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Army Operation In Assam And Human Rights Violation: A Study In the Perspective of AFSPA

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Abstract

Assam, a state of the Indian Union, was declared a Disturb Area under Armed Forces (Special Powers) Act 1958 due to widespread violence and substantial collapse of the law and order situation. The Central Government declared the whole state and 20 kilometers inside areas of adjoining bordering states of Assam as a Disturb Area and launched Army Operations in the year 1990. During these periods, the State people have witnessed significant counter insurgency operations such as operation Bajarang, operation Rhino I & II 'operation Sher-e- Dil', 'operation Tiger Heart' and Unified Command Structure Operation. In these operations, innocent civilians were threatened, harassed, detained, arrested, and assaulted. During the operations time, young girls were raped, humiliated, and even killed by soldiers. Arbitrary arrests and lengthy detentions of young men picked up randomly from their homes and public places became an order. The detainees were regularly subjected to severe beatings and torture. Deaths in custody have also occurred as a result of torture. In this paper, an attempt has been made to study how the country's armed forces had violated the rights of the people during the army operation in Assam under the shadow of the AFSPA and its impact in society.

Keywords: *Armed Forces, Army Operation, encounters, arbitrary arrests, custodial death, rape and molestation*

Introduction

Assam came under Army Rule in 1990 with the declaration of the President's Rule, suspending the then regional party's (Asom Gana Parishad) state government. To combat the insurgency problem of Assam, a series of Army Operations were launched by the Central Government to help the civil administration.¹ During these operations, innocent civilians, often relatives or neighbours of young men suspected of having militant sympathy towards militants, were subjected to atrocity. The disturbed area, villagers have been threatened, harassed, raped, assaulted, and killed by soldiers and frightened them to identify suspected militants. Arbitrary arrests and lengthy detentions of young men picked up in these periodic

¹ Borah K, "Human Rights Violation in Assam", Annexure V, in N. Sanajaoba (ed) *Human Rights Principle, practices and Abuses*, (New Delhi:, Omson Publications, 1994) p. 277

sweeps or at random from their homes and from public places became an order. The detainees of the armed forces were regularly subjected to severe beatings and torture. Deaths in custody have occurred due to torture and in several alleged encounters and escape attempts.² Though the counter-insurgency operations could stop the insurgents 'outfits' activities with much effectiveness, it remained in the mind of the people whether they are citizens of India or not.

Army Operations in Assam

Since 1990, due to the widespread violence and substantial collapse of law and order situation in Assam, the Central Government declared the state as a Disturb Area and introduced Army Operations. The people of the state have witnessed major counter insurgency operations vide 'operation Bajrang, operation Rhino I & II 'operation Sher-e- Dil', 'operation Tiger Heart' in some specific districts of the state, and Unified Command Structure Operation. During these operations, the human rights of the people of Assam were grossly violated.

Operation Bajrang: On November 27, 1990, the Central Government imposed President's rule putting the state under the direct control of Delhi vide Article 356 of the Indian Constitution, and launched a massive anti-insurgency operation with the code name "Bajrang".³ At that time the Asom Gana Parishad (AGP) a regional political party, was in power and the Government of the State failed to control the unlawful activities of ULFA. In attempting to quash the ULFA organization, the Government launched counter insurgency campaigns that were interlinked with widespread human rights violations. Explaining the reasons and situations of President Rule in Assam, the Central Government argued that the State's Law and Order situation was unstable and grave internal threat arose to the nation due to the wide spread violence.⁴ This military operation was called off on April 20, 1991.

Operation Rhino: In June 1991 election to Assam State Legislative Assembly was held and the Indian National Congress came to power and formed its Government led by Hiteswar Saikia. But, due to the continuous violence of ULFA activists, the Government had decided to deploy army in Assam and on September 14, 1991. The army was deployed once again in the state under the code name "Operation Rhino." Operation Rhino employed between 40,000 to 50,000 army men, including the elite Mountain Division, the Rajputana Rifles, the Kumaon Regiment and other army units, plus about 100,000 members of the Border Security Force (BSF), the state police, the Central Reserve Police Force (CRPF)

