

ARMED FORCE (SPECIAL POWERS)ACT, 1958: A LEGAL ANALYSIS

Keerthana DS⁶³⁰, Shivpriya Anil⁶³¹ & Shreya Pola⁶³²

INTRODUCTION

Post independence, the list of legislations passed by the government, both state and central, on anti-terrorism is staggering. The Armed Forces (Special Powers) Act (AFSPA) passed in 1958 was one of the first anti-terrorist legislations enacted by the central government to counter the insurgent movements in the north-east.

AFSPA was enacted to bring under control, the areas that the government recognized as “disturbed”. AFSPA empowers the Governor of the state, or the Central Government to declare any part of the state as a ‘disturbed area’, if in its opinion there exists a dangerous situation in the said area that makes it necessary to deploy armed forces in the region.

Originally, it came into being as an Ordinance in 1958 and within months was repealed and passed as an Act. However, this was meant only for Assam and Manipur, where there was insurgency by Naga militants. After the northeastern states were reorganized in 1971, the creation of new states (some of them union territories originally) like Manipur, Tripura, Meghalaya, Mizoram and Arunachal Pradesh paved the way for the AFSPA to be amended.

This act has been very controversial because, like any other anti-terrorist law, it prima facie violates certain liberties and basic rights of the citizens as it is applicable without any accountability. This Act has been facing a lot of resistance from various Human Rights groups due to the provision of sweeping powers and immunity to the army in these “conflict-ridden” or “disturbed” areas. Irom Sharmila, a public activist, has refused to eat or drink since November 2000 demanding the repeal of AFSPA.

Tripura recently repealed the Act after several rounds of reviewing. This move was hailed by human rights’ activists as paving the way for other states to roll back the Armed Forces Special

⁶³⁰ Student, School of Law, Christ University

⁶³¹ Student, School of Law, Christ University

⁶³² Student, School of Law, Christ University

Powers Act. This Act is currently prevalent in the states of Assam, Nagaland, Manipur, Arunachal, Meghalaya and Jammu and Kashmir.

This paper aims to analyze the Act by tracing its evolution, and goes on to examine the merits demerits of the Act. Also, it seeks to understand the complexities of an act such as the AFSPA. This would help establish a trajectory for the better understanding of AFSPA, thereby helping us reach an informed conclusion on whether the Act is applicable in a democratic country such as India, despite its drawbacks.

EVOLUTION OF ARMED FORCES (SPECIAL POWERS) ACT

After independence, one of the first anti-terrorist legislations passed by the new Indian Government was the Armed Forces(Special Powers) Act of 1958 (AFSPA) which extended to troubled Northeastern states of Manipur and Assam. The origins of this act can be traced back to the Armed Forces(Special Powers)Act of 1948. The Act of 1948 was enacted to replace four ordinances – the Bengal Disturbed Areas(Special Powers of Armed Forces) Ordinance; the Assam Disturbed Areas(Special Powers of Armed Forces) Ordinance; the East Bengal Disturbed Areas(Special Powers of Armed Forces) Ordinance; the United provinces Disturbed Areas(Special Powers of Armed Forces) Ordinance – invoked by the Central Government to deal with the internal security situation in the country in 1947.⁶³³

The Act of 1948 was sculpted from the Armed Forced Special Powers Ordinance of 1942 which was passed by the British on August 15th, 1942 to suppress the ‘Quit India’ Movement. As the title itself indicates, ‘special powers’ were bestowed on ‘certain officers’ of the armed forces to deal with an ‘emergency’.⁶³⁴ The Ordinances provided extensive powers to the officers. Under Section 3 of The Armed Forces (Special Powers) Ordinance, 1942,there was a guarantee of complete immunity to the officers against any action taken up against them. Their acts could not be challenged in the court by anyone unless they had prior permission from the Central Government. Section 2 of the Act provided ‘special powers’ including the use of force (even to cause death) on

⁶³³ *Report of the Committee to Review the Armed Forces(Special Powers) Act of 1958, Ministry of Home Affairs, Government of India, 2005, p 10.*

⁶³⁴ The Armed Forces (Special Powers) Ordinance, 1942, 15 August 1942, at http://indianarmy.nic.in/Site/RTI/rTI/MML/MML_VOLUME_3/CHAPTER__01/452.htm. Accessed on August 28, 2015.

any person who does not stop when challenged by a sentry or causes damage to property or resists arrest.

