

AFSPA and Indian Armed Forces

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ABSTRACT

Indian armed forces personnel may belong to different communities, regions, services, regiments, units, ranks, age groups, and different periods of the post-independence history of India. But what is common to all of them is the feeling of patriotism and the display of the highest level of valour on the battlefield. Symbolizing the ethos and values such as devotion to duty, esprit de corps, honesty, honour, non-discrimination, and spirit of selfless sacrifice, they lived up to the motto: “One for all and all for one”.

In some states, the enjoyment of human rights by members of the armed forces is disproportionately restricted by the constitution or by law. For instance, in many countries, armed forces personnel are not allowed to fully exercise their rights to freedom of speech and freedom of assembly. As a consequence, armed forces personnel are hindered from speaking for themselves or voicing concern about cases of human rights violations. As the closed nature of military institutions can exacerbate this situation, it is important for governments to ensure that human rights are protected in the barracks.

This study outlines certain human rights violations and restrictions imposed on army personnel and draws attention to the need of the hour to reconsider the laws applicable to the army in light of their service. In this study, various laws and their applicability pertaining to the laws related to the Indian Armed Forces, such as the Armed Forces Special Powers Act (AFSPA), UAPA, POTA, etc. are being dealt in extenso, keeping human rights of the Armed Forces as the cynosure of the study. This paper also examines the role of the two organs of the State, i.e. Legislature and the Judiciary in safeguarding the human rights of the Indian Armed Forces, as the Courts should be conscious of the fact that they are the last bastion of hope for the people. It is the trust and confidence of the people in the fearless, flawless administration of justice and safeguarding the rights of every citizen which is of supreme importance for the survival of democracy and the progress of the nation.

Keywords: AFSPA, POTA, Constitution of India, Human Rights, Insurgency, and Indian Armed Forces.

INTRODUCTION

“Human Rights”¹ is a 20th-century name for “natural rights” or rights of man. They are inherent in every human and essential for attaining a dignified life without which one cannot live like a human. Human rights are universal and inalienable; indivisible; interdependent and interrelated. They are universal because everyone is born with and possesses the same rights, regardless of where they live, their gender or race, or their religious, cultural, or ethnic background.²

¹ The term appears for the first time in the history of any International Document is the Charter of the United Nations Organization (U.N.O.).

² Universal Declaration on Human Rights, adopted on 10 December 1948, art.2.

Inalienable because they are not subject of alienation i.e., human rights can never be sold, gifted, or taken away. Indivisible and interdependent because all rights – political, civil, social, cultural, and economic – are equal in importance and none can be fully enjoyed without the others.³ They apply to all equally, and all have the right to participate in decisions that affect their lives. They are upheld by the rule of law and strengthened through legitimate claims for duty-bearers to be accountable to international standards.⁴

Human rights are as old as human society itself, for they derive from every person's need to realize his or her essential humanity. They are neither ephemeral nor alterable with time place or circumstance. They are not the products of philosophical whim or political fashion. They have their origin in the fact of the human condition and because of their origin, they are fundamental and inalienable. More specifically, Constitutions, Conventions, or Governments do not confer human rights but are merely instruments and testaments of their recognition. They are important, sometimes essential, elements of the machinery for the protection and enforcement of human rights but they do not give rise to human rights. Human rights were born not of humans but with humans.⁵

Human rights ideology postulates human dignity and recognition that every human being, irrespective of race, religion, color, or circumstances, is born equal and entitled to the rights of a human being. Far from being mere legal abstractions or moral exhortations, they are dynamic, political, social, economic, judicial as well as moral and include cultural and philosophical conditions which define the intrinsic value of man and his inherent dignity.⁶

ROLE OF THE MILITARY IN COUNTERINSURGENCY OPERATIONS

In India, the role of the military in counterinsurgency operations is under the scrutiny of intelligentsia, media, and policymakers alike. Armed forces have been constantly engaged in counter-insurgency operations and other related areas. On the other hand, Indian armed forces are not only ensuring peace and security in the insurgency-affected areas but also attempting to create awareness among the local population, carry out development works, and other public services including health and education.

Therefore, it can be inferred that although Army is not the right force to be deployed in the sub-conventional conflict, it is going to remain in the insurgency-prone areas as long as a substitute is not found or other counter-insurgency forces are brought at par with Indian army in terms of capabilities and training and at the same time it is also very important that policymakers has to provide sufficient powers and privileges to the armed forces so that they have utilize maximum opportunity to tackle the counter-insurgency and other emergencies.

Moreover, the human rights of the Armed Forces are being limited with special emphasis on the enactment of the laws by the Parliament and their effects and defects in implementation at the ground zero such as Armed Forces Special Powers Act, POTA, etc. in the disturbed areas in some parts of the States in our Bharat including but not limited to Jammu and Kashmir, Nagaland, Assam and Chhatisgarh.

ENACTMENT OF THE LEGISLATIONS

The “men in uniform” approach stipulates that the armed forces personnel, whether professional or consc-

³ Preamble, International Covenant on Economic, Social, and Cultural Rights [“ICESCR”], adopted on 16 December 1966. See also, the International Covenant on Civil and Political Rights [“ICCPR”], adopted on 16 December 1966, art. 1(1).

