

**REPORT OF THE
COMMITTEE TO REVIEW THE
ARMED FORCES (SPECIAL POWERS)
ACT, 1958**

**GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS**


2005

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**THE COMMITTEE TO REVIEW THE ARMED FORCES
(SPECIAL POWERS) ACT, 1958.**

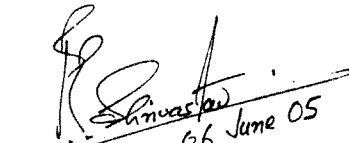
The Report of the Committee is submitted for kind consideration.



6-6-2005

Dr. S.B. Nakade

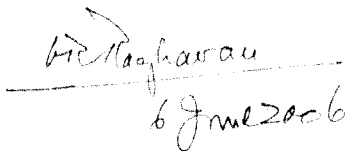
Member



66 June 05

P.P. Shrivastav

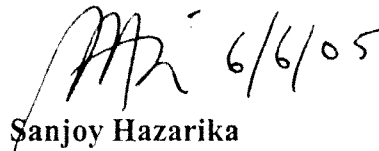
Member



6 June 2006

Lt. Gen. (Retd) V.R. Raghavan

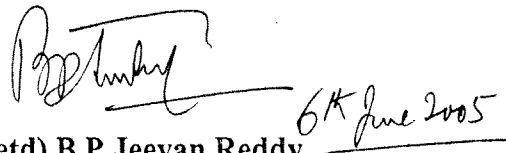
Member



6/6/05

Sanjoy Hazarika

Member



6th June 2005

Justice (Retd) B.P. Jeevan Reddy

Chairman

PART-I
INTRODUCTION

Background

In the wake of the intense agitation launched by various civil society groups in Manipur following the death of Kr. Th. Manorama Devi on 11.7.2004 while in the custody of the Assam Rifles, and the earlier indefinite fast undertaken by Ms. Irom Sharmila since 2001 demanding repeal of the Armed Forces (Special Powers) Act, 1958 (hereinafter referred to AFSPA), the Union Home Minister visited Manipur in September 2004 and reviewed the situation with the officers of the State Govt. and the Security/Intelligence agencies. During this visit Apunba Lup and many delegations and citizen groups raised a demand for revocation of the AFSPA. There were other groups who demanded a review of the Act or favoured retaining the Act. During the visit of the Prime Minister to Manipur in November 2004, several organizations including the Apunba Lup and many other individuals met the Prime Minister with similar pleas. The Prime Minister assured them that the Central Govt. would consider their demand sympathetically.

2. The Central Government, accordingly, set up a 5-Member Committee (vide Ministry of Home Affairs Office Order No. 11011/97/2004-NE-III dated 19th November, 2004 – Copy at **Annexure-I**) under the Chairmanship of Justice B.P. Jeevan Reddy, former Judge of the Supreme Court with the following four Members: -

- (a) Dr. S.B. Nakade, Former Vice Chancellor and Jurist.
- (b) Shri .P. Shrivastav, IAS (Retd), Former Special Secretary, MHA
- (c) Lt Gen (Retd) V.R. Raghavan, Former DGMO.
- (d) Shri Sanjoy Hazarika, Journalist.

3. The terms of reference for the Committee are as follows: -

"Keeping in view the legitimate concerns of the people of the North Eastern Region, the need to foster Human Rights, keeping in perspective the imperatives of security and maintenance of public order to review the provisions of the Armed Forces (Special Powers) Act, 1958 as amended in 1972 and to advise the Govt. of India whether-

(a) To amend the provisions of the Act to bring them in consonance with the obligations of the Govt. towards protection of Human Rights; or

(b) To replace the Act by a more humane Act.

The Committee may interact with representatives of social groups, State Governments and concerned agencies of Central Govt./State Govt. legal experts and individuals, as deemed necessary by the Committee in connection with the review of the Armed Forces (Special Powers) Act, 1958 as amended in 1972.

The Committee will meet as often as required and visit the North Eastern region, if felt necessary".

Deliberations of the Committee and its interaction with stakeholders:

4. The Committee held its first meeting on 24.11.2004 and second meeting on 26.11.2004 and deliberated on its terms of reference of the Committee and procedure to be followed for its work. In its third meeting held on 8.12.2004, it was decided to

call for representations from the general public. A notice was published in all the national dailies and regional papers on 10.12.2004, which, inter-alia read as under: -

"The Committee has decided to call for representations on whether it should be recommend to the Government of India to:

(i) amend the provisions of the Act to bring them in consonance with the obligations of the government towards protection of Human Rights.

