

“ASSESSING THE IMPACT OF AFSPA, 1958 IN NORTH – EAST - AN  
ANALYSIS ON THE REASON BEHIND THE GROWING DEMAND FOR  
REPEALING IT”

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This is to certify that SUBHRAJYOTI SARKAR has completed his dissertation titled “ASSESSING THE IMPACT OF AFSPA, 1958 IN NORTH - EAST. AN ANALYSIS ON THE REASON BEHIND THE GROWING DEMAND FOR REPEALING IT” under my supervision for the degree of MASTERS OF LAW/ONE YEAR LL.M DEGREE PROGRAMME of National Law University and Judicial Academy, Assam.

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## DECLARATION

I, SUBHRAJYOTI SARKAR, do hereby declare that the dissertation titled “ASSESSING THE IMPACT OF AFSPA, 1958 IN NORTH - EAST. AN ANALYSIS ON THE REASON BEHIND THE GROWING DEMAND FOR REPEALING IT ” submitted by me for the award of the degree of MASTER OF LAWS/ ONE YEAR LL.M. DEGREE PROGRAMME of National Law University and Judicial Academy, Assam is a bonafide work and has not been submitted, either in part or full anywhere else for any purpose, academic or otherwise.



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## Table of Cases

1. *Bacha Bora vs State of Assam*
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3. *Naga People's Movement of Human rights vs The Union of India*
4. *Joginder Kumar vs The State of Assam*
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17. *Maneka Gandhi vs Union of India*
18. *Asif Iqbal Tanha v. Sate of NCT*



## Table of Statutes

- 1860 – Indian Penal Code
- 1942 – The Armed Forces (Special Power) Ordinance
- 1947 - Assam Maintenance of Public Order Act
- 1948 – The Armed Forces (Special Power) Act
- 1948 – Universal Declaration of Human Rights
- 1950 – Constitution of India
- 1955 - The Assam Disturbed Area Act
- 1958 – The Armed Forces (Assam Manipur) Special Power Act
- 1958 – The Armed Forces (Special Power) Act
- 1971 - North-Eastern Areas (Re-organisation) Act,
- 1973 – Code of Criminal Procedure
- 1976 – International Covenant on Civil and Political Rights
- 1985 - Terrorist and Disruptive Activities (Prevention) Act
- 2002- The Prevention of Terrorism Act
- Unlawful Activities (Prevention) Act,1967
- National Security Act, 1980
- Preventive Detention Act, 1950
- Assam Preventive Detention Act, 1980
- Gujarat Prevention of Anti – Social Activities Act, 1985
- Andhra Pradesh Preventive Detention Act, 1970
- 4. Government of India Act, 1935
- 3. Rowlatt Act,1919

## Table of Abbreviations

1.	ADM	Additional District Magistrate
2.	AIR	All India Reporter
3.	BLT	Bodo Liberation Tigers
4.	C.M	Chief Minister
5.	CAA	Citizenship Amendment Act
6.	C.P	Commissioner of Poice
7.	Cr.P.C	Criminal Procedure Code
8.	DONER	Development of North Eastern Region
9.	DM	District Magistrate
10.	FIR	First Information Report
11.	HM	Home Minister
12.	IPC	Indian Penal Code
13.	ICCPR	International Covenant on Civil and Political Rights
14.	J&K	Jammu and Kashmir
15.	LS	Lok Sabha
16.	MOS	Memorandum of Settlement
17.	MNF	Mizo National Front
18.	NNC	Naga national Council
19.	NLFT	National Liberation Front of Tripura
20.	NSA	National Security Act
21.	NSCN - IM	National Social Council of Nagaland
22.	NEC	North – Eastern Council
23.	N.E	North East
24.	NEFA	North East Frontier Agency
25.	NER	North Eastern Region
26.	PLA	People's Liberation Army
27.	P.S	Police Station
28.	POTA	Prevention of Terrorism Act
29.	RS	Rajya Sabha

30.	SIT	Special Investigation Team
31.	TADA	Terrorist and Disruptive Activities (Prevention) Act
32.	NDFB	The National Democratic Front of Boroland
33.	U.T	Union Territory
34.	ULFA	United Liberations Front of Assam
35.	UNHRC	United Nations Human Rights Council
36.	UDHR	Universal Declaration of Human Rights
37.	WW1	World War One

## **CHAPTER 1- INTRODUCTION**

### **1.1. INTRODUCTION**

During Independence, North - Eastern part of India consisted of Assam, NEFA and the princely states of Manipur and Tripura which later merged with India in 1949. Today's Meghalaya, Mizoram, Nagaland were then part of 'Undivided Assam' and later it was carved out after. Nagaland attained its statehood in the year 1963.

After passing the North-Eastern Areas (Re-organisation) Act, 1971 which was a major steps in regard for the creation of new states in NER, Meghalaya was accorded with statehood in the year 1972, Two Union territories Manipur and Tripura became full – fledged state in the year 1972, Mizoram and Arunachal Pradesh were declared as Union territories in the year 1972 later both attained statehood in the year 1986 and 1987. Sikkim was a monarchy which merged in the year with India in the year 1975.

N.E states shares borders with five neighbouring countries which constitutes eight states that is connected through a narrow corridor known as 'Chicken Neck' located at Siliguri in the state of West Bengal. The corridor is 60 km long and 20 km wide. The corridor is often considered as vulnerable because it is bordered by Bangladesh, China, Nepal and Bhutan. During the Sino – India border war in 1962, The NER gained strategic importance as regards to National Security of India. North – East has nearly 475 ethnic groups.

N.E region of India has a long history of insurgency problems due to presence of various terrorist outfits. In various reports it was highlighted that such banned outfits performs cross – border terrorism from neighbouring countries where they get safe access to the arms and ammunitions and also receives financial, logistic supports. There were many factors which gave birth to the insurgency issues like the racial and ethnic disparities, socio-economic imbalance with the other part of the nation, lack of proper infrastructure, issues relating to migration, demand for control over local resources, increasing gap in between NER and main stream India which has created a sense of exclusion, exploitation and alienation have resulted in a unstable security situation in the region due to formation of many insurgent groups in the N.E states to fight against such issues.

There are many reasons like demographic changes, sense of isolation, lack of accountability, governance deficit, widespread corruption and deprivation behind the long history of insurgency in north east. There have been long standing conflicts on the demand for separate nation like in Nagaland, Bodoland, Mizoram etc. and many insurgent groups like NSCN, NDFB (S) have been demanding for separate nation.

Similarly due to influx in large scale of illegal migrants have increased the Ethnic conflicts among the local and migrant communities. Assam have witnessed historic agitation known as 'Assam Movement' for long six years led by AASU where 860 no. of peoples sacrificed their demanding an 'Infiltration Free Assam' . Illegal infiltration has impacted a lot among the indigenous people, It has not only created a fear in the minds of local people that they will be reduced to minority in their homeland but has also increased illegal activities like. Several violence broke out in the state between the local peoples with the illegal migrants. There have been long standing demand for the implementation of the ILP system in many north eastern states like Manipur, Meghalaya, Assam have been in among the prime demands of many pressure groups. Long standing territorial conflicts within the North eastern states due to unsolved inter-state border dispute, lack of proper surrender cum rehabilitation policy for militants groups are few reason resulted in violence in the region and also major reason behind why 'Permanent Peace' couldn't be established till today.

After the creation of East Pakistan, North East was geographically isolated and become virtually disconnected which gave hostile neighbour likes China, Bangladesh, Myanmar who have been extending all forms of support to the insurgent groups so as to create a disturbed environment in the region.

There are many initiatives taken by the government to improve the internal security position in the north eastern states. We can find that the proactive initiatives of the government to reduce the gap between the NE States and other States of the country for the development of North – East like for creation of DONER Ministry at centre which makes plans, executes and monitors the developmental schemes and projects in Northeast India. DONER Ministry aims to fulfil the infrastructural gaps in the region by sanctioning the projects and are done in a ratio of 90:10 which means ninety percent of the projects is funded by the Central Government, and the remaining ten percent is

borne by the respective state of North East<sup>1</sup>. Major area of operations of the Ministry are Power, Irrigation, Roads and Communications, Water supply, Inland Waterways Transport etc.

DONER Ministry also has few Inter – Ministerial committees to ensure better coordinate with various Ministries/Departments. Another landmark initiative was creation of North Eastern Council in the year 1972 with its headquarter at Shillong which works for the economic and social development of the North Eastern Region and also acts as a Regional Planning body for the North – East. It formulates sector-wise outline of development plans and projects to accelerate the pace of development of the region. Centre has also increase grants to N.E states as well in the centre funded schemes like Jal Jeevan Mission etc. North Eastern Development Finance Corporation Ltd was established to provide financial assistance to micro, small & medium enterprises for setting up industrial, infrastructure and agri-allied projects in the North Eastern Region of India which has played a major role in establishing enterprises for generating sustainable livelihoods.<sup>2</sup>

Ministry of Home Affairs has established North East division in the Ministry to tackle with the security issues mostly with the internal security and law & order situation of the north-eastern states. The ‘North East Division’ of the Ministry looks after the issues relating to strengthening the security in the states, Provide necessary support to states to tackle militancy oversee the implementation of proper rehabilitation of surrendered militants, Initiating ‘Peace Talks’ with various insurgent groups so as to bring them to the mainstream, solve border disputes among the states, take-up diplomatic matters with bordering countries etc. The division is which is headed by Officer of Additional Secretary level. It can be mentioned that the administration of the AFSPA is also looked after by the ‘N.E Division’ of the Union Home Ministry<sup>3</sup>.

There have been many initiatives taken by Union and State Governments to develop the areas which fall under six schedule in north eastern region by providing special financial grants to the autonomous councils and also by constructing higher educational

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<sup>1</sup> Saptoporna Ghosh, ‘What is the Ministry for Development of North Eastern Region (MDoNER)?’ The Hindu (18 March 2022) <<https://www.thehindu.com/news/national/explained-what-is-the-ministry-for-development-of-north-eastern-region-mdoner/article65233596.ece>> accessed 10 June 2022.

<sup>2</sup> NEDFi, ‘ABOUT NEDFi’ <<https://www.nedfi.com/who-we-are/>> accessed 10 June 2022.

<sup>3</sup> Ministry of Home Affairs, ‘NORTH EAST DIVISION’ <[https://www.mha.gov.in/division\\_of\\_mha/north-east-division-0](https://www.mha.gov.in/division_of_mha/north-east-division-0)> accessed 10 June 2022.

institutes, engineering colleges, hospital and medical colleges, skill institutes to empower the tribal youths and make the areas more developed. Responsible for overseeing the overall developmental schemes and projects in 'North - East India' hence many insurgent groups has been operating in north east with a prime demand to make their own states or regions. After the violence in Assam there were repercussions in other parts of India which triggered exodus of people of North East India in other states.

India has witnessed many rebellion to gain Independence from the clutches of British. Many brave lives were martyred to gain the independence but till today we find headings in newspapers regarding ambush which occurs many part of our country mostly in Jammu and Kashmir, North - East India and also in some Naxals prone areas of Chhattisgarh, Jharkhand. Almost each time terrorist groups which carry out pre-planned attacks on our Indian Armed forces to highlight their presence. Most of the time we find that the main motto or the aim such terrorist organisations is to gain sovereignty.

It is worth mentioning that Indian Armed forces are trying their best to combat the cross – border terrorism in order to maintain peace.

The then 'Viceroy of India Lord Linlithgow' promulgated the 'Armed Forces Special Powers Ordinance' in the year 1942. The main reason behind introducing such law was to supress the 'Quit India movement'. After Independence GoI issued four ordinances to tackle the law and order issues which was prevailing in various parts of the country. Following are the four ordinances-

1. Assam Disturbed Areas (Special Power of Armed forces) Ordinance,1947
2. Delhi Disturbed Areas (Special Power of Armed forces) Ordinances, 1947
3. United Provinces Disturbed Areas (Special Power of Armed forces) Ordinances, 1947
4. Bengal Disturbed Areas (Special Power of Armed forces) Ordinance,1947

All the four ordinances were mainly based on the Armed Forces (Special Powers) Ordinance issued in the year 1942.

The Armed Forces (Special Powers) Act of 1958 is considered by the local peoples as a draconian law which was passed by Indian Parliament. It consists of six sections which provides special power to the armed personnel's. AFSPA gives wide power to shoot, search and arrest. Initially it was made applicable to Manipur and Assam and later was amended in year 1972 to increase the jurisdiction across all the seven north eastern- states except the state Sikkim. Enforcement of the Act has resulted in many cases of illegal detention, illegal custodial torture by armed personnel's.

The paper aims to provide comprehensive explanation of the Act. The Researcher seeks to make detailed analysis of legality of the Act with special focus on the implications in the north-eastern states. The researcher will also focus on the historical background of the Act how it evolved.

## **1.2. Statement of Problem –**

'Armed Forces (Special Power) Act, 1958' was passed to tackle the increasing violence in North – East region decades ago. The Act provides no proper procedure to be followed while doing any arrest or to search any place if there is any reasonable suspicion. The Act has been enacted to provide power to the armed forces to stabilise and uphold the law and order situation in 'Disturbed Areas' but it is often criticised due to failure to appear to be up-to-the mark as because it lacks basic principles which are required for an Act to function in the society. The Act doesn't comply with many international human rights instruments, treaties, declarations which India is a party. Due to the unchecked power of the Act many innocent peoples were killed during illegal detentions, operations and many faced physical and mental torture, abuse and harassments. Common peoples were detained for longer periods of time due to ambiguity in the Act. The Act provides legal protection against any proceedings to the armed personnel's for any act done during the course of duty which also provides arbitrary power to perform any action without any legal mechanism to address the arbitrary action. The Act has also initiated a sense of alienation from main stream India.



### **1.3. Review of Literature**

There are many researches which has been carried out by renowned scholars, eminent journalists on the AFSPA and its implications. The pro and cons has also been explained in leading newspapers after few cases of human rights violation. Some of the leading articles are:-

**a. Wg Cdr (Dr) U C Jha (Retd) - “Armed Forces Special Power Act - A Draconian Law” (2015) –**

The book explains all the Armed Forces Special Power Acts which has been enacted from time to time. It highlights all major provisions of the Act. It also provides an analysis of the reports of various commissions constituted to review regarding AFSPA and the legal challenges regarding the validity of the Act.

**b. Mohd Aqib Aslam, “Armed Forces Special Powers Act 1958 (AFSPA) and Human Rights Violations: A Critical Analysis” (2021) –**

The article emphasises on the working of AFSPA in different states of North - East. It also focuses on the impact of AFSPA and the various ongoing campaigns demanding the repeal the Act. The article also highlights the major violations of Human Rights laws, International laws by AFSPA.

**c. Caesar Roy, “The Draconian Armed Forces (Special Powers) Act, 1958 – Urgency of Review”-**

In this article, the Researcher explains the origin and historical developments which led to the enactment of AFSPA. The article also explains the legal and constitutional aspects, how AFSPA contravenes with I.P.C, Cr.P.C and International Humanitarian Laws etc. The paper tries to explain the recommendations and suggestions which are forwarded by various committee regarding the revisions of various sections of the Act.

**d. *Reports of the committee to review the Armed Forces (Special Power) Act, 1958 (2005)* –**

After the mass agitation by many organisations after the death of Thangjam Manorama in Manipur Government of India has setup 5 member committee to review the provisions of AFSPA and to advice the Government of India regarding any amendments which is required to protect human rights, to replace the Act by a more humane Act.

**e. *Vivek Chadha, “Armed Forces Special Powers Act : The Debate” (2012)* –**

The book provides information regarding the situations which led to the enactment of AFSPA. It describes the human rights perspective, security forces perspective and the opinion of public in regard to the Act. It also explains the role of AFSPA in Jammu and Kashmir and in other places. The book compares AFSPA with other humanitarian law. It also advances few recommendations for more transparency, accountability and responsibility.

**f. *A.G Noorani, “Armed Forces (Special Powers) Act: Urgency of Review” (2009)-***

The article explains the leading cases regarding the AFSPA and the directions and observations made by Supreme Court and High Courts. It explains how the Act contravenes with the other legislations and also provides information regarding the reason behind the increase in the insurgency. It also explains leading sections of the Act.

#### **1.4. Aim**

The aim of the dissertation is to study the detailed of the AFSPA its development and the legal aspects. The primary focus of the work is to study the issues which led to the enactment of the Act and the how AFSPA violates major international human rights principles. It also highlights the major incidents of human rights violation due to AFSPA. It also plans to provides suggestions to resolve the loopholes of the Act and make it more transparent and in accordance to the international human rights standards.

#### **1.5. Objective of the study**

- To trace the historical development of AFSPA.
- To discuss the legal aspects of the AFSPA
- To study the impact of the AFSPA.
- To study the origin and the reason for uprising of insurgency movements in North – East India
- To study the historical aspects of the security laws in India
- To study the Infamous Dangori fake encounter case

#### **1.6. Scope and Limitation**

As the name of the topic suggests the study shall be based on the in-debt study of historical evolution of the security laws of the country and it shall emphasis on AFSPA, 1958. The study will cover some incidents of violation of human rights under AFSPA and will also focus on the infamous Dangori fake encounter case.

### **1.7. Research Questions**

- a) What are the factors that led to the enactment of the AFSPA?
- b) What are the various legal and constitutional aspects of AFSPA?
- c) Which areas are still under AFSPA?

### **1.8. Research Hypothesis –**

For the purpose of this dissertation, the researcher hypothesises that:

- a) AFSPA contravenes the various provisions of IPC, Cr.P.C, International conventions, Agreements etc.
- b) Unconstitutionality nature of AFSPA.
- c) Impact of AFSPA in Assam and North East India and other states.

### **1.9. Research Methodology**

This research adopts a purely “doctrinal research methodology”. It examines the various National and International Legislations, Schemes and Policies, which relates to AFSPA. Through the Analytical research method, various landmark judgments of the ‘Supreme Court of India and the High Courts’ have been analysed.

For the purpose of research both the ‘Primary and the Secondary data’ have been collected. The ‘Primary data’ includes the National and State Legislations, the Government Schemes, the Judgments and Orders of the Supreme Court and the High Courts, and the Law Commission Reports. The secondary data comprises Books, Articles, Newspapers, Websites and Blogs.

## **1.10. Chapterisation**

### **Chapter 1- INTRODUCTION: -**

This chapter explains the geographical position of North – Eastern states, its bordering countries and how the insurgent groups have been getting supports of those countries take the benefit of the hilly dense it benefits the insurgent groups of North – East. How the insurgent groups have It also explains the history of arms movements in the regions and root cause behind such movements. The chapter also explains the various initiatives taken by Ministry of DONER, N.E.C to reduce the gap between the main stream India and North – East and also to initiate new projects for overall development of the region.