The Armed Force(Special Powers) Act,1948 was rescinded in 1957, only to be resurrected a year later in 1958. The reason for the Act to be brought back was the deterioration of the internal security in 'unified Assam'. The people from Nagaland who resided in the Naga Hills of Manipur and Assam opposed the merging of their territory with India on the grounds that they were racially and social-politically different from the rest of the nation. They had even voted for a referendum declaring independence in 1951 and boycotted the first general elections in India in 1952. They evidently showed their non-acceptance of the Indian Constitution and began to commit violent acts against the State.⁶³⁵

In order to deal with the rebellion that was taking place, the Assam Government implemented the Assam Maintenance of Public Order(Autonomous District) Act in 1953 in the Naga Hills. This legislation intensified the police action on the rebels. The situation, however, worsened. The Assam Government, in retaliation, deployed Rifles and imposed the Assam Disturbed Areas Act in 1955. This provided a legal framework for the paramilitary forces and the armed state police to combat the insurgency in the region.⁶³⁶

The Assam Disturbed Areas Act was very identical to the Armed Forces Special Powers Ordinance of 1942. Much like the latter, the former gave special powers to officers of the armed force to counter insurgency.

Even after all these developments, the Assam Rifles and the state armed police could not combat the insurgent Naga rebellion. The Nagas formed a parallel government called the Federal Government of Nagaland constituting the Naga Nationalist Council (NNC) on March 22, 1956. This intensified the violence in the Naga Hills. The State Government was incapable of handling the situation and asked for central assistance. Responding to the appeal, the central government sent the army to address the situation and restore normalcy in the region.

⁶³⁵ South Asian Human Rights Documentation Centre, *Armed Forces Special Powers Act* at http://www.hrdoc.net/sahrdc/resources/armed_forces.htm. Accessed on August 28, 2015.

⁶³⁶ Dinesh Kotwal, "The Naga Insurgency: the Past and the Future," *Strategic Analysis*, Vol 24 (4), July 2000, p 751.

The President of India promulgated the Armed Forces (Assam and Manipur) Special Powers Ordinance on May 22, 1958 to confer 'special powers' on the armed forces as well as provide them the legal framework to function in the 'disturbed areas' of Assam and the Union Territory of Manipur.⁶³⁷ A Bill seeking to replace the ordinance was introduced in the Parliament on August 18, 1958.

This Bill faced some opposition. Some members argued that giving such power to the armed forces will lead to the violation of the fundamental rights. Some argued that since the armed forces had been given impunity by the Act, they would be free to function in any manner that they considered suitable.

Nevertheless, after a discussion lasting a total of seven hours, the Bill was passed by both the Houses of Parliament with retrospective effect from May 22, 1958. It received the President's assent on September 11, 1958 and was printed in the Statute Book as The Armed Forces(Special Powers) Act, 1958.⁶³⁸

AN OVERVIEW OF THE ARMED FORCE (SPECIAL POWERS) ACT, 1958

The introduction of the act states that it is enacted to assist state governments which are incapable of maintaining internal stability.

Section 1 of the Act states the name of the Act and the areas to which it extends. This includes Assam, Manipur, Meghalaya, Nagaland, Tripura, Arunachal Pradesh and Mizoram.