⁴ What are Human Rights available at: <http://www.ohchr.org/en/issues/Pages/WhatareHumanRights.aspx> (last visited on August 31, 2024).

⁵ Justice P.N. Bhagwati, “*The Right to Life and Economic, Social and Cultural Rights*”, (1992).

⁶ Aarti Tikoo Singh & Suchandana Gupta, “Woman Army officer in J&K shoots herself”, *Times of India*, June 17, 2006.

cripted, are entitled to the same rights and protections as all other citizens of the country, subject to the limitations imposed by military service. The Parliament, to fight terrorism and break down law and order, has had to enact some drastic laws conferring broad powers on military personnel but falling short of martial law. The Armed Forces (Assam and Manipur) Special Powers Act, enacted in 1958,⁷ conferred special powers on the members of armed forces in the disturbed areas of Assam, Manipur, Nagaland, Tripura, Meghalaya, and Arunachal Pradesh.

The Act authorizes the civil authorities to call the armed forces to their aid in case of disturbed or dangerous conditions and the army officers are given extensive powers to maintain public order. The validity of this Act was challenged in *Inderjit Barua v. State of Assam* but declared valid by the Delhi High Court.⁸ The Act has now been upheld by the Supreme Court in *Naga People's Movement of Human Rights v. Union of India*.⁹ The Court has ruled that the Act relates to Entry 2A in List I (Union List of the Constitution) and thus, Parliament is competent to enact the law.

The Act has been enacted by parliament in the exercise of its legislative power under Arts. 246 and 248 to confer certain powers on armed forces when deployed in aid of civil power to deal with the situation of internal disturbance in a disturbed area. The Act does not authorize the armed forces to supplant or act as a substitute for civil power in a disturbed area.

The Chandigarh Disturbed Areas Act, 1983¹⁰, was enacted by parliament to make better provisions for the suppression of disorder and for the restoration and maintenance of public order in disturbed areas in Chandigarh. The administrator was authorized, by notification in the official gazette, to declare Chandigarh as a disturbed area. Thereafter, police become authorized to use force, even to fire, for maintaining public order after giving due warning even to the extent of causing the death of anyone contravening law or order.¹¹

The Armed Forces (Punjab and Chandigarh) Special Powers Act¹² authorized armed forces to use force, even to the extent of firing and causing death on any person infringing law and order in the disturbed area. The army officers could arrest without warrant any person committing a cognizable offense and also search any premises and vehicle etc. The Terrorist and Disruptive (Prevention) Act 1985 (*hereinafter* referred as “TADA”) was enacted by parliament to fight against terrorist activities in the country.¹³

The preamble to the Act stated that it was being enacted to make special provisions for the prevention of, and for coping with terrorist and disruptive activities. The Act prescribed capital punishment for any terrorist act causing death. Other punishments for such activities ranged from three years to life imprisonment. Provision was made for establishing designated courts for the speedy trial of the offenders and the verdict of such courts could only be challenged in the Supreme Court. Life under the law was restricted to two years. This Act was replaced by another Act in 1987. The Act had come to an end but a new Act Prevention of Terrorist Act, 2002 (*hereinafter* referred as “POTA”) had been replaced TADA.¹⁴ Finally, POTA was also repealed by the Congress-led Govt. in the year 2004. These laws are no doubt draconian in nature but perhaps be justified on the ground that they deal with extraordinary situations and

⁷ Armed Forces (Special Powers) Act, 1958, (Act 28 of 1958).

⁸ *Union of India v. Inderjit Barua*, 1980 Supp SCC 696.

⁹ M.P. Jain, *Indian Constitutional Law* 1338 (Lexis Nexis Butterworths, Wadhwa, Nagpur, 6th edn., 2010).

¹⁰ The Chandigarh Disturbed Areas Act, 1983 (Act 33 of 1983).

¹¹ The Armed Forces (Punjab and Chandigarh) Special Powers Act, 1983 (Act 34 of 1983).

¹² *Supra* note 11.

¹³ Terrorist and Disruptive Activities (Prevention) Act, 1987 (Act 28 of 1987).

¹⁴ The Prevention of Terrorism Act, 2002, (Act 15 of 2002).

avoid more perhaps be justified on the ground that they deal with extraordinary situations and may avoid more drastic measures like martial law to deal with such situations. Amidst these concerns, the premature demands and proposals for further troop cuts and the withdrawal of the Armed Forces Special Powers Act (AFSPA) raised temperatures in the Valley.

Despite the withdrawal of 10 battalions of the Central Reserve Police Force (*hereinafter* referred as “CRPF”) and nearly 30 battalions of the Indian Army from the State in 2009, demands for the further dilution of Force were raised stridently throughout the year, both by separatists and by the mainstream political parties. The State Government has also sought a more structured phased removal of Central Paramilitary Forces (*hereinafter* referred as “CPMFs”) from the State. On January 1, 2012, official sources stated, “In the first phase, the Government has asked for sanction for raising five Police battalions comprising 5,000 Police personnel. However, as a long-term measure, the State has sought the creation of a total of 50 Police battalions to gradually replace paramilitary and security personnel with the Police Force.”