### **Chapter 2 - HISTORICAL DEVELOPMENT OF SECURITY LAW:-**

This chapter deals with the series of events which led to the enactment of security laws in India. The chapter explains all the security laws dividing them into two period i.e British period and Post – British.

### **Chapter – 3 - IMPLICATIONS AND PRESENT STATUS OF AFSPA IN NORTH – EASTERN STATES:-**

This chapter explains the history of insurgency movement in all the states of North – East. It explains how AFSPA contravenes major provisions of Human Rights including international conventions, covenants and agreements. It also explains how the Act demotivates insurgent groups to negotiate with the government. The chapter also provides the information regarding the present areas under the purview of AFSPA.

### **Chapter – 4 - CRITICAL ANALYSIS OF INFAMOUS DANGORI ENCOUNTER CASE:-**

The chapter also analyses the infamous Dangori encounter incident that took place in Dangori in Tinsukia district of Assam where the armed forces picked up nine youths and among them five youths were killed by the forces after brutal torture.

## Chapter – 5 – CONCLUSION AND RECOMMENDATION:-

The last chapter concludes the study, with some valuable suggestions to the Act which can make it more accountable and under proper legal mechanism without any form of arbitrary actions.

## **CHAPTER 2 - HISTORICAL DEVELOPMENT OF SECURITY LAW IN INDIA:-**

### **2.1 – Historical Development**

Globally the term ‘Terrorism’ has acquired universal dimension and it has become a challenge for the whole world. Terrorism is considered often referred as a “Crime against humanity” which has been condemned by all across the globe. Terrorism activities have not only threatened the basic principles of democracy but also has posed a serious challenges regarding the existence and holistic development of mankind<sup>4</sup>.

One of the foremost duties of the any democratically elected government is to maintain peace and public order and provide security to its citizens. It’s a prime aim of government that it would establish a just society which is governed by rules and regulations. So to maintain a peaceful society which is governed by rules and regulation it is very important to have some laws to check the anti- terrorism activity. Such laws are usually termed as Security Laws and maybe enforced when required to tackle any type of unforeseen situations.

During British India there had been many security laws passed by the British Crown with the intention to divide the masses and to rule. By passing those security legislations they tried to use the Armed forces and control the mass movements against the atrocities of British government. Among those laws Bengal Regulations, Defence of India Act, 1919, Rowlatt Act, Government of India Act, 1935, Armed Forces (Special Powers) Ordinance, 1942 etc. were prominent.

After India attained independence there were multifarious challenges in maintaining and managing the internal security of the country. There increased various forms of criminal activities like terrorist activities, cross border crimes and formation of insurgent groups in different parts of the country.

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<sup>4</sup> Caesar Roy, ‘Terrorism in India and Legislation for its Prevention’ (2011) 5(2) Quest-The Journal of UGC-HRDC Nainital  
<[https://www.researchgate.net/publication/236970988\\_Terrorism\\_in\\_India\\_and\\_Legislation\\_for\\_its\\_Prevention](https://www.researchgate.net/publication/236970988_Terrorism_in_India_and_Legislation_for_its_Prevention)> accessed 10 June 2022.

Security laws in India primarily aims to uphold and maintain national security, law and order, internal security, public order, public peace and religious harmony. Laws like AFSPA aims to take special security measures in specific areas under to prevent any form of terrorist activities. Similarly preventive detention laws can detain any Indian citizen if he possesses any form of reasonable apprehension that his activity may pose threat to the nation or any activity which may be dangerous to public order and security.

The present setup of Criminal Justice System of India which follows the legal procedures and the system that was established by the British during the pre-independence era and that includes The IPC adopted in the year 1860, The Criminal Procedure Code adopted in the year 1861 and later amended in the year 1973 was not sufficient to deal with the heinous criminal offences. In view of this situation it was felt necessary to introduce special laws to combat growing terrorism so as to ensure speedy trial, setting up special courts and awarding rigorous punishment for perpetrators.

Accordingly Parliament of India has enacted several national security and anti-terror laws such as Preventive Detention Act, Maintenance of Internal Security Act, National Security Act, Armed Forces (Special Powers) Act, Terrorist and Disruptive Activities Act, Prevention of Terrorism Act, Unlawful Activities (Prevention) Act etc. as and when required in order to uphold the sovereignty, security and integrity of the nation. Security laws operate alongside the ordinary substantive and procedural criminal codes. The laws relating to preventive detention was passed which granted the executive more power than which is allowed under the Cr.P.C .Few anti-terror laws such as the PDA, MISA, TADA and POTA have been repealed now but there are few laws which are still in force like the Armed Forces (Special Powers) Act, 1958, The Unlawful Activities (Prevention) Act, The National Security Act, 1980.

To combat the terror related activities in India, GoI in the year 2008 established National Investigation Agency (NIA)<sup>5</sup>, the federal Agency which have been empowered with various power and privileges to conduct investigations regarding terror related crimes across the states, one of such is that they does not require any special permission from the states. NIA comes under the purview of Union Home Ministry and is headed by a Director General who is an IPS Officer.

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<sup>5</sup> The National Investigation Agency Act 2008.



## 2.2 - Preventive detention laws during British regime in India -

There were many legislations passed by the British with the intention to divide the masses and to rule. By passing security legislations they tried to use the Armed forces and control the mass movements against the atrocities of British government. Those laws were direct violating the human rights of Indian peoples.

In the *Union of India v. Paul Nanickan and Anr*<sup>6</sup>, the Supreme Court highlighted that the main purpose behind the preventive detention isn't to punish any person for doing something but it aims to obstruct anyone before he does it and deter him from doing so. The detention maybe based on suspicion which can be justified.

Some of the security laws introduced during British period are:-

### 1. *Bengal Regulation:-*

The 1818 Bengal Resolution was first of its kind preventive detention law during the British rule in India. The law aims to maintain the law and order, security, public tranquillity in the state and in doing so if it is deemed necessary by the officials of the state can place any person 'Under personal restraint' except the 'sufficient ground to institute any judicial proceeding'. The 1818 regulation was extended whole across India and it remained in force till 1927. It was used as a weapon to detain peoples who had nationalist sympathies in pre-independent India.

### 2. *Defence of India Act, 1915:-*

After passing the Partition of Bengal in 1905 and Colonisation Bill in 1906 by the British government there began popular unrests against the British in various parts across the country. In order to restrain the revolutionary movements and mutiny against the British during the WW1, the British administration in India enacted the emergency criminal law known as Defence of India Act, 1915. The main motive for which the law

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<sup>6</sup> [2003] 8 SCC 342.

was enacted was, To make it illegal to communicate with the enemy, obtaining any information. The Act also prohibited any activities that the government saw prejudicial to the war effort. According to Sec 2(1) (f) of the Act allowed the governments to make rules to detain any individual with ‘Reasonable Suspicion’ indefinitely, without any representation and to be tried by Special tribunals. Anyone could be detained as a preventive measure whose conduct is or is likely to harm the “Prejudicial to the British India”. The Act was enacted for the duration of the war and for a period of six months thereafter for public safety and the defence of British India. The law was widely used for arresting and curtailing the voice of revolutionary moderate leaders.<sup>7</sup>

In *Keshav Talpade vs Emperor*<sup>8</sup>, the federal court declared it to be ultra – virus.

### 3. Rowlatt Act :-

British government was concerned about the rising nationalism among the Indians and were in a fear that the growing movements can drive them out of the country, Hence to curb the growing nationalism, the British administration were determined to take some measures before it reaches the mass hence the Imperial Legislative Council passed The Anarchical and Revolutionary Crimes Act, 1919 extensively known as Rowlatt Act in February, 1919 which replaced the Defence of India Act, 1915. The Act was passed by the Rowlatt Committee headed by Sir Sydney Rowlatt. This act authorised the British government to arrest anybody suspected of terrorist activities and to imprison any person accused of conspiring for up to two years without any trial. Under the Act, the police forces were empowered to search any place without a warrant. Several restrictions on freedom of press were imposed. According to the Act possession of treasonable literature was also a punishable offence. The Act was termed as ‘Black Law’ and large scale protest started against the law started in India. The Act was passed without giving importance to the opinions of the Indian Member of the Imperial Legislative Council after which Madan Mohan Malviya, Muhammad Ali Jinnah, Mazhar ul Haq resigned from Council Council<sup>9</sup>. Gandhiji called a nation – wide protest or hartal against the law which was known as Rowlatt Satyagraha. Mahatma Gandhi

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<sup>7</sup> ‘Defence of India Act, 1915’ <<https://byjus.com/free-ias-prep/defence-of-india-act-1915/>> accessed 10 June 2022.

<sup>8</sup> *Keshav Talpade v Emperor* AIR 1943 F. C. I.

<sup>9</sup> ‘Rowlatt Act & Jallianwala Bagh Massacre (1919)’ <<https://byjus.com/free-ias-prep/rowlatt-act-and-jallianwala-bagh-massacre/>> accessed 10 June 2022.

and others called for massive hartals known as Rowlatt Satyagraha. In places like Punjab, the agitation against the Rowlatt Act was alarming as because there were large scale riots, protests against the Act. Many prominent Indian leaders and the common peoples were outraged by the Act<sup>10</sup>. Among such Dr. Satya Pal and Dr. Saifuddin Kitchlew, the two prominent figures of the protests were arrested. In protest of the arrest, the leaders of the movement called a peaceful protest at ‘ Jallianwala Bagh ’ on the day of the festival of Baisakhi on 13th April 1919. Brigadier-General Dyer was in-charge of Punjab’s law and order. General Dyer with his troops consisting of Gurkha British Indian Army unit, Sindh Sikh regiment, and 52nd Sikh regiment arrived at the spot at 5.30 p.m. and surrounded the peaceful protesters. The Bagh could only be exited on one side and after blocking the exit with army General Dyer ordered his troops to shoot the peaceful and unarmed crowd without warning protesters. As per the British reports nearly 379 people were killed, and about 1,200 more were wounded in the firing<sup>11</sup>.

#### 4. *Government of India Act, 1935 –*

The Government of India Act of 1935 was passed by the British Government in the year 1935. It contained 321 sections and 10 schedules. The Government Act of 1919 was not satisfactory and the Indian leaders also demanded for constitutional reforms. The Act divided the powers between the centre and units among three lists- federal list, provincial list and the concurrent list<sup>12</sup>. The Act also granted the power to the concerned authority i.e provincial authority to enact preventive detention laws of their own. Governors were empowered to legislate through ordinances to deal with , ‘Any persons who has committed or is conspiring, preparing, or attempting to commit, crimes of violence which bears the intention to overthrow the government or in similar situations’. The Act was condemned by nearly all sections of Indian also was unanimously rejected by the Indian National Congress. Congress called it a ‘slave constitution that attempted to strengthen and perpetuate the economic bondage of

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<sup>10</sup> Sujitha S, ‘The Rowlatt Act : everything you need to know’ <<https://blog.ipleaders.in/the-rowlatt-act-everything-you-need-to-know/>> accessed 10 June 2022.

<sup>11</sup> Kenneth Pletcher, ‘Jallianwala Bagh Massacre’ <<https://www.britannica.com/event/Jallianwala-Bagh-Massacre>> accessed 10 June 2022.

<sup>12</sup> ‘Government of India Act of 1935’ <<https://www.insightsonindia.com/polity/indian-constitution/historical-underpinnings-and-evolution/crown-rule-1858-1947/government-of-india-act-of-1935/>> accessed 10 June 2022.

India'. The Act further provides provision for Provincial Autonomy, Division of Subjects, Dyarchy at the Centre, Bicameral legislature, Increase in the Size of Legislatures, Federal Court, Reorganization of provinces, Separation of Burma, Separate electorates for Women, Depressed classes, labour, Federal railway authority, Federal Public Service Commission, Provincial Public Service Commission, Joint Public Service Commission for two or more provinces etc.<sup>13</sup> . It can be mentioned that while drafting the Constitution of India, 1950 various provisions were borrowed from the Act.

Scholars like Andrew Muldoon have argued that the Act was arguably the most significant turning point in the history of the British administration in India. He further mentioned that the Act was a way for continuation of the British control of India, and the deflection of the challenge to the Raj posed by Gandhi, Nehru and the nationalist movement.

According to J.A. Gallagher, 'The Act was designed to revise the workings but not weaken the realities of British Power'.

#### 5. *Armed Forces (Special Powers) Ordinance, 1942 –*

The then Viceroy of India Lord Linlithgow passed the Armed Forces Special Powers (Ordinance) on August 15th 1942. AFSPA which exists till today was first enacted as an ordinance, the main aim behind enacting the Act was to suppress and divert the Quit India Movement led by Mahatma Gandhi<sup>14</sup>. Since implemented it has been termed as controversial law due to excessive power to the armed forces.

### **2.3 Position of security laws in post- British era :-**

After India became free in the year 1947 and the Constitution was adopted in the year 1950 some situations forced the framers of the Indian Constitution to give

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<sup>13</sup> Dr. Deepti Tiwari, 'Government of India Act 1935: Main Features' <<https://magadhmahilacollege.org/wp-content/uploads/2020/05/Government-of-India-Act-1935-converted-1.pdf>> accessed 11 June 2022.

<sup>14</sup> 'Armed Forces Special Powers Act (AFSPA)' <<https://byjus.com/free-ias-prep/understanding-the-armed-forces-special-powers-act/> 23/5/2022> accessed 11 June 2022.

Constitutional recognition to some Preventive Detention Laws and placed them in the Fundamental Rights part of the Constitution.

1. *Preventive Detention Act, 1950:-*

Preventive Detention Act, 1950 was the first Preventive Detention law that was passed after independence of India. The Act was introduced to prevent the anti-national as well as anti – social elements from carrying out any form of activities that may become threat to the nation. The Act was a time bound and to remain for 2 years in practice. But, the time limit of the Act was increased from time to time, and finally, it was abolished in the year 1971. Preventive Detention Act, 1950 reinforces human detention in situations where state conditions are involved, such as national defence, the preservation of peace and public order, international affairs etc. The validity of the Preventive Detention Act, 1950 was challenged before the court in the case of *A.K Gopalan v. The State of Madras*<sup>15</sup> after communist leader A.K Gopalan was imprisoned under the Preventive Detention Act, 1950. The detention was challenged through a writ of Habeas Corpus under Article 32 of the Indian Constitution and the Act was put under test. Petitioner argued that Sections 7, 8, 10, 11, 12, 13, and 14 of the Preventive Detention Act violate Articles 13, 19, and 21 of the Indian Constitution, hence the Act is ultra vires of the basic fundamental provisions as enshrined in the Indian Constitution. The petitioner also raised the issue of the 'procedure defined by statute' clause in the Indian Constitution. Apex Court held that punitive and preventive detention were outside the ambit of Article 19 of the Constitution of India hence it had not violated it. Court also contended that Article 22 of the Indian Constitution is a self-contained Code and that he was detained in accordance with the procedure established by law and if the state takes away a person's liberty in accordance with the procedure established by law then it cannot be said that it violates the provisions contained in Articles. The court arrived at the conclusion that the detention was legal, and thus the writ petition was dismissed<sup>16</sup>.

2. *Armed Forces Special Powers (Assam and Manipur) Act, 1958 –*

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<sup>15</sup> AIR 1950 SC 27.

<sup>16</sup> Nishiket Dave, 'A.K. Gopalan V. State Of Madras' (8 November 2020) <<https://lawsisto.com/legalnewsread/ODY3MQ==/AK-Gopalan-v-State-of-Madras-1950-AIR-27-1950-SCR-88>> accessed 12 June 2022.

AFSPA was first enacted to combat with the Naga insurgency in the Assam region. In 1951, the N.N.C reported that it conducted a 'free and fair plebiscite' in which about 99 per cent of Nagas voted for a 'Free Sovereign Naga Nation'. People boycotted the general election of 1952 which later extended to a boycott of schools and officials run by Govt.

To tackle the situation, GoA imposed the 'Assam Maintenance of Public Order (Autonomous District) Act' in the Naga Hills in 1953. Later GOA deployed the Assam Rifles in the Naga Hills and enacted the Assam Disturbed Areas Act of 1955. The Act provides a legal framework for the paramilitary forces and the state police forces to combat insurgency in the region. But the Assam Rifles and the state police forces could not contain the Naga rebellion and the rebel Naga Nationalist Council (NNC) established a parallel government in 1956.

After which Indian Government enacted the Legal provisions to support the armed forces to combat the insurgency which finally led to the enactment of "The Armed Forces (Assam and Manipur) Special Powers Ordinance 1958" was promulgated by the then "President of India" Dr. Rajendra Prasad on 22nd May 1958. Later it was replaced with the "Armed Forces (Assam and Manipur) Special Powers Act, 1958" on 11th September 1958.

The Armed Forces (Assam and Manipur) Special Powers Act, 1958 provides power only to the Governors of the States and the Administrators of the Union Territories to declare areas in the concerned State or the Union Territory as 'disturbed'.

The reason for conferring such power as per 'Objects and Reasons' included in the Bill was that Keeping in view the duty of the Union under Article 355 of the Constitution of India, inter-alia, to protect every State against any internal disturbance, it is considered desirable that the Central government should also have the power to declare areas as 'Disturbed', in order to enable its armed forces to exercise special powers.

It was later extended to all N.E states.

Later it was replaced with 'The Armed Forces (Assam and Manipur) Special Powers Act, 1958' on 11th September 1958. The territorial jurisdiction of the Act

also got expanded over all the states of N.E except Sikkim. The words ‘The Armed Forces (Assam and Manipur) Special Powers Act, 1958’ was substituted by "Armed Forces (Special Powers) Act, 1958", getting the abbreviation “AFSPA”, 1958<sup>17</sup>.

### 3. *Unlawful Activities (Prevention) Act, 1967:-*

Unlawful Activities (Prevention) Act is a counter- terrorism law which was passed in the year 1967 by former P.M Indira Gandhi. The main motto behind enacting the Act was enacted to curb the unlawful activities and to uphold the sovereignty and integrity of India. National Integration Council recommended for the enactment of the Act. Since inception the law has been termed as ‘Draconian’ as because it violates major fundamental rights of the citizens and as well as of non-citizens.

The Act can be declared as ultra- vires on the following grounds:

#### (1) Violation of ‘freedom of press guaranteed under Article 19 (1) (a):-

The UAPA is considered to be a legislation that has caused steady erosion of Article 19, Article 19 (1) (a) - The freedom of speech and expression is a cornerstone for the foundation of democracy in India. The ‘freedom of press’ is implicit under this Article. However, time and again the UAPA is being misused as tool to suppress the opposition voices. Many journalists and opposition party leaders are being slapped with the Act, endangering their fundamental rights. One such recent example is of Tripura Violence, when two Advocates and a journalist were booked under the UAPA over their social media posts and reports about the recent communal violence which took place in the state. The Supreme Court came to their rescue, which ordered no coercive steps including arrest against them. This is a glaring instance of how the UAPA has a chilling effect on the freedom of speech and expression.