Or

(ii) replace the Act by a more humane legislation.

The Committee invites individuals, organisations, parties, institutions and all non-governmental organisations interested *in* the issue to send their responses within 30 days at the above address.

The Committee proposes to visit the North-East beginning with Manipur on 27th December, 2004. The timings and venue of the meetings of the Committee shall be intimated later. All those interested are invited to present their views in writing as well as in person on the dates to be specified in due course through the media".

5. The office and other infrastructure of the Committee came up much later during the last week of December 2004. The Committee paid its first visit to Imphal (Manipur) from December 27 to 30,2004. A section of Apunba Lup had given a call to

boycott the visit of the Committee. Despite the boycott call, a large number of individuals, groups, organizations and lawyers appeared before the Committee and expressed their views on the AFSPA freely. The GOC 17 Mountain Div. Imphal also gave a detailed presentation on the existence of various militant underground outfits and the role of the Army in containing the insurgency. He justified the powers and protection given to the Armed Forces under the AFSPA.

6. During the second visit of the Committee to Manipur, it visited the hill districts of Manipur viz. Senapati and Churachandpur on April, 20 to 23, 2005. At these hearings, representatives of Nagas, Kukis, Zomis, Paites, and other ethnic groups appeared before the Committee and made written and oral submissions.

7. The Committee visited Agartala in Tripura on February 8, 2005. A few groups appeared and represented their views.

8. In Assam, a large number of people holding different shades of opinion appeared before the Committee at Guwahati on Feb. 9 & 10, 2005. Groups of Lawyers, University students, individuals and some tribal groups appeared before the Committee, seeking the repeal of the Act. At Dibrugarh (April 24/25, 2005), scholars and teachers from the Dibrugarh University as well as professionals and business representatives expressed their views favouring repeal of the Act.

9. In Meghalaya, (Shillong - Feb. 11, 2005), the Director General Assam Rifles, gave a presentation on the need for retaining the AFSPA. A few citizen groups and individuals appeared at the hearings and expressed their views. The Act is applicable only in a 20-Kilometer belt along the Assam border as per the notification issued by the Central Government.

10. In Nagaland (Kohima – March 21 & 22, 2005), the Civil Society groups which appeared before the Committee strongly demanded the repeal of the Act. The Naga Hills (then in Assam) was the first area to which the Act was applied in the year 1958 to tackle insurgency. Several senior officials of the State Government appeared and asked for the repeal of the Act. Earlier on March 21, the DIG-Assam Rifles briefed the Committee on the current situation in the State and favoured the retention of the Act.

11. In Arunachal Pradesh (Khonsa – April 25, 2005), the Commandant of the Assam Rifles and the Supdt. Of Police of Tirap district recommended the retention of the Act, which was applicable only to the two eastern districts of Tirap and Changlang, which have been declared as “disturbed areas”. A senior police official expressed his view that some areas of Lohit district should also be brought under the purview of the Act.

12. The Committee organized public hearings at Delhi (Jan. 19-21, 2005) where a large number of individuals, groups, NGOs and Human Rights’ groups appeared before it. Most of them demanded the repeal of the Act. In addition, the Committee was briefed by the Army Headquarters Delhi on 7.3.2005 by HQ Eastern Command (Kolkata) on Feb. 7, 2005), and by H.Q. BSF on May 7. 2005). The DG, CRPF, conveyed views of the organization on January 21, 2005. All these Forces favoured the retention of the Act or, at any rate, to provide a legal mechanism defining their powers during such operation and to provide for necessary safeguards. Four State Governments, viz. Assam, Arunachal Pradesh. Meghalaya and Mizoram also conveyed their views in writing. While the Governments of Assam and Arunachal

Pradesh favoured the retention of the Act, the other two State Governments felt that there is no need for the Act any more.

13. The Committee held 13 meetings, 17 public hearings and received briefings from 7 State agencies on the Act. In all, 54 individuals, 51 organizations and 5 political parties submitted their views to the Committee at various public hearings. There were 169 men and 27 women who appeared before the Committee at various places in the North-East and at New Delhi. We must say that while an overwhelming majority of the citizen groups and individuals pleaded for repeal of the Act, they were firmly of the view at the same time, that the Army should remain to fight the insurgents. When explained that the continuance of Army's operations would require a legal mechanism, quite a few of them agreed but suggested that such a mechanism should duly take into account the need to protect the rights and interests of citizens as also of the State. Factual data regarding the meetings, hearings and representations made by individuals, Civil Society groups, Human Rights organizations, etc. is available at **Annexure II**.