Similarly, despite the Army’s opposition to the withdrawal of AFSPA on the grounds that this could result in the “emergence of terror sanctuaries and safe havens”, the then Chief Minister Omar Abdullah, on several occasions, reiterated the separatist and popular demand for partial removal of AFSPA. Those opposing AFSPA allege that it has been misused by the SFs. In what can only be an embarrassing response, Defence Minister A.K. Antony replied to the question posed by the MP P.L.

Punia in Parliament, on December 19, 2011, that 24 cases seeking sanction for prosecution under AFSPA have been received from Jammu and Kashmir Home Department during the last five years, from 2007 to December 15, 2013 out of which in 19 cases, the requests for sanction the prosecution were rejected, as it was found in the investigation that no *prima facie* case was made out against the accused Army personnel. 05 cases were still under examination.”

Meanwhile, the Valley-based Association of Parents of Disappeared Persons (*hereinafter* referred as “APDP”), admitted that militants were responsible for more enforced disappearances than the SFs. It claimed that, of the 132 cases it had documented, militant groups were responsible for 24 cases of enforced disappearances compared to 22 by the SF’s, including the Police (the remaining cases remained indeterminate) J&K is at a crossroads.

Though these measures, in addition to several others, have helped in improving the situation, any slackness on the part of the State Government as well as New Delhi to fulfill their political goals will devoid the State of an opportunity to return to permanent peace sooner than later. The controversy over the application of the Armed Forces Special Powers Act in the State resurfaced repeatedly through 2012, with ambivalent positions taken by established political parties as well.

Nevertheless, the Centre made it abundantly clear that AFSPA could not be removed as long as the security situation in the State required the presence of the Army and Central Paramilitary Forces (*hereinafter* referred as “CPMFs”) in the State. On October 14, 2012, Union Home Minister Sushil Kumar Shinde clarified that, “There is marked improvement in the security situation in the State (J&K). With further improvements, AFSPA can be revoked partially, but it wouldn’t be wise to take any chances at the moment. According to partial data compiled by the South Asia Terrorism Portal database¹⁵, as many as 16 civilians, 17 Security Force (*hereinafter* referred as “SF”) personnel, and 84 militants were killed in 70 incidents of killing in 2012; as against 34 civilians, 30 SF personnel, and 119 militants in 122 incidents of killing in

¹⁵ South Asia Terrorism Portal, available at: <https://www.satp.org/> (last visited on August 22, 2024).

2011. Thus, civilian, SFs, and terrorist fatalities recorded a decline of 52.94%, 43.33%, and 29.41%, respectively.¹⁶ Evidently, demands such as the withdrawal of AFSPA as well as measures such as the removal of troops and bunkers in the State, though theoretically desirable, presently remain premature. It is usually complained that a good deal of abuse of power takes place under these special laws. The courts however do try to ensure that misuse of power does not take place. For example, in the Naga People's Case, the apex court laid down certain guidelines for exercising power under The Armed Forces (Assam and Manipur) Special Powers Act, 1958.¹⁷

To meet the situation arising in certain parts of India on account of the partition of the country in 1947, the Govt. of India issued four ordinances viz., The Bengal Disturbed Areas (Special Powers of Armed Forces) Ordinance 1947,¹⁸ The East Punjab and Delhi Disturbed Areas (Special Powers of Armed Forces) Ordinance 1947¹⁹ and The United Provinces Disturbed Areas (Special Powers of Armed Forces) Ordinance 1947. These ordinances were replaced by The Armed Forces (Special Powers) Act, 1958.²⁰ It is not necessary for us to notice the provisions of this Act for the reason that it was a temporary statute enacted for a period of one year though it continued till it was repealed by Act 36 of 1957.

The present Act was enacted by the parliament in 1958 and it was known initially as Armed Forces (Assam and Manipur) Special Powers Act, 1958²¹. Art 355 of the constitution places an obligation upon the union of India to protect every state against external aggression and internal disturbance and to ensure that the Govt. of every state is carried on in accordance with the provisions of this constitution.²²

THE AFSPA CONUNDRUM

The AFSPA²³ shows the inability and reluctance of the government to solve the conflict with adequate political measures. The AFSPA was passed on 18 August, 1958, as a short-term measure to allow the deployment of the army to counter an armed separatist movement in the Naga Hills, has been in place for the last five decades and was extended to all the seven states of the Northeast region in 1972 (with the exception of Mizoram). It was part of a bundle of provisions, passed by the central government, to retain control over the Naga areas, in which the Naga National Council (hereinafter referred as "NNC") demanded further autonomous rights.

The AFSPA became a powerful measure for the central and state governments to act against actors challenging the political and territorial integrity of India. As a result, the Indian army for the first time since its independence was deployed to manage an internal conflict. But, instead of resolving the problem, it led to an ongoing escalation of the conflict by bringing it on a military level.

The Act violates provisions of international human rights law, including the right to life, the right to be protected from arbitrary arrest and detention, and the right to be free from torture and cruel, inhuman, or degrading treatment. It also denies the victims of the abuses the right to a remedy. A fact-finding

¹⁶ Press Trust of India, *available at*: https://www.business-standard.com/article/current-affairs/lt-col-moves-hc-against-army-s-decision-to-ban-social-media-for-officials-120071300959_1.html (last visited on August 20, 2024).