Section 2 defines the Act. Section 2(a) defines 'armed forces' as military forces and the air forces operating as land forces, and includes any other armed forces of the Union so operating. This definition is very ambiguous. In the 1958 version of the act, armed forces was defined as the "military forces and the air forces operating as land forces". Section 2(b) defines the term 'disturbed areas' as areas which are, for the time being, listed under section 3 of the act. Lastly, Section 2(c) states that the definition of all those terms that are used in the Act, which are provided

⁶³⁷ *The Armed Forces (Special Powers) Act, 1958* at http://mha.nic.in/pdfs/armed_forces_special_powers_act1958.pdf. Accessed on August 26, 2015.

⁶³⁸ *The Armed Forces (Special Powers) Act, 1958*.

in the Air Force Act, 1950 or the Army Act, 1950 as the definitions which are given to them in the respective acts itself.

Section 3 of the Act grants powers to declare areas to be disturbed. If the Governor of the State or the Administrator of the Union Territory, to which the act extends to, is of the opinion that the whole or part of the State or Union Territory is in a disturbed or dangerous condition to such an extent that the use of armed force or civil power is necessary, then the Governor or Administrator of the State or Union Territory respectively has the power to declare the whole or part of the State or Union Territory as disturbed by a notification in the Official Gazette. This definition was granted to be very vague. The vagueness of this definition was challenged in *Indrajit Barua v. State of Assam*⁶³⁹ case where the court held that “The Governor is empowered to declare any area of the State as “disturbed area’. It could not be arbitrary on ground of absence of legislative guidelines”. Thus, it was exempted from judicial scrutiny.

The 1958 amendment gave power only to the State Government to declare an area disturbed. The 1972 amendment extended the power to declare an area disturbed to the Central Government. The Lok Sabha Debates of 1972, they argued that by extending this power to the Central Government, it would limit the authority of the State Government to do the same. The 1972 amendment clearly shows that Central Government is no longer concerned with the State’s powers. Now, the Central Government has the power to overrule the opinion of the State Governor in declaring an area to be disturbed.

Section 4 deals with the special powers given to armed forces which are granted to the commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces. This provision gives the personnel of the armed force the power to use force for a variety of reasons.

Section 4(a) gives the power to fire upon or use force, even if it results in death, against a person who is acting in contravention to any law and order that is at that time being in force in the disturbed area. The officers are allowed to prohibit, by the use of fire or force as stated above, the assembly of five or more people or the carrying of weapons or of things that are capable of being used as weapons or of fire-arms, ammunition or explosive substances. The officer, however, needs

⁶³⁹ AIR 1983 Del. 514

to be "of the opinion that it is necessary to do so for the maintenance of public order" and give "such due warning as he may consider necessary".

Section 4(b) gives the power to armed force personnel to destroy any property that he detects to be an arms dump or a prepared or fortified place or shelter from where armed attacks are made or likely to be made or attempted to be made. The officer can also destroy any property that is used as training camp for armed volunteers or utilised as a hide-out by armed gangs or absconders wanted for any offence.

Section 4(c) gives the officers, the power to arrest, without warrant, any person who has committed a cognizable offence or even against anybody whom the officer has reasonable basis to suspect that he has committed or is about to commit a cognizable offence. He can also use the necessary force required to effect such an arrest.

Section 4(d) gives the armed force personnel to enter and search without warrant to make an arrest or to recover any property including arms, ammunition and explosives which are believed to be unlawfully kept on the premises. The search can also be administered to recover any person believed to be wrongfully restrained or confined or any property that is believed to be stolen property. This section even permits the use of force to execute such search.

Section 5 of this Act deals with the arrest which are to be made over to the police once completed. Under this section any person arrested and taken into custody under any provision of this act, shall be made over to the officer-in-charge of the nearest police station with "the least possible delay". The phrase "least possible delay" has been left undefined and is left to the discretion of the army personnel.

Section 6 gives complete immunity to the officers who work under this Act. Under this section, no prosecution, suit or legal proceeding can be instituted against any person with respect to anything done or claimed to be done in exercise of the powers conferred under this Act, except with sanction from the Central Government.

WHY THE ACT IS DRACONIAN

The provision of a "license to kill" has steered this Act to incur an odium that no other Act has incurred, both at a national and an international level. AFSPA grants the army, central police

forces, and state police personnel in “disturbed areas” with “certain special powers,” including the right to shoot to kill, to raid houses, and destroy any property that is “likely” to be used by insurgents, and “to arrest without warrant” even on “reasonable suspicion” a person who has committed or even “about to commit a cognizable offence.”⁶⁴⁰ It speaks a lot for the Court’s insensitivity to citizens’ rights in cases where “national security” is involved- that the judgments are short on legal analysis and rich on patriotic rhetoric, which is wholly out of place in judicial pronouncements.⁶⁴¹

Various provisions enshrined in the Indian law have been violated by this Act.

1) Violation of Article 21 of the Constitution

Article 21 of the Constitution guarantees the fundamental right to life.

*“No person shall be deprived of his life or personal liberty except according to procedure established by law”.*⁶⁴²

Since the Maneka Gandhi’s case⁶⁴³, the court has clearly established that the “procedure” must be “just, fair and reasonable”.

Under the provisions section 4(a) of the AFSPA, the power granted to the armed forces personnel to shoot and to kill is a gross violation of the Constitutional right to life. This law is not ‘fair, just or reasonable’ because it endows the armed forces with arbitrary power and allows them to use excessive force. It ignores an officer’s duty to respect the right to life of the citizen, omits this vital injunction and contains instead a carte blanche unheard of in any other statute in any other democracy- “even to the causing of death”.⁶⁴⁴

⁶⁴⁰India’s Controversial Armed Forces (Special Powers) Act by Sudha Ramachandran. Available at <http://thediplomat.com/2015/07/indias-controversial-armed-forces-special-powers-act/>.

⁶⁴¹ Armed Forces(Special Powers) Act: Urgency of Review. *Economic and Political Weekly*, [Online]. Vol. 44, No. 34. Available at: <http://www.jstor.org/stable/25663461> [Accessed 24/08/2015].

⁶⁴² INDIA CONST. part III, art. 21.

⁶⁴³ (1978) 1 SCC 248

⁶⁴⁴Armed Forces(Special Powers) Act: Urgency of Review. *Economic and Political Weekly*, [Online]. Vol. 44, No. 34. Available at: <http://www.jstor.org/stable/25663461> [Accessed 24/08/2015].

2) Violation of Article 14 of the Constitution

Article 14 states 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."⁶⁴⁵ The AFSPA, which is enforced in limited parts of India, "disturbed areas", are denied the protection of the right to life, denied the protections of the Criminal Procedure Code and prohibited from seeking judicial redress, they are also hence denied equality before the law. Residents of non-disturbed areas enjoy the protections guaranteed under the Constitution, whereas the residents of the Northeast live under virtual army rule. Residents of the rest of the Union of India are not obliged to sacrifice their Constitutional rights in the name of the "greater good".⁶⁴⁶ They live under a virtual but undeclared state of emergency and are given no remedy for the injustices they suffer at the hands of the military.

3) Article 22 of the Indian Constitution

*"(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."*⁶⁴⁷

Section 4(c) of the Act⁶⁴⁸ contravenes the above Constitutional provision by providing the armed forces with the freedom to arrest anybody merely on grounds of suspicion that they are going to commit an offence. They are not even required to furnish the details and reasons of the arrest. There is no advisory board to review these arrests and hence, these arrests, which are made without a warrant, violate the preventive detention sections under this Article. The only relief available to this arbitrary provision is the usage of Habeas Corpus. However, habeas corpus cases are only filed for those who have access to lawyers and the court.

⁶⁴⁵ INDIA CONST. part III, art. 14.

⁶⁴⁶ Armed Forces Special Powers Act : A Study in National Security Tyranny. Available at http://www.hrdc.net/sahrdc/resources/armed_forces.htm.