² Asia Watch, 1993 p 1

³ Asia Watch, 1993 p 3

⁴ Borah, 1994 p 277

and the Assam Rifles.⁵ After these two major operations namely Operation Bajrang and Operation Rhino, a section of the ULFA agreed to negotiate for a peaceful settlement of the problem. The other section of the ULFA was unhappy with the prospect of a negotiated settlement and refused to disarm. The Government stated that near about 2,800 militants outfits of ULFA surrendered and Law & Order situation of the state came to normal and hence the Operation Rhino was suspended.⁶

Unified Command: In 1997, the Operation of Unified Command structure was introduced by the Assam government as counter insurgency tactics for combating insurgency in the state under the leadership of the Chief Secretary of the Government of Assam. The Unified Command structure paved the way for virtual military rule in the state and ran against every known democratic process of conflict resolution. According to the structure of the operation, the local Police and Army jointly conducted the operation.

Since 1997, all anti-insurgency operation has been conducted under the Unified Command imposing restrictions on the security forces, which is virtually flouted. According to the norms, the Armed Forces must conduct search operations in the presence of a judicial magistrate and arrested persons should be handed over to the local police for questioning, etc. But in real practice, it was never followed by the Armed Forces. The Operations were still conducted under the provisions of AFSPA. The introduction of this type of military regime caused the death of around more than a thousand⁷ people.

Human Rights Violation in Assam

There have been constant and widespread reports of abuse of Human Rights in Assam since Operation Bajaranga. Empowered by the two unique Acts namely 'Assam Disturbed Areas Act 1955' and 'AFSPA', the Armed Forces of India abused, searched, arrested, detained, raided the civilians at different segments and even some times they did combing operations in other places of the state. It is also noticed that whenever there had been any attack made by the insurgents targeting the Armed Forces or upon the police, immediately combing operations was conducted in adjoining areas.⁸ This eventually disrupted the everyday life of the people. The women, girls, children had to take shelter in other safe places or outside the functional areas. The young boys had to run away from their own house for the sake of their lives or escape from the search, arrest, detention, etc. In such a situation often they were shot at and subsequently

⁵ Asia Watch, 1993 p 3

⁶ ibid p 4

⁷ A Brief Report on State Repression in Assam, by MASS, March 2000

⁸ Borah, 1994) p. 277

labeled it as an encounter. From the reports, it is clear that during military operations, the Human Rights of the people of the state had been repeatedly violated. It was also seen that the Armed Forces took all the responsibility of combating the insurgents alone instead of seeking help from the administration, as per the Act.

Empowered by the Special Powers Act, the armed forces violated the people's Human Rights and did some inhuman actions in different stages of army operations. They performed search operations, raids, and mass atrocities in commonplace, raids in the house of the Members of Parliament (MP), Judicial Magistrates (JM), Police Officers (PO) and even in the house of armed force personnels of the state. The inhuman actions like beating, hanging, staking, giving an electric shock, punching, pulling hair etc. were common to all. At that time, many innocent people of the state were harassed, tortured, killed and raped by men in uniform. The situation reached such stages that the right to life was in danger. It was because the civil administration existed merely for name sake. They could not protect the civilians.⁹ To combat insurgents, the fundamental rights of the people of the state were virtually suspended so that they would not be able to protest the illogical action of the armed forces. Some of the incidents of human rights violations are mentioned below.

Wanton Raids: Wanton army search operations were carried on causing mass atrocities. Even the house of sitting Member of Parliament was not spared from search operations. The residence of Sri Nagen Saikia of Dibrugarh, Assam, a Rajya Sabha Member was raided by army during the time of Operation Rhino. This incident was condemned in the parliament and the issue was taken up before the privilege committee. During this time the residence of Judicial Magistrates, police officers, constables, Members of Armed Forces were also not spared from raids.¹⁰ **Indiscriminate Mass Raids:** Section 4(d) of the AFSPA, 1958 empowers Commissioned Officers, Warrant Officers, Non-Commissioned Officers or any other persons of equivalent rank of Armed Forces to enter and search without any warrant, any premises, to make any such arrests who had committed a cognizable offence or against whom a reasonable suspicion excised that he had committed or was about to commit a cognizable offence.¹¹ During the time of army operation in Assam, the Armed Forces raided near about 4000 different villages of the state. Such raids were done on the basis of reports of intelligence agencies or information that came from different sources

⁹ Manab Adhikar Sangram Samity, (MASS) "Human Rights Violation in Assam, Operation Rhino, 1991", *Human Rights Principle, Practices and Abuse*, N. Sanajaoba, (New Delhi: Omsion Publication, 1994, p.138