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<sup>17</sup> The Armed Forces (Special Powers) Act 1958.

(2) Violation of ‘Right to protest’ guaranteed under Article 19(1) (a) and 19(1)(b):

“Right to protest” emanates from Article 19 (1) (a) and Article 19 (1) (b), but the protest has to be a peaceful one. The importance of dissent was highlighted by the Supreme Court in the landmark case of *Mazdoor Kisan Shakti Sangathan vs Union of India and Anr* in the following words:

“Together, both these rights ensure that the people of this country have the right to assemble peacefully and protest against any of the actions or the decisions taken by the Government or other governmental authorities which are not to the liking legitimate dissent is a distinguishable feature of any democracy. Question is not as to whether the issue raised by the protestors is right or wrong or it is justified or unjustified. The fundamental aspect is the right which is conferred upon the affected people in a democracy to voice their grievances. Dissenters may be in minority. They have a right to express their views.”

The UAPA has been used historically as a medium to stifle the dissenting opinions. The protests of the opposition leaders, activists or common people have been discriminately brought under the purview of Section 15, termed as “terrorist act.” For instance, in the very recent case of *Asif Iqbal Tanha v. Sate of NCT*<sup>18</sup> student activist was arrested for participating in protest against the CAA, 2019. The Delhi High Court granted him bail, after he spent a year in Tihar Jail. Considering the charge-sheet filed against the accused, the Court found no prima facie against him, and granted him bail.

Similarly, in a separate order of the same court *Devangana Kalita v. Sate of NCT Delhi*<sup>19</sup> the Court granted the bail to another student activist. The observations of the Court are of great significance to understand the arbitrary use of the UAPA to silence the voice of the dissent.

The right to protest is a fundamental right that flows from the constitutionally guaranteed right to assemble peaceably and without arms enshrined in Article 19(1)(b) of our Constitution, surely the right to protest is not outlawed and cannot be termed as a ‘terrorist act’ within the meaning of the UAPA, unless of

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<sup>18</sup>CRL.A 39/2021

<sup>19</sup> CRL.A.90/2021



course the ingredients of the offences under sections 15, 17 and/or 18 of the UAPA are clearly discernible from the factual allegations contained in charge sheet and the material filed therewith.

#### 4. *Maintenance of Internal Security Act, MISA –*

Indian Parliament passed The Maintenance of Internal Security Act, MISA in July 2, 1971 under the Prime Ministership of Indira Gandhi. MISA was instituted to establish internal security in India. The Act allowed the Indian law enforcement agencies to search and detain individuals and seizure their properties without any warrants. Since enactment of MISA it was regarded as a controversial and was amended several times. It became infamous for its excesses usage during the emergency for arresting, torturing opposition leaders, journalists, scholars, activists, opposition political party members etc. who got arrested and were detained without a trial. The Act violated basic human rights. MISA was repealed in 1977 after the Janata Party came to power.<sup>20</sup>

In the case of *Khudiram Das v. State of West Bengal*<sup>21</sup>, where a writ petition of Habeas Corpus under Art 32 of the Constitution of India regarding the validity of petitioners detention through an order by the district magistrate under the Maintenance of Internal Security Act, 1971. The Supreme Court stated that the Court neither has the power to consider the amplexness or respectability of the grounds nor is it allowed to substitute its own supposition with that of the detaining authority which is most appropriate to take such decisions.<sup>22</sup>

#### 5. *National Security Act, 1980 -*

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<sup>20</sup> 'Emergency in India during 1975: Atrocities and Acts during Emergency' <<https://www.india.com/education/emergency-in-india-during-1975-atrocities-and-acts-during-emergency-1581724/>> accessed 13 June, 2022.

<sup>21</sup> AIR 1975 SC 550.

<sup>22</sup>Shreya Malhotra, 'Preventive detention laws in India' <<https://blog.ipleaders.in/preventive-detention-lawsindia/#:~:text=State%20of%20West%20Bengal%2C%20where,that%20of%20the%20detaining%20authority>> accessed 13 June, 2022.

The National Security Act is a preventive detention law which was passed by Indian Parliament in the year 1980. The Act contains 18 sections and empowers the Union and State Government to detain any individual from acting in any manner prejudicial to the security of the nation or who try to impede the law and order situation of a state or country. It focuses on maintaining and preservation of national security.

National Security Act allows a person to be detained without a charge for up to twelve months. The main reason behind is to prevent the individual from committing a crime. It further provides that the any individual who has been detained also need not be informed about the charges for which he has been arrested or detained till ten days which is a clear violation of Section 50 of the Criminal Procedure Code. The advisory board is constituted under Section 9 of the Act with High Court Judges.<sup>23</sup> Denial to right to consult or defended by a legal practitioner is violation of Article 22 (1) of the Indian Constitution.

In the case of detention under Section 10 of the Act Government within three weeks from the date of detention has to place before the advisory board the reasons or the grounds on which the order has been made and the representation, if any, made by the detainee.

The advisory board shall, after considering the materials placed before it and after hearing the detainee, submit its report to the government within seven weeks from the date of detention of the person concerned. The rule has been enshrined under Section 11 of the Act. The report of the board shall specify as to whether or not there is sufficient cause for the detention. In cases where the advisory board has reported that there is, in its opinion, sufficient cause for the detention of the person concerned, the government may confirm the detention order and continue the detention for such period as it thinks fit. In cases where the board has reported that there is no sufficient cause for the detention, the Government shall revoke the detention order and the detainee to be released forthwith. A detained person can continue to be in jail without obtaining the opinion of the advisory board for a period longer than three months, but not exceeding

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<sup>23</sup>PTI, 'Govt constitutes 3-member advisory board of sitting HC judges to review NSA cases' *The Hindu* (19 March 2022) <<https://www.thehindu.com/news/national/govt-constitutes-3-member-advisory-board-of-sitting-hc-judges-to-review-nsa-cases/article65240314.ece#:~:text=Under%20the%20NSA%2C%20a%20person,a%20lawyer%20during%20the%20trial.>> accessed 13 June, 2022.

six months where such person had been detained with a view to preventing him from acting in any manner prejudicial to the defence of India.

However, under National Security Act, none of these rights are available to the person detained. The government holds the right to conceal information which it considers to be against public interest to disclose.

In *A.K Roy vs Union of India*<sup>24</sup>, the court held that the National Security Act was constitutional but insisted that the extraordinary power of preventive detention be narrowly constructed: “Detention without trial is an evil to be suffered, but to no greater extent and is no greater measure than is minimally necessary in the interest of the country and community.

#### 6. *The Armed Forces (Punjab and Chandigarh) Special Powers Act, 1983-*

The central government enacted the Armed Forces (Punjab and Chandigarh) Special Powers Act in 1983, by repealing The Armed Forces (Punjab and Chandigarh) Special Powers Ordinance of 1983, in order to enable the central armed forces to operate in the state of Punjab and the ‘U.T’ of Chandigarh which was battling the Khalistan movement in the 1980s. In 1983 the Act was enforced in the whole of Punjab and Chandigarh. The terms of the Act broadly remained the same as that of the Armed Forces Special Powers Act (Assam and Manipur) of 1972 except section 4 and section 5 which provided for additional powers to the armed forces. As the Khalistan movement died down AFSPA was withdrawn in 1997, roughly 14 years after it came into force. While the Punjab government withdrew its Disturbed Areas Act in 2008, it continued in Chandigarh until September 2012 when the Punjab and Haryana high court struck it down.

#### 7. *The Terrorist and Disruptive Activities (Prevention) Act, 1987 :*

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<sup>24</sup> AIR 1982 SC 710.

The Terrorist and Disruptive Activities (Prevention) Act, 1987 (“TADA”) was the first anti-terror legislation in India, which was passed under the background of Insurgency of Punjab, a secessionist movement for the formation ‘Khalistan’ a sovereign State for Sikhs in Punjab Region. For the very first time it defined “terrorist act” as: *“Whoever with intent to overawe the Government as by law established or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act, commits defined as ‘Terrorist act’*<sup>25</sup>

In the case of *Kartar Singh v. State of Punjab*<sup>26</sup> a five-judges Bench upheld the Constitutional validity of the Terrorist and Disruptive Activities (Prevention) Act, 1987. However, the Court agreed that in many occasions, the Act was invoked in the unwarranted manner which was “sheer misuse and abuse of the Act by the police.” Justice Ranganathan Misra, who was the Chairperson of the National Human Rights Commission had informed the commission to withdraw the Act because of its “draconian nature”, its gross misuse, its low rate of conviction (0.8 per cent only) which reveals its ineffectiveness and the administration of the statute being left solely to the executive<sup>27</sup>. The contentious provisions were: admissibility of confessions made to the police officer not lower in rank than a Superintendent of Police as admissible in the trial court not to disclose the names and identity of witness for the prosecution thereby denying the accused his fundamental and effective right to cross-examination. According to the ‘sunset provision’, the life of the Act, was eight years, which expired and it was repealed on 23 May, 1995

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<sup>25</sup> The Terrorist and Disruptive Activities (Prevention) Act 1987, s 3(1) (India).

<sup>26</sup> [1994] 3 SCC 569.

<sup>27</sup> The Terrorist and Disruptive Activities (Prevention) Act, 1987 s16 (India)

8. *The Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 –*

The Armed Forces (Jammu and Kashmir) Special Powers Act in J&K was enacted in 1990 in order to tackle the rising militancy and insurgency in J&K. According to the Act, if the Governor of J&K or the GoI is of opinion that the whole or any part of the state is disturbed or in a dangerous condition then the Act can be imposed. Although the J&K has its own ‘Disturbed Areas Act’, a separate legislation that came into existence in 1992. After a while the Disturbed Areas Act for J&K was lapsed in 1998, but the government can still declare ‘Disturbed Area’ under Section (3) of AFSPA.

9. *Prevention of Terrorist Activities Act, 2002 (“POTA”)*

Prevention of Terrorist Activities Act was passed in response to the 2001 terrorist attack on the Parliament of India by two Pakistan-raised terrorist organizations- Lashkar-e-Taiba (LeT) and Jaish-e-Mohammed. Under Section 3 (1), it defined “terrorist act” as: Section 3 (1), it defined “terrorist act” as:

(a) with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people does any act or thing by using bombs, dynamite or other explosive substances or inflammable substances or firearms or other lethal weapons or poisons or noxious gases or other chemicals or by any other substances (whether biological or otherwise) of a hazardous nature or by any other means whatsoever, in such a manner as to cause, or likely to cause, death of, or injuries to any person or persons or loss of, or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the community or causes damage or destruction of any property or equipment used or intended to be used for the defense of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies, or detains any person and threatens to kill or injure such person in order to compel the Government or any other person to do or abstain from doing any act;

(b) is or continues to be a member of an association declared unlawful under the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), or voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession of any unlicensed firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or causes significant damage to any property, commits a terrorist act.

In, *People's Union for Civil Liberties v. Union of India*<sup>28</sup> upheld the constitutional validity of POTA.

#### 10. *Unlawful Activities (Prevention) Amendment Act, 2019*

The Unlawful Activities (Prevention) Amendment Bill, 2019 was introduced in Lok Sabha by the Minister of Home Affairs, Mr. Amit Shah, on July 8, 2019 was passed in the Lok Sabha on 24 July and Rajya Sabha on 2 August. The Bill amends the Unlawful Activities (Prevention) Act, 1967<sup>29</sup>. The Act provides special procedures to deal with terrorist activities, among other things. The new provisions empowers the government to designate individuals as terrorists if the person commits or participates in acts of terrorism, prepares for terrorism, promotes terrorism or is otherwise involved in terrorism. The bill also empowers the Director-General, NIA to grant approval of seizure or attachment of property when the case is being investigated by the agency whereas in the existing Act, the investigating officer is required to obtain the prior approval of the DGP to seize properties that bear any connection to terrorism. Under the existing case the court investigation of cases may be conducted by officers of the rank of Deputy Superintendent or Assistant Commissioner of Police or above but according to the new bill it empowers the officers of the rank of Inspector or above, to investigate cases. It also empower the Director General of NIA to grant approval of seizure or attachment of property when the case is investigated by the agency.

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<sup>28</sup> [2004] 9 SCC 580.

<sup>29</sup> The Unlawful Activities (Prevention) Amendment Bill 2019.

No changes have been proposed regarding the arrest or bail provisions. No changes have been made regarding the burden of proof and it remains on the investigating agency and not on the accused, has not been changed<sup>30</sup>.

11. *Prevention of Black- marketing and Maintenance of Supplies of Essential Commodities Act, 1980 –*

Also known in short as Essential Commodities Act, 1980 was enacted on 12<sup>th</sup> February, 1980 and came into force on 5<sup>th</sup> October, 1979. The Act was enacted to curb the black marketing of essential commodities. Items which have been enlisted as essential item under the Act include; pulses and edible oils, drugs, fertilisers, and petroleum and petroleum products etc. The main motto behind enacting the Act is to prevent business enterprises to stock more than a particular limit so that no artificial crisis arises, to keep check so that no black marketing of essential commodities occurs, to fix the price of essential goods, to stabilise the prices of essential commodities. Sec 3 of the Act provides provision for detention of any person who may act in prejudicial to maintenance of supplies of essential commodities. According to Sec 13 the maximum period for the detention can be six months starting from the date of detention. During Covid – 19 central government has declared masks and hand sanitizer as essential items<sup>31</sup>.

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<sup>30</sup> *ibid.*

<sup>31</sup> 'Essential Commodities Act, 1955: Meaning, Objectives, and Punishment' <<https://www.jagranjosh.com/general-knowledge/what-is-essential-commodities-act-1955-1585305727-1>> accessed 13 June 2022.

## 2.4 STATE LEGISLATION ON PREVENTIVE DETENTION –

Alongside the central legislations there are also few state legislations which are enacted by various state legislations to combat various activities like terrorism, smuggling etc. and some of them are -

### *The Chhattisgarh Special Public Security Act, 2006 -*

Few state legislations were also passed to combat terrorism activities like the ‘The Chhattisgarh Special Public Security Act, 2006’ passed by Chhattisgarh Assembly in December 2005. The Act provides the powers to the Police to detain any person who poses any form of danger to peace in society and disturb the law and order situation. The Act further says that if any person whose actions encourage the disobedience of the established law will be considered ‘unlawful’<sup>32</sup>. The Act came under criticised after the arrest of Civil Rights Activist and the Vice – President of People's Union of Civil Liberties Dr. Binayak Sen under the Chhattisgarh Special Public Security Act, 2006 on the allegation of helping the Naxals to revolt against the state machinery. He was sentenced to life imprisonment by a trial court of Chhattisgarh. After which Dr. Sen appealed at Chhattisgarh High Court but his but the court upheld the conviction<sup>33</sup>. The arrest was heavily criticised by many human rights group and civil rights group they stated that the said Act is far more draconian than any of the national security legislation. Later Supreme Court granted him bail and also dropped the charge of sedition brought against him<sup>34</sup>.

### *The Jammu and Kashmir Public Safety Act, 1978-*

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<sup>32</sup> ‘Chhattisgarh Special Public Security Act’ <<https://cpjc.wordpress.com/chhattisgarh-special-public-security-act/>> accessed 13 June 2022.

<sup>33</sup> ‘No sedition; bail for Binayak Sen: Supreme Court’ *NDTV* (15 April 2011) <<https://www.ndtv.com/india-news/no-sedition-bail-for-binayak-sen-supreme-court-453055>> accessed 13 June 2022.

<sup>34</sup> ITGD Bureau ‘Binayak Sen gets bail, SC trashes sedition charge’ *India Today* (18 April 2011) <<https://www.indiatoday.in/india/north/story/sc-grants-bail-to-binayak-sen-drops-sedition-charge-132224-2011-04-15>> accessed 13 June 2022.



Jammu and Kashmir Public Safety Act, 1978 is a preventive detention law allows to take any person under custody, arrest any person without any warrant and also can detain any person without any trial for a period up to two years. Under the Act anyone who has been arrested need not be produced before a magistrate within 24 hours of the detention moreover any person who has been detained under the Act does not have the right to move a bail application before a criminal court. The Act is similar like the National Security Act. The Act was promulgated by the Government led by Sheikh Muhammad Abdullah to curb the timber smuggling but many social organisations and prominent human rights groups have criticised it to be a draconian law and misused widely. Till today near about 20,000 persons including two former C.Ms Omar Abdulla and Mehbooba Mufti have been booked under the said law. The Act has become a political weapon for the ruling party against the political voices.<sup>35</sup> Amnesty International has described the Act as a ‘Lawless Law’ and has demanded to repeal the controversial Act.<sup>36</sup>

Although security laws have been enacted to ensure safety and security of our citizens as well as our country but human rights groups always complain regarding the arbitrary detention and extra judicial execution of people. Women have faced sexual violence from the state actors using security powers, particularly in areas where the military has powers under AFSPA.<sup>37</sup>

#### *Assam Preventive Detention Act, 1980 –*

Government of Assam passed the Assam Preventive Detention Act, 1980 and received the President assent on 19th July, 1980. The Act contains 18 sections and it allows that the state government not below the rank of Secretary to the state government or a D.M

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<sup>35</sup> Freny Manecksha, ‘The Public Safety Act Is a Political Weapon For the Government in Kashmir’ *The Wire* (28 December 2018) <<https://thewire.in/government/public-safety-act-kashmir>> accessed 13 June 2022.

<sup>36</sup> ‘A LAWLESS LAW DETENTIONS UNDER THE JAMMU AND KASHMIR PUBLIC SAFETY ACT’ <<https://www.amnesty.org/en/wp-content/uploads/2021/06/asa200122011en.pdf>> accessed 13 June 2022.

<sup>37</sup> 4 MANDY TURNER & BINALAKSHMI NEPRAM, *THE IMPACT OF ARMED VIOLENCE IN NORTHEAST INDIA* (University of Bradford. 2004); Namrata Gaikwad, *Revolting bodies, hysterical state: Women protesting the Armed Forces (Special Powers) Act (1958)*, 17 *CONTEMPORARY SOUTH ASIA* 299(2009).

in respect of any person that with a view to preventing him from doing any wrong. The Act further provides power to the government to detain any individual for an act which possesses threat to the security of the state, public order maintenance of supplies and services to the community<sup>38</sup>. The Assam Preventive Detention Ordinance 1980 was repealed.