¹⁷ The Armed Forces (Assam and Manipur) Special Powers Act, 1958 (Act 28 of 1958).

¹⁸ The Bengal Disturbed Areas (Special Powers of Armed Forces) Ordinance 1947, (Ordinance No. XI of 1947).

¹⁹ The East Punjab and Delhi Disturbed Areas (Special Powers of Armed forces) Ordinance, 1947, (Ordinance No. XVII of 1947).

²⁰ Ordinance were invoked by the central government to deal with the internal security situation in the country in 1947, which arose out of the partition of India.

²¹ *Ibid.*

²² The Constitution of India, art. 355.

²³ Factly, Should 'Sahayak' System In The Army Be Abolished?, Newslandry, Jan. 18, 2017.

commission, appointed by the government in 2004, complained that the “AFSPA has become a symbol of oppression, an object of hate and an instrument of discrimination and highhandedness”.

Before concluding the point about the implications and effect of AFSPA, we have to understand the ground reality of declared disturbed area of the country. However, this chapter is only about the historical background of the problems prevailing in certain parts of the country therefore we have to take each and every state where the armed forces have been deployed for a long time. The problem started from the Naga Hills.

INSURGENCY & AFSPA

INSURGENCY IN NAGALAND

The population is divided into 17 major tribes and 20 sub-tribes some of the major tribes include Ao, Angami, Sema, Lotha, Tangkhul, Konyak, Rengma, and Mao. Each Tribe and sub-tribe speaks a different language, though each of these belongs to the Tibeto-Burmese group of languages”.²⁴ The Nagas had always been divided into clans and tribes and their history was full of struggles.

They had never lived in a peaceful society and were always busy in tribal clashes. “Among all the ethnic groups and tribes living in the Northeast, the Nagas were the first to raise the banner of revolt against the Indian government, on August 14, 1947, under the aegis of the Naga National Council (NNC) led by Angami Zapu Phizo.”²⁵ In July 1948, Phizo was arrested along with some of his associates. They were released in 1949 and Phizo became the President of NNC in 1950. The NNC publicly resolved to establish a sovereign Naga state.

In May 1951, the Council held a ‘referendum’ in which it claimed that 99% of the Naga people supported independence for Nagaland, though this has never been accepted by the government of India. The NNC boycotted the general elections in 1952 and launched a violent secessionist movement, with Naga insurgents raiding several villages and police outposts. On March 22, 1956, Phizo created an underground government called the Naga Federal Government (NFG) and a Naga Federal Army (NFA). In April that year, the Central government inducted the army to crush the insurgency in what was, till then, the Naga Hills District of the State of Assam.

To deal with the situation, The Armed Forces (Special Powers) Act, 1958, was subsequently enacted. Phizo, However, escaped to the then East Pakistan in December 1956 and, subsequently, to London in June 1960”. However, after attaining statehood on December 1, 1963, a serious attempt was made to bring about a political settlement. In April 1964, a peace mission was formed with Jai Prakash Narayan, B.P. Chaliha and Rev. Michael Scott as its members and an agreement for suspension of operation (*hereinafter* referred as “AGSOP”) was signed with the insurgents on September 6, 1964. But insurgent groups continuously violated AGSOP. In result of continuous violation of agreement Centre Govt. banned the NNC.

Thereafter, security forces (SF’s) launched a massive counter-insurgency operation and brought the situation under control forcing insurgent groups to the negotiating table. This exercise resulted in a shilling accord between the Centre and a section of NNC and the NFG on November 11, 1975. But later on,

²⁴ Available at: <http://www.satp.org/satporgtp/countries/india/states/nagaland/background/index.html> (visited on September 15, 2013).

²⁵ After the death of Phizo in 1990, there was another split in the NNC. Phizo’s Daughter Adino, an Angami and Khudhao Nanthan, a seema and a close associate of Phizo, constituted separate groups on rivals line. Available at : www.satp.org (last visited on June 21, 2016).

dissenting groups of 140 terrorists of the NNC defected from the mainline of its groups and had gone to China for training. After their return from China they formed a new organization called the National Socialist Council of Nagaland (NSCN) under the patronage of Thuengling Muivah, Isak Chisi Swu²⁶ and S.S. Khaplang on Myanmar soil in 1980.

As discussed above the Naga were always divided into clans and tribal lines and it affects the roots of the NSCN when it is divided into two parts. The Konyaks tribe formed a separate faction under the leadership of Khole Konyak and S.S. Khaplang.²⁷

The Tangkhul faction was led by Isak Swu²⁸ and Muivah.²⁹ The two groups were further split into two factions the NSCN IM and the NSCN – K. The NSCN Khole-Kitovi, a ‘splinter group’ of NSCN-K, was formed on June 7, 2011, and the Zeliangrong United Front (ZUF) on February 25, 2011.³⁰ Since then number of incidents of conflicts between Naga insurgent groups has increased. In the advent of interfactional clashes, Nagaland the then chief minister Neiphiu Rio³¹ had said the following statement. Though the world and outsiders recognize Naga people, yet people themselves do not recognize each other and though Nagas have a ceasefire with others they do not have a ceasefire among themselves”³² the agitation and revolt which was started with the demand of full nationhood would be converted into a criminal act. As of April 2, 2012 said “killing of Nagas by the Nagas is not a demonstration or reflection of Naga nationalism and has got nothing to do with Naga political issue but it amounts to criminal offense only Minister Imkong Imchan.”³³

