

# Special Powers for Armed Forces

## We Need Clarity, not Emotions

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The Armed Forces (Special Powers) Act, 1958, better known as AFSPA, has been brought out of wraps at various opportune times – opportune for those who have either something to gain, i.e. the insurgents in Jammu and Kashmir, political parties always ready to fish in troubled waters, with an eye on electoral gains or those who are regular establishment-baiters, who have made it a habit to take the plunge headlong in any controversy with the belief that if it is against an organ of the government, it needed to be opposed!

Many have called AFSPA a draconian law and have vehemently supported its repeal, but having read quite a few of their views and watched them pontificating on TV, I am convinced that most lack even a rudimentary, let alone in-depth knowledge on the subject. This Act has been in force for over five decades because it was essential for the conduct of smooth counter-insurgency operations by the army. It will continue to be needed as long as the army is employed on counter-insurgency/ terrorism tasks.

The Act was promulgated on September 11, 1958. The rationale for bringing the Act on the statute book needs to be appreciated. When the army was first employed on counter-insurgency tasks in Nagaland in the 1950s, two aspects came to the fore immediately. First, unlike in the case of maintenance of law and order, when the army is called out in ‘aid to the civil authority’, where time is available to employ the police before committing the army, operations against insurgents are entirely of a different genre, as the insurgents do not give any time for such niceties.

The insurgents we are fighting today are heavily armed, they act speedily, commit heinous crimes and disappear. Unless the army counters such actions

with speed and not wait for orders from higher civil or military authorities, nothing would be achieved.

Secondly, the soldiers and officers of the army had to be protected from prosecution for consequential action taken against insurgents in good faith as part of their operations. Here too, the Act does contain the important caveat that the army personnel can be prosecuted with the Centre's sanction, if their actions warrant it. There is, therefore, no blanket immunity from the laws of the land.

Over the years, some army personnel have indeed been prosecuted where a prima facie case existed. However, it is also true that due to the exceptional care which all army commanders take when their troops are employed against insurgents, such cases are few and far between. After the initial employment in Nagaland, the employment of the army on counter-insurgency tasks continued increasing, till it was progressively employed in all the north-eastern states for such tasks. Along with such employment, AFSPA was also invoked in all affected states.

When insurgency erupted in Srinagar in 1990, the Act was extended to the Valley. Later, as the activities of the insurgents spread, first to the Poonch-Rajauri area, then to Doda and Bhadarwah and finally to the whole state, the entire state was brought under the Act's purview in stages. It can thus be seen that AFSPA was invoked progressively only when the situation required the deployment of the army.

The army is designed and structured for fighting external enemies of the nation. Consequently, they are not given any police powers. However, when the nation wants the army to conduct counter-insurgency and counter-terrorist operations, then they must be given the legal authority to conduct their operations without the impediment of getting clearances from the higher authorities. If this is not done, they would be unable to function efficiently and defeat the insurgents and terrorists at their own game. It is for this reason that the Act gives four powers to army personnel. These are for 'enter and search', 'arrest without warrant', 'destroy arms dumps or other fortifications' and 'fire or use force after due warning where possible'. Once again, there is a safeguard in the Act, which stipulates that the arrested person(s) will be handed over speedily to the nearest police station.

The law stipulates that AFSPA can be imposed only after the area in question is declared a 'disturbed area' by the state government concerned. When this writer was the Director-General Military Operations (DGMO) and the army was asked to deploy in the Doda-Bhadarwah area, we requested for the invocation of the Act. The state government was reluctant to do so on

account of political considerations, but we did not commence operations till the Act was invoked.

Clearly, the Army has no desire to get embroiled in counter-insurgency tasks. It is not the army's job. However, despite over 50 years of insurgency in our country, the state police as well as the central police forces (CPOs) have not been made capable of tackling insurgency. Consequently, in each case the army was inducted to carry out counter insurgency/ terrorist operations. If the national leadership tasks the army for conducting such non-military operations, then it is incumbent on the leadership to provide the legal wherewithal to all army personnel employed on such tasks.

It is only then that the operations will be conducted in the usual efficient manner of the army and would be result-oriented. They also must be legally protected. It is because these two aspects have been catered for that the army has been neutralising the insurgents and terrorists, so that normalcy is restored and the political leaders and officials can restart governing.

Source: <http://www.tribuneindia.com/2010/20100711/edit.htm#3>