
A LEGAL CRITIQUE OF SECTION 6 OF AFSPA AND ITS IMPACT ON HUMAN RIGHTS

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ABSTRACT

The Armed Forces (Special Powers) Act (AFSPA), which has tested India's parliamentary democracy to the core, has drawn much criticism and controversies because of the special operative powers vested in the armed forces in operation areas. The focus of this discussion is Section 6 of AFSPA which grants military men and women legal immunity to be prosecuted without the permission of the central government. This paper analyses the repercussions of immunity; drawing upon the legal, judicial and socio-political contexts. The account considers the previously discussed judgments, existing documented cases and a urged legal change to reflect the level of national security and accountability. In this paper the author's main aim is to conduct a critical analysis of the effects that legal immunity under AFSPA has on human rights and major changes that might be introduced to improve the situation.

Keywords: AFSPA, human rights, Section 6, accountability, immunity.

Introduction

The Armed Forces (Special Powers) Act AFSPA, 1958, is one of the most debated laws in India today more so on its legislative history primarily intended to deal with internal aggression in states prone to insurgency. Originally called as a measure to check the increasing insurgent group activities in North Eastern states, AFSPA has spread to other disturbed areas like Jammu and Kashmir.¹ The act endows the armed forces with extraordinary powers to deal with 'disturbed areas', where, in the opinion of the state, normal measures do not suffice. AFSPA took away the armed forces authority to arrest from warrants, to search property, and to use deadly force if needed. These provisions are intended to give a fast and efficient response to threats created by insurgents and to quell the severe unrest in some areas.²

However, the most criticised form of AFSPA is Section 6 which provides shield to the armed forces personnel who otherwise commit an act that is otherwise a crime in the country without prior authorization of the central government. This means that no person who is serving or has served in the armed forces can be prosecuted before a court of civil law in respect of anything done in pursuance of AFSPA unless the central government has sanctioned the prosecution. The justification for this type of immunity is to shield security forces from consequences of the law during their work in difficult and often dangerous conditions, not only meeting in one place but working at different places, in situations that may often seem acute and complicated, and demanding forceful solutions.

The provision is considered to be one of the key enablers of the alleged abuses of power by the security forces resulting in grave human rights abuses in the affected countries political instabilities. Extrajudicial Executions, torture, enforced disappearances and other acts have been reported from those regions where AFSPA is implemented. This has brought massive concerns about a situation dubbed 'the culture of impunity,' which gives security personnel the freedom to carry out their actions without the constraints of the law.³

Many instances have been reported which point to human rights abuses under the AFSPA claiming widespread misuse of provisions laid down in the act, thus having a great deal of

¹ R Bhattacharyya, "Living with Armed Forces Special Powers Act (AFSPA) as Everyday Life" 83 *Geojournal* L 31-48 (2018).

² *Ibid.*

³ S Baruah, "Routine emergencies: India's armed forces special powers act. Civil wars in South Asia: State, sovereignty, development" 189-211 (2024).

public indignation and calls for its repeal or reform. A vivid example is the murder of the third-year student of Manipur's Women's College Thangjam Manorama in July 2004 by the personnel of the 2nd Battalion of the Assam Rifles. This led to a number of protests, most famous of which was the 16-year long hunger strike by Irom Sharmila who demanded for the repeal of AFSPA in Manipur. There is more focus on legal immunity for such acts, teaching concern on the right balance between national security and the protection of human rights.

It is consequently the central research question to assess the extent to which the legal immunity afforded through Section 6 of AFSPA has impacted human rights abuses in conflict areas. This research aims at finding out the rationale for this immunity, its origin and the social-political consequences of extending the immunity. The paper also seeks to evaluate the degree to which the armed forces have exploited AFSPA to perpetrate human rights abuses and whether there is a systematic basis for this. In addition, it seeks to examine what corrective action deserve to be taken. This study, in light of studying judicial decisions human rights organizations and materials, proposes to map the legal and socio-political justice vis-à-vis immunity under AFSPA and its effect on affected communities. The purpose is to introduce possible suggestions for law changes that would allow for balancing between national security and cooperation with international human rights standards in the act's enforcement and increase its transparency.

Legal Rationale and Historical Context of Section 6 of AFSPA Section 6⁴ reads as follows:

"No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act."