INSURGENCY IN MANIPUR

Manipur was merged fully with the Indian Union on October 15, 1949, but it became a full-fledged State more than two decades later, in 1972. This delay in granting statehood caused discontent among the Meiteis who felt that their identification with ‘Hindu India’ brought them no political or economic benefits. This gave rise to secessionist tendencies among a section of the Meiteis and a number of separatist groups emerged thereafter. On November 24, 1964, Samarendra Singh founded the United National Liberation Front (UNLF) to achieve independence and establish a socialist society. In December 1968, a breakaway group of the UNLF, led by Oinam Sudhir Kumar, established a government- in-exile called Revolutionary Government of Manipur (RGM) with headquarters in Shyllhet, in the then East Pakistan. The RGM was backed by Pakistan.

The primary objective of the RGM was to 'liberate' Manipur through an armed struggle. The RGM maintained an elaborate underground organization. Its administrative and civil set-up included a home minister, a finance minister, a foreign minister and an army chief of staff with Sudhir Kumar as General

²⁶ Died on 28/06/2016, The Indian Express dated 29/06/2016.

²⁷ A Hemie Naga from Myanmar.

²⁸ A Sema from Nagaland.

²⁹ A Tangkhul from Manipur’s Ukhrul District.

³⁰ Veronica Khangchain (Research Associate), “Naga Factionalism Escalates” Volume 10, SAIR weekly Assessment and Briefing, 41 (2012).

³¹ He is Member of Parliament representing Nagaland in Lok Sabha. He was the chief minister of Nagaland for three terms, making him the only Nagaland chief minister to have served three consecutive terms (2008 to 2014) and belong to the Angami Naga Tribe.

³² *Supra* note 58.

³³ Ao Naga Tribe.

Secretary”.³⁴ The insurgency was mostly benefitted by the government of Pakistan in its inception,³⁵ Some of the meitie’s leaders like N. Bisheswar Singh had gotten assistance from China in the formation of the People’s Liberation Army (PLA). Some other underground organizations were formed during 1979-80. In the advent of new insurgency era in Manipur, the number of fatalities had increased from 2 in 1978 to 51 in 1981.

Thereafter, the entire Imphal valley was declared a disturbed area and the Armed Forces (Special Powers) Act, 1958 was imposed in September 1980. Subsequently, “security forces arrested Tulachandra, the leader of PREPAK, while the leader of the rival PREPAK faction, Maipak Sharma, surrendered in the same year. Security forces also succeeded in destroying several bases of the Meitei insurgent groups. Security forces, while raiding a PLA camp in Tekcham, Thoubal district, killed nearly its entire top leadership and arrested Bisheswar on July 6, 1981. On October 26, 1981, the PLA, PREPAK and the KCP were notified as unlawful organisations. Counter-insurgency operations continued and on April 13, 1982, the new PLA leader, Thoundam Kunjabehari and eight other activists were killed in an encounter in Kadampokpi, near Imphal.”³⁶ The insurgent also began to raise their voice against the Mayangas (outsiders) settled in Manipur. They perceived that domination by outsiders was largely responsible for their economic and social backwardness.

In May 1993, more than 90 people, including women and children, were killed in a series of clashes between the Meities and Pangals, in Thoubal and Imphal districts. Reports indicate that the People’s Republican Army (PRA) that was set up in the early nineties instigated the communal clashes. Reports also suggest that a section of the Pangals established links in Bangladesh and with Pakistan ISI (Inter-Services Intelligence) for weapons and other assistance. Besides, a number of new outfits.³⁷

While Meitei’s outfits remained active in the Imphal Valley, the major Naga insurgent group - National Socialist Council of Nagaland--Isak-Muivah (NSCN- IM), unleashed a reign of terror in the Naga-inhabited areas in four of Manipur's four hill districts, namely, Ukhrul, Senapati, Tamenglong and Chandel. The NSCN-IM used Ukhrul district particularly (where its leader Muivah was born) as a base for collecting funds and recruiting cadres.

The NSCN-IM carried out several terrorist acts in Manipur in the nineties. On June 29, 1993, NSCN-IM militants killed 26 security force personnel and eight civilians in an ambush on National Highway No. 39. During May-September 1993, NSCN-IM militants killed as many as 120 security force personnel. On July 31, 1995, they attacked a Manipur Rifles post, in Kangohud, Senapati district, and looted 22 weapons and 3,784 rounds of ammunition. Again in August 1995, NSCN-IM militants made a vain attempt on the life of the Deputy Chief Minister, Chaoba Singh.

After being active for 40 years the insurgent groups would not get the desired result according to the plan and their support was also reduced among the inhabitants of Manipur. It was also felt by these insurgent groups that small factions would not get anything and would not made any pressure upon the Union of India. Moreover, the army has played a vital role in curbing their activities. Counter-insurgency operations had picked up the pace and it was almost impossible to these groups to retaliate in a similar manner.

³⁴ South Asia Terrorism Portal, *available at*: www.satp.org (last visited July 23, 2015).