#### *Gujarat Prevention of Anti – Social Activities Act, 1985-*

The Act was enacted by Gujarat Legislative Assembly bearing Act No. 16 Of 1985. The act provide for preventive detention of bootleggers, dangerous persons, drug offenders, immoral traffic offenders and property grabbers for preventing their anti-social and dangerous activities prejudicial to the maintenance of public order. The Act contains 18 sections .

Under the Act a person can be kept under preventive detention up to one year by an order from concerned police commissioner or district magistrate. The Act has been immensely useful in maintaining peace by detaining the anti-social elements of the society. Later in the year 2020 new amendments were introduced to widen its ambit and sexual offenders were included within its ambit<sup>39</sup>.

#### *Andhra Pradesh Preventive Detention Act, 1970 –*

The Act provides for preventive detention in certain cases in the state where the public order may has been adversely affected due to any dangerous activities by any certain persons, who are known as ‘bootleggers, dacoits, drug offenders, goondas, immoral traffic offenders and land-grabbers’ cause any harm, danger or may rise a feeling of insecurity among the general public. According to Sec 3 of the Act, The Government in order to maintain public order may make necessary arrangements to detain any person who may breach the supply chain of the state, may pose treat to the security of the state or in maintaining public order. D.M ADM, Commissioner of Police have been

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<sup>38</sup> Assam Preventive Detention Act 1980, s 3.

<sup>39</sup> Express News Service ‘Amendment bill passed in Gujarat Assembly: Sexual offenders, cyber criminals to face PASA’ *Indian Express* (Gandhinagar 23 September 2020) <<https://indianexpress.com/article/india/amendment-bill-passed-in-gujarat-assembly-sexual-offenders-cyber-criminals-to-face-pasa-6606908/>> accessed 13 June 2022.

entrusted to pass necessary orders under the Act. The maximum period for which any person may be detained shall be twelve months<sup>40</sup>.The state legislatures have also enacted orders and rules under above mentioned Acts regarding conditions of detention under the Act.

### **Chapter 3 - IMPLICATIONS AND PRESENT STATUS OF AFSPA IN NORTH – EASTERN STATES –**

#### **3.1. Insurgency in NER –**

AFSPA grants special power to the personnel of armed forces to detain, search and enter any person and any premises without warrant. The Act provides immunity to the armed personnel's who are acting under the Act against any prosecution or legal proceedings regarding their activity except with the previous sanction of the GoI The Act also provides provision that if any 'Commissioned and Non-Commissioned' officers of the armed forces finds that to in order 'to maintain peace and public order , after giving necessary warning may fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law'. The Act also provides provision for assembly of five or more persons or for carrying any weapons or of things capable of being used as weapons or of fire-arms, ammunition or explosive substances by civilians. The Act provides power to the military officers regarding arrest of any person who has committed any offence or there exists any form of suspicion that the concerned person has committed or is about to commit any unlawful activity without warrant. The Act provides provision to the armed forces to "search and enter any premises without any warrant to make arrest or to recover anyone who is believed that he has been restrained unlawfully or any form of ammunition or explosive materials is believed to be wrongfully kept in that premises<sup>41</sup>.

In 1954, the Nagas began an insurgency for independence. To control the insurgent activities, GoI promulgated the Act to address the movement. The Act came into force due to the increase of insurgency in the NER, Especially when the Nagas began an

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<sup>40</sup> The Andhra Pradesh Preventive Detention Act 1970.

<sup>41</sup> AFSPA 1958, s 4 (d).

insurgency movement for independence and the State governments was facing difficulty to control. Although it was enacted to curb the emerging insurgencies in N.E states but often there arose allegation of violation of Art 21 and there are many cases where it was found that the armed forces have violated rules and have intentionally tortured the local youths. There have been a country-wide protest to repeal the Act because of infringement of fundamental rights of common people because the common people have become the worst sufferer. Many have lost their near and dear ones and in very few cases justice was served. The law also gives immunity to member of armed forces against prosecution for their activities.

Anti – AFSPA Activist Irom Sharmila of Manipur has fasted for near about 16 years long fasting with a demand to repeal the AFSPA. She began her fasting on the year 2000 after she witnessed a horrible incident where 10 civilians were shot by armed forces while those people were waiting at a bus stop<sup>42</sup>. Many Social organisations of North East have started campaign to repeal the Act which they term it as ‘Draconian Law’.

### **3.2 Historical Analysis of Insurgency Movement in NER -**

NER has been lacking behind on basic services in many sectors like lack of proper inadequate infrastructure, low level per capita income, sluggish economic growth in the region, sense of exploitation of natural resources of north – eastern states. Another reason for the longstanding armed rebellion in the north-eastern states was regarding the questions of mass immigration from Bengal and East Bengal.

There is a long history of insurgency in the North – Eastern part of India due to several grounds. States like Mizoram, Nagaland and Manipur have experienced militancy. The leader of the militancy and their leaders enjoyed support from the mass due to voiced genuine issues pertaining to the local people such as inadequate governance, lack of development, lack of basic needs which were often neglected by the government

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<sup>42</sup> ‘5 things to know about 'Iron Lady' Irom Sharmila’ *Deccan Chronicle* (9 August 2016) <<https://www.deccanchronicle.com/nation/current-affairs/090816/five-things-to-know-about-indias-iron-lady.html>> accessed 13 June 2022.

### a) Nagaland-

Nagaland is one of the smallest states in India. It is bordered by the state of Assam to the west and north-west, Arunachal Pradesh to the northeast, Manipur to the south and Myanmar to the east. The state capital is Kohima which is located in the southern part of Nagaland<sup>43</sup>. Nagaland was the first state which faced militancy due to the demand for independence. Long before the Britishers left India, Nagas considered themselves to be independent and many a time petitioned the British to declare them as independent nation. During the visit of Simon Commission in 1929 members of 'Naga Club' made representation to the commission and told the commission to "leave us alone to determine for ourselves as in ancient times"<sup>44</sup>. During 1946 under the leadership of Naga leader Angami Zapu Phizo, Naga National Council (NNC) was formed and it declared Nagaland an independent state on August 14, 1947. Even after independence in the year 1956 Naga insurgent groups and the rebel N.N.C leader Phizo's formed a parallel government which was known as "The Federal Government of Nagaland". But such process were declined both by the British and Government of India. After which Nagas, started arms struggle initially under Naga National Council which later split into two groups known as N.S.C.N Isak-Muivah faction and Khaplang faction and continues to struggle for 'Greater Nagalim'. Map of 'Greater Nagalim' comprises of Naga-inhabited areas also Nagas staying in districts of Assam, Arunachal Pradesh, Manipur and portions of Myanmar, Separate Flag etc. Today NSCN (IM) came to be seen as the "umbrella organisation of all insurgent groups" in the region.

It is important to mention that a framework agreement was signed in 2015 known as the 'Nagaland Peace Accord', it was signed between the GoI and the National Socialist Council of Nagaland (NSCN), to end the insurgency in the state of Nagaland. R N Ravi was appointed interlocutor for the peace talks between NSCN-IM and the central government from 2014 to 2021<sup>45</sup>.

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<sup>43</sup> 'Geography of Nagaland' <<https://nsdma.nagaland.gov.in/geography-of-nagaland#:~:text=Nagaland%20is%20bounded%20by%20the,the%20southern%20part%20of%20Nagaland>> accessed 15 June 2022.

<sup>44</sup> 'Naga Club recalls representation to Simon Commission on Jan 10 1929' *The Naga Republic* (14 January 2018) <<https://www.thenagarepublic.com/files/naga-club-recalls-representation-simon-commission-jan-10-1929/>> accessed 15 June 2022.

<sup>45</sup> *ibid.*

**b) Mizoram –**

Mizoram was a part of Assam before it was granted statehood in 1987. Mizoram Union (MU) was formed on 9 April 1946 with the objectives of autonomy in matters of land, customary laws, culture, and identity, and recognition of the Mizo dialects. After the demands of Mizoram were getting stronger, in 1946 the interim Government of India made an attempt to address these issues by setting up the North East Frontier (Assam) Tribal and Excluded Areas Committee of the Constituent Assembly in 1947. The committee was headed by then Chief Minister of Assam Gopinath Bardoloi. The committee recommended for the provision of District Councils under Article 244 (2) of the Sixth Schedule of the Constitution after which the 'Autonomous District Council' status was accorded to Lushai Hills.

One of the main reason for the birth of insurgency in Mizoram was the famine which occurred in the year 1959 due to gregarious flowering of bamboo that strikes every 48 years and has led to massive loss of crops. The Mizos had anticipated that famine and had requested the then Assam Government to sanction Rs 15 lakhs to the Mizo District Council for relief measures<sup>46</sup>. Assam Government rejected the request and after which the most violent chapter of the militancy begun in Mizoram and 'Mizo National Famine Front (MNFF) was formed. MNFF was transformed into a political party known as Mizo National Front (MNF). After the Union government failed to response during the "Mautam Famine", the people of Mizoram under the leadership of Mizo National Fronts's (MNF) Laldenga started movement for independence of Mizoram from India. On February 28, 1966, the volunteers of the Mizo National Front launched "Operation Jericho" to throw out Indian forces stationed in Mizoram and launched simultaneous attacks on Assam Rifles in Aizawl and Lunglei and on March 1, 1966 MNF declared independence of Mizo peoples from India and declared independence<sup>47</sup>. Government offices and stations like Telephone Exchange and ransack of Government Treasury in Aizawl were attacked and destroyed after which Government of Assam declared Lushai Hills District as a "Disturbed Area" also the Government of India banned MNF as a

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<sup>46</sup> 'N E readies to tackle bamboo flowering that led to Mizo insurgency' *One India* (June 19 2006) <<https://www.oneindia.com/2006/06/18/n-e-readies-to-tackle-bamboo-flowering-that-led-to-mizo-insurgency-1150669516.html?story=2>> accessed 16 June 2022.

<sup>47</sup> Ibid.

terror organisation under the Defence of India Rule. The Armed Forces Special Power Act (AFSPA) was in force in the area by 1967<sup>48</sup>.

To control the tough situation central government led by Indira Gandhi responded by ordering the Indian Air Force to attack the city on March 5, 1966. Accordingly Indian Air Force with four fighter jets attacked the city. The bombing of the country's own citizens was ordered by the then P.M Indira Gandhi to attack the city<sup>49</sup>.

It is important to note that the Indian Air Force's uneventful bombing at Aizawl under the direction of the then P.M Indira Gandhi has never been recorded or recognized by the Indian Air Force<sup>50</sup>.

### c) *Tripura-*

Tripura was under the rule of Maharajas from 'Manikya Dynasty'. According to 'Rajmala', the Royal Chronicle of Tripura a total of 184 kings ruled over the state before it merged with the Indian Union on October 15 1949". Even British couldn't conquer It hence remained as an independent princely state under the Maharaja even during the British rule in India. On January 26, 1950 Tripura was accorded the status of a 'C' category state and on November 1, 1956, it was recognized as an U.T. Tripura attained full Statehood on 21 January 1972 under the North-East Reorganisation Act, 1971<sup>51</sup>.

Tripura was a tribal dominated state but due to influx of mass population from the nearby East Pakistan (present Bangladesh) due to persecution on religious grounds, forceful conversion, feeling of insecurity among the minorities community due to repeated attacks, desecration of temples etc. in Bangladesh has extensively reduced the population of the indigenous tribal. It was the particular reason which had created national consciousness among the tribal peoples and the continuous neglect on the immigration issue had led to a direct confrontation between Indian nationalism and

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<sup>48</sup> 'Mizoram Peace Accord' <[https://en.wikipedia.org/wiki/Mizoram\\_Peace\\_Accord#cite\\_note-nunthara-8](https://en.wikipedia.org/wiki/Mizoram_Peace_Accord#cite_note-nunthara-8)> accessed 16 June 2022.

<sup>49</sup> Praveen Swami, 'The seduction of maximum force' *The Hindu* <<https://www.thehindu.com/opinion/lead/The-seduction-of-maximum-force/article16196303.ece>> accessed 16 June 2022.

<sup>50</sup> Ezrela Dalidia Fanai, 'Mizoram: Uneventful Air Raids In Aizawl On March 5, 1966; Day Concealed Under History Sheets' <<https://www.northeasttoday.in/2022/03/05/mizoram-uneventful-air-raids-in-aizawl-on-march-5-1966-day-concealed-under-history-sheets/>> accessed 16 June 2022.

<sup>51</sup> 'Tripura State Portal' <<https://tripura.gov.in/history>> accessed 16 June 2022.

tribals of the state and thus created insurgency on ethnic lines. After which local indigenous peoples started movement for the protection of political and economic right of the indigenous population which gave birth to many militant outfits like NLFT, Tripura National Volunteers that also aims to establish an independent Tripura etc.<sup>52</sup>. Although after many negotiations most of the militant group has either surrendered or the process of peace processes are carried out with Govt. by holding talks between groups and Government of India. The Tripura Tribal Areas Autonomous District Council Bill, 1979 was unanimously passed by the Tripura Legislative Assembly on March 23, 1979 for establishment of Autonomous District Council (ADC) for socio-economic development, preservation of language and culture of Tripura Tribal Areas. Later the ADC was included under the 6th Schedule by amending the Constitution of India. The prime objective behind setting up the ADC is to hand over certain administrative and legal authority to the Council and also to remove material disparities between the tribal and non-tribal<sup>53</sup>.

#### **d) Assam-**

Separatist movements in Assam got started due to increase in the numbers of populations due to the increase of the large numbers of illegal migrants during 1970. Government of India didn't pay attention regarding the political, social, cultural, economic issues and increased levels of illegal immigration from Bangladesh<sup>54</sup>. It gave birth to a movement which demanded for the deportation of all illegal migrants from the state. Movements led the formation of United Liberation Front of Asom (ULFA). ULFA insurgency paved way to formation of other insurgent outfits in Assam who demanded for the protection of tribal rights and demand for separate state, union territory and autonomous council for the tribal people in the state<sup>55</sup>. Collective tribe

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<sup>52</sup> 'Insurgency in Tripura' <[https://www.wikiwand.com/en/Insurgency\\_in\\_Tripura](https://www.wikiwand.com/en/Insurgency_in_Tripura)> accessed 16 June 2022.

<sup>53</sup> 'The Official Website of Tripura Tribal Areas Autonomous District Council' <<https://ttaadc.gov.in/About-TTAADC#:~:text=The%20Tripura%20Tribal%20Areas%20Autonomous%20District%20Council%20Bill%2C%201979%20was,in%20on%20January%2018%2C%201982>> accessed 16 June 2022.

<sup>54</sup> Aruni Kashyap, 'India needs talks for Assam's Peace' *The Guardian* (19 May 2010) <<https://www.theguardian.com/commentisfree/2010/may/19/assam-independence-talks-india>> accessed 17 June 2022.

<sup>55</sup> 'INSURGENCY IN ASSAM' <<https://wcd.nic.in/sites/default/files/Women%20Headed%20Household-Assam-%20Final%20Report.pdf>> accessed 17 June 2022.



based outfits were formed like the BLT , N.D.F.B which demanded for liberation of Boroland from the Indian expansionism and the Dima Halim Daogah for creation of ‘Dimaraji’ A separate state for Dimasa’s consisting of some parts of Karbi Anglong, Nagaon, Cachar, Hojai districts of Assam and some parts of Dimapur district of Nagaland. Later ULFA split into two groups—one group led by its Chairman Arabinda Rajkhowa return to normalcy and also decided to hold peace for talks with centre whereas another group led by Commander-In-Chief Paresh Baruah who is against the talks with the government and rebranded the organisation as ULFA-Independent.

In the year 2020, all three remaining factions of NDFB surrendered and a new peace deal was signed with the Centre and Assam government. As per the deal, all of them disbanded themselves and deposited all their arms. And the surrendered rebels are being rehabilitated.

Former Deputy Commander-In-Chief of ULFA-I Drishti Rajkhowa along with 62 other rebels from also laid down arms. One of the most wanted militant leaders of Assam, Ingti Kathar Songbijit along with more than 1000 cadres from various outfits laid their arms.

Most of the outfit are engaged in talks with the government but the led by Paresh Baruah of ULFA-Independent is still continuing its war against the state. But on May 2021 ULFA-I declared unilateral ceasefire after long years and also didn’t boycott the Independence Day and Republic Day which is considered as a positive sign to establish permanent peace in Assam as well as in North – East<sup>56</sup>.

e) *Manipur* –

The Kingdom of Manipur which was ruled by the Manipuri Kings was concurred by British following the brief Anglo-Manipur War of 1891. The war continued till 31 March to 27 April 1891. The last ruler of Manipur was Bodhchandra Singh after which Manipur became a part of India dominion on 21 October 1949. In Manipur the Meitei community are majority in Imphal valley, while the surrounding hill districts are inhabited by Nagas and Kukis. Kuki militancy has its roots in ethnic identity struggles

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<sup>56</sup> Utpal Parashar, ‘Insurgency in Assam on a downswing; only two major outfits are active’ *Hindustan Times* (6 February 2022) <<https://www.hindustantimes.com/india-news/insurgency-in-assam-on-a-downswing-only-two-major-outfits-are-active-101644148717070.html>> accessed 17 June 2022.

and they have been demanding for Kukiland since long time. Kukiland comprises the Kuki-populated areas of Myanmar, Manipur, Assam, and Mizoram.

Another cause of insurgency in Manipur is inter-communal violence between the Kukis and the Nagas. The ethnic clashes between Nagas and Kukis has led to the formation of several Kuki insurgent groups like Kuki National Army (KNA).

AFSPA was imposed to suppress the activities but later Kuki outfits under two umbrella groups, the Kuki National Organisation (KNO) and United People's Front (UPF) signed the tripartite Suspension of Operation pacts with the GoI and Manipur. But insurgent groups like UNLF, PLA, KYKL etc. are yet to come to the negotiating table<sup>57</sup>.

The Naga movement in the neighbouring state of Nagaland has also spread to Manipur's hill regions, with the NSCN-IM demanding for 'Nagalim' (Greater Nagaland), which is seen as a threat" to Manipur's territorial integrity in the valley. Large parts of Naga inhabited areas like Tamenlong, Senapati, Ukhrul and Chandel of Manipur falls under the proposed map of 'Greater Nagalim' which is being opposed by most of the peoples and social organisations of Manipur. The Naga movement in the neighbouring state of Nagaland has also spread to Manipur's hill regions, with the NSCN-IM demanding for 'Nagalim' (Greater Nagaland), which is seen as a threat to Manipur's territorial integrity in the valley. Large parts of Naga inhabited areas like Tamenlong, Senapati, Ukhrul and Chandel of Manipur<sup>58</sup> falls under the proposed map of 'Greater Nagalim' which is being opposed by most of the peoples and social organisations of Manipur even also by the Naga peoples residing in Manipur and they also decided to stay in Manipur<sup>59</sup>.

