

VIOLATION OF HUMAN RIGHTS

IN NORTH - EAST INDIA
(an armed conflict situation)



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Gaikhamsin Riamei

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We are receiving the information on the violation of human rights all over the world. India's position is better after the USA as explained by some human rights organizations. Several states are facing the brunt of violation of human rights in the hands of administration in one way or other. We are a largest democracy in the world have right to enjoy our rights and duties properly.

The stories about north eastern state of the country are hair raising as several violent groups, tribal armies and local parallel administrative councils have come out into existence. This has ruined the whole administration structure in the region. The army and local administration should establish a rule of law and provide a sound platform for the human rights activities in the region. Author has successfully explained the problems of the people of the north east India into a justified way. The book is a storehouse of knowledge on the human rights in the north eastern states.

ISBN- 978-81-8116-042-3

About The Author



Born in 1981 at Soubunglong Village, Tamenglong District, Manipur, Gaikhamsin Riamei is the last son of late Mr. Tingkuguang Riamei.

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He had been one of the active student activists in various capacities gaining rich experiences in student extra-curricular activities. At present he is a Guest Lecturer at the Centre for Human Rights and Duties Education, Manipur University.

To his credit he has participated in various academic activities notably Summer Internship Programme conducted by the NATIONAL HUMAN RIGHTS COMMISSION, New Delhi, and sixth Summer Course on International Law conducted by the Indian Society of International Law respectively in 2007. The present book is an enlarged and modified version of a project work of the Summer Internship Programme of **NATIONAL HUMAN RIGHTS COMMISSION**, New Delhi. He has zest for quality education with untiring efforts.

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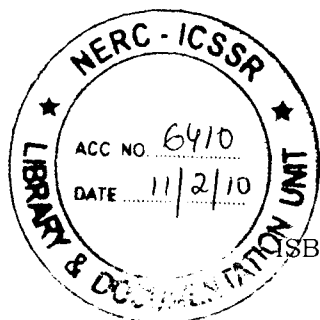
MAXFORD BOOKS

New Delhi-110 002

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Violation of Human Rights in North-East India

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First Edition 2010

ISBN : 978-81-8116-042-3

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005410

Published by:

MAXFORD BOOKS

Sales Office: 4264/3, IInd Floor, Ansari Road, Daryaganj,
New Delhi - 110 002

Ph.: 011-65156284

Regd. Office: 95, Medha Apartments, Mayur Vihar, Phase-I
Delhi - 110091

Ph.: 011-22743537

E-mail : maxfordbooks@hotmail.com

Printed at: Ashim Printline, Delhi-92

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CHAPTER 1

INTRODUCTION

Violation of human rights in conflict situation implies two things. First, the emergence and continuing law and order problems in a given society or region. Secondly, the enforcement of particular Act intended to contain the problem. The North Eastern region, particularly after Indian independence, has undergone tremendous changes in terms of administrative structures, democratic politics, socio-economic transformation, etc. The changes did not bring about only positive changes but also negative ones as well. The latter were the direct outcome of the split of old order in the region. For the split of old order without suitable socio-political arrangement in line with region-specific was often resisted by certain section of the people. The resistance they offered was not in constitutional manner but exhibited in outlawed one. As a result, there emerged law and order problem in the region starting from Naga-Hills since the latter half of 1940s, and similar experience was also witnessed in Mizoram in 1960s and Assam, Manipur, in 1970s. Finally state like Tripura, Meghalaya, etc. have had similar law and order problems. Moreover, there has been trend of increasing ramification of insurgency outfits in those states particularly since 1980s onwards. While these problems were previously considered law and order problems, they were now treated as one of more political nature. The enforcement of draconian law was resulted from the former perception of the problems.

The enforcement of Armed Forces (Special Powers) Act, 1958

in North-East in response to increasing law and order problems may be considered from certain counts in the light of the above mentioned background. One can begin with it by asking whether the application is relevant to the problems, which are more of political in nature. It is now increasingly realized that the endemic problems infesting the northeastern India are not mere law and order problems experienced in other parts of India. In fact, many of the insurgency problems are deeply rooted in political ideology of liberation. Therefore, effort for removal or repeal the Act seems to depend upon how one perceives the problems. Secondly, the question that whether the Act is efficacious in counter-insurgency or not. It seems that the Act, which was previously enacted to contain law and order problems in pre-independence days and further amended it for similar object seems to be unsuitable in insurgency situation. The pertinent question to ask in this connection is that; Has the enforcement of the Act contained insurgency problem in the past decades? If not the Act is impotent for the insurgency problems and designed for true law and order situation. The question, which seems to be pertinent to put in the discussion on enforcement of the Act, is: Which sections of the Act are potentially violative of Human Rights and the Fundamental Rights of Indian constitution? The above mentioned factors and perceptions were responsible for the enforcement of Armed Forces (Special Powers) Act 1958, beginning from 1960s in Ukhrul, Manipur.

