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Mayong Tikhak
Research Scholar, Department
of Law, Nagaland University
Lumami (A Central
University), Nagaland, India

Dr. Rumi Dhar
Assistant Professor,
Department of Law, Nagaland
University Lumami (A Central
University), Nagaland, India

Sonia Nath
Research Scholar, Department
of Law, Nagaland University
Lumami (A Central
University), Nagaland, India

Correspondence Author:
Mayong Tikhak
Research Scholar, Department
of Law, Nagaland University
Lumami (A Central
University), Nagaland, India

A draconian law “Armed forces special powers act, 1958” and its impact on disturbed areas of Arunachal Pradesh

Mayong Tikhak, Dr. Rumi Dhar and Sonia Nath

Abstract

The Constitutionality of the Armed Forces Special Power Act, 1958 has been debated for decades. Human rights laws are seen to be violated by the severe provisions of the Act. Still, the Act remains in force in a number of Northeastern states since it designated the area as a disturbed area. The Act was implemented to eliminate the insurgency problems in Northeastern states and restore peace in the region. A region may be designated as a "Disturbed area" by the Central Government in accordance with Section 3 of the Act if it is in such a hazardous or disturbed state that the use of military troops to support civil authority is required.

Three districts in Arunachal Pradesh—Tirap, Changlang, and Longding—have been designated as disturbed areas because of the effect of the Naga insurgency. However, the military forces are given unprecedented latitude to conduct operations and typically abuse this provision when an area is designated as disturbed. The phrase "disturbed area" has a negative effect on the region's social and economic development, particularly in the tourism sector, as well as the unhindered conduct of daily life. Neither an industrial business nor a higher education institution is located in the area since it is seen unfavorably by the public due to the Act's classification of it as a disturbed area.

In this paper, the authors will critically analyse the impact of the title “disturbed area” and other provisions of the Act which effects the social and economic growth. The authors will study by using partly doctrinal and partly empirical methods to find out the outcomes and sum up with the suggestion and conclusion.

Keywords: Disturbed area, AFSPA, insurgency, socio-economic development, human rights

1. Introduction

The easternmost part of the country is Northeast India, sometimes referred to as the "Land of Seven Sisters." It is a region of various communities, religions, and cultures. Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Tripura—often known as "The land of Seven Sisters"—and Sikkim—often referred to as the "Brother" to the seven states—make up the country's current eight states ^[1]. There are various problems in the region. Separatist movements, intercommunity, communal, and interethnic conflicts are only a few examples of today's various conflicts ^[2]. The government has enacted the Armed Forces Special Powers Act of 1958 (AFSPA) to control the situation by declaring it a "disturbed area". It has been 65 years since a large portion of the northeast is still under military control and is classified as a "disturbed area". Thousands of people are killed extrajudicially, and arbitrary arrest, torture, rape, and false encounters have become part of life ^[3]. The Act was solely implemented to eradicate the problem of insurgency in the northeast. However, it has failed drastically to solve the insurgency problem. Instead, it gravely violated human rights. Many factions of the insurgency were created amidst the Act's enforcement. It has more adverse effects on civilians than the insurgency.

A region may be designated as a "Disturbed area" by the Central Government in accordance with Section 3 of the Act if it is in such a hazardous or disturbed state that the use of military troops to support civil authority is required. Any commissioned officer, warrant officer, non-commissioned officer, or soldier in the military of a similar rank may search, seize, and

¹Wikipedia (2023), Northeast India, Retrieved from https://en.wikipedia.org/wiki/Northeast_India

²Tukin K Das, Ivy Das Gupta *et al.*, “Conflicts and Socioeconomic Consequences in Northeast India”, 3 (1) *AJHSS* (2015)

³Suhaschakma, “*The State of Encounter Killings in India*”, P- 88, (Asian Centre for Human Rights, 2018)

execute anyone if they have the least suspicion that doing so is necessary in order to "maintain the public order" in a "disturbed area." Since no one can file a lawsuit against an armed forces member for anything done or allegedly done in conformity with the Act without the Central Government's approval.