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<sup>57</sup> Jimmy Leivon, 'Explained: How big is insurgency threat in Manipur?' *Indian Express* (23 February 2022) <<https://indianexpress.com/article/explained/how-big-is-insurgency-threat-in-manipur-7786366/>> accessed 17 June 2022.

<sup>58</sup> Samudra Gupta Kashyap, 'Greater Nagalim' claims: As NSCN(IM) deal nears fruition, why three Northeastern states are agitated' *Indian Express* (Guwahati 27 November 2017) <<https://indianexpress.com/article/explained/greater-nagalim-claims-as-nscnim-deal-nears-fruition-why-three-northeastern-states-are-agitated-4956070/>> accessed 17 June 2022.

<sup>59</sup> Bikash Singh, 'Manipur Nagas decide to remain in Manipur' *Economic Times* (19 April 2022) <<https://economictimes.indiatimes.com/news/india/manipur-nagas-decide-to-remain-in-manipur/articleshow/90942488.cms?from=mdr>> accessed 17 June 2022.

**f) Arunachal Pradesh –**

Arunachal Pradesh was known as the North East Frontier Agency during British India and the Republic of India until 1972, it is the largest state in the Northeast. There are many reasons behind the insurgency in Arunachal Pradesh, One of the major issue is the geographical location of the state. Arunachal Pradesh shares three international borders with Bhutan in the west, Myanmar in the east and the disputed border with China in the north at the McMahon Line. Arunachal Pradesh shares its border with only two states of India i.e. Assam and Nagaland in the south. Arunachal Pradesh was initially as an U.T which was carved out of Assam. It has the longest international border with China. As the state has close proximity with the borders of China, Myanmar hence they often try to take the advantage of an adverse relation between India and China. It has also been alleged that China and Myanmar provides aids in various forms to many insurgent groups which are active in North – East.

**g) Meghalaya –**

Meghalaya which is popularly known as the ‘Scotland of the East’ for its scenic beauty was previously a part of Assam as an ‘Autonomous State’ within the state of Assam on 1970 and later it attained the statehood on 1972 and became a full-fledged states under the North Eastern Region (Reorganisation) Act, 1971. It was formed by carving out“United Khasi Hills and Jaintia Hills, and the Garo Hills from Assam. Meghalaya shares 443 k.m long international border with Bangladesh. Large scale influx of illegal migrant labourers cross the international border and come to the state for employment in coal mines has posed challenges to the employment of local indigenous workers hence many militant organizations like Hynniewtrep National Liberation Council (HNLC) aims to make Meghalaya free from the alleged domination of outsiders<sup>60</sup>. Other organisations like The GNLA is fighting for a 'Sovereign Garoland' in the

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<sup>60</sup> ‘Hynniewtrep National Liberation Council’  
<[https://en.wikipedia.org/wiki/Hynniewtrep\\_National\\_Liberation\\_Council#:~:text=The%20Hynniewtrep%20National%20Liberation%20Council,%22\)%20from%20the%20Indian%20mainland](https://en.wikipedia.org/wiki/Hynniewtrep_National_Liberation_Council#:~:text=The%20Hynniewtrep%20National%20Liberation%20Council,%22)%20from%20the%20Indian%20mainland)> accessed 17 June 2022.

Western areas of Meghalaya<sup>61</sup>. Most of the extremist organisations have base camps, training camps in Chittagong Hill Tracts which falls in Bangladesh

### ***3.3 Overview of the Act –***

Armed Forces (Assam and Manipur) Special Powers Ordinance was promulgated by the President on 22nd May of 1958. In which some special powers have been given to the members of the armed forces.

The Act contains 7 important sections which contains some important provisions. Few important sections are –

Sec 3 – It grants the power to declare as ‘Disturbed Areas ’.

Sec 4 – Special power to Armed Forces.

Sec 5 – Arrested persons to be handed over to police with least possible delay.

Sec 6 – Protection to the personnel’s working under the Act.

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<sup>61</sup> ‘South Asian Terrorism Portal’ <<https://www.satp.org/terrorist-profile/india-insurgencynortheast-meghalaya/garo-national-liberation-army-gnla>> accessed 17 June 2022.

## CHAPTER 4 - AFSPA AND HUMAN RIGHTS

There are certain basic rights and freedoms which are necessary for human being to develop and are entitled to all. Human Rights are embody key values in our society and those basic rights which are available to all person so as to live with dignity and that everyone is protected against any form of abuse or discrimination.

According to United Nations, Human rights are rights we have simply because we exist as human beings - they are not granted by any state. These universal rights are inherent to us all, regardless of nationality, sex, and national or ethnic origin, colour, religion, language, or any other status. They range from the most fundamental - the right to life - to those that make life worth living, such as the rights to food, education, work, health, and liberty<sup>62</sup>.

UNICEF declares Human Rights as “Human rights are standards that recognize and protect the dignity of all human beings. Human rights govern how individual human beings live in society and with each other, as well as their relationship with the State and the obligations that the State have towards them”<sup>63</sup>.

The Constitution of India provides for Fundamental rights, enshrined in the Part III of the Constitution of India which guarantees civil liberties such that all Indians can lead their lives in peace and harmony as citizens of India. There are six main fundamental rights.

Human rights law obliges governments to do some things, and prevents them from doing others. Individuals also have responsibilities: in using their human rights, they must respect the rights of others. No government, group or individual person has the right to do anything that violates another’s rights.

AFSPA violates many major provisions including Derogable and Non - Derogable rights. Derogable rights those rights which can be infringed only under certain circumstances. Whereas Non – Derogable rights are those rights which are considered as very important and that such rights cannot be suspended any circumstances custodial

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<sup>62</sup> OHCHR , ‘What are human rights?’ <<https://www.ohchr.org/en/what-are-human-rights>> accessed 18 June 2022.

<sup>63</sup> UNICEF, ‘What are human rights?’ <<https://www.unicef.org/child-rights-convention/what-are-human-rights>> accessed 18 June 2022.

deaths, torture, rape, extrajudicial killings in the North - East and Kashmir in general and those among them which are facilitated by the AFSPA in particular.

Supreme Court of India to limit the excessive powers granted to the military by the AFSPA, in particular by ruling that a declaration under Section 3 of the AFSPA is to be reviewed every six months, strengthening the safeguards for the rights of arrested persons and determining that a list of pre-existing 'Do's and Don'ts' are legally binding. However, even with these improvements, the AFSPA falls far short of international standards, including provisions of treaties to which India is a state party.

Another provision of the act is Sec 6 which suspends the right to file suit against any activity of the armed forces. Prosecution against any officer performing duty under the Act requires sanctions from the government and also it provides absolute immunity for all forms of atrocities committed under the AFSPA.

The AFSPA grants the Army "Special Powers" which have to be used with extreme care as it was enacted to curb the emerging insurgencies in north – east but often there arose allegation of violation of human Rights of civilians. In the name of judicial immunity several innocent people were killed by the armed forces. There have been a country-wide protest to repeal the Act because of infringement of fundamental rights of common people because the common people have become the worst sufferer. Many have lost their near and dear ones and in very few cases justice was served. The law also gives immunity to member of armed forces against prosecution for their activities.

Supreme Court in *Rekha v State of Tamil Nadu*<sup>64</sup> highlighted that Prevention detention is, by nature, repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during wartime). Since, however, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise, we will be impinging upon an individual's right to liberty guaranteed by Article 21 of the Constitution of India which was won after a long, arduous, historic struggle.

Court also referred *V. Shantha v. State of Telangana*<sup>65</sup> wherein it was held that, preventive detention laws are not an alternative to normal legal processes.

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<sup>64</sup> AIR 2011 SCW 2262.

<sup>65</sup> AIR 2017 SC 2625.

There are many International instruments as well as the fundamental rights which protects the basic human rights of citizens but AFSPA violates those major laws:-

#### **4.1. AFSPA and International Covenant on Civil and Political Rights (ICCPR):**

India was a signatory of the ICCPR in 1978 which means Government of India will take the responsibility of securing the rights guaranteed by the Covenant to all its citizens. AFSPA violates few important provisions under Part III of ICCPR.

- Article 6 – According to Article 6 which “Protects right to life of every human being and also mentions that no one shall be arbitrarily deprived from right to life”. It is a non–derogable right. Arbitrary detention are considered against the Right to life. But according to Sec 4(c) of AFSPA arrest without warrant and no specific regarding the time period for presenting the accused before Magistrate under Sec 5 violates Right to life.
- Article 7- According to Article 7 ‘No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment’. The AFSPA had been put under question for facilitating torture and ill-treatment of detenu. The AFSP Act grants military officers broad power to detain individuals without providing any safeguards against arbitrary detention. The Act doesn’t grants of the recognized safeguards, which are therefore not available to arrested or detained.
- Article 9 – According to Article 9 “Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention, anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him”. Section 4(c) and Section 5 of AFSPA do not comply with the Article 9 of ICCPR. The provisions of the AFSPA allows for arbitrary detention as they provide for arrest without warrant and also if there is ‘reasonable suspicion’ that a person is ‘about to commit a cognizable offence’. However there is no proper mechanism to determine the suspicion or the need for arrest.

In maximum cases it has been found that AFSPA allows arbitrary arrest and detention and also no information regarding the arrest is provided to the arrested person or the detainee which is a violation of Article 9 of the ICCPR.

- Article 17 – According to Art 17 of ICCPR ‘No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation’ on the other hand Sec 4(d) of the AFSPA provides provision to ‘Enter and search without warrant any premises to make any such arrest as aforesaid or to recover any person believed to be wrongfully restrained or confined or any property reasonably suspected to be stolen property or any arms, ammunition or explosive substances believed to be unlawfully kept in such premises, and may for that purpose use such force as may be necessary’ so it violates the principle laid down in Art 17 of ICCPR.
- Article 21 – It provides provision for ‘The right to freedom of assembly’. But Section 4(a) of AFSPA violates the provision of Art 19 (1) (b) of the Constitution of India. According to 4 (a) of AFSPA “Any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces may, in a disturbed area If he is of opinion that it is necessary so to do for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire-arms, ammunition or explosive substances”. So it is contradictory to Art 21 of ICCPR.



## 4.2. Universal Declaration of Human Rights, 1948:

The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations. It sets out, for the first time, fundamental human rights to be universally protected.

AFSPA contravenes various Articles of UDHR. AFSPA violates few important provisions of UDHR like Art 1 – Which provides for free and equal dignity to all citizen has been violated in AFSPA

- *Article 3* of UDHR deals with ‘Right to Life ‘ but Sec 4(c) and Sec 5 of AFSPA violates the provision because the main factor working behind the both is to detain
- *Article 5* of UDHR ensures that no torture or inhuman treatment is given to any person but AFSPA has been under question for granting power to detain individuals without providing any safeguards. The Act doesn’t grants of the recognized safeguards, which are therefore not available to arrested or detained.
- *Article 8* of the UDHR ensures that everyone is provided access to justice but in the AFSPA no actions or prosecution can be initiated against any personnel’s who have violated any right without the sanction of the government.
- *Article 9* highlights that no one should be arbitrarily detained but Section 4(c) and Section 5 of AFSPA do not comply with the provision of UDHR. According to the provisions of the AFSPA allows for arbitrary detention as they provide for arrest without warrant and also if there is ‘reasonable suspicion’ that a person is ‘about to commit a cognizable offence’. However there is no proper mechanism to determine the suspicion or the need for arrest.

- *Article 11*- Everyone should be treated as innocent until guilty until one has been proved as guilty by law, But According to Sec 4(a) of AFSPA, “Any Armed forces personnel can shoot to kill in case of the commission or suspicion of the commission of offences and It is also contrary to the Article 21 which talk about the Right to life and personal liberty”.
- *Article 12* deals with Right to Privacy but Sec 4(d) of the AFSPA provides provision to ‘Enter and search without warrant any premises to make any such arrest as aforesaid or to recover any person believed to be wrongfully restrained or confined or any property reasonably suspected to be stolen property or any arms, ammunition or explosive substances believed to be unlawfully kept in such premises, and may for that purpose use such force as may be necessary’.
- *Article 20* – Everyone has the right to freely assemble in any place but he provision is violated by Section 4(a) of AFSPA violates the provision.

Convention against Torture and other Cruel, Inhuman or Degrading Treatment India signed the convention in the year 1997. Although it has not yet ratified it, the very act of signing entails an international obligation not to defeat the treaty’s object and purpose

#### **4.3. Violation of Article 14 of Constitution of India (Right to Equality)**

Section 4 of the Central Act, cannot stand the test of reasonableness and absence of arbitrariness and as such will not constitute procedure established by law within the meaning of Article 21 of the Constitution. He relied on Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and others. Air 1981 Sc 746(2).

In, *B.P. Royappa v. State of Tamil Nadu*<sup>66</sup> it was held that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness which legally as well as philosophically, is an essential element of equality or no arbitrariness pervades Article 14 like a brooding omnipresence.

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<sup>66</sup> AIR 1975 SC 555.

#### **4.4. Violation of Art 19 of Constitution of India (Right to freedom of speech and expression)-**

Section 4(a) of AFSPA violates the provision of Art 19 (1) (b) of the Constitution of India. According to 4 (a) of AFSPA ‘Any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces may, in a disturbed area If he is of opinion that it is necessary so to do for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire-arms, ammunition or explosive substances’. But Under article 19(1) (b) of the Constitution of India all the citizens of India have the right to hold meetings and take out processions but it should be done peaceful and it must be unarmed.

#### **4.5. Violation of Article 21 of Constitution of India (Protection of life and Personal Liberty)-**

Section 4(a) of the AFSPA grants armed forces personnel the power to shoot or to kill which violates the fundamental Right to Life, Article 21 of the Constitution of India states that “no person shall be deprived of his life or personal liberty except according to procedure established by law. This right is available to both citizens and non-citizens”. Article 20 & 21 are given utmost importance and they cannot be suspended even under National Emergency

Article 21 and there are many cases where it was found that the armed forces have violated rules and have intentionally tortured the local youths. Any Armed forces personnel can shoot to kill in case of the commission or suspicion of the commission of offences and It is also contrary to the Article 21 which talk about the Right to life and personal liberty.

The right to liberty and security of person is also violated by Section 4(c) of the AFSPA, which fails to protect against arbitrary arrest by allowing soldiers to arrest anyone

merely on suspicion that a 'cognizable offence' has already taken place or is likely to take place in the future. Further, the AFSPA provides no specific time limit for handing arrested persons to the nearest police station. Section 5 of the AFSPA vaguely advises that those arrested be transferred to police custody "with the least possible delay.

These provisions of AFSPA clearly violates the Art 21 - Right to life and personal liberty granted under Article 21 of the constitution that states 'No person shall be deprived of his life personal liberty except according to procedure established by law'. The Supreme Court in *Maneka Gandhi vs Union of India*<sup>67</sup> held that – "Procedure established by law' within the meaning of Article 21 must be 'right and just and fair' and 'not arbitrary, fanciful or oppressive' otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.

#### **4.6. Violation of Art 22 of Constitution of India (Protection against arrest and detention)-**

The power of arbitrary arrest and detention given to the armed forces goes against the fundamental right vested in Article 22. According to Sec 5 of the AFSPA which provides provision that any person who has been arrested shall be forwarded to the nearest police station with the minimum possible delay but according to the Article 22 (2) of the Constitution of India which provides that any person who is arrested must be produced before the nearest magistrate within a period of twenty-four hours of arrest, the journey from the place of arrest to the court of the magistrate is excluded from the time and that no arrested person shall be detained in custody beyond the said period without the approval of a magistrate. So there is no proper definition of the 'least possible delay' under the Act results into arbitrary detention, since the time period is not specified at all.

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<sup>67</sup> AIR 1978 SC 597

#### **4.7. AFSPA contravenes provisions of Indian Penal Code –**

AFSPA also contravenes provisions of Indian Penal Code. As per Sec 302 of IPC murder is punished with death but it is not an offence as per Sec 4(a) of AFSPA

As per the Sec 143 of IPC “Whoever is a member of an unlawful assembly which is punishable with the minimum imprisonment for a term of six months or with fine or with both. To more extend if any person joins unlawful assembly with deadly weapon will be punished with the minimum imprisonment for a term of two year or fine or with both”. But the same if committed by someone in any particular area which has been declared as ‘Disturbed’ under AFSPA, Army can fire upon or otherwise use force, even to the causing of death which is a clear violation of Art 14 of Indian Constitution.

#### **4.8. AFSPA contravenes provisions of Criminal Procedure Code –**

Section 129,130 and 131 of the Cr.P.C sets out the condition under which the armed forces maybe called in to disperse an assembly. These two sections have several safeguards and are slightly more justifiable compared to Sec 4 (a) of the AFSPA. Under section 130 of the Cr.P.C, the armed forces officers are to follow the directive of the magistrate and use as little force as necessary in doing so. Under Section 131 of Cr.P.C, when no Executive Magistrate can be contacted, the armed forces may be disperse the assembly but if it becomes possible to contact an Executive Magistrate at any point, the armed forces must do so. Sec 131 only gives the armed forces the power to arrest and confine. Moreover, it is only commissioned or gazetted officers who may give the command to disperse such an assembly. Whereas in the AFSPA even non-commissioned officer are given the power. Hence AFSPA provides more wide power than Cr.P.C for ‘Dispersal of an assembly’.

## CHAPTER 5 -MAJOR HUMAN RIGHTS VIOLATION INCIDENTS IN NORTH- EASTERN STATES

### *Manipur –*

- There were many incidents that shocked the nation and also exposed the abuse of Armed Forces Special Powers Act in North-East India. We also can find gross violation of Human Rights in many cases one of such incident is the brutal rape and murder of Thangjam Manorama Devi who hails from Manipur. In the incident by the alleged armed forces. She was labelled as a member of the separatist People's Liberation Army of Manipur who was responsible for numbers of terrorist activities<sup>68</sup>. On July 10, 2004, Assam Rifles Jawans allegedly picked up 32-year-old Manorama Devi from her home. Before being taken away from her home she was tortured in front of her mother and brother<sup>69</sup>. On July 11, her bullet ridden body was found from the fields four km from her home in Bamon Kampu village in Imphal East district. She was found dead with multiple bullet injuries on her private parts and thighs. Later, Assam Rifles claimed that Manorama Devi was a member of the insurgent group, People's Liberation Army, and was killed while trying to escape<sup>70</sup>. The incident triggered massive protests across the state and also in the rest of India. On July 15, 2004, a group of 30 elderly women stripped naked in front of the 17th Assam Rifles headquarters in Manipur's capital Imphal with a banner that read: 'Indian Army Rape us' as a mark of protest against Manorama's murder and alleged rape. Later, a bench of Supreme Court comprising of Justices T.S Thakur and Justice P.C Ghosh directed the centre to pay Rs. 10 lakhs to the mother of Thangjam Manorama Devi who was mercilessly killed by Assam Rifles personnel in 2004. The court directed that the compensation amount has to be paid within four weeks. The bench also admitted the petition challenging the order of the Gauhati

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<sup>68</sup> Amala Dasarathi, 'Remembering Thangjam Manorama' *Feminism India*, March 9, 2017 <<https://feminisminindia.com/2017/03/09/thangjam-manorama-essay/>> accessed on

<sup>69</sup> Esha Roy, 'Manorama rape and murder: 10 years on, family's hope for justice fades' *Indian Express* (12 July 2014) <<https://indianexpress.com/article/india/india-others/manorama-rape-and-murder-10-years-on-familys-hope-for-justice-fades/>> accessed 19 June 2022.