There is a statistical figure of increasing instances of Human Rights violation particularly in Northeast. Since excessive military power is exercisable under the Act in particular situation, security forces often failed to go themselves with restraints and thereby committed different forms of violations of human rights. Of the instances of human rights violations, rapes, shootings, etc. are most condemnable. For such crime when committed, should not ever be related to insurgency or law and order problems. Why should girls and housewives be the target of armed security forces? Any personnel of security forces completely forget the similar fate of their rape victims if it falls on their own sisters or wives at the hands of other beastly fellows. Or perhaps they have also forgotten the fate of the victims of their torture or extra-judicial

killings if similar measure is meted out to the security personnel by their enemies. No military excesses ever serve expected purpose in arm conflict situation. What the Indian military should know is the principle that: a firm deal to enemies but soft deal to the public. Many military successes are possible through lawful dealings. In other words military can effectively carry out their mission through the cooperation of the public. Military civic programs speak of the fact. But these beautiful ventures are often marred by the military excesses in the region.

By logic the enforcement and its extension of AFSPA in Northeast is done on account of insurgency problems in the region. As has been stated earlier that insurgency issue is not mere law and order problem. This truth is not known to many except some military high ups and to political leaders. The insurgency problems may be said to be directly responsible for present complicity in human rights issue. Therefore, there should be continuing efforts, vision, plan to end insurgency problem politically. While it creates law and order problem, its goal is political. For insurgency is usually a political movement.

In dealing with human rights violation, institutions like Human Rights Commissions, rights bodies operating in the region and country, have vital role to play. The Commissions should be given more and fitting powers to deliver justice to the people. Therefore, there should be well coordination between concerned legal authorities of the civil and that of the military. Mutual prompt cooperation between them is desired in delivering justice. For justice delayed is not only justice denied but justice delayed is crimes encouraged in such situation. Restraint theory of crimes is not outdated. It has practical truth. At the same time there must be well coordination among different strata of Rights bodies operating at different levels. And there must be widespread diffusion of rights bodies to fight for human rights with a collective objective- protection of human rights at all-cost irrespective of region, communities, etc.

There is contradiction existing in AFSPA against Art 13(2) of Indian Constitution. The latter reads: the state shall not make any law,

which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall, to the extent of contravention, be void. The Act with sweeping power under its different sections violates important provisions of Articles. Why had not the Act (AFSPA) been made void?

The sweeping power enjoyed by security forces under the Act in disturbed area is stated in section 4(a) "Any commissioned officer, warrant officer, non commissioned officer or any other person of equivalent rank in the armed forces can, for the maintenance of public order shoot any person dead if any person found violating any law or order for time being in force in disturbed area". The clause (a) is violative of Article 21 of the Indian Constitution. For according to the Article no "personal shall be deprived of his life...except according to procedure established by law". There is a paradox in the expression "procedure established by law". For any Acts, including AFSPA, enacted by the Parliament becomes a procedure established by law. But as to the interpretation of the expression the procedure is understood in terms of reasonableness, fairness and justness needed to satisfy the Article 21. So according to D.D. Basu, "In sum, today, procedure established by law, no longer means any procedure enacted by the Legislature; to satisfy the requirement of Article 21, it must be reasonable, fair and just". Now, the question is whether the prescription found in the Act, made by Parliament is just or fair or reasonable for the provision of Article 21? If not AFSPA contravenes the Article 21 of the Indian Constitution.-

Again, under Section 5. of Armed Forces (Special Powers) Act, 1958 security forces with their own deliberate reason(s) abused Human Rights violating Article 22 of Indian Constitution. While the Section makes crystal clear that the arrested person(s) is handed over to nearest police station with "the least possible delay together with a report of the circumstances occasioning the arrest". The abuse of this provision given in the Section leading to violation of human rights comes in the forms of extra-judicial execution, disappearance, sex crimes, non-submission of arrest memos, etc. This nature of violation is in

contravention of Article 22 of the Constitution. Article 22(1) gives the least limit for delay to detain the arrested person and clause (2) gives the limit (24 hours) within which the arrested should be produced. The Section 5 of the Act gives no provision for detention. So, any detention or any rights violations consequent upon the detention, etc do all violate Article 22 of the Indian Constitution.