¹⁰ Laishram, 2007 p131

¹¹ Article 4 of the Armed Forces (Special Powers) Act, 1958

like the ruling party, local people or persons engaged by the armed forces.¹² This information sometimes went in vain and mass raids were carried out blindly. One of such kind of mass raid was conducted in Badhakara village of Lakhimpur District of Assam in the morning of 4th October, 1991. The male members of the village were dragged out, some even from bed and beaten up at home. Women were abused, slapped, some were even hit by a rifle and there were many cases of molestation. The male members were rounded up and taken into two interrogation camps, one situated in the field of local school, and another at about 2.5 km away from the village inside a reserve forest at the bank of river Ghagar. Most of the men were beaten on the way to these camps. On the way to the camp, the Army personnels forced the men to carry them on their back over a muddy and swampy area. The Major-in-charge of the Operation was riding on the back of a respected elderly teacher of the village.

In the camp, people were punished in various ways. They were ordered to kneel down facing the sun, compelled to do frog jumps, kept without food or water, kicked, beaten, hair pulled etc. During interrogation, the armed personnels asked some common questions to everybody "Where is ULFA?" Do you know who are ULFA and where they are? This meant that the raid was done only to create terror among the people by violating the people's Human Rights. Interestingly the fact was that not a single hardcore insurgent was arrested or detained.¹³

Interrogation at Army Camps: Armed Forces, deployed in different operations tried to arrest people of various places at random. Like arbitrary raids, the arresting methods also denoted violation of Human Rights. Army Jawans, roaming through the villages and towns in civil dresses lifted young boys at will-some were taken up from the shop while they were taking pan or newspapers; some were from playgrounds, cultural halls, college hostels,¹⁵ roads, buses, and homes and were taken to army camps. The arrested persons were interrogated and tortured by the army in temporary camps and many of them were released without any charge. These proved that the detained persons were innocent and illegally interrogated and tortured by the armed forces. Criticism arose whether the Act empowered the armed forces to detain anybody or torture any one without any charge or whether they were sent for violating the Human Rights of the people of the state.

During the time of interrogation, most of the arrested people were tortured in various ways, which was inhuman and shameful for human society. On the other hand, ineffectual interrogation was done in many times due to language problems. Most of the people did not know Hindi or could not speak fluently in the languages used by the Army men for which misunderstanding cropped up among them. These led to such

¹² MASS, 1994, p.141

¹³ MASS, 1994, p.140

conditions that some detained innocent people were identified as hardcore insurgents and were sent to jail which was unfortunate for all. The interrogation was not properly done but Human Rights were violated in the state by torturing the innocent people in the name of combating insurgency.¹⁴ At times, when the army personnels failed to nab an insurgent, they resorted to hard and picked up innocent villagers and labeled them insurgents.

Methods of Torture Applied

The methods of torture applied by the Armed Forces at that time of interrogation had been criticized by the people, organizations and the mass media of the state. Against the inhuman torture of the Armed Forces, various mass movements, demonstrations, protests, strikes were held and even bandhs (closure) were observed in the state.

Beating and Punching: The detained or arrested persons were beaten up very badly both at home in front of the family members and in army camps by hand, lathis (sticks of cane or bamboo), rifle butts, and whips. They were punched in the face, head and abdomen, trampled over the body and kicked seriously.

Hanging: Another type of torture was hanging. Persons were hanged in ceiling beams or trees in upside-down positions and beaten severely.

Staking: In this system, persons were compelled to lie down on the ground, either keeping faces up or down position and hands and feet tied in a spread-eagled manner to stakes driven to the ground.

Electric Shock: During operations, some of the arrested persons were given electric shock from 12 Volt car battery or domestic main switches. The shock was given in some susceptible areas like the head, cheeks, ears, neck, shoulders, and armpits and even to some internal parts.

Hitting and Pulling: Torment meant hitting persons in their genitalia by stick till he or they become unconscious due to pain or pulling hair from eyebrow, head, armpit and genitalia area continuously. Armed Forces, sometimes also pulled their nails forcefully and inhumanly.

Pouring Water: In this system, water was running continuously over the mouth and nose of the detainee till they were nearly suffocated. Another method of water treatment was immersing the heads of the persons in a bucket or drum of water till they were nearly unconscious.