<sup>70</sup> 'The Killing of Thangjam Manorama Devi' <<https://www.hrw.org/reports/2008/india0908/3.htm>> accessed 19 June 2022.

High Court holding as valid the appointment of commission of inquiry to go into the circumstances leading to the ghastly incident. The judicial inquiry report on the issue was handed over to the apex court revealing the "brutal and merciless" torture of the girl by the Assam Rifles team<sup>71</sup>. The case of brutal murder of Thangjam Manorama led to widespread protests against the Armed Forces (Special Powers) Act.

- Another incident which shook the Manipur was in the year 2000 in Manipur which is infamously known as ‘Malom Massacre’. In the incident 10 civilians were gunned down by the 8th Assam Rifles at Malom Makha Leikai, near Imphal’s Tulihal airport. In protest of the incident Irom Sharmila went on a hunger strike. In November 2000, these 10 civilians were gunned down by the 8th Assam Rifles at Malom Makha Leikai, near Imphal’s Tulihal airport. However, it was later alleged to be a fake encounter. While the troops claimed that there was an encounter underway, after the convoy had come under attack from extremists. After 21 years of the incident, Manipur High Court ordered a compensation of Rs 5 lakhs for each of the families of the victims. Anti – AFSPA Activist Irom Sharmila of Manipur has fasted for near about 16 years long fasting with a demand to repeal the AFSPA. She began her fasting on the long hunger strike demanding withdrawal of the Armed Forces (Special Powers) Act from the State<sup>72</sup>. Many Social organisations have started campaign to repeal the Act which they term it as ‘Draconian Law’.
- *Operation Blue Bird* - National Socialist Council of Nagaland (NSCN) looted and attacked the post the Assam Rifles near Oinam village, Manipur on July 9, 1987. In the attack 9 jawans of the post were killed and they looting large amount of ammunition. In response to this attack and to also to retain the looted ammunition Operation Bluebird was launched by the Army officials<sup>73</sup>. The

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<sup>71</sup> ‘kiling: SC directs Centre to pay Rs 10 L compensation’ (18 December 2014) <[https://www.Manorama business-standard.com/article/pti-stories/manorama-kiling-sc-directs-centre-to-pay-rs-10-l-compensation-114121801449\\_1.html](https://www.Manorama business-standard.com/article/pti-stories/manorama-kiling-sc-directs-centre-to-pay-rs-10-l-compensation-114121801449_1.html)> accessed 19 June 2022.

<sup>72</sup> ‘Sharmila attends Malom massacre anniversary’ *The Hindu* (13 November 2016) <<https://www.thehindu.com/news/national/other-states/Sharmila-attends-Malom-massacre-anniversary/article16090970.ece>> accessed 19 June 2022.

<sup>73</sup> ‘5 things to know about Iron’ <[https://www.Manorama business-standard.com/article/pti-stories/manorama-kiling-sc-directs-centre-to-pay-rs-10-l-compensation-114121801449\\_1.html](https://www.Manorama business-standard.com/article/pti-stories/manorama-kiling-sc-directs-centre-to-pay-rs-10-l-compensation-114121801449_1.html)> accessed 19 June 2022.

search operation lasted for more than three months in the 30 villages but no arms and ammunitions were recovered. During the time the villagers were brutally tortured, human-rights of the local people were violated on a large scale. Innocent villagers were tortured by the high-ranked military officials and even some of them were buried alive after third degree torture. More than 300 people were tortured, women were raped and molested. The villagers were forced to prepare food for the soldiers for than 2 months until the villagers ended their granary stocks. Later, petition against the army officials was filed by the villagers in the Gauhati High Court. For more than 28 years, no action was taken on this case and later, due to the absence of any other records except the pleadings of the villagers it was discarded<sup>74</sup>.

- On 29th October, 1997 Mr. Thoudam Nanao Singh, aged 22, resident Imphal West district, was allegedly sexually abused and tortured by personnel from Sikh Regiment of Indian Army. He along with his friends were picked up by the Army from Sekmajing bridge and were taken to the camps on allegation that they were associated with People's Liberation Army (PLA). PLA is the principal military force of China. In the camp Nanao along with his friends were brutally tortured for two days. They were beaten badly, kicked with boots even the members of the security forces have put their genitals in his mouth until he vomited. He was forced to sign a declaration where it was mentioned that he was not tortured during the custody. Later they were handed over to the Singjamei Police Station and released on bail.

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<sup>73</sup> 'Sharmila attends Malom massacre anniversary' *The Hindu* (13 November 2016) <<https://www.thehindu.com/news/national/other-states/Sharmila-attends-Malom-massacre-anniversary/article16090970.ece> Lady' Irom Sharmila' *Deccan Chronicle* (9 August 2016) <<https://www.deccanchronicle.com/nation/current-affairs/090816/five-things-to-know-about-indias-iron-lady.html>> accessed 13 June 2022.

<sup>74</sup> Nandita Haksar, 'Manipur killings, 1987: Charges against Assam Rifles disposed of – though evidence has gone missing' *Scroll.in* (Jul16,2019) <<https://scroll.in/article/928469/manipur-killings-1987-charges-against-assam-rifles-disposed-of-though-evidence-has-gone-missing>> accessed 20 June 2022



Again on 29 February 2004 Mr. Thoudam Nanao Singh was reportedly taken by Assam Rifles jawans from his home. He was again reportedly tortured beaten with a stick, kicked by personal<sup>75</sup>.

*Assam -*

- In 1992 two veterinary doctors Dr. Jayanta Saikia and Dr. Sona Roy were mercilessly encountered by Army while they were travelling towards Sipajhar Darrang district from Mangaldoi in a car. Dr. Jayanta was killed because, the army thought he was Jyoti Saikia, the ULFA commander of Darrang District. There arose huge protest after the incident. AASU leaders under the leadership of Sarbananda Sonowal and Samujjal Bhattacharya started for indefinite fast at Judges Field of Guwahati.
- On July 25, 2021 Indian Army's Rajputana Rifles tortured 45-year-old-specially-abled man identified as Rangan Hakhun of Margherita under Tinsukia district of the state. According to the locals the Indian Army personnel picked up the especially abled man from his residence at Malau village on charges that he has nexus with the NSCN militants. He was taken to the army camp and was allegedly brutally tortured by the army personnel's. The incident has provoked strong reactions among the tribal peoples<sup>76</sup>.
- On 19th February, 1994 Nine AASU leaders namely Matheswar Moran, Prakash Sharma, Gunin Hazarika, Manoranjan Das, Prabin Sonowal, Pradip Dutta, Debojit Biswas, Akhil Sonowal and Bhaben Mora were picked up by the 18 Punjab Regiment of Indian Army from various locations of Dangori in Tinsukia district of Assam.

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<sup>75</sup> India briefing on the Armed Forces (Special Powers) Act, 1958 <<https://www.amnesty.org/en/wp-content/uploads/2021/08/asa200252005en.pdf> > access date – 17<sup>th</sup> July, 2022

<sup>76</sup> Assam: Indian Army tortures 45-year-old-specially-abled man in Margherita, sparks protest , NENOW, July 25, 2021 <<https://nenow.in/north-east-news/assam/assam-indian-army-tortures-45-year-old-specially-abled-man-in-margherita-sparks-protest.html>> 18<sup>th</sup> June, 2022

Hon'ble Gauhati High Court directed the Army to produce all the nine youths who were under detention at nearest police station. But The Army tortured the five innocent youths so brutally and were in so severe condition that they were not in a position to be produced before the magistrate. So the army personnel's took them to the forest and killed five of them, while four were released. Army released Gunin Hazarika, Prakash Sharma, Matheswar Moran and Manoranjan Das at different locations. Army left five bodies who were identified as Prabin Sonowal, Debojit Biswas, Akhil Sonowal, Pradip Dutta and Bhaben Moran, at Doomdooma police station on February 22 after Dhola Police Station declined to accept the bodies. The incident is infamously known as 'Dangori fake encounter case'<sup>77</sup>.

#### *Nagaland -*

- Another incident took place on 10th April, 1979 while three boys were returning from fields were tortured by two young boys by the Assam Rifles personnel's in Phek town. According to Naga People's Movement for Human Rights (NPMHR) "three young boys Chikhoy aged 15 , Nuhutso aged 14 and another who was youngest among all aged 11 years were caught by the army personnel when they took a short-cut home from the fields through the Assam Rifles camp. They were tortured badly and were beaten with sticks and rifle butts and kicked around with boots by the personnel's. They were burnt with cigarettes and had tobacco shoved into their mouth, eyes and nostrils. The men even tried to force these boys to drink blood from the wounds they had caused and after the long torture when one among them requested for water one of the jawan allegedly urinated into the mouth of one of them. The doctor of the Phek Civil Hospital, the NPMHR says, testified that the wounds were 'inflicted very badly'. Nuhutso was hospitalised for 12 days and Chikhoy was still under medical treatment when NPMHR representatives visited him in mid-June"

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<sup>77</sup> 1994 Assam fake encounter: The knock that broke their peace, a family remembers, Business Standard, October 15, 2018< [https://www.business-standard.com/article/pti-stories/1994-assam-fake-encounter-the-knock-that-broke-their-peace-a-family-remembers-118101500640\\_1.html](https://www.business-standard.com/article/pti-stories/1994-assam-fake-encounter-the-knock-that-broke-their-peace-a-family-remembers-118101500640_1.html)>19<sup>th</sup>June,2022

- The second case is the alleged rape of a 60-year-old woman on 18th May 1979 at Kuonuo, by a jawan of the 99 Border Security Force. Several local organisations like Angami Women's Welfare Association protested against the incident<sup>78</sup>.
- *Mokokchung Massacre* – On December 27, 1994 several citizens including children were killed, shops were burnt after an incident of firing took place in between the insurgents and the armed group which includes 16th Maratha Light Infantry and 10th Assam Rifles. One jawan was killed in the incident. In a reaction to the incident both the forces started to fire and gradually they torched the nearby building, houses and shops. According to the local even women's were raped. 48 houses, 17 vehicles and 7 two-wheelers razed to ashes, excluding those destroyed by gunfire and shelling. 7 civilians were gunned down, another 5 burned alive including a child, several women raped and more than a dozen gone missing<sup>79</sup>.
- *The Mon massacre* – In Nagaland on 4th of December, 2021 at around 5 P.M one pickup van carrying workers from coal mines from Tihu area were opened fired by the 21st Para Special Force of the Assam Rifles. The troopers had intelligence inputs about some militant movement in the area and on seeing the truck they mistook the civilians as Naga militants and opened fire killing six labourers two received serious injuries who were returning from coal mines. According to the Army they had credible intelligence of likely movement of insurgents and have to opened fire only when instructions to the vehicle to stop were not followed. Although the two survivors rejected the claims, as did Nagaland Police upon a preliminary inquiry. After the incident eight more civilians were shot dead after local angry protesters clashed with the security forces and at least two vehicles of the Army Special unit were set on fire. A

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<sup>78</sup> NPMHR protest against human rights violation by paramilitary forces in Nagaland, India Today, October 31, 1979 <<https://www.indiatoday.in/magazine/indiascope/story/19791031-npmhr-protest-against-human-rights-violation-by-paramilitary-forces-in-nagaland-822470-2014-02-18>> accessed on 20<sup>th</sup> June, 2022

<sup>79</sup> 1994 isn't just a number, Morung Express, 22<sup>nd</sup> Sept, 2011 <<https://morungexpress.com/1994-isnt-just-number>> accessed on 19<sup>th</sup> June, 2022

soldier was also killed during the clash. Nagaland Government suspended Internet, Message Service and also imposed curfew and prohibitory orders in Mon district<sup>80</sup>. The incident was Nagaland was condemned by many. Chief Ministers of Nagaland, Meghalaya, Manipur expressed their protest against AFSPA. Nagaland Cabinet has written to centre to repeal against AFSPA. After the incident Army initiated Court of Inquiry and the State Government also has formed a Special Investigation Team (SIT) to probe into the firing incident. In this regard one FIR has been registered at Tizit police station<sup>81</sup>.

The NSCN(IM) which is holding peace talks with the Centre on the Naga political issue, condemned the killing of civilians by security forces and said it is a 'Black Day' for the Naga people.

#### *Arunachal Pradesh –*

- On April 3, 2022 Soldiers of Army's 12 Para (Special Forces) based in Khonsa of Tirap injured two civilians in the Tirap district of Arunachal Pradesh after mistaking them for extremists. Two youths namely Nokphua Wangpan and Ramwang Wangsa were critically injured in the incident. Later both were airlifted for advanced treatment to Assam Medical College and Hospital (AMCH) in Dibrugarh<sup>82</sup>.

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<sup>80</sup> Nagaland Civilian Killings: Internet, SMS Services Suspended In Mon District. Governor Condemns Incident, ABP News, 5<sup>th</sup> Dec, 2021 <<https://news.abplive.com/news/nagaland-civilian-killings-internet-sms-suspended-in-mon-district-governor-condemns-incident-1497824>> access date – 21<sup>st</sup> June, 2022

<sup>81</sup> Army orders Court of Inquiry into killing of civilians in Nagaland Business Standard, 5<sup>th</sup> Dec, 2021 <[https://www.business-standard.com/article/current-affairs/army-orders-court-of-inquiry-into-killing-of-civilians-in-nagaland-121120500193\\_1.html](https://www.business-standard.com/article/current-affairs/army-orders-court-of-inquiry-into-killing-of-civilians-in-nagaland-121120500193_1.html)> accessed on 20<sup>th</sup> June, 2022

<sup>82</sup> Prabin Kalita, Two injured as Army opens fire on Arunachal Pradesh villager, Times of India, April 3, 2022 <<https://timesofindia.indiatimes.com/city/guwahati/two-injured-as-army-opens-fire-on-arunachal-villagers/articleshow/90617173.cms>> accessed on 20<sup>th</sup> June, 2022

## CHAPTER 6 – JUDICIAL INTERVENTION ON AFSPA -

### 6.1. Bacha Bora vs State of Assam

- In a habeas corpus case of *Bacha Bora vs State of Assam*<sup>83</sup>, petitioner Bacha Bora filed a petition under Art 226 of the constitution of India against the arrest and illegal and unlawful detention of his sons Rituraj Barua aged 19 and Padmaraj Barua aged 21 and prayed the release of duo. Army personnel arrested Rituraj and Padmaraj from their respective houses under the Tinsukia district and later handed over them to the Tinsukia Police Station. They were made accused under the TADA Act on the ground that they were involved in ULFA activities. After the arrest both were produced before the Additional District Magistrate on the very same day for remand. Later the case was transferred to Digboi Police Station but there were allegations of assaults and torture by the army personnel. Ld. Counsel for the petitioner argued regarding the legality of the arrest and reason behind the detention for more than two weeks. Ld. Counsel also highlighted the violations of Art 21, Clause (1) of Article 22 of the Constitution, Violation of Section 5 of the AFSPA as per the decision laid down in *Purnima Barua v. Union of India*<sup>84</sup> on the ‘ least possible delay ’.

After both Rituraj and Padmaraj medically examined, Medical reports indicated that the both had injuries further Padmaraj was sent to Urology unit and Rituraj was sent to cardio thoracic and orthopaedic units for further examination.

The court in a series of hearing ordered and directed that the respondents shall pay Rituraj Barua and Padmaraj Barua Rupees 5000/- each as monetary compensation and it further ordered and directed that the respondents shall see that in future no such violation of constitutional and or legal rights of the citizens are permitted to be committed by the army personnel.

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<sup>83</sup> 1991 Cri. L. J. 2782.

<sup>84</sup> 1991 Cri L.J 2675.

## 6.2. Decisions in *Joginder Kumar vs State of U.P* & *D.K Basu vs State of West Bengal*

- It is to be noted that in the case of *Joginder Kumar vs State of U.P*<sup>85</sup> and *D.K Basu vs State of West Bengal*<sup>86</sup> held that “An arrest should not be made on mere suspicion of a person’s complicity in the crime. The Police officer must be satisfied about the necessity and justification of such arrest on the basis of investigation. It is to be noted that arrest without warrant, deciding the amount of forces to be applied, reasoning the suspicion and all, is capable of being undertaken by anyone in the army from a commissioned officer to even the lowest level. This manifests nothing but the arbitrariness of the law”.
- But it is very surprising that in the case of *Indrajit Barua vs State of Assam*<sup>87</sup>, the Delhi High Court found that the AFSPA to be constitutional and the only way to repeal the Act is for the Supreme Court to declare the AFSPA as unconstitutional. It is extremely surprising that the Delhi High Court found that the AFSPA constitutional given the wording and application of the AFSPA. The Act is unconstitutional and it must be repealed to bring the end of such draconian law. Article 19 of the Constitution gives fair indication of how to test it. The power given by Sections 4 and 5 of the Assam Act and the Central Act could be regarded as placing restrictions on the freedoms guaranteed by Article 19(1)(b) and (d). The enforcement of the rights contemplated by Article 19(1)(b) and (d) can, however, be restricted only in the interest of maintaining, inter alia, public order or in the interest of general public as provided by clauses 3 and 5 respectively of Article 19 of the Constitution.  
'A person may be deprived of his life or personal liberty in accordance with fair, just and reasonable procedure established by valid law.' As we noticed earlier. Article 21 is couched in negative language, the positive form of which would be as propounded by Chandrachud, C. J. Further the injunction not to deprive a person of his life and liberty except in accordance with fair, just and reasonable procedure established by

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<sup>85</sup> AIR 1994 SC 1349.

<sup>86</sup> AIR 1997 SC 610.