³⁵ R.K. Dorendro Singh.

³⁶ *Supra* note 18.

³⁷ *Ibid.*

Therefore, in July 2011, top leaders of seven underground groups operating from the Imphal valley of Manipur met for two days to discuss their future course of action and had agreed to form a Coordination Committee (hereinafter referred as CorCom). Irengbam Chaoren was appointed as convenor of CorCom. After the formation of CorCom, a joint press statement was signed by seven top leaders of the militant groups, namely.

1. *Ksh Laba Meitei (President KCP)*
2. *N.Oken, General Secretary (KYKL)*
3. *N. Nongdrenkhomba, Chairman, PREPAK*
4. *Irengbam Chaoren, President RPF*
5. *Kh Pambei, 'Acting Chairman' UNLF*
6. *Laan-Ngamba Luwang, 'Chairman' UPPK*
7. *L. Paliba, 'Chairman' (PREPAK-PRO)*

The Corcom would comprise at least top two leaders from the seven underground groups, and was intended to establish a united front to bring unity among revolutionary groups to free Manipur from India's colonial regime. The CorCom along with other North east militant outfits have camps in Myanmar under the protection of NSCN-K. But, despite of every effort movement would not make any major impact and it is confirmed by the statement of Major General U.K. Gurung Inspector General (South), Assam Rifles, stated that "Manipur's insurgencies had 'lost steam' and law and order situation was much improved". The chairman of KYKL, N.Oken Conceded that "both the revolutionary movement and the 'social movement' had gone into a 'reverse gear' and had lost the people's support to an alarming level".

INSURGENCY IN TRIPURA

Tripura was a princely state that acceded to the Indian Union on October 15, 1949. It became a Union Territory on November 1956 and afterward a full-fledged state on January 21, 1972. The major reason of discontent among the indigenous people of Tripura was the massive influx of Bengali refugees from East Pakistan following the partition. The indigenous people, who accounted for 95 percent of the population of Tripura in the 1931 census, had been reduced to just 31 percent at the time of the 1991 census. This has led to serious discontent among the tribals, who have become a minority in their own land.

The land, business, and government jobs are in the hands of the immigrants. In order to protect the rights of indigenous people, they formed a front name called as Tripura Upajati Juba Samiti (TUJS). They demanded an autonomous district council under the sixth schedule of the Constitution and declared KoK Borok as an official language and land reforms in favor of the indigenous population.³⁸

The Turbulence was started in 1970, when certain groups of Tribals believed that only armed action could secure their demands for an independent tribal state and for that purpose, Tripura Sena was created. Thereafter, in 1978, The Tripura National Volunteers (TNV) was formed, headed by Bijoy Hrangkhah. The State Government had passed The Tripura Tribal Area Autonomous District Council Act, in 1979. This step would prove counterproductive and a Bengali militant organization was formed (Amra Bangali), which resulted in communal clashes being broken out in several parts of the state and about 1800 people lost their lives and over 3600 houses were burnt.³⁹ In the year 1980, the army was inducted in the state, and the situation was brought under control.

³⁸ *Supra* note 18.

³⁹ *Ibid.*

The TNV with its stronghold in the Jampai area bordering Mizoram, had close links with the Mizo National Front (MNF), but with the signing of the Mizo accord in 1986 and the subsequent surrender of the MNF to the authorities the TNV ability to continue the armed struggle was severely curbed, on August 12, 1988, the TNV signed a memorandum of settlement with the state government its members laid down arms and come over the ground.

On August 20, 2002, terrorists belonging to a faction of the National Liberation Front of Tripura (NLFT), killed 20 personnel of the paramilitary Tripura State Rifles (TSR) in a daylight ambush at Hirapur, in the West Tripura district of this troubled State in India's Northeast. Clearly acting on inside information, the militants had attacked 25 Security Force (SF) personnel traveling in a single truck, on their way to a hospital where they were taking three of their number for treatment. A shortage of vehicles had resulted in the truck traveling unescorted, against established norms in the area.⁴⁰

It seemed that the nexus between the political parties and insurgent groups was the major reason for violence in Tripura. The geographical condition would have an added advantage to the insurgents for procuring arms and ammunition from South East Asia specially, Thailand and Singapore. They deposit them in the Cox Bazaar Area.⁴¹ The terrorist groups in the state are deeply criminalized and have transformed abduction into a lucrative industry. The state which has barely 8.29% of the Northeast population accounts for over 70 % of all abductions in the region.⁴²

The State Govt. has long argued its inability to contain the militancy in the state without greater support from the Centre and Chief Minister Manik Sarkar has repeatedly blamed the withdrawal of the army from counter-insurgency operations for the worsening situation. Three Army battalions had been withdrawn from the state in the wake of the Kargil war in Jammu and Kashmir in 1999. It was also revealed that Pakistan had played a major role in propagating the insurgency in northeast Bangladesh. Chief Minister Manik Sarkar says, "We have been repeatedly urging the Central Government."⁴³

Tripura is a unique example of a recent time of controlling insurgency with the help of determined state agencies. The counter-insurgency campaign was driven by trained and reorganized state police, led by the Tripura State Rifles (TSR), rather than by the Army or Central Paramilitary Forces (CPMFs) as is the case with most of the other northeastern counter-insurgencies. The State police records show that the overall crime rate in Tripura go down due to the measures adopted by the police forces.⁴⁴