Applying Chilly Powder: Applying chilly powder in eyes and other parts of the body of the arrested or detained and pushing it in to anus through lathi till they became unconscious was another inhuman activity. In such situations, persons even lost their balance and fell down.

¹⁴ MASS, 1994, p.142

Burning: The detained persons were burnt with lighted cigarette butts in different parts of the body, including private parts. The persons were compelled to stand in sun light for a long time or kneel down facing the sun.

Sticking Pin: In this method of torture was pins stuck in the nails, fingers and other selective parts of the body of some arrested persons so that they could not keep their normal balance. Humiliation: Reports of many physical punishments and humiliations can be traced in official records during the time of army operations. During that time people were obliged to come out from their house and line up in the open field, street or Army Camps. At that time they were forced to stand there for long hours facing the sun, or in sunlight or in the rain, or had to kneel down holding the ears or stand on one leg. The detained persons were compelled to do frog jumps, run in a circle, kicked, punched and beaten with lathi and rifle.

The army men used slang and filthy languages, which were against social norms. It was seen that in most of the times, especially during night time the army men were mostly drunk. It was also found that Army jawans usually misbehaved with women when they launched raids and searches.¹⁵ A few girls were gang-raped by the Armed Forces; many of such incidents did not come to light due to fear of social sanctions. The existing records and examples still prevail in the state, which stands testimony to the inhuman torture of armed forces that were awful to society and dangerous for human beings.¹⁶

The persons tortured by the armed forces lost their mental balance and suffered immensely. Those persons who were given an electric shock on the head, suffered from intense headaches, memory lapses, a lack of coordination of thought and action, visual disturbances, and other symptoms. Other physically tortured persons suffered from joint pains, blood vomiting, black coloured stool or melaena, passage of blood in urine, inability to use arms, fingers, legs, etc. Those who tortured in genitalia developed sexual abnormalities. A few selected examples of Human Rights violations in Assam during the time of Army Operations and the result of the AFSPA, 1958 have been mentioned below.

Death during Army Raids

During the Army raids, quite a few persons lost their lives in Assam due to excessive violence, heartless beating and torture. Here the name of Mr. PURNA DAS, a teacher of Goalpara District of Assam who was beaten to death on 24th September, 1991 could be mentioned.

¹⁵ ibid p.142

¹⁶ ibid p 145

On 24th September, 1991 at about 11p.m. the army knocked at the door. When Mr. Purna Das opened the door, they dragged him out and started beating mercilessly in front of his family. His sons Narayan Das, Deepak Das, servant Khiren Rabha and one of their relatives Nityananda Das were also harshly beaten. After beating, the army men started to kick Mr. Purna Das and trampled him on ground. At that time he vomited blood and by 3.30 A.M. next day he was dead due to inhuman torture in his own house.¹⁷

Death in Army Custody

There are reports of many custodial deaths during the time of army operation in Assam. Reports and data shows that such kind of incidents took place due to the result of inhuman torture at the time of detention. In few cases, the army version was that the persons tried to escape from their custody before being shot dead. The version offered by the armed forces regarding the custodial death was too hard to believe. The case of Mr. Dibakar Handique, an office assistant of Rajgarh College of Lakhimpur District in this regard could be mentioned.¹⁸

On 28th September, 1991 Mr. Dibakar Handique was arrested by the army and taken to army camp. On 30th September Police returned his dead body to his family. In case of Handique's death, the Army version was unbelievable. According to them he died due to the high blood pressure and heart attack. But, it was seen that the body of Mr. Handique was full of extensive marks of injury. Both his hands and legs were broken; the skull was fractured due to blunt injury. The body bore marks of severe beating and burn marks caused by electric shock. His external genitalia (penis and testicles) was totally smashed. The interesting case was that the local police opined that they did not know anything about the arrest and death of Mr. Handique.

Rape and Death

The Armed Forces who were deployed in Army Operations in Assam involved in many rape cases in the state. Some of the pathetic incidents of rape case done by the Armed Forces during the time of Operation Rhino and its later part could be mentioned below as examples.

