

# A DRACONIAN LAW THAT NEEDS TO DISAPPEAR

Relevant for: Security Related Matters | Topic: Security challenges and their management in Border Areas

‘ If necessary, there needs to be incarceration of the guilty’ | Photo Credit: K. MURALI KUMAR

The statement made by the Prime Minister, Narendra Modi, in April this year, to the people of the North-east to the effect that the Government intends withdrawing the much-dreaded Armed Forces (Special Powers) Act 1958, or AFSPA, completely from the region — this follows its partial withdrawal from parts of Assam, Nagaland, Arunachal Pradesh and Manipur in March this year — could spell tidings for the denizens of these States. The Prime Minister was addressing a ‘Peace, Unity and Development’ rally in Diphu in Assam’s Karbi Anglong district. In the north-east, Nagaland has largely borne the brunt of this draconian law after it was imposed in the late 1950s when insurgency raised its head in the State.

The genesis of the law can be traced to the Armed Forces (Special Powers) Ordinance 1942 which was enacted by the British to subjugate the rebels in the country during the Quit India movement, particularly in Assam and Bengal in October 1942. The law continues to be enforced in its new format as the Armed Forces (Special Powers) Act 1958.

Indubitably, the need for the law was required in the 1950s when Naga insurgents resorted to large-scale violence. Hundreds of Indian Army soldiers, central and State paramilitary personnel were either killed or injured in ambushes that had been meticulously planned and launched by the insurgents. Informers of the security forces were eliminated or disabled.

While there was some semblance of peace having been restored after the Shillong Peace Accord with the Naga insurgents in 1975, the situation took an ugly turn after the breakaway group led by Isak Chishi Swu and Thuingaleng Muivah formed the Nationalist Socialist Council of Nagalim (Isak-Muivah), better known as the NSCN(I-M), in January 1980, and resorted to large-scale violence across the States of Nagaland and Manipur. Thuingaleng Muivah is a Tangkhul Naga from Ukhrul district of Manipur while Isak Chishi Swu was a Sumi Naga from Zunheboto in Nagaland. Isak Chishi Swu died in June 2016 after the Naga Framework Agreement had been signed between the Government and the NSCN (I-M) in August 2015. It is believed that the agreement was rushed through given Isak Swu’s health condition. The agreement has been hanging fire since then as the Government has not agreed to permit a separate flag and constitution for Nagaland which the NSCN (I-M) is determined to have.

A generation has lived with AFSPA in Manipur and Nagaland. Residents in these States have been victims of the aberrations committed by security forces for decades. While AFSPA gives sweeping powers to the security forces to shoot and kill anyone on suspicion and even search or arrest any person without warrant, no prosecution against them is possible for any wrongdoing without the previous sanction of the Central government. While the Armed Forces (Special Powers) Ordinance 1942, authorised “Any officer not below the rank of Captain in (the Indian) Military forces... to use such force as may be necessary, even to the causing death against any person...”, AFSPA 1958 empowers even a non-commissioned officer (may be a Lance Naik, a Naik or Havildar) to “fire upon or otherwise use force; even to the causing of death”; no prosecution against them is possible without the consent of the Central Government.

It is the consent from the Central government that is delaying any further action being taken against the commandos of the Army’s 21 Para (Special Forces) who killed six locals initially in a case of mistaken identity in Mon district of Nagaland on December 4, 2021. The incident led to a riotous situation in which more persons, including an Assam Rifles jawan, were killed.

Unconfirmed reports put the civilian death toll at 17.

Meanwhile, the Supreme Court of India passed an interim order recently “staying further proceedings pursuant to FIR No.27 of 2021/Final Report of the Special Investigation Team [SIT]/Chargesheet,” on a petition filed by the wives of the commandos found guilty by the SIT.

Armed with unbridled power, aberrations by security forces operating in the States are bound to take place. When the Extrajudicial Execution Victim Families' Association Manipur (EEVFAM) approached the top court in 2012 to have 1,528 cases of alleged fake encounters investigated through the Central Bureau of Investigation ( *Extra Judicial Execution Victim Families Association (EEVFAM) vs Union of India & Anr.*), it was found that the first six cases investigated were indeed fake encounters. This prompted the Court to conclude that the veracity of the allegations made by the Association was beyond suspicion. Having come under the scanner, the AFSPA drew critical comments from the Supreme Court.

Despised by every citizen of the States where it has been in force, AFSPA was not withdrawn despite their demands. The very basic tenets of democracy which espouse the principles “of the people, by the people and for the people” have stood negated. No section of society would ever allow itself to be subjected to a law that is as draconian as AFSPA, which in effect curbs the liberty and the rights of the people as enshrined in the Constitution — a Constitution that is held sacrosanct by the nation.

Efforts made in the past to rescind the law have met with failure. The iron lady of Manipur, Irom Chanu Sharmila, went on a 16-year long hunger strike starting from November 2000. Hailed as a heroine for nearly two decades, she fell from glory when people were disapproving of her breaking the fast. On being asked to comment on the withdrawal of AFSPA in several parts of Manipur, Assam and Nagaland, she was of the opinion that this was a new beginning and a result of decades-long fight.

The Justice B.P. Jeevan Reddy Commission that was tasked with reviewing the provisions of AFSPA submitted its report on June 6, 2005 with the recommendation that AFSPA be withdrawn. Surprisingly, it had suggested making amendments to the Unlawful Activities (Prevention) Act, 1967 (UAPA) to achieve the purpose of AFSPA. The report was subsequently shelved.

Former Union Home Minister P. Chidambaram was of the firm opinion that AFSPA should be withdrawn. But stiff resistance from the Defence Ministry which was headed by A.K. Antony scuttled the proposal. The Indian Army offered stiff opposition to any proposal to do away with the much-detested law.

The present dispensation at the Centre has been hailed for its bold decision to rescind the law as the Army would have still offered resistance to its withdrawal. It must be noted that at a function in Guwahati on April 23, Union Defence Minister Rajnath Singh said that all three wings of the defence forces were in favour of the removal of AFSPA from the Northeast and Jammu and Kashmir, but the act remained in place “due to the situation”. In Nagaland, AFSPA has been removed from the jurisdiction of 15 police stations in seven districts, while in Assam, it has been removed completely from 23 districts; one district will be covered partially under the Act. In Manipur, 15 police station areas of six districts will be excluded. However, there needs to be a comprehensive and serious periodical review undertaken by the Centre till the entire North-east is freed from the tentacles of AFSPA.

Investigations into the 1,528 alleged fake encounters also need to be fast tracked and taken to their logical conclusion. If necessary, there needs to be incarceration of the guilty, thereby

sending out a clear message that those who murder under the cloak of the uniform of the security forces cannot expect to go scot free if there are violations.

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