Finally, the provision of legal protection meant for the arrested given under Section 6 is highly subjective and contravenes Article 32. The Section includes obligatory binding in the form of obtaining prior sanction of the Central Government for any legal act to be instituted against the arrested. This is subjective because the fate of the arrested is determined by the "sanction". This sanction may not always be legal or lawful. It may be political or biased. Again, remedies for the violation of rights arising from the Section come under Article 32. But the Section of the Act denies constitutional remedies for the aggrieved by denying them to prosecute, to file suit or to take up legal proceedings against armed forces without the "Sanction" of the Central Government. For the Section reads: No persecution, suit or other legal proceeding shall be instituted, except with the previous sanction in respect of anything done or purported to be done in exercise of the powers conferred by sanction of the Central Government against any person. In addition to the complicity of subjectivity the idea created by the "Sanction of the Central Government", blanket protection given to security forces empowers them to commit Human Rights violation under any pretext or unjustified grounds.

Against the backdrop of rampant human rights violation by the Security Forces under the Act, there were proposal for the repeal of the Act. As has been pointed out, the ground for the enforcement of the Act was insurgency problem and by viewing the problem as law and order problem. Since this standpoint is not accepted to be empirically true, it is high time to review the Act in the light of the report of Jeevan Reddy.

In armed conflict situation, the question of winning public confidence appears to be most vital issue. In such situation two actors-

state law-enforcing agencies and the outlawed groups, are trying to seek cooperation of the public while aiming at achieving their object. So, the question is: Who wins public confidence? Either party with the confidence can do great harm to its enemy(s) and achieve party's object. Such reality may be exploited to one's advantage. Therefore, how far one party honors human rights is one of the vital factors for winning public confidence. Experience tells us that security forces do not honor human rights. There was rampant violation of human rights, which bred more sense of alienation among the affected. Feeling of disliking grown upon rapes, tortures, killings, etc. People do take security forces as agents of mainland India who can do fatal harms to innocent public of the region. So, even if they do not perfectly subscribe to separatist or secessionist ideology, they are hardly in good terms with security forces. Scarce, suspicion reign supreme in the mind of the masses. Their mindset is often physically justified by repeated human rights violation by security forces and thereby security forces fail to enjoy public confidence.

Now, if rampant Human Rights Violation causes loss of public confidence in law-enforcing agents, the question of extension of AFSPA in this region should be discussed. For the issue creates certain paradox. While the enforcement of the Act is to curb law and order problem, new serious nature of problem comes to stay. There is an unmistakable element that the Act is inept or irrelevant to deal with insurgency problem. One simple proof is that human rights of an innocent citizen can easily be violated in armed conflict situation. Such person or the people can never feel the violation justified for the sake of insurgency. Why should an innocent man or woman suffer the atrocity vicarious of lawless person? Such natures of crimes committed against the innocents fail to serve the purpose to contain insurgency problem.

In this discussion therefore we proposed to include the study of the historical background of the passing of the Armed Force (Special Powers) Ordinance, 1942, Armed Force (Special Powers) Act, 1958, AFSPA Amendment Act, 1972, etc. The discussion highlights the rationale or justification for passing the Acts and their limitations, etc.

The enforcement of the Act (AFSPA) and its consequences led to the passing of the Protection of Human Rights Act, 1993. The importance and its power are examined in the light of problem cropped up in armed conflict situation particularly in North-East and Jammu and Kashmir since 1960s. Towards the protection of human rights, India has established statutory autonomous bodies—both at national and regional levels.

This landmark development is discussed focusing on its structural and procedural contents and their roles in protecting human rights in India. And special attention is paid to State Human Rights Commission, Manipur. The discussion is also done in the lights of protective provision given by International Human Rights bodies.

A special focus on north-east insurgency tangles is made highlighting historical background of their growth, emergence of law and order problem through the operation of insurgents in the region, ineptness of AFSPA to contain insurgency problem, etc. Finally, attention is drawn to all concerned that insurgency is not mere law and order problem but a political problem. Wrong perception of the latter is a responsible factor for the imposition of Armed Forces (Special Powers) Act, 1958 in north-east and Jammu & Kashmir.

Then the discussion on actual violation of human rights forms the most important part of present study. The discussion traces all known instances of the violation starting from 1960s in Manipur and then in north-east. The discussion is held under separate heads like rape, torture, killing, disappearance, massacre, etc. The problem of human rights violation in Jammu & Kashmir is also briefly studied. In our analysis, it is found that the innocents bore the brunt of the military excesses in the period under study. The study period covered between 1960–2004. The study is concluded with observations.