¹⁷ ibid p 145-46

¹⁸ ibid p 148

Case of Raju Boruah: *Army men raped Raju Baruah, a 20 year old student of Chaiduar College of Gohpur of Sonitpur District on 6th October, 1991 in daytime i.e. at 11 a.m. According to reports several Army Jawans entered the house of Raju Boruah. At that time no male member was at home. Her mother was cooking a meal. The Jawans searched their house and took Raju Baruah to a forest at the back of the house. There, they gang-raped her one after another and threw her unconscious body to a nearby pond. Her brother-in-law Kamal Boruah arrived at that time and pulled her up from the pond.*

She was immediately admitted to Dhalpur Civil Hospital, where she was declared dead. The post mortem report confirmed beating in breast, nipple, bruises all over the body, and sperm and semen in the vagina of the virgin. The Government also confirmed this incidence as one of rape and murder.

Case of Bhanimai Dutta: *Another pathetic rape case occurred at Kowadanga Village, in Naoboicha, Lakhimpur District, Assam. This incident took place in Mukuta Dutta's house of the said village. According to the family statement on October 16, 1991, at 3:00 p.m., a huge number of the security forces' house arrived at the house of Mukut Dutta in two trucks and four jeeps just as his fourteen-year-old daughter Bhanimai was returning after fetching water from a nearby well. After entering the campus, the armed forces asked Mukuta Dutta how many sons he had. He told them he had two sons- Tarun and Bubul. He also informed that his elder son, twenty-five-years old Tarun, was at that time in the village; twenty-year-old Bubul was at home. The army men accused Tarun of having ULFA connections and began slapping Dutta. They then dragged Mukuta and his younger son Bubul towards the jeeps. Dutta's wife Rakhada ran after the soldiers, pleading with them to stop. But the soldiers continued to beat Bubul and his father, leaving Mukuta Dutta lying on the ground, forced Bubul into a waiting vehicle and drove away.*

As Mukuta returned to the house with his wife's help, they saw three other members of the security forces leaving their house through the front door. Mukuta and Rakhada ran inside the house and found Bhanimai lying on the bed, almost naked and unconscious. She was trembling violently, saliva dripping from the sides of her mouth. Rakhada, the mother of Bhanimai screamed for help and neighbours came running. Sumita Sut, a neighbouring girl of 13 years, said that she had seen Bhanimai lying on the bed with bruising and bites marks all over her body". She said she tried to stop the trembling in Bhanimai's arms and legs by holding on to them, but Bhanimai died soon after without getting medical treatment. At that time, the government doctors were on strike. The next day, on October 17, Bhanimai's uncle took her

body to a private hospital for postmortem, but the report of the postmortem was surprisingly not released to the family till today.¹⁹

Initially, the Government of Assam tried to deny that Bhanimai Dutta was raped. But, when the matter was highlighted in mass media and strong protests were made in the District then a State Minister of the Government of Assam, Mr. Bargoram Deuri, went personally to the home of Mr. Dutta and promised to provide compensation of Rs.100,000, and offered one of Mukutu's sons a government job.

Death in Encounter

The Army men were also involved in many fake encounter cases in the state where many innocent people were killed. Some pathetic incidents of encounter death by the Armed Forces during the time of Operations could be mentioned as examples below:

Case of Nitu Rajbangsji: *Nitu Rajbangsji a 25 year old businessman, was killed by CRPF on 17th September, 1991 at the heart of Dhekiajuli town. On that day he came to buy sweets. Suddenly he was challenged by CRPF jawans and so he began to run. The CRPF chased him for more than a mile and opened fire. Nitu entered a half-finished house of one Mr. Manuranjan Dutta. There a CRPF jawan named Dayananda Singh cornered him in a bathroom and shot him dead.*²⁰

Case of Khireswar Borah: *Khireswar Borah, son of Baluram Borah, village Maghnowa, Narayanpur, Lakhimpur, Assam, a B. A. third-year student of Sankardeva College, was arrested by soldiers on October 3, 1991. The next day his body was handed over to the North Lakhimpur police. According to the government report Khireswar Bora, a suspected ULFA insurgent, was shot while trying to escape. But, the real fact was that Khireswar Borah was dead as a result of a severe beating by the armed personnel.*

Khireswar was arrested on October 3, 1991 by the Army and was taken to his home and asked to show them where weapons were buried. When Bora failed to do so, soldiers tied him to a tree and beat him severely in front of family members. Bora was then reportedly taken to another village where, witnesses say, he was again tied to a tree and beaten until he died. When his body was turned over to police it had bullet wounds.²¹

