html>

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