Due to the impact of the insurgency, three districts of Arunachal Pradesh—Tirap, Changlang, and Longding—have been classified as disturbed regions ^[4]. However, the military forces are given unprecedented latitude to conduct operations and typically abuse this provision when an area is designated as disturbed. The phrase "disturbed area" has a negative effect on the region's social and economic development, particularly in the tourism sector, as well as the unhindered conduct of daily life. Neither an industrial business nor a higher education institution is located in the area since it is seen unfavourably by the public due to the act's classification of it as a disturbed area.

2. History of Arunachal Pradesh

Arunachal Pradesh is the largest seven sister states of northeast India. It is also known as the land of the rising sun and the land of Dawn-lit Mountains. It is surrounded by forests and mountains and shares the border with China, Myanmar, Bhutan, Tibet, Assam and Nagaland. There are 26 major tribes and 110 sub-tribes dwelling in 26 districts of Arunachal Pradesh ^[5].

In Arunachal Pradesh, only the three districts - Tirap, Changlang and Longding share the border with Assam, Nagaland, and the neighbouring country of Myanmar have been declared "disturbed areas". The insurgent groups from the neighbouring states use the route of Arunachal Pradesh throughout Myanmar. There is a key reason behind increasing influence of insurgency groups is the border agreement between India and Myanmar. Tribes residing near the India–Myanmar border are permitted to cross the border without a visa under the Free Movement Regime (FMR), which spans 16 km (9.9 mi) on either side ^[6]. Within 10 kilometres (6.2 miles) of the border are approximately 250 communities housing over 300,000 people, many of whom routinely cross the border through 150 small and major statutory and informal border crossings. The insurgency groups have many camps and take shelter in the particular area of the border. All of their arms and ammunitions come from the Myanmar through these routes.

The history of insurgency in the area began during the colonial era and the division of India. During this time, the Naga people demanded the creation of a separate nation known as Greater Nagalim ^[7] and claimed the districts of Tirap, Changlang, and Longding in Arunachal Pradesh, along with a small portion of Assam and Manipur. These people have the same ancestral roots as the people of

Nagaland and are similar in ethnicity, culture, and customs. That is the primary cause of the disruption caused by the insurgency in Arunachal Pradesh. However, Arunachal Pradesh does not own its own insurgency ^[8].

The problem of insurgency was started in the districts of Tirap, Changlang, and Longding since nineties. The influence of insurgencies spread all over the area and affected the lives of the civilian. The cases of extortion and abduction for ransom money were increased. The central government then declared the area as "disturbed area" and enforced "Armed Forces Special Power Act, 1958" (AFSPA) on Sept. 17, 1991 ^[9]. Following the implementation of this law, the situation worsened, which led to the advancement of insurgent groups. As a result, civilians suffered during the conflict between the Indian army and these groups. It becomes backlog to the development in these three Districts. Almost every year, there is a case of civilian casualty by Indian armed forces or the insurgencies. Because the armed forces are shielded from legal investigation, there is an increase in violence in the area. Human and fundamental rights are being massively violated.

The insurgency is a fundamental issue in these three regions of Arunachal Pradesh. In addition, the Armed Forces Special Power Act also creates more hardship in people's lives. They worked as the fuel to the burning flame. The people of the affected areas are left with inevitable and disastrous conditions after the enforcement of the AFSPA. The people of tri-district want peace, but not at the cost of innocent life. The cries and the protest against AFSPA always went in vain. It has been a long decade; the people of tri-District have not seen the day without the chaos and the violence ^[10].

3. Armed forces special powers ACT, 1958

A significant portion of northeastern India is governed under the Armed Forces Special Powers Act 1958, which designates the area as a "disturbed area". It was first imposed in the northeastern states of Assam and Manipur in reaction to armed political activities. The Act was meant to be in force for a year. Tensions caused by the Naga people's desire for self-determination after their independence led to an armed conflict in that area. The 19th-century British colonial laws served as the model for AFSPA. More precisely, it was based on the Armed Forces (Special Powers) Ordinance of 1942, a British colonial ordinance that was enacted to aid in the termination of the "Quit India Movement," a stage in the struggle for Indian independence ^[11]. The terms of the ordinance were only put into effect when the state was under an emergency declaration or during the emergency period. However, any place might be subject to the Armed Forces Special Powers Act of 1958 if designated as a "disturbed area."