PART II

Legal and Constitutional Aspects

CHAPTER-I

To meet the situation arising in certain parts of India on account of the partition of the country in 1947, the Government of India issued four Ordinances viz., the Bengal Disturbed Areas (Special Powers of Armed Forces) Ordinance, 1947 (Act 11 of 1947); the Assam Disturbed Areas (Special Powers of Armed Forces) Ordinance, 1947 (Act 14 of 1947); the East Punjab and Delhi Disturbed Areas (Special Powers of Armed Forces) Ordinance, 1947 (Act 17 of 1947); and the United Provinces Disturbed Areas (Special Powers of Armed Forces) Ordinance, 1947 (Act 22 of 1947). These Ordinances were replaced by the Armed Forces (Special Powers) Act, 1948 being Act 3 of 1948. It is not necessary for us to notice the provisions of this Act for the reason that it was a temporary statute enacted for a period of one year, though it continued till it was repealed by Act 36 of 1957.

2. The present Act was enacted by the Parliament in 1958 and it was known initially as Armed Forces (Assam and Manipur) Special Powers Act, 1958. The Act was preceded by an Ordinance called Armed Forces (Assam and Manipur) Special Powers Ordinance, 1958 promulgated by the President of India on 22-5-1958. The Act applied to the entire State of Assam and the Union Territory of Manipur. After the new States of Arunachal Pradesh, Meghalaya, Mizoram, and Nagaland came into being, the Act was appropriately adapted to apply to these States. The Act has not been made applicable to any other State in the country.

3. Some observations regarding the situation obtaining in the North-east may not be out of order before referring to the feedback received from each State.

4. The Committee feels that agitations such as those in Manipur and elsewhere are merely the symptoms of a malaise, which goes much deeper. The recurring phenomena of one agitation after another over various issues and the fact that public sentiments can be roused so easily and frequently to unleash unrest, confrontation and violence also points to deep-rooted causes which are often not addressed. Unless the core issues are tackled, any issue or non-issue may continue to trigger another upsurge or agitation.

5. The present ground realities need to be viewed in the context of the geo-political, socio-economic and ethnic factors as well as cultural traditions to understand the concerns of different sections of society and finding ways of coming out of the current impasse.

6. As originally enacted, the power to declare an area to be a 'disturbed area' was conferred only upon the State governments. By Act 7 of 1972, however, such a power was conferred concurrently upon the Central government. The reason for conferring such a power upon the Central government is stated in the 'Objects and Reasons' appended to the Bill, which reads thus: "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 of 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."

7. The Preamble to the Act, as amended, reads as follows:

"An Act to enable certain special powers to be conferred upon members of the Armed Forces in disturbed areas in the State of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura."

Sub-section (2) of Section 1 the Act applies the Act to the States mentioned in the preamble. Section 2 defines the expressions 'Armed Forces' in clause (a) and 'disturbed areas' in clause (b). They read as follows:

"(a) 'Armed Forces' means the military force and the air force operating as land forces and includes any other armed force of the Union so operating.

(Thus the Armed Forces established and maintained by the Union also fall within this definition.)

"(b) 'Disturbed area' means an area which is for the time being declared by notification under Section 3 to be a disturbed area."

Clause (c) of Section 2 says that all other words and expressions used in the Act but not defined, but defined in the Air Force Act, 1950 or the Army Act, 1950 shall have the meanings respectively assigned to them in those Acts.

8. Section 3 of the Act reads as follows:

"Power to declare areas to be disturbed areas. —If, in relation to any State or Union Territory to which this Act extends, the Governor of that State or the Administrator of that Union Territory or the Central Government, in either case, is of the

opinion that the whole or any part of such State or Union Territory, as the case may be, is in such a disturbed or dangerous condition that the use of armed forces in aid of the civil power is necessary, the Governor of that State or the Administrator of that Union Territory or the Central Government, as the case may be, may, by notification in the Official Gazette, declare the whole or such part of such State or Union Territory to be a disturbed area”.

9. Under this Section, if the Government of the State to which this Act applