



CRITICAL ASSESSMENT OF THE ARMED FORCE SPECIAL POWER ACT

INTRODUCTION: -

Recently, the Union Government has partially withdrawn the Armed Forces Special Powers Act (*hereinafter* the AFSPA), 1958 from parts of three Northeast states— Assam, Nagaland, and Manipur. The Act, introduced decades ago in India’s northeastern states and Kashmir to control militancy and turbulence, often has undemocratic side effects. By the government’s own account, the situation in the northeast has improved. Hence, it is argued that the Act should be taken away completely; however, to reach any conclusion, we need to understand the stance of this legal regime holistically.

CRITICAL ANALYSIS OF THE ARMED FORCES SPECIAL POWERS ACT: -

The AFSPA was enacted by the government in the year 1958 in the context of separatist movements and the violence caused by them. The AFSPA has been imposed on the Northeast states, Jammu & Kashmir, and Punjab during the militancy years. The Northeast has lived under the shadow of AFSPA for nearly 60 years, creating a feeling of alienation from the rest of the country.

Critical Analysis of the Provisions of the Act: -

Power to the Armed Force Personnel: - The Act, under Section 4, provides the armed forces the power to maintain public order in “disturbed areas”. Moreover, under the Act, if reasonable suspicion exists, the army can also arrest a person without a warrant; enter or search premises without a warrant; and ban the possession of firearms.

Coordination with Local Police: - The Act provides special powers for the armed forces. For instance, it allows them to open fire, even causing death, against any person in contravention of the law or carrying arms and ammunition; however, this cannot be done without prior warning given to the suspect. Also, it gives them powers to arrest individuals without warrants, on the basis of “reasonable suspicion”, and search premises without warrants. Moreover, Section 5 of the Act provides for the security forces to hand them over to the local police station within 24 hours.

Information Consultation with the States: - As per Section 3 of the Act, it can be imposed by the Centre or the Governor of a state, on the state or parts of it, after these areas are declared “disturbed”. As per the amendment in the year 1972, the Act gives powers to the central government to unilaterally take the decision to impose the AFSPA while declaring an area ‘disturbed’; this is usually done informally in consonance with the state government.



Constitutional Validity of the Act: - The constitutional validity of the Act was challenged in the Supreme Court in the case of *Naga People's Movement of Human Rights v. Union of India*, wherein the Apex Court while upholding the constitutional validity of the law, laid down guidelines for the armed forces who are acting in areas under the AFSPA. It is to be noted that the Act has been criticized for infringing the Fundamental Rights guaranteed under the Constitution, such as the Right to Life under Article 21, and the protection against arrest or detention as per Article 22.

Immunity Provided to the Authority: - As per Section 6 of the Act, no prosecution, suit, or other legal proceedings shall be instituted, without the prior sanction of the Central Government, against any person for anything done or purported to be done in the exercise of the powers conferred by this Act. It gives immunity to the armed forces violating Article 32 of the Constitution.

Reasons for Withdrawal of the Act: - Reduction in 'disturbed' areas under the AFSPA is a result of the improvised security regime and fast-tracked sustainable development due to the consistent efforts by various stakeholders, and several agreements to end insurgency and bring lasting peace in the North-East by the Indian government.

For instance, all major groups, such as the NSCN(I-M) and Naga National Political Groups (NNPGs) in the state of Nagaland are at advanced stages of concluding agreements with the government.

IMPACT OF REPEAL OF THE ACT, AND THE WAY FORWARD: -

The question arises when the situation is considered favourable, and the government along with the other stakeholders is paving the way toward building bridges to the peace, and security in the region, why it should not be repealed.

We need to understand that repealing a law cannot be the sole solution to eradicate the discomfort that the people of Northeast India have been born for the last six decades. The objective of the law was to curb the Naga insurgency and Secessionist and Nationalist Movements, which though have reduced to a large extent, cannot be said to be ended by roots. Since, the root cause of the insurgency is still alive, the repealing of law cannot be the solution.

However, what can be done on the other side of the road is to comply with the guidelines set out by the Supreme Court, Jeevan Reddy Commission, and the National Human Rights Commission (NHRC) for the Act.

Moreover, the training and sensitization of the armed personnel are highly required in this regime. The accountability and vicarious liability of the superior officers, and the armed personnel should be ensured to protect the human rights of the people of the area.



The procedure of the applicability of the Act should be made transparent, and the parameters should be decided for an area to be declared a disturbed area. The consultation process with the state and the local government should be made formal and mandatory to uphold the spirit of cooperative federalism.

Lastly, community participation to promote the sustainable development of the area should be ensured. The incentives and policies should be set up for the promotion of education, health, employment, skill development, etc. among the people.

CONCLUSION: -

The status quo of the act is no longer the acceptable solution due to numerous human rights violation incidents that have occurred over the years. Moreover, as far as the terms ‘public order’ and ‘disturbed areas’ are concerned, there is still much vagueness regarding the definitions of the two terms in the Act. The Act has become a symbol of oppression, and arbitrariness in the areas it has been enacted. Hence, the government needs to address the affected people and reassure them of favourable action. Conclusively, the progressive amendments, through the participation of all the stakeholders, are required to be initiated under the Act to establish a balance between the national security regime, and the Fundamental Rights of the people.