⁴ Editorial, "Centre extends AFSPA in parts of Nagaland, Arunachal Pradesh for another six months" *The Hindu*, September 27, 2023.

⁵ Wikipedia, "Arunachal Pradesh" available at: https://en.wikipedia.org/wiki/Arunachal_Pradesh

⁶ Deeptiman Tiwari, "What is the India-Myanmar border Free Movement Regime, which the Centre is planning to end?" *The Indian Express*, Jan. 23, 2024.

⁷ Sandhya Verma & Anjan Sahu, "Armed Forces (Special Powers) Act, 1958 In North – East India : An Analysis" 6.2 *IJCR* 541-546 (2018).

⁸ National Socialist Council of Nagaland, available at: https://en.wikipedia.org/wiki/National_Socialist_Council_of_Nagaland (assessed on 14th August 2023)

⁹ Press Information Bureau, "Armed Forces Special Powers Act (AFSPA), 1958 in Northeastern States", 2022.

¹⁰ Prasenjit Borkakoti, "A Critical Analysis Of The Prospects Of AFSPA With Reference To Insurgency Problem In North East India", 07 *IJLJ* 26 (2016)

¹¹ Yash Goyal, "Armed Forces Special Powers Act (AFSPA): Necessity of Law Reformation Rather Than Absolute Retention or Repeal" *SSRN* (2023).

The original name of the AFSPA was the Armed Forces (Assam and Manipur) Special Powers Ordinance, 1958, which was approved by parliament in September and went into effect in May of the same year. In 1972, an amendment to the AFSPA gave the Union administration—and specifically the President-appointed Governor, who represents the Union in each state—the authority to designate a region as "disturbed." The state government used to hold this authority.

"Armed forces includes both armed and paramilitary groups like the National Security Guards (NSG), Assam Rifles, Rashtriya Rifles, Sikh Regiment, and Border Security Force (BSF) that are active in disturbed areas"^[12].

According to state and army authorities, the Act is vital to defend the nation's "integrity," combat terrorism and insurgency, safeguarding "sensitive border areas," and safeguarding the state against so-called internal disturbances. Somehow, the Act itself became questionable in terms of its constitutionality.

4. Constitutional validity of the act

The validity of the AFSPA has been contested ever since it was first enacted in 1958. The Supreme Court of India heard the first constitutional challenge against the Armed Forces (Special Powers) Act, 1958 in 1997. In spite of this, the Supreme Court maintained the legality of the AFSPA, concluding that the army's power was neither "arbitrary" nor "unreasonable." In rendering its ruling, the Supreme Court disregarded India's responsibilities under international law^[13]. However, the designation of a region as "disturbed," which is a requirement for the application of the AFSPA, should be reassessed every six months, taking into account the evolution of events during that time. The Court observed that the Central Government was required to justify refusing the sanction of authorization to prosecute. A list of "Do's and Don'ts" provided by the Army, including one instructing soldiers to use "minimum force," was also declared by the Court to be legally enforceable in all situations, and soldiers who violated it should be tried and punished.

Many activists have criticised this decision, calling it "shocking" and arguing that it did not adequately analyse whether the AFSPA violated both the fundamental rights guaranteed by the Indian Constitution and the international human rights laws, nor did it place enough restrictions on the abuse of authority provided under the Act.

Although the Apex Court issued such directives, there are no prominent examples of security forces being punished for disobeying these directives. According to a contentious Supreme Court ruling about the AFSPA's constitutionality, relying solely on the armed services to carry out their own Dos and Don'ts has been insufficient and ineffectual. A kind of permanent emergency rule has been formed by AFSPA in the areas in which it is in effect. It is not, however, subject to the limitations that democratic constitutionalism imposes on emergencies in order to avoid abuse of power because it has not been officially declared an emergency^[14].

¹²Amnesty International "India Briefing on the Armed Forces (Special Powers) Act, 1958", (2005).

¹³Naga People's Movement for Human Rights v. Union of India AIR 1998 SC 431.

¹⁴Priyashikha Rai (2020), "Constitutionality of armed forces special power act: A challenge to rule of law." International Journal of Applied Research 6(10), 1002-1005

5. Critical analysis of the term "disturbed area"

The Act's Section 3 authorised power to declare the area as disturbed. When dangerous circumstances emerge and it becomes essential to utilise the military forces in support of civil authority, this provision makes it easier for the government, administrator and the Central government to proclaim a disturbed region. But neither does it set forth any such circumstances, nor would the authority be justified in making such a declaration in any specific case.

The unclearness of this definition was challenged in the case of *Indrajit Barua v. state of Assam*^[15]. The court concluded that the lack of accuracy to the meaning of a disturbed area wasn't an issue in light of the fact that the public authority and others of India get its meaning. Nonetheless, as far as the declaration relies upon the satisfaction of the Government official, the announcement that an area is disturbed isn't subject to judicial review. So in practical, it's just the public authority's agreement which classifies the region as disturbed. There is no instrument for individuals to challenge this opinion. Peculiarly, there are acts which characterize the term all the more solidly. Inside the Disturbed Areas (Special Courts) Act, 1976, a place could likewise be declared disturbed when "a government is satisfied that (i) there was, or (ii) there's, in any area within a State extensive disturbance of the general public peace and tranquillity, by reason of differences or disputes between members of different religions, racial, language, or regional groups or castes or communities, it may declare such area to be a disturbed area." The lack of accuracy inside the meaning of an upset region under the AFSPA exhibits that the public authority isn't interested about putting shields on its use of the AFSPA. Inside the 1958 form of the AFSPA just the state legislatures had this power. The 1972 modification demonstrates that the Central Government no longer worries about the authority of the state. Instead, the state governor's view can presently be overruled by the central government, which can then declare a region to be disturbed. The Central Government holds the office to utilize the AFSPA to the areas it wishes inside the Northeast.

So, the term "disturbed area" used to enforce the AFSPA in the region has various negative impact on the socio-economic development. We already discussed, how the draconian provisions of the Act has violated the fundamental rights guaranteed under Indian constitution and international human rights. But, in this paper, the researcher is concentrating on the impact of using the term "disturbed area" in the districts of Tirap, Changlang and Longding, Arunachal Pradesh.

6. Methodology

Focusing on the objectives of the research and bring out light into the problem, the researcher has used methodology of partly doctrinal and partly empirical. he has collected the available and related data's and resources from such as public opinion, law journals, Books, Print and electronic media, reports of various Authorities and scholarly Article/thesis regarding the topic of research and empirical data's were collected through a survey of self-made structured questionnaires/interviews having a set of both open and close ended questions.

¹⁵AIR 1983 Del 513 at p. 525.

7. Results

In order to find out the impact of AFSPA in the region, researcher had conducted a survey in the form of interviews and self-structured questionnaire. Hereby, the result of the survey is discussed below:

In the survey, Question was asked: How secure you feel with the implementation of Armed Forces Special Power Act? Majority of 60% have voted for “neither secure nor insecure” because they want an effective laws to eliminate the problems of insurgency from the region permanently, but at the same time, this law had taken many civilian lives. These provisions adversely create more problems to the common people. Most of the time, native people are looked with suspicion and had to face baseless interrogation by the army. Many stop points or army check points to cross even to go to their own home. The people are in fear because of the over powered provisions of Act. It also recorded that the villager suffers due to clashes between armed forces and insurgent group. 100% people accept that whenever there is a clash between armed forces and militant, the villager suffers in massive scale. Firstly, they suffer the loss and damage of properties and agricultural fields because of the explosion of bomb and grenade. Many times it is witness that gun shots are happened in the village, burned down the houses and cattle etc. Secondly, the villagers have to vacate the village in no time. Whereas the people live in joint family and many old ages have to evacuate in emergency.