⁶⁴⁷ INDIA CONST. part III, art. 22.

⁶⁴⁸ Section 4, Armed Forces Special Powers Act, 1958.

4) Provisions of the Criminal Procedure Code (CrPC)

Section 130 and section 131 of the CrPC deal with provisions relating to the usage of armed forces for the dispersion of assemblies that have the potential to disrupt public peace. According to these Sections, the Executive Magistrate is given the discretion to command the Armed Forces to take appropriate measures to disperse such assemblies. Here, the armed officers are obliged to ‘use *as little force, and do as little injury to person and property*, as may be consistent with dispersing the assembly and arresting and detaining such persons.’⁶⁴⁹ In a situation where it is not possible to communicate with the Executive Magistrate, any commissioned or gazetted officer of the armed forces is permitted to take requisite actions in order to disperse the assembly. However, if it becomes practicable to communicate with an Executive Magistrate during the course of these actions, the Executive Magistrate may decide upon whether such an action should be continued or not.

Section 4(a) of the Act is a statutory obscenity. By providing any commissioned or non-commissioned officer of the armed forces with the arbitrary power of taking any necessary action to disperse an assembly, even to the extent of causing death, the Act contravenes the provisions illuminated in the CrPC. It has been rightfully called as “license to kill”.

International Law

1) International Covenant on Civil and Political Rights (ICCPR)

India signed the ICCPR in 1978, hence promising to incorporate the provisions and the rights guaranteed by the covenant to all its citizens.

The provisions in AFSPA contravene various rights guaranteed by the covenant. Article 1 states that all people have the right to self-determination. As discussed previously, the AFSPA is a tool in stifling the self-determination aspirations of the indigenous peoples of the North East.⁶⁵⁰

⁶⁴⁹ Section 130(3), Code of Criminal Procedure, 1898.

⁶⁵⁰ An Abomination called AFSPA by Sanjoy Hazarika. Available at <http://www.thehindu.com/opinion/lead/an-abomination-called-afspa/article4404804.ece?ref=relatedNews>

Although Article 4 recognizes the requirement of suspension of certain rights in matters involving national threats, Article 6 enumerates certain non-derogatory rights even in the cases of public emergency and threats to national safety. The greatest outrage of the AFSPA under both Indian and international law is the violation of the right to life, which is elucidated in Article 6 as a non-derogatory right. Under no situation of a state of emergency or internal disturbance, will the suspension of this right be justified. Article 7 of the ICCPR prohibits torture and this is a non-derogatory right as well.

Hence, in the light of the provisions of AFSPA, it can be deduced that the provisions in AFSPA, which permits the infliction of torture⁶⁵¹ to the suspects and power to abolish the right to life⁶⁵² of certain individuals are a grave contradiction to the ICCPR.

WHY THE ACT IS JUSTIFIED

The Act, though it had its own drawbacks, was enacted for just purposes, and was done constitutionally. It was enacted because of the duty imposed on the Union by Article 355 of the Constitution of India. The Article states:

“It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution”

Originally, this Article was passed with the view of regulating federal Centre- State relations. Passing the Act was a measure to counteract insurgency in the north east, and would fall squarely within this provision. The same was contended by the Attorney General in 1991 when the Human Rights Committee questioned the validity of Section 2 of the Act.⁶⁵³ In *Naga People's Movement of Human Rights v. Union of India*, the Supreme Court had to decide the question of the constitutionality of the AFSPA. After confirming the legislative competence of the Union vide Entry 2A of List I of the VI Schedule, the enactment was upheld with the observation that its provisions were enacted in order to enable the Union to discharge the obligation imposed on it

⁶⁵¹ Section 4, Armed Forces(Special Powers) Act,1958.