The government argues for this clause which will allow armed forces personnel to work in hostile and unfavourable terrains. And it is argued that it shields them from reckless litigation that could impair the effectiveness of the forces in their operations. The rationale of its induction goes back to the early 1950s when factors for increased insurgency appeared in the then North Eastern states, especially, Nagaland and Manipur. The same rationale has been used over the years in other areas such as the state of Jammu and Kashmir which has bound AFSPA since 1990. Originally adopted format as a temporary tool, prolonged usage of AFSPA has stirred up debates whether it is relevant in the democratic country. The act has, however, been

⁴ The Armed Forces (Special Powers) Act AFSPA, 1958.

highly criticised by civil society, human rights organisations and other interested groups but the government has largely refuse the criticisms reasoning on grounds of security dangers and Boko haram insurgence in the affected areas.⁵

Case Study: Manorama Devi Case

The case of Manorama Devi is an epitome of the rooted problems related to the affirmative action and the violation of human rights by the state machinery under the gall of AFSPA claiming immunity under section. Thangjam Manorama, 32 from Manipur was arrested on July 11, 2004 by personnel from the Assam Rifles a paramilitary force functioning under the AFSPA regime. The stated grounds for her detention were that she was a member of the banned insurgent group, the People's Liberation Army PLA and that she had explosives. It was a warrant-less arrest because AFSPA empowers the security forces to arrest a person on suspicion of engaging oneself in unauthorized activities.⁶

So after the arrest, she was taken for interrogation and for further investigation. The following morning her lifeless corpse was dumped along the road fully covered in gun shot wounds and two of her fingers had been chopped off, she had also been raped. This revelation caused a flurry of anger prompting mass protests across Manipur, with reference to the impunity enjoyed by the security forces that act based on AFSPA. Local people and human rights campaigners said she was raped before being killed, a contention that was corroborated by the post mortem examination which showed that she had been tortured.

The Manorama Devi case made a turning point on perennial dispute between the AFSPA implementing Indian state and its citizenry in the affected areas which relates to the existing contract between people's trust and armed forces. The incident caused massive protest, which was spear headed by Meira Paibis, a group of women activist from Manipur, led an naked protest carrying a banner that read 'Indian Army Rape Us' to the gates of the Assam rifles headquarters in Imphal. This act of defiance turned into a protest against AFSPA and made the people of Manipur especially the issue of the human rights violation more famous at the national and international level.

⁵ JR Mukherjee, *An Insider's Experience of Insurgency in India's North-East* (Anthem Press, 2007).

⁶ S Chopra, "Dealing with Dangerous Women: Sexual Assault Under Cover of National Security Laws in India" 34 *BU Int'l LJ* 319 (2016).

Jeevan Reddy Committee

The government established the Justice Jeevan Reddy Committee in 2005 to investigate its implementation and impact on affected districts due to public discontent and demonstrations. The committee decided whether the act was needed and discussed its repeal or revision. Government ministries and official entities, bureaucracy and military, non-governmental organisations and human rights agencies, tribal and community groups were consulted by the Justice Jeevan Reddy Committee.⁷

After lengthy deliberation, the committee presented its findings and demanded AFSPA repeal. A key concern in the study was the misuse of the statute and Section 6 immunity. The committee concluded that AFSPA had become a symbol of oppression and alienation in unsettled regions, and continuing it would only increase state-people estrangement. They proposed replacing the AFSPA with a more humanitarian statute that would hold individuals responsible when required while meeting security demands.⁸

Though recommended by Justice Jeevan Reddy Committee, the national government has not adopted comparable recommendations with full findings. As human rights NGOs, activists, and historians have noted, the committee's recommendations were ignored, missing an opportunity to improve history.

Judicial and Legislative Responses to Impunity

Judicial Precedents

The issue of immunity under AFSPA has always been a question in Indian courts especially in those cases that sought to declare the act unconstitutional. Later in *Naga People's Movement of Human Rights v UOI*⁹ it gave its stamp of approval for AFSPA but also set certain precaution to be adopted to avoid its abuse. The court also stated that force it's allowable if it is proportionate and necessary. Nevertheless, the Guidelines set out above have not been followed to the letter where they apply and where they don't they are at best incomplete and irrelevant.

⁷ A Ahmed, "Reconciling AFSPA with the Legal Spheres" 5 *Journal of Defence Studies* 109-121 (2011).