93.8% people agreed that tri-District have poor social development due to term disturbed area, because the outsiders feels insecure visiting the place and the investors and businessmen are not willing to invest and to do business in the area. Even the Government Officers are not willing to get posted in those areas and seek re-posting to other places out of the disturbed areas. It causes lack of employment and social exploration that being the reason people is less aware about the modern world. They contend that the insurgency's involvement and the proclamation of a disturbed area are the main causes of this problem since they in still greater dread in the minds of foreigners.

In the conducted interview, it was recorded that the people are not happy with the baseless interrogation by the Indian army; they said that even in the medical emergencies they had to answer the Indian army in the check point. They also speak about being tortured by the armed forces. The tortured may be physical or mental. Physical means they beaten up the villagers and detain without warrant. Mentally means they question about the insurgency every time they come for patrolling in village. Restriction at many places and often encounters hindrance travelling.

8. Discussions

By looking at the history of Arunachal Pradesh, it is very much clear that only three districts of Arunachal Pradesh comes under the preview of AFSPA. The fundamental reason behind it is the geographical location. These three districts shares the International Border with Myanmar and domestic border with Assam and Nagaland. Firstly, the free movement regime of 16 km between India and Myanmar border is the major factor in uprising of insurgency problems and migration issues. Secondly, the concept of Greater Nagalim as a separate country is the factor in uprising the problem of insurgency in Arunachal Pradesh. Because the tri-districts of Arunachal Pradesh is also claim as the part of Greater Nagalim. The AFSPA was introduced

in the area by the Central government in 1991 as a result of that developing problem. The Act's constitutionality has been contested from the start because of its harsh provisions, which violate several international human rights standards.

Most notably, section 3 of the Act does not provide a detailed definition of the word "disturbed area." It significantly affects the region's socioeconomic growth.

The researcher carried out a research study to determine the influence of the phrase disturbed area. The empirical study's findings indicate that the primary factor influencing socioeconomic development is the insurgency problem. However, the implementation of AFSPA in the region and declaration of area as disturbed area is proved to be the contributing factor in degrading the all-round development in the region. The tri-districts of Arunachal Pradesh stands at least development in the development index of the state, having poor medical condition, educational institution and no any industrial establishment.

In the study, it shows that the public shows no support in the armed forces due to lack of trust. They considered it as draconian law where the provisions are being misuse by the armed forces. Interestingly, majority of people have no idea about the AFSPA, they think all the armed forces are likewise only. They express that the poor socio-economic condition of the region is due to the unrest situation created by the armed forces and the insurgency. They also stated about their day to day problem faced by them, unnecessary interrogation, arrest and search without warrant by the armed forces. Ultimately, it can be conclude by analysing the results that the implementation of AFSPA and influence of insurgency in the region have combine contribution in the degradation of socio-economic development.

9. Conclusion

The AFSPA is seriously affected in remote village areas rather than the township areas. The village people are innocent and unaware about the provisions. They never heard about the AFSPA and their village is declared as disturbed area. AFSPA continues to remain the complicated debate notwithstanding. Indeed, the armed forces need legal protection in disturbed areas to counter insurgency, but it does not mean that “blanket immunity” for the soldier to be given. Firstly, The ambiguities in the definition of the term disturbed area needs to be redefine. It should be characterized with the statement that an area is disturbed be directly hand over the abstract assessment of the concern Government. It ought to have an objective standard which is judicially reviewable. Secondly. The armed forces should make good cordial relation with the villagers to gain of trust of the villagers and they should follow the Supreme Court's Do's and Dont's guidelines. Thirdly, The Government should conduct awareness program in all the remote areas and look into the socio-economic condition of the region. fourthly, the free movement regime on the border between India and Myanmar should be stop and proper security to be installed. Lastly, these regions should be given proper educational facility and provide employment opportunity to the people. Then only we can expect some change in the region.

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