¹⁹Asia Watch, 1993 p 7

²⁰MASS, 1994, p.147

²¹Asia Watch Vol. 5 Issue 7, 1993 p 10

Arrest of Journalist and Human Rights Activist

During the time of Army Operations in Assam, particularly during the period between 1997 and 1999, 28 journalists were detained by the State Administration. Ajit Kumar Bhuyan, a renowned Journalist and Human Rights activist, was arrested from his residence on October 1, 1997 under the National Security Act (NSA). But, the NSA Board advised the Government of Assam to release Bhuyan and accordingly, he was released from jail. After release from jail, he was again re-arrested under a fake case No. 853/97 of Nagaon Police Station on November 21, 1997. Bubumoni Goswami a journalist with Asomiya Pratidin, was also arrested by the police under a fake case, No. 104/97 when he was returning from office to his native home (Morigaon) under section 365/120 (b)/ 120 (a) of the IPC, to be read with 10/13 ULA (P). Similarly, Mr. Prakash Mahanta, Mr. Asish Gupta responsible media professionals, were also arrested during this period, under NSA and sundry sections of IPC and ULA (P). In 1997, two journalists, Naresh Kalita and Jitumoni Bora of *Dainik Agradoot*, were arrested by the City Police in Guwahati.²²

The human rights scenario blurred in Assam during Army Operations because even the human rights activists were not spared from the high-handedness of the security forces. Several activists of MASS who worked for the protection and promotion of Human Rights in Assam have lost their lives in army custody. They were declared to have died in 'encounters'. Many of its activists faced arbitrary arrests and harassment. The Chairman and Secretary-General of this organisation Parag Das and Lachit Bordoloi respectively, were sent to long imprisonment on fabricated charges.²³

Many human rights defenders were tortured and killed by the state-sponsored vigilante force to crush their activities towards protection and realization of human rights and fundamental freedom and protest against the large-scale violation of Human Rights in the state. The human rights defenders became the state police's first target for surveillance, arbitrary arrest detention, and extra-judiciary killing. In this regard, Parag Das, Editor of 'Asomiya Pratidin' an Assamese daily and founder secretary of MASS may be mentioned. It is necessary to state that Mr. Das was a strong voice of Assam and a good analyst of the socio-economic issues, who worked for the nation in true sense. He strongly raised his voice to protect Assam's rights during the emergency and normal times. He was also detained for several times under Terrorist and Disruptive Activities Prevention Act (TADA) and National Security Act (NSA).

²² A Brief Report on State Repression in Assam, by MASS, March 2000

²³ A report on some disappearance cases in Assam, by *Manab Adhikar Sangram Samiti* (MASS), August 1998

Cases of Disappearance

The cases of disappearance are examples of Human Rights violations in Assam. Many individuals who were picked up by the Armed Persons for interrogation or detention disappeared from their custody. It is worth mentioning that the detained persons who were disappeared were taken from their respective houses or public places in the presence of their family members or the public. For example, we may cite the names of *Bipul Nazir, Prafulla Gogoi, Salil Das, Rudra Deka, Surbarna Konwar, Pradip Barua, Biswajit Bora, Putul Medhi, Charan Sing Bordoloi, Hiranya Barua, Hamen Nath, Mohan Nath, Biplab Gohain, Kiran Chaharia, Pintu Saikia, Kula Gogoi, Abhijit Kalita, Purna Kachari and Padum Nath* in this regard.

Mr. Bipul Nazir, a college lecture of Bhibiram Hazarika College, Dhalpur of Lakhimpur district, was picked up by the Armed Forces from his residence at Tatibahar, near Narayanpur of Lakhimpur District in 1992. When Nazir did not return after a few days, his family members informed the matter to district administration and then they came to know that he disappeared from custody. The Armed Forces flatly denied the detention case of Bipul Nazir.²⁴