<sup>87</sup> AIR 1983 Del 513.

valid law is primarily addressed to the State. Therefore, if to save hundreds lives one life is put in peril or as Das, J. expounded or B. K. Mukherjee, J. put it, “If a law ensures and protects the greater social interest than such law will be a wholesome and beneficial law although it may infringe the liberty of some individuals : it will ensure for the liberty of the greater number of the members of the society at the cost of one and a few. In any organized society, - claiming to be civilised and governed by the rule of law, social imperatives for the greater good must take precedence over individual rights. If that is the correct understanding of the constitutional provisions we have to test the arguments advanced on behalf of the petitioners from this approach”.

The court observed that First of all it has to be kept in view that the impugned Statutes are for a region which traditionally has had serious trouble. It is a border area. Infiltration of undesirable forces has existed for a long time. The powers conferred by Sections 4 and 5 of the two statutes may be exercised in such an area and not in any other area of our country. The second postulate is that even in the aforesaid area the powers can be exercised only after a declaration has been made by the highest authority of the State that the area is a disturbed area. The powers can be exercised only in an area declared a disturbed area and in no other area in the State of Assam. The third requirement is that even in an area declared to be a disturbed area there has to be a law or order, like an order under Section 144, Criminal Procedure Code, in force before the powers under section 4 can be exercised. Even then the power can be exercised only in respect of those who are violating the law or order promulgated in disturbed area and not in respect of those who are law abiding. In other words, the impugned power is exercisable in relation to only those who break the law and not those who abide by the law. Further, the exercise of power by the authorised persons is permissible if it is necessary to maintain public order. By this is meant that the breach of law or order like an order under Section 144, Criminal Procedure Code must be such which will affect public order and not merely law and order. Even with all these postulates being there, before exercise of the power a warning is required to be given to those who are in breach of the law or order in force. The words, “if any” in the Assam Act do not mean that it is left to the whim and fancy of a police officer etc. to give a warning or not to give a warning. The words mean that if in the situation it is feasible and practicable

to give the warning then the warning must be given before exercise of the power. The next requirement is that force may be used but such force would be used as would be necessary in the circumstances of the situation. Spelling out the extent of permissible force it is laid down that the force used may extend to even firing upon the offenders though that firing results in death. Therefore, as we read the impugned provisions they do not mean that in any and every situation the police officer etc. would just open fire to kill. The power conferred is to use force and if necessary even fire which firing can result in death. There is another very important safeguard and that is that the police officers etc. have not been made immune from action in courts for abuse of power. A provision, however, has been made by Section 6 of the Assam Act as well as Section 6 of the Central Act that the prosecution or civil action and other legal proceedings that the police officials etc. may have to face in connection with exercise of powers contemplated by Sections 4 and 5 of the Assam Act or the similar provision in the Central Act, can be commenced only after taking the sanction of the State Government in the case of powers exercised by officials mentioned in the Assam Act and of the Central Government of officers contemplated by the Central Act. This is to ensure that the officers officials concerned do not have to face frivolous litigation for acts done in due discharge of duty. In our view this is a very important safeguard to prevent abuse of powers. There is, therefore, no force in the argument that the width of the power conferred makes the conferment arbitrary.

- In the case of *Naga People's Movement for Human Rights vs Union of India*<sup>88</sup>, a Constitution Bench of five judges considered the validity of the Armed Forces (Special Powers) Act, 1958 (as amended) (AFSPA) enacted by Parliament and the Assam Disturbed Areas Act, 1955 enacted by the State Legislature of Assam. In this case the validity of the Act was challenged by means of a writ petition before the Supreme Court of India. The petitioner alleged that the Act had violated constitutional provisions regarding the procedure for issuing proclamation of emergency, and upset the balance between the military, civilian, centre and state authorities. The court rejected those contentions. It found that the Parliament had

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<sup>88</sup> 1998 AIR 431.



been competent to enact the Act and ruled that its various sections were compatible with the pertinent provision of the Indian Constitution. The court further emphasised that the military forces had been deployed in the disturbed area to assist the civilian authorities. As these authorities couldn't function even after military's deployment, the court held that the constitutional balance between competencies of the military and the civilian authorities has not been breached. The court didn't find any violation of the constitutional balance of competencies between Union and the state. But the court didn't address the compatibility of the Act with India's obligations under ICCPR or other International obligations. But the Supreme Court of India in the same case laid down guidelines for the armed forces who are working in areas under the AFSPA. These provisions were made to ensure that the Act could not be misused. The court also further decided that there should be a periodic review regarding the declaration of an area as 'Disturbed Area' before the expiry of six months.

The learned Attorney General has placed before the court the instructions which are prescribed in the form of a list of known as "Do's and Don'ts" that are issued by the Army Headquarters from time to time. The instructions which is mentioned in the said list must be followed while performing any duty under Armed Forces (Special Powers) Act, 1958 are in these terms:-

*Do –*

*i. Action before Operation*

- (a) Act only in the area declared 'Disturbed Area' under Section 3 of the Act.
- (b) Power to open fire using force or arrest is to be exercised under this Act only by an officer/JCO/WO and NCO.
- (c) Before launching any raid/search, definite information about the activity to be obtained from the local civil authorities.
- (d) As far as possible co-opt representative of local civil administration during the raid.

*ii. Action during Operation*

- (a) In case of necessity of opening fire and using any force against the suspect or any person acting in contravention to law and order, ascertain first that it is essential for maintenance of public order. Open fire only after due warning.
- (b) Arrest only those who have committed cognizable offence or who are about to commit cognizable offence or against whom a reasonable ground exists to prove that they have committed or are about to commit cognizable offence or against whom a reasonable ground exists to prove that they have committed or are about to commit cognizable offence.
- (c) Ensure that troop under command do not harass innocent people, destroy property of the public or unnecessarily enter into the house/dwelling of people not connected with any unlawful activities.
- (d) Ensure that women are not searched/arrested without the presence of female police. In fact women should be searched by female police only.

*iii. Action after operation*

- (a) After arrest prepare a list of the persons so arrested.
- (b) Handover the arrested persons to the nearest Police Station with least possible delay.
- (c) While handing over to the police a report should accompany with detailed circumstances occasioning the arrest.
- (d) Every delay in handing over the suspects by the police must be justified and should be reasonable depending upon the place, time of arrest and the terrain in which such person has been arrested least possible delay may be 2-3 hours extendable to 24 hours or so depending upon particular case.
- (e) After raid make out a list of all arms, ammunition or any other incriminating material/document taken into possession.
- (f) All such arms, ammunition, stores, etc. should be handed over to the police State along with the seizure memo.
- (g) Obtain receipt of persons arms/ammunition, stores etc. so handed over to the police.

(h) Make record of the area where operation is launched having the date and time and the persons participating in such raid.

(i) Make a record of the commander and other officers/JCOs/NCOs forming part of such force.

(k) Ensure medical relief to any person injured during the encounter, if any person dies in the encounter his dead body be handed over immediately to the police alongwith the details leading to such death.

*iv. Dealing with Civil Court*

(a) Directions of the High Court/Supreme Court should be promptly attended to.

(b) Whenever summoned by the courts, decorum of the court must be maintained and proper respect paid.

(c) Answer questions of the court politely and with dignity.

(d) Maintain detailed record of the entire operation correctly and explicitly.

*Don'ts*

1. Do not keep a person under custody for any period longer than the bare necessity for handing over to the nearest Police Station.

2. Do not use any force after having arrested a person except when he is trying to escape.

3. Do not use third degree methods to extract information or to extract confession or other involvement in unlawful activities.

4. After arrest of a person by the member of the Armed forces, he shall not be interrogated by the member of the armed force.

5. Do not release the person directly after apprehending on your own. If any person is to be released, he must be released through civil authorities.

6. Do not temper with official records.

7. The Armed Forces shall not take back person after he is handed over to civil police."

### **6.3. Justice Jeevan Reddy Committee –**

After intense agitation launched by various civil society groups demanding repeal of the Armed Forces (Special Powers) Act, 1958, In the year 2004 Union Government set up a 5-Member Committee under the Chairmanship of Justice B.P. Jeevan Reddy, Retd. Judge of the Supreme Court with the following four Members Dr. S.B. Nakade, P.Shrivastav, V.R. Raghavan, Sanjoy Hazarika to review the provisions of the Act and advice the Govt. of India to amend the provisions of the Act for protection of Human Rights. The committee paid their visit to various places like Imphal, Agartala, Shillong, Guwahati, Kohima and held 13 meetings, 17 public hearings and nearly 51 organizations and 5 political parties submitted their views to the Committee at various public hearings. Majority of the groups and individuals pleaded for repeal of the Act. Committee submitted 147-page report.

#### **Observations of the Reddy Committee were:-**

No. 1 – Deployment of armed forces only in specific situations –

*“The security of the nation, which is of paramount importance. Security of the nation involves security of the States as well. The very first entry in the Union List in the Seventh Schedule to the Constitution speaks of defence of India and every part thereof which means and implies that it is the power and obligation of the President, the Parliament and the Union Government to ensure the defence of India and of every part thereof. Where the State Government finds that it is not able to maintain public order and it is of the opinion that the aid of the armed forces under the control of the Union is necessary for maintaining or restoring the public order, it can request the Union Government to send the armed forces to maintain and restore the public order and also even where the State Government does not so request but the Union Government is satisfied that for protecting the State from "internal disturbance" i.e. it is necessary' to deploy armed forces of the Union, it can do so under Art.355”.*

No. 2 – No proper way to ensure that Fundamental rights of Citizens must be protected even when Armed forces are deployed –

*“It is equally the duty of the Union and the States to not only respect the fundamental rights conferred upon the citizens of India by Part III and other provisions of the Constitution. Both Union and the State are under an obligation to ensure the conditions wherein the citizens can enjoy and avail of the fundamental and other rights available to the citizens. There are few important Fundamental Rights like Article 14, 19, 21, 22 which should remain sacrosanct and effective even where the armed forces of the Union are deployed to restore public order and/or peace or to protect a State against internal disturbance”.*

No. 3 – No grievances mechanism to address violations –

*“Deployment of armed forces or para military forces of the Union to restore public order in any part of the territory of India, or to protect a State from internal disturbance is, and ought to be, an exception and not the rule. The deployment of armed forces for the said purposes should be undertaken with great care and circumspection. Unless it is absolutely essential for the aforesaid purposes, the armed forces of the Union should not be so deployed. It has also to be ensured that the legal mechanism under which they function is sufficiently clear and specific and accords with the spirit and provisions of the Constitution as adumbrated herein above. While providing protection against civil or criminal proceedings in respect of the acts and deeds done by such forces while carrying out the duties entrusted to them. It is equally necessary to ensure that where they knowingly abuse or misuse their powers, they must be held accountable therefor. The legal mechanism should ensure that any violations do not take place and should also ensure that adequate remedial measures do exist where such incidents do take place”.*

Hence after interacting with various representatives of social groups, organisations and other stakeholders found the committee found that “The Armed Forces (Special Powers) Act, 1958 should be repealed as because the Act is too sketchy, too bald and quite inadequate in several particulars”.

#### **6.4. Justice J.S Verma Report –**

Justice Verma committee has made several recommendations to ensure proper protection of women in disturbed areas. The committee recommended to initiate legal actions against the armed personnel's who are involved in any offences against women. Justice Verma committee highlighted that , 'Sexual violence against women by members of the armed forces or uniformed personnel must be brought under the purview of ordinary criminal law" the report said, adding that " There is an imminent need to review the continuance of AFSPA and AFSPA-like legal protocols in internal conflict areas as soon as possible and also the provision of seeking sanction from the central government provision of seeking sanction from the central government before initiating any legal action against an armed forces personnel should be done away with in case of sexual crimes and appointment of Special Commissioners for safety of women in conflict areas conflict areas".<sup>89</sup>

#### **6.5. Justice N. Santosh Hegde Committee**

In 2013, The Supreme Court has set up a committee which was headed by Justice Santosh Hegde, Former Judge of Supreme Court of India to investigate the review the killings in Manipur. In its findings it was stated that the Act provides more power to the armed forces and which was abused widely. The Act provides legal immunity to personnel's from prosecution and has failed to protect citizens from misuse provide due to absence of proper mechanism to prevent it.<sup>90</sup>

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<sup>89</sup> Justice Verma panel suggests amendments to AFSPA, Times of India, 24<sup>th</sup> Jan,2013<[http://timesofindia.indiatimes.com/articleshow/18157655.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/18157655.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)> accessed on 21<sup>st</sup> June,2022

<sup>90</sup>Jitesh Jha, Judicial Commission appointed by SC on AFSPA highlighted misuse of the Act in Manipur, Jagaranjosh,July 19,2013 <<https://www.jagranjosh.com/current-affairs/judicial-commission-appointed-by-sc-on-afspa-highlighted-misuse-of-the-act-in-manipur-1374208165-1>> accessed on 22nd June,2022

## **Chapter – 7 OPINION OF INTERNATIONAL BODIES ON AFSPA**

### **7.1. Amnesty International calls on Armed Forces Special Powers Act (AFSPA) –**

Amnesty International was concerned about the AFSPA and also wrote to the committee convened by the government of India to review the Armed Forces (Special Powers) Act (AFPSA) to recommend that the government of India should repeal the Act and also to ensure that any future legislation must comply with all international human rights and humanitarian law treaties to which India is a party.

Amnesty International is concerned that the Act violates important non-derogable provisions of international human rights law and major provisions like right to life, rights to liberty etc. These rights are enshrined in the ICCPR to which India is a party.<sup>91</sup>

### **7.2. UN Human Rights Committee –**

U.N In 1997, “The UN Human Rights Committee expressed concern regarding the continuing reliance on the AFSPA and at human rights violations by security personnel in areas declared ‘disturbed’. It expressed concern about the ‘climate of impunity’ and lack of remedies resulting from the requirement of government approval for legal proceedings against armed forces acting under special powers. The Committee recommended that this requirement be abolished.<sup>92</sup>

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<sup>91</sup> AMNESTY INTERNATIONAL, Amnesty International calls for repeal of the Armed Forces (Special Powers) Act 1958, Public Statement, 4<sup>th</sup> May,2005 <<https://www.amnesty.org/en/wp-content/uploads/2021/08/asa200202005en.pdf>> accessed on 22<sup>nd</sup> June,2022

<sup>92</sup> Aarti Dhar, U.N. asks India to repeal AFSPA, The Hindu, March 24,2009<<https://www.thehindu.com/news/national/article59988503.ece>> accessed on 22<sup>nd</sup> June,2022

### **7.3. The Human Rights Watch**

The Human Rights Watch, another international organisation which works for Human Rights had released a document entitled “Getting Away With Murder :50 Years of the Armed Forces (Special Powers) Act” in August, 2008 which provides an detailed account of the incidents regarding the violation of Human Rights violations and also has requested the Indian Government to repeal the Act.<sup>93</sup>

### **7.4. NHRC guidelines regarding arrest-**

National Human Rights Commission laid down proper guidelines for Police personnel while making arrest. According to the guideline Police personnel should ensure that no person is deprived of Right to Life and personal liberty (Art. 21 of the Indian Constitution), Arrestee must be informed the grounds of arrest (Art 22 of the Indian Constitution), Police must ensure that the information regarding the arrest and place of detain is informed to a relative or a friend of the arrestee (Section 50A (1) Cr. PC), Arrest is recorded in the designated register of the police station (Section 50A (3) Cr. PC) , To ensure that no woman is arrested after sunset and before sunrise, other than in exceptional circumstances (Section 46(4) Cr. PC), Ensure that a woman police officer is associated while effecting arrest of a woman (Section 46 (4) Cr. PC), To ensure that no force or beating is administered under any circumstances while effecting arrest of a juvenile or a child, Protect the human dignity of the person being arrested. Public display or parading of the person arrested should not be permitted, Conduct search of the arrested person with due respect to his/her human dignity, Inform the Police Control Room and the District/State Headquarters about the arrest and the place of detention. Do not arrest a person without warrant, unless there is a reasonable satisfaction, on the basis of investigation done, about the person’s involvement in a cognizable offence and there is a need to affect his/her arrest. (Section 41, Cr. PC).

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<sup>93</sup> AN ANALYSIS ON THE STATUS OF ARMED FORCES SPECIAL POWERS ACT IN NORTH-EAST INDIA, Rostrum Legal, Jan 2, 2014 <<https://journal.rostrumlegal.com/an-analysis-on-the-status-of-armed-forces-special-powers-act-in-north-east-india/>> 24<sup>h</sup> June,2022



### **7.5. Reason behind the growing demand for repealing the Act–**

There were many major incidents where the armed personnel's have misused the power that have been granted to them under the Act which resulted in numerous cases of violations of human rights. Though the Act was enacted to curb or tackle the insurgency in the region but it is couldn't satisfy the aspirations of common peoples of North – East because of absence of basic protections against arbitrariness. The basic principle of criminal jurisprudence is that, an accused is regarded innocent until proven guilty. To protect the accused there are many legal and constitutional rights which have been guaranteed to the accused. AFSPA grants wide power to the armed forces and it doesn't grants protection to the accused. It also doesn't specifies any form of guidelines regarding arrest to of any female. It has been alleged that it has created a scenario of Army rule where common people has fear at every moment. Intelligence failure, killing of civilians presuming them as militants, custodial torture leading to death of civilians have become common in those areas which are still under the Act. Almost all the cases of human rights violations have been criticised in international platforms by international bodies not only that Chief Ministers, Member of Parliaments, Ministers have strongly demanded for repeal of the Act but unfortunately no initiative have been taken yet to nullify the Act.

### **7.6. AFSPA acts as a hindrance to peace talk with terrorist outfits –**

Union Government has initiated peace talks, ceasefire agreements with many insurgent groups operating in north-east region like ULFA (I), NSCN (NK) and NSCN (R) and few others. The proposal for peace talks has also been accepted by few outfits.

Influential militant groups like NSCN (IM) have signed the ceasefire agreement and now also have signed the framework agreement with the union government in the year 2015. NSCN (K) Niki group has also signed the ceasefire agreement<sup>94</sup>. In Manipur the UPF, KNO has signed the Suspension of Operation (SoO) agreement with the Government of India.

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<sup>94</sup> Status of peace process in North Eastern States, <[https://www.mha.gov.in/sites/default/files/NE\\_Peace\\_Process\\_25022022.PDF](https://www.mha.gov.in/sites/default/files/NE_Peace_Process_25022022.PDF)> accessed on 25<sup>th</sup> June,2020

Most of the terrorist outfits from north – east have a common demand which is to repeal the AFSPA as because many cases of human rights violations in the region and the Act is considered as a threat to the common people of the region.

The Act further demoralises the outfits to join peace talks or ceasefire agreements as because in recent past it has been seen that few members of insurgent groups who are under ceasefire or they have suspended their activity were killed in encounters<sup>95</sup>.