A militant organization, the Bodo Security Force (BSF) came into being in 1989 under the leadership of Ranjan Daimari. The BSF later renamed the National Democratic Front of Bodoland (NDFB), resorted to terrorism in order to secure 'Independent Bodo Nation' north of the river Brahmaputra. A very large proportion of violent activities in the state, including killing, explosions, arson, and attacks on police stations have been carried out by the NDFB. This is an organized and well-trained militant group with a strength of about 900. It has established a working arrangement with the NSCN-Isak Muivah (NSCN-IM). An accord was signed on February 20, 1993, between the Government of India the government of Assam, and Bodo leaders, creating the Bodoland Autonomous Council (BAC) within Assam. However, since Bodo villages are not contiguous, the demarcation of the jurisdiction of BAC has remained a problem. Both the

⁴⁰ Ajai Sahni, "Tripura: The Politics of Ethnic Terror" *SAIR Weekly Assessments & Briefings*, Vol.1, No.6, (2002) (last visited on August 22, 2024).

⁴¹ Infamous for their illegal arms market in Bangladesh and has major centre illegal arms in South East Asia.

⁴² *Supra* note 25.

⁴³ *Id.* at 30.

⁴⁴ *Ibid.*

NDFB and the BLTF have condemned the Bodo Accord, and have since the mid-1990s, been engaged in to represent the Bodo cause. In the early 1980s, the ABSU emerged as a potent force under the leadership of Upendranath Brahma⁴⁵ campaign of violence directed against other ethnic groups within 'Bodo Areas'.

INSURGENCY IN MEGHALAYA

Meghalaya is a land of scenic magnificence, dominated by various tribes. Prominent of them are Garos dominate western Meghalaya; the Khasis, Central Meghalaya; and the Jaintias, Eastern Meghalaya. The Hynniewtrep Achik Liberation Council (HALC) was formed which represented the interests of the dominant tribes of the state, the Khasis, Jaintias, and the Garos. Later on the feeling of alienation among the Garo led to a split in the HALC in 1992, and they formed a separate insurgency group named as the Achik Matgrik Liberation Army (AMLA) later on it was replaced by the Achik National Volunteers Council (ANVC). The primary objective of HALC is to convert Meghalaya into a state exclusively for the Khasi tribes by freeing it from the domination of the Garo tribe, on the other hand, ANVC wants a separate homeland called 'Achik Land' in the areas of Garo Hills.⁴⁶

Meghalaya has been used as a safe mode of illegal arms and ammunition transportation to the rest of the northeast. As per information available with the intelligence agencies of the central and the state government, militant outfits like ULFA-I and the NDFB (S) have been using Meghalaya as a corridor. According to the chief minister of Meghalaya, most of the GNLA activities are running from Assam or Bangladesh with allegiance other terror outfit of the state.⁴⁷ Presently, AFSPA is not in force in Meghalaya despite a series of violent acts by armed insurgent groups including GNLA. But areas within 20 Km of the state boundary with Assam are under the purview of the Act.

The Central Government has declared this 20 km belt "disturbed" and armed forces deployed in Assam are permitted to go into this area in pursuit of rebel groups.⁴⁸ There are two views in her five children were locked up in the house by the assailants. Such brutality on the pretext of her Meghalaya.⁴⁹ Expressing concern over the deteriorating law and order situation in Meghalaya's Garo Hills region, the full bench of the Meghalaya High Court has asked the Centre to use the Armed Forces (Special Powers) Act to bring the situation under control. The Union Government of India is clear about the terror activities and has wanted to stop them completely without any compromise with the security and integrity of the nation, therefore they compel terror groups to stop their activities and surrender without condition.

On the other hand, the government has decided not to offer any proposal to any group of terrorists who are involved in heinous crimes like the NDFB-S or the GNLA. So even though there may be offers of truce from some insurgent groups or factions in 2015, there is very little chance of the government accepting such offers. If we compare the situation of Meghalaya with other states of the northeast it is apparent from

⁴⁵ Sushil Kumar Sharma, "Operation All Out against Bodo Militants: What Next" (Manohar Parrikar Institute of Defence Studies, 2016) *available at*: https://idsa.in/issuebrief/operation-all-out-against-bodo-militants_sushilksharma_020210 (last visited on August 23, 2024).

⁴⁶ Overview: insurgency and peace efforts in Meghalaya" center for development and peace studies (CDPS) Guwahati *available at*: http://cdpsindia.org/meghalaya_overview.asp (last visited on June 22, 2016).

⁴⁷ "Proposed Government, GNLA talk under cloud", on Meghalaya, June 11, 2014 *available at*: <http://www.ohmeghalaya.com/proposed-govt-gnla-peace-talk-under-cloud> (last visited on March 23, 2016).

⁴⁸ "Explained: Tripura junks the controversial AFSPA, where do the other states in northeast stand? *The Indian Express*, May 29, 2015, *available at*: <http://indianexpress.com/article/explained/explained-tripura-junks-the-afspawhere-do-the-state-in-northeast-stand> (last visited on June 2, 2015).