⁸ Ibid.

⁹ AIR 1998 SUPREME COURT 431.

In *Extra Judicial Execution Victim Families Association (EEVFAM) v UOI*¹⁰, the Supreme Court ruled that immunity under AFSPA did not enjoy absolute immunity from prosecution in situations where human rights violations are alleged. The court ordered investigations into extra-judicial killings allegedly committed by security forces in Manipur and reiterated that excessive use of force is ruled by law. *Sebastian M. Hongray vs Union of India*¹¹, another critical judgement where Supreme Court ordered compensation on two people alleged to have got disappeared under armed forces custody expresses judicial concern about AFSPA associated excesses.

Legislative Recommendations

The Justice Jeevan Reddy Committee in 2005 and the second Administrative Reforms Commission in 2007 has recommended deletion of AFSPA. They said that the act most especially its sections on immunity is appropriate for use in a democracy and has led to acts of violence between the state and the local communities. However, the recommendations have not been implemented by the Indian government due to relative small amendments due to continuous threat in the region.

Socio-Political Impact of Legal Immunity

Erosion of Trust in Conflict Zones

Section 6¹² which has granted the state the legal immunity has badly affected the interface of the state with the local communities. In Kashmir and in the North-East, there is a huge amount of distrust in the armed forces. Resentment of that perception has fueled the cycle of violence and insurgency as it has exacerbated fear of historical security personnel derived acts of impunity.

Impact on Accountability

AFSPA stands accused of not having accountability mechanisms. Most of the time the central government refuses to sanction prosecution, citing national security. As a result, victims have

¹⁰ WRIT PETITION (CRIMINAL) NO.129 OF 2012.

¹¹ 1984 SCC(CRI) 87.

¹² The Armed Forces (Special Powers) Act AFSPA, 1958.

become practically immune and there is now no legal recourse for victims — affronting the rule of law and justice itself.

Legal Reforms for Balancing National Security and Accountability

Several legal scholars and human rights advocates have proposed reforms to Section 6 of AFSPA:

- **Increased Judicial Oversight:** Allowing courts to directly review cases involving alleged human rights violations under AFSPA without requiring central government sanction.
- **Establishment of an Independent Review Board:** Creating a mechanism to review allegations against security personnel, comprising members from the judiciary, civil society, and human rights organizations.
- **Amendment to Section 6:** Narrowing the scope of immunity, particularly in cases involving serious human rights abuses, such as extrajudicial killings and torture.
- **Sunset Clause:** Introducing a time-bound review of AFSPA's provisions to ensure they are not extended indefinitely without parliamentary scrutiny.

Comparative Analysis with International Standards

The International Covenant on Civil and Political Rights (ICCPR), a bill of international human rights, requires that states provide for human rights' abuses accountability. India owes international law to take necessary action in order to ensure that perpetrators of crimes does not go scot free. However, the AFSPA provision of immunity cancels these provisions, and thereby necessitates the changes which make domestic laws compatible with human rights of international law.¹³

Conclusion

This paper posits that section 6 of AFSPA has been instrumental in the continued abuse of the rights of people in troubled areas. Its supposed protection to security personnel has led to this

¹³ U Kar, "An Analysis of the AFSPA (Armed Forces Special Power Act)" 4 Issue 2 Indian JL & Legal Rsch (2022).

brutalization, a situation whereby the providers of security can perpetrate the most heinous acts in the name of securing the country, yet can never be prosecuted, thus eroding the rule of law and democratic tenets of governance on accountability among the worst. It is obvious that national security is precious but it should not be a rich man at the expense of basic human rights. For the specified cases of the negligence of liabilities and abuses of human rights and freedoms, the present judicial and legislative measures remain inadequate to control this misuse of the immunity.

To rebuild the relationship between the state and local communities, effective and legitimate legal measures are needed that on one hand, strengthen accountability to justice, whereas on the other, retain the sufficient measure of powers for security threats. Chaired reforms involving enhanced judicial supervision, and the adoption of new and farther review bodies are highly likely to offer a moderate course that serves the interests of national security and human rights protection.

Therefore, updating AFSPA and its immunity clauses is imperative to help the law fulfill its goals without trampling the rights of the people. Only by a set of such measures can one see a glimmer of a prospect to build India's security and rights that are worthy of a human in a just and balanced manner, for the people trapped in the conflict zones.

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