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<sup>95</sup> 2 ‘NSCN(IM) cadres’ killed in Arunachal encounter; locals claim victims are civilians, The Print, 21<sup>st</sup> March 2022 <<https://theprint.in/india/2-nscnim-cadres-killed-in-arunachal-encounter-locals-claim-victims-are-civilians/882636/>> accessed on 25<sup>th</sup> June

## **CHAPTER 8- PRESENT STATUS OF AFSPA IN NORTH – EASTERN STATES-**

The present law and order situation in NER has improved tremendously. Most of the states are now in a developing trend after a long time. If we see the previous situations of north – eastern region most states lacked basic facilities like connectivity, educational institutes, medical facilities etc. which were not given due attention. North – East was neglected since 1962 Sino – Indian war when the Chinese troops captured Bomdila, Kameng and NEFA and were advancing towards Tezpur and the radio speech of the then P.M Nehru's stating 'My heart goes out to the people of Assam at this hour' was felt like Assam was 'abandoned' and was left to the mercy of the Chinese . Infrastructural gap, poverty, inequity, lack of basic necessities was another reason why there exist a sense of deprivation among the people of the region that gave birth to arms movements among the youths who demanded to reduce the gap that existed.

But if we see today's north – east where most states have stable governments with many centrally funded projects as well as other aided projects supported by International bodies like Asian Development Bank, World Bank etc. for development of rural infrastructure, drinking water projects, bridges, airport, railway lines, proper road facility etc. are coming up in various parts of the region that will help in getting higher technical and non – technical educational institutes and will increase local employment, and will also boost local economy. There were many insurgent groups in North – East like Dima Halim Daoga of Dima Hasao, National Democratic Front of Bodoland of Bodoland, Karbi National Volunteers of Karbi – Anglong has formally inked tripartite peace accord to end up the insurgency in the region and have signed Memorandum of Settlement (MoS) with the government and have demanded for special package socio-economic and educational development of their areas.

To establish permanent peace in Bodoland in Assam a MOS was signed with NDFB, ABSU etc. According to the MoS, The widen the power and function of “Bodoland Territorial Council” and to streamline its functioning; resolve issues related to Bodo people residing outside ‘Bodoland Territorial Area Districts’ promote and protect Bodo’s social, cultural, linguistic and ethnic identities; provide legislative protection for the land rights of tribals. To ensure proper and speedy development of tribal areas and proper rehabilitation of members of NDFB factions. ‘MoS’ also provides for

establishing a Bodo-Kachari Welfare Council as per existing procedure, to notifying Bodo language as an associate official language in the state and to set up a separate directorate for Bodo medium schools. A provision is also there for a special development package of Rs.1500 crores to undertake specific projects for the development of Bodo areas .

Similarly the insurgent groups of Karbi Anglong also have signed the peace accord with the G.o.I and G.o.A to end the long violence and to return to mainstream and establish peace and bring normalcy in the hilly area of Karbi Anglong. According to the Union Government, “The Centre will make available a special development package of ₹1,000 crores over the next five years, for the Assam government to undertake specific projects for the development of Karbi areas, Greater autonomy to the Karbi Anglong Autonomous Council (KAAC), protection of identity, language and culture of the Karbi people and focused development of the Council area, without affecting the territorial and administrative integrity and also provides for rehabilitation of surrendered cadres” .

Similarly, In Dima Hasao the Dima Halim Daoga (DHD) has also signed peace accord with the Union and State government to end the insurgency in Dima Hasao erstwhile North cachar Hills.in the agreement the Assam government accepted the demad to re-organise the autonomous council of Dima Hasao .

In Tripura, NLFT (SD) signed an agreement with G.O.I and its 88 cadres along with 44 weapons joined the mainstream society in Tripura.

After observing the following instances we can definitely say that there were many efforts from both state and centre to ensure normalcy has been lauded by many. Hence gradually AFSPA was reduced in various parts of North – East and now it is active only in few hypersensitive areas.

The Armed Forces (Special Powers) Act, 1958, was completely withdrawn from Meghalaya in the year 2018, Tripura in 2015 and Mizoram in the year 1980 . Presently in the North Easter states of India, AFSPA is in force in Nagaland, Manipur, Assam, (excluding Imphal Municipal Council Area), 3 districts of Arunachal Pradesh viz. Tirap, Longding and Changlang and the areas falling under the territorial jurisdiction of eight police stations of districts of Arunachal Pradesh which shares border with neighbouring state of Assam.

On August 28, 2021 Hon'ble Governor of Assam through an official notification extended the existing 'Disturbed Area' status of the state for another six months under Section 3 of the Armed Forces (Special Powers) Act, 1958 . Due to some recent incidents of killings of innocent citizens by the armed forces in Mon district of Nagaland, Tirap district of Arunachal Pradesh the demand for repeal of the law has gained more momentum. The Chief Minister of Meghalaya, Nagaland, Manipur condemned the incidents and demanded for repeal of the 'Draconian Law'.

Later on 31st March, 2022 Union Government revoked AFSPA from 23 districts of Assam, 6 districts of Manipur and 7 districts of Nagaland. It was declared by Union Home Minister Amit Shah. Union Government accepted the recommendation of a committee constituted to examine the demand for withdrawal of AFSPA in a phased manner.

But it is important to mention that Union Government has initiated peace talks, ceasefire agreements with many insurgent groups operating in north-east region like ULFA (I), NSCN (NK) and NSCN (R) and few others. The proposal for peace talks has also been accepted by few outfits<sup>96</sup>.

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<sup>96</sup> 2 'NSCN(IM) cadres' killed in Arunachal encounter; locals claim victims are civilians, The Print, 21st March 2022-<<https://theprint.in/india/2-nscnim-cadres-killed-in-arunachal-encounter-locals-claim-victims-are-civilians/882636/>> accessed on 25th June

## Chapter 9- AFSPA AND JAMMU AND KASHMIR –

Jammu and Kashmir was a princely state and was ruled by Sikh Kings known as ‘Dogra Dynasty’. The last ruler was Maharaja Hari Singh and has three important part viz Jammu, Kashmir, Ladakh. After the partition princely state were left with the choice to join Pakistan, India or to remain Independent. Most Muslim majority areas under British India wanted to become part of Pakistan. Maharaja who was Hindu ruler of the Muslim-majority Jammu and Kashmir decided to remain independent. There were few groups of local tribesmen with the aid from Pakistan started to attack few places in order to take it. Law and order situation of the state was deteriorating. Finding no other way Maharaja approached to India for assistance. India agreed to provide military aid but the condition was that Kashmir should merge with India. Maharaja accepted the conditions and signed the ‘Instrument of Accession’ with India. On 27th October, 1947 Kashmir became integral part of India. Since then the fraction with Pakistan on the issues of Kashmir have been on headlines be it Indo – Pak war in 1965, Bangladesh Independence Movement, Kargil War etc.

But today’s situation is far different from earlier. Now a large scale ethnic cleansing of thousands of Hindu “Kashmiri Pandits” had taken place and still it continues in Kashmir. Militant groups like Jaish-e-Mohammed, Hizb-ul-Mujahideen, Lashkar-e-Toiba, All Parties Hurriyat Conference, Jammu and Kashmir Liberation Front who were aided by Inter-Services Intelligence of Pakistan were engaged in torture, killings, rapes, attacks on houses and temples of Kashmiri Pandits. Kashmiri Pandit women were kidnapped, raped and murdered, throughout the time of exodus and were the worst sufferers. After such incidents mass exodus of “Kashmiri Pandits” happened. Most “Kashmiri Pandits” either moved to Jammu and were in refugee camps.

Apart from the ethnic cleansing of “Kashmiri Pandits” the separatists militant groups have been demanding for separation of Kashmir and are often involved in armed conflict with the armed forces. Kashmiri youths are trained by the militants and are sent to fight with the armed forces. As the Kashmir is surrounded by rival countries like Pakistan, china which provides logistic support, arms supply and facility to establish training camps at their territory. To neutralise those militants there occurs conflicts in between militants and Indian security forces which has resulted to large number of casualties. The insurgency issues is also one of the reason which has forced the large-

scale migration of non-Muslim minority populations which includes Kashmiri Pandit, Buddhist out from the valley. Supporting the need of AFSPA in J&K armed forces demanded to continue AFSPA in order to eliminate such terrorist who are involved in such ant – national activities, engaged in killings of minorities , to stop infiltration state armed forces often gets initiates operations .

Article 370 which was inserted through a Presidential Order use to give special status to Jammu and Kashmir like provision for separate flag, separate penal code, outsiders cannot buy property in Jammu & Kashmir, No power to centre to declare financial emergency in the state.

But after loses its special status after Union Home Minister Amit Shah on 5 August 2019, introduced the “Jammu and Kashmir Reorganisation Bill, 2019” which was passed by both the house and became Act after it received the assent of Hon’ble President of India to convert Jammu and Kashmir's status of a state to two separate union territories, namely Union Territory of Jammu and Kashmir and Union Territory of Ladakh.

Major human rights violation in J&K –

- Bijbehara Massacre –

On 22 October 1993, personnel’s from Border Security Forces was accused of arbitrarily firing on a crowd which was gathered to protest against the siege of “Hazratbal Shrine”.In the firing incident nearly 37 civilians were killed in Bijbehara. Although there were allegations that the protestors after finishing their Friday prayers shouted shouting pro-independence slogans and also attacked the army personnel’s . After the matter was heavily criticised, Government of India initiated enquiry and later 13 BSF officers were charged with the “Murder”.

Recently J&K Lieutenant Governor Manoj Sinha mentioned that there are chances that AFSPA will be revoked from the valley. It can mentioned some particular groups try to provoke the local Kashmiri youths about the tyranny of armed forces and motivate them to join the militancy. So to protect the all of them there must be some initiatives taken from government to make a trial basis revocation to see the circumstances which may

arose due to absence of such special law but strongly opposed to such moves for the safety, security of all

## **Chapter 10 -CRITICAL ANALYSIS OF AFSPA IN THE LIGHT OF INFAMOUS DANGORI ENCOUNTER CASE -**

On 19th February, 1994 Nine AASU leaders namely Matheswar Moran, Prakash Sharma, Gunin Hazarika, Manoranjan Das, Prabin Sonowal, Pradip Dutta, Debojit Biswas, Akhil Sonowal and Bhaben Mora were picked up by the 18 Punjab Regiment of Indian Army from various locations of Dangori in Tinsukia district of Assam. During that time activities of ULFA were at peak. The youths were picked up for their alleged involvement in the murder of Rameswar Singh, General Manager of Assam Frontier Tea Company at Talap TE. Singh was shot dead outside his residence on February 15 by five armed men. All nine youth who were picked up from different locations were small traders and young student leader. After the army picked them from their houses all the family members of the youths were assured that they will be released after next morning after interrogation. The said news quickly spread across the state after which Former Minister Jagadish Bhuyan immediately informed the matter to the S.P and D.C of the district. Everyone waited for a while waiting for the release of the youths, But after passing of few days of unlawful detention of the youths, Jagadish Bhuyan instantly filed a writ of habeas corpus in the Gauhati High Court on Feb 22. The bench of Hon'ble Chief Justice Justice S.N. Phukan and Hon'ble Justice A.K. Pattnaik directed the army to produce all the nine youths who were under detention at nearest police station. But The Army tortured the five innocent youths so brutally and were in so severe condition that they were not in a position to be produced before the magistrate. So the army personnel's took them to the forest and killed five of them, while four were released. Army released Gunin Hazarika, Prakash Sharma, Matheswar Moran and Manoranjan Das at different locations after receiving the court order. Army left five bodies who were identified as Prabin Sonowal, Debojit Biswas, Akhil Sonowal, Pradip Dutta and Bhaben Moran, at Doomdooma police station on February 22 after Dhola Police Station declined to accept the bodies. The Army reportedly took the five innocent youths in two boats towards Dibru-Saikhowa National Park and after crossing Dangori river they mercilessly killed the youths. All the five innocent youths were labelled as ULFA extremists by the Army and were brutally tortured in the detention at



the Army camp which was later revealed from the post-mortem report. The report revealed that they have been brutally tortured before being shot. Their tongues were sliced, eyes were gouged out and kneecaps was smashed, even their bodies received electric shocks. The petitioner for the applicant was Hrishikesh Roy, the then Sr. Advocate of Gauhati High Court and is currently the Judge of Supreme Court of India.

Again a fresh petition was filed in the Gauhati High Court informing the court that the armed forces ignored the order of the court and mercilessly killed the five youths. After the incident there were two separate inquiries were started, one was by a judicial magistrate and another was internal investigation by the army. However, the two arrived at a contradictory conclusions, prompting the court to order an inquiry by the CBI. In 2011, after investigation the agency declared the name of seven Army personnel who were held responsible for the killings. The Supreme Court in 2012 had asked the army to decide the mode of trial —a court martial or judicial trial for the seven who were charge sheeted by the CBI in the reported fake encounter case registered in the Guwahati High Court in February, 1994

The case went to the Supreme Court, which sought a court martial and punishment of the guilty officers. The Summary General Court Martial (SGCM) has ordered the dismissal of Maj. Gen A K Lal, Col R S Sibiren, Col Thomas Methew, Capt. Jagdeo Singh, Capt. Dilip Singh, Naik Shivendar Singh and Naik Albindar Singh.

The then C.M Sarbananda Sonowal family members of the 5 youths who were mercilessly killed by Army expressed their faith on Indian Judiciary after the judgement was pronounced and the long legal battle of 24 years came to end.

There were many heart-breaking stories where many youths were killed mere on suspicion. Innocent youth were often termed as militant and were taken to camps and had to face brutal torture, even few were forced to accept that they were terrorist. AFSPA has not only spread hatred against the Armed forces but also provided immense power to the forces to act arbitrarily. Arbitrary activity and few incidents of Armed forces is also one of the main reason that many educated youths have taken arms in their hand and have started movement against the state demanding repeal of such Act. Most militant organisations have many demands and repealing of AFSPA is common in all.

## Chapter 11 - CONCLUSION

After having overall observation we can say that after observation that the Armed Forces (Special Power) Act has a time violated the international treaties and conventions, fundamental rights of citizens which are protected under the Constitution of India. AFSPA also violated prominent international covenant and conventions to which India is a party. Although the Act was enacted to curb the growing terrorism in north – east and to empower armed personnel's to tackle and neutralise the insurgent groups but in reality it has become a symbol of oppression in north – east region because often it has been found that the armed forces have misused the power conferred to them under the Act as because the Act lacks clarity. There is no specific guidelines regarding the declaration of any area as “Disturbed Area”. The Act also do not specific regarding the time period when an arrested person is required to be placed before the Magistrate and absence of such specific rules provides the armed forces wide power to keep the detainee in custody for longer period of time. It has been observed in maximum cases that whenever the arrested person is kept under custody for longer period of time the detainee face custodial torture which even leads to death of the detainees. The term “least possible delay” which has been mentioned under Art. 5 of the Act doesn't clearly provides the time period that means the armed forces can interpret the definition according to their own which increases the chances for misuse .The Act also provides blanket protection to the armed personnel's while performing duty under the Act and it requires prior sanction of the Central Government to initiate any legal proceedings against any personnel's for any wrong if committed. Another important point is that there is no special provision to ensure the procedure to arrest any women under the Act. “According to National Human Rights Commission guidelines on arrest, As far as practicable, women police officers should be associated where women are arrested that too, arrest of women between sunset and sunrise should be avoided” but in maximum cases it has been observed that it has not been followed for which cases of rape, torture happened. The case of Thangjam Manorama can be highlighted here. The Act grants the power to the armed forces to fire upon any person for the maintenance of public order which grants the wide power to the armed forces to open fire after warning which is considered to be in contravention of the law. Sec 4 (d) of the Act provides power of the armed forces to enter any premises without warrant which violates Right to Privacy.

During any search operations specially during the night women's mostly feel inconvenienced and harassed. Right to Privacy was declared as fundamental right by the Supreme Court in In "*Puttaswamy v. Union of India* case"<sup>97</sup> but no importance has been given on it under the Act.

If for a moment we consider that AFSPA has become partially successful to curb on uprisings and enemies from infiltrating the country one side but on the other side it has become a reason to give birth to greater anti-national uprisings. Although the area under AFSPA have been reduced but still keeping in view the aim and aspirations of the large section of population of north – east region. I must say if TADA and POTA can be repealed then why not AFSPA which has been termed as "Draconian" law be repealed. Hence, The Act must get repealed.

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<sup>97</sup> [2017] 10 SCC 1.

## SUGGESTIONS -

I have already mentioned that the present situation of north – east is something which is very different from what was during the enactment of the Act. Recent incidents where armed forces mistakenly fired and which killed civilians in north – eastern states have impacted a lot. Many organisations have strongly condemned the incidents and the insurgent groups which are funded and provided support from countries like China, Myanmar have started to blame game and have started to reorganise the movements demanding independence of states from India. Hence to tackle such issues the armed forces must be very alert because such incidents may provoke anti-India and anti-Indian forces sentiments. In the 21<sup>st</sup> century AFSPA should have no place as because such repressive Acts will eventually instigate youths to join insurgent groups and to revolt against the country.

So to uphold as well as to protect the sovereignty, unity, and integrity of India, The Act must get repealed or if it is not possible due to resistance from armed forces then few amendments can be brought to make the Act more transparent in the eye of law and also to make the law compatible with the International Human Conventions, Covenants, Guidelines. Following are the suggestions –

- a) The section 3 of the Act must be amended and there must be proper guidelines regarding declaring any area as “Disturbed Area”. The opinion of the particular state government of the state where the AFSPA is required to be imposed must be taken into confidence.
- b) There must be a particular time limit regarding the “Disturbed Area” under the act. Also there must be a systematic setup to review and assess the status of the situation of the area which has been declared as “Disturbed”.
- c) There must be legal mechanism to deal with the cases where there has been alleged that the armed forces have violated the right of civilians and the cases must be fast tracked so as to ensure prompt justice to the needy.

- d) While doing any arrest armed personnel's must follow the guidelines laid down by Cr.P.C, Supreme Court of India, N.H.R.C, Jeevan Reddy Committee and due care should be taken while making arrest of any women. Supreme Court's Dos and Don'ts for the army laid down in the *Naga People's Movement of Human Rights v. Union of India* should be followed.
- e) While performing any operation or search in any place the forces must coordinate with the local Police station and local area Magistrate so that no unprecedented incidents occurs. The same was laid down in the case of *Luithukia v/s Rishang Keishing*<sup>98</sup>.
- f) Compensation must be awarded to the persons who were tortured illegally taking the advantage of the Act. The court in *Purnima Barua vs Union of India*<sup>99</sup> held that "Monetary compensation should be awarded when the detention was in violation of Section 5 of the Act".

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<sup>98</sup> AIR 1998 SC 431.

<sup>99</sup> 1991 CriLJ 2675

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