⁴⁹ High Court tells centre to invoke AFSPA in Garo Hills region *available at*: <http://indianexpress.com/article/india/india-news-india/meghalaya-insurgency-hc-tells-centre-to-invoke-afspa-in-garo-hills-region/> (last visited on June 6, 2015).

the face of it that the episode of insurgency is new in Meghalaya. However, the state government and the union are unable to find out the solution of the problem as to why a peaceful state is facing such a problem. However, it is nothing new in this insurgency and does possess all the traits of northeast insurgency.

KASHMIR INSURGENCY AND ITS EFFECTS

One of the worst insurgency-hit regions of the sub-continent, Kashmir has its own story to tell. Since 1989, the low intensity conflict in Jammu and Kashmir has been the most important issue in India's internal security scenario. Possession of the state has been an issue of dispute between India and Pakistan since 1947. After two unsuccessful attempts to seize the territory by force (1947 and 1965), Pakistan has largely refrained from making any direct attempt at challenging control of the area of J&K still in India's possession.

Rather, the focus of Pakistan's efforts, channelled through the Inter-Services Intelligence (ISI), is on aiding Pakistan-based militant groups who are busy in proxy war against Indian security forces in the state. The proxy war has claimed 26226 lives between 1988 and 2000 in an estimated 43956 incidents of terrorist violence. Of these casualties, 10310 were civilians, 3520 were security forces personnel, and 12396 were terrorists. If we look at the historical background of the Kashmir insurgency, we find that political instability and political rivalry were the main causes of discontent. This began after the death of Sheikh Abdullah, the then chief minister of Jammu and Kashmir.

A political tug-of-war was started between Congress and the National Conference (NC), resulting in the dismissal of two consecutive state-elected governments.⁵⁰ Thereafter an accord was concluded between Farooq Abdullah and Rajiv Gandhi under which the Congress and the NC formed an alliance to contest the state assembly elections held in 1987. But this alliance was opposed, in the 1987 elections, by a coalition of Islamic parties, the United Muslim Front. Allegations of irregularities in these elections gained wide credibility and generated domestic unrest in the state. Pakistan set out to channelize this civilian discontent into an armed insurgency against India.

CONCLUSION

Since 1990 the quantities of such occurrences have expanded. The killings incorporate all like terminating on quiet parades, burial service parades, and experience killings. The truths of the matter is that the Indian powers take full preferred standpoint of the exceptional forces given to them under the Indian law and take part in gigantic human rights violation with no dread.

The current being, between July 2016 and November 2016, 96 regular citizens were allegedly executed by projectiles/nerve gas shells and 1, 5000 were harmed and 8587 captured ". Additionally, in 2016, pellet weapons were broadly utilized as a jam control measure bringing about numerous killings and hundreds losing their visual perception for eternity. As per AI report of 2016, no less than 14 individuals were murdered and hundreds were blinded by security powers' utilization of pellet-shooting shotguns, which are naturally off base and aimless. Security powers utilized discretionary or exorbitant constrain against demonstrators on a few events.

In August, Shabir Ahmad Monga, a speaker, was pounded the life out of by armed force fighters. The Jammu and Kashmir Government forced a time limitation which kept going more than two months. Private landline, versatile, and network access suppliers suspended their administrations for a

⁵⁰ Frooq Abdullah Government was dismissed in 1984 and Ghulam Mohammad Shah Government was dismissed in 1986.

considerable length of time on requests from state specialists. The correspondence shutdown undermined the scope of human rights. Occupants detailed being unable to achieve restorative help in instances of crises. In July, the State Government kept the production of neighbourhood daily papers in Kashmir for three days. In September, Khurram Parvez, a Kashmiri human rights protector, was captured and kept for more than two months on spurious grounds, a day after he was kept from flying out to an UN Human Rights Council session in Geneva, Switzerland.

In October, the administration requested a Srinagar-based daily paper to stop printing and distribution on dubious grounds. Several individuals, including kids, were put in authoritative detainment. The Human Rights Watch in its Annual Report kept up “A crackdown on rough challenges in Jammu and Kashmir starting in July executed more than 90 individuals and harmed hundreds, powering further discontent against government powers”.

Exemption for police and security compels to a great extent proceeded in the midst of new claims of torture and extrajudicial killings, including reports of rape and different misuse by security drives in the focal Indian condition of Chhattisgarh" In support of his stand, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christ of Heyns, on Walk 30, 2012, likewise required the annulment of AFSPA, saying that: “AFSPA enables the state to abrogate rights. Such a law has no part in a majority rules system and ought to be rejected”.

The Jammu and Kashmir State Human Rights Commission submitted an interim report, titled “The Enquiry Report of Unmarked Graves in North Kashmir”, to the state government. As per this report, there are documented findings of 2,156 bodies in unmarked graves at 38 different sites in districts that have been at the epicentre of the insurgency during the 1990 internal conflicts. In March 2013, The UN's Special Rapporteur on Violence against Women, Rashida Manjoo, appealed to the Indian government to repeal the controversial Armed Forces Special Powers Act (AFSPA) and the Public Safety Act (PSA) from Jammu and Kashmir and the north-east states stating that "the acts violate international laws India has signed and ratified".