Killing of Civilians for Revenge

On 1st February, 1997, ULFA militants suddenly attacked Armed Force personnel who were travelling for duty in a remote village located in the border area of Arunachal Pradesh and 5 km away from Pangeri, under Digboi Police station of Tinsukia District and killed 2 Army men and escaped thereafter. At that moment, three youths named Kamal Tapadar (25), Sitaram Shani (21) and Diganta Gogoi (22), who were coming from Namsai of Lohit District of Arunachal Pradesh to attend the marriage ceremony of Sri Jyoti Deb of Pangeri, arrived in the spot riding in a scooter. Without giving any warning, the Armed Forces fired upon the youths and killed them on spot. The army claimed that the three slain persons were ULFA activists, and they found guns and arms from them. But, they were unable to hand over the arms to the civil authority. This issue was highlighted in media and protests and demonstrations were held in the district. After 2 days of the incidents i.e. 3rd February, 1997, the Additional Chief Secretary of Assam called a press conference and said that the three killed youth were not members of ULFA but innocent people. It has been observed that when armed personnels were killed or died in the insurgent attacks and

²⁴ ibid

if the armed forces could not kill or capture the insurgents involved in the mishap, then they resorted to revenge killing of innocent people present in or nearby the spot.²⁵

Arrested or Detained Persons Handcuffed in Hospital

The arrested and detained persons were handcuffed by the police and the armed forces, who were admitted even in the hospital for a medical treatment against the directive of the Supreme Court in Premshankar Shukla's case. Kuldip Nayar, an eminent journalist and President of Citizens for Democracy, wrote to the Supreme Court that he saw seven TADA detainees handcuffed and tied to a hospital bed in Guwahati. He said that this was done even though the room, where they were being held, had iron bars, was locked and guarded by a group of armed policemen. Nayar wrote that he failed to understand how the Assam Government could treat people in this manner, despite court directives to the contrary. In its defense, the Government said that the detainees were hardcore terrorists belonging to the ULFA and many dreaded members of this organization had previously escaped from custody. In the case filed by Citizens for Democracy, the Supreme Court verifies that the arrested outfits who are kept in hospital for medical treatment must be free from handcuffs.²⁶

Conclusion:

Under relevant international human rights and humanitarian law standards, there is no justification for such an act as the AFSPA. The AFSPA, by its form and in its application, violates the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture (CAT), the UN Code of Conduct for Law Enforcement Officials, the UN Body of Principles for Protection of All Persons under any form of detention, and the UN Principles on Effective Prevention and Investigation of Extralegal and Summary Executions.

The AFSPA also violates the spirit of the Constitution and other related Laws. There are several cases registered and even now some cases are pending before the Indian Supreme Court which challenges the constitutionality of the AFSPA. Article 14 of the Indian Constitution guarantees the rights to equality before law. This article guarantees that "the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.". Similarly, the Article 21 of the Indian Constitution guarantees the right to life to all people which read as, "No person shall be deprived of his

²⁵ Voice of Mass, 17th May, 1997 p 20

²⁶ CITIZENS FOR DEMOCRACY V STATE OF ASSAM SCC 743, 1995

life or personal liberty except according to procedure established by law." In the case of Menaka Gandhi vs. Union of India in 1978, the Court interpreted the "procedure established by law" as a "fair, just and reasonable law". This decision overrules by the Court in 1950 in Gopalan vs. Union of India case where it is stated that any law enacted by Parliament met the requirement of "procedure established by law". The Article 22 of the Indian Constitution states that "(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice. (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate."

After introducing the AFSPA it has been alleged that the country's armed forces have been violating the rights of the people of the concerned areas or states, which empowered the armed forces through extraordinary powers. The military, police and other paramilitary personals have been committing gross excesses in declared disturbed areas without any fear of punishment and unleashing inhuman action upon innocent people violating the norms of constitutional rights and legal provisions of the country. For that reason, numerous mass protests had been resorted to on in different parts of the country, and legal challenges have also been made in the land's apex court.

From the study, it has been reflected that the AFSPA is highly responsible for the violation of human rights of the people of Assam as like as the other states where this act applied. AFSPA is regarded as unconstitutional legislation. Different International and national organizations, legal experts, and human rights activists have demanded the repeal of this Act from the state to have dignified and quality lives.

Our study demonstrates that the AFSPA has violated the international recognition and domestic norms of legal system. The AFSPA often violates the constitutions' provisions like the Article 14, Article 21, Article 22, and Criminal Procedure Code (CrPC) in the disturbed areas.

The insurgency problems of Assam as like the other states of NE cannot be solved by using force. To solve this problem, the Government must take the path of negotiation rather than force. To protect human rights in the real sense initiative ought to be taken by the Government. The use of force is not only the way to solve the burning problem of the state.

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