⁶⁵²*Supra.*

⁶⁵³ Terrorism and Human Rights Laws: A Comment Author(s): U C JHA Source: Economic and Political Weekly, Vol. 44, No. 37 (SEPTEMBER 12-18, 2009), pp. 70-71.

under Art. 355 of the Constitution so as to protect States from grave situations of internal disturbances and to prevent such situations from escalating to such seriousness as would require invoking the drastic measures under Art. 356.⁶⁵⁴ The Court held that by virtue of Article 355, the Union owed a duty to protect the states against internal disturbances.⁶⁵⁵

The Act came into existence after several attempts of the State government to control the Nagas revolt against the unification of their territory with India. The region had always had a sense of disconnect with the rest of the Indian subcontinent. In order to deal with this rebellion, Assam came up with the Assam Maintenance of Public Order (Autonomous District) Act in the Naga Hills in 1953 and intensified police action against the rebels. The situation worsened nonetheless. The government then deployed the Assam Rifles and enacted the Assam Disturbed Areas Act, 1955 which was very similar to the Armed Forces Special Powers Act of 1958.⁶⁵⁶ But neither of the empowered authorities were able to contain the rebellion. On the contrary, the violence spread. The consequence of the State governments request for the Centres assistance is the Armed Forces Special Powers Act, 1958. The Act must be understood in this context. The previously mentioned Acts had not achieved the degree of control they were meant to, and ultimately provisions like the ones in AFSPA came to be of great importance in combating such insurgencies. Deploying the armed forces without powers such as the ones in AFSPA would be detrimental to the cause, as the looming threat of legal proceedings as well as other legal binds would have prevented the armed forces from carrying out their functions to their full capacity. It would demoralise the Armed Forces.

A factor to consider, while specifically dealing with the issue of ‘disturbed’ areas, would be that no part or provision of any Act should be read or understood in isolation, without the object of the Act in mind. The statement of Objects and Reasons of the Act, reiterating the fact that the Act was indeed passed due to a constitutional duty, states that –

⁶⁵⁴ Duty of the Union Under Article 355 of the Constitution - Remembering the Constitutional Ideal of Co-operative Federalism, Jaideep Reddy, 4 NUJS L. Rev. 371 2011.

⁶⁵⁵ *Naga People's Movement of Human Rights v. Union of India* AIR 1998 2 109.

⁶⁵⁶ Dinesh Kotwal, “The Naga Insurgency: the Past and the Future,” *Strategic Analysis*, Vol 24 (4), July 2000, p 751.

"The Armed Forces [Assam and Manipur] Special Powers Act, 1958, empowers only the Governors of the States and the Administrators of the Union Territories to declare areas in the concerned State or Union Territory as "disturbed". Keeping in view the duty of the Union under Article 355 of the Constitution, inter alia, to protect every State against internal disturbance, it is considered desirable that the Central Government should also have power to declare areas as "disturbed" to enable its armed forces to exercise the special powers."

A reasonable and sensible meaning must be found by the use of the text, context, subject-matter, purpose of the statute as a whole, including extrinsic aids or conditions surrounding its enactment and application⁶⁵⁷. The argument for arbitrary scope for declaring 'disturbed areas' is hence weighed against the contention that it is the prerogative of Central Government, as it is the Centre's duty to ensure internal disturbances and external threats. Therefore, if the central government is not given any power to decide what areas would fall under the ambit of the Act, it would not uphold its duty to its true sense.

Various countries have resorted to such laws in time of need. United Kingdom, in the wake of the Birmingham bombings in 1974, enacted the Prevention of Terrorism (Temporary Provisions) Act, 1974, which gave unprecedented Executive and Police power to prevent the spread of the Irish terrorism in Britain. The Act gives powers to the Home Secretary to declare which organizations would fall under the ambit of the Act, and curtails public expression of support to such organizations. It also allows the police to arrest any person who they reasonably suspect that a person is concerned in the commission, preparation or instigation of acts of terrorism.⁶⁵⁸

The most recent example would be the new anti-terrorism law approved by the President of Egypt, Abdel Fattah el-Sisi, which empowers the military and police by granting them legal protection from the use of proportional force in the course of their duties. This is in the wake of growing

⁶⁵⁷ 5 Fordham L. Rev. 219 1936, Contextual Interpretation of Statutes by Frederck J. De Sloovre

⁶⁵⁸ *Supra*.

terrorist activities in North Sinai with the increasing spread of support to the Islamic State of Iraq and Greater Syria (ISIS)⁶⁵⁹. There have already been arrests under this law⁶⁶⁰.

CONCLUSION

The Armed Forces(Special Powers) Act, 1958 clearly violates both domestic and international law. Such violation maybe considered a necessity to combat security challenges and preserve national sovereignty. The continuation of AFSPA in the north eastern states of India indicates the predominance of security mindset of the government without considering the importance of human rights and liberties of its citizens.

The people of north eastern states have suffered decades of sponsored violence under the arbitrary rule of AFSPA. It is a fact that extraordinary powers have been conferred on the armed forces which has been allegedly misused by the military, police and other paramilitary forces to commit gross excesses without any fear of being punished. Despite several protests, review committees and appeals, this act has not been repealed or reviewed. No other act has received this level of odium, domestically and abroad in the United Nations fora, especially in the Human Rights Committee.

According to the authors, therefore, the issue boils down to the idea of utilitarianism as opposed to individual rights and liberties. Liberties, as understood in a practical context, are limited and never absolute. The struggle between order and liberty will always persist, where overstepping on either side would be against the sense of democracy, and thereby becomes a topic of discussion. It is a known fact that in order to curb terrorist attacks, certain rights must be curtailed. So in a modern democratic set up such as this one, which notion would receive greater importance, becomes an important question. The liberties and rights given to citizens are subject to restrictions. These are usually procedures established by law, which are not arbitrary in nature. In this context, the Acts is relevant.

⁶⁵⁹Egypt Adopts Controversial Anti-terrorism Law. Available at <http://www.aljazeera.com/news/2015/08/egypt-adopts-controversial-anti-terror-law-150817042612693.html>. Accessed on August 30, 2015.

⁶⁶⁰Egypt arrests three under new anti-terror law fro spreading Islamic State, available at <http://www.foxnews.com/world/2015/08/23/egypt-arrests-3-under-new-anti-terror-law-for-spreading-islamic-state/>. Accessed on August 31, 2015.

The Act was enacted at a time of great relevance, and has indeed empowered soldiers. The damage that might have been caused had the Armed Forces been denied this power is indeed incomprehensible. The Act, and the powers it conferred on the Armed Forces might have protected the right to life, in its most primal sense, of many, while violating the same right, as understood in Francis Coralie case⁶⁶¹, of many others. It is clear that it was important to give such powers to armed forces. However, there have been a number of human rights violations because of the same.

Due to the same provision, many innocent people have also lost their lives. Houses were captured, women are raped, men are detained without reason, tortured, and sometimes killed. The atrocities can be listed more comprehensively, but to give an idea of the situation, the previously mentioned ones would suffice. We must admit that the provisions, however justly enacted, have failed to retain the true reason behind such enactment. This Act was for the safety of the people in North Eastern regions (originally), and was later extended to Jammu and Kashmir.

The present condition of AFSPA is full of controversies and movements being run against this Act and the demand of a large number of people to repeal the Act. It has made lives of people very miserable. It fosters feelings of alienation amongst the people of the North East, including the ones who may not support the separatist idea of the rebels, as the army of their own country brutally kill the innocent, and rape their women. It is hard to see the future of this act as it is, because of the political complications and other safety requirements the government needs to fulfill. However, the repeal of the Act in Tripura recently, is a ray of hope for the rest of the states. The repeal of the Act may be improbable, and hence the authors opine that in the very least, the Act needs to be reviewed, and should be amended such that the true object of the act resonates among the actions of the armed forces.

⁶⁶¹ Francis Coralie Mullin v. The Administrator, Union Territory of Delhi & Ors, 1981 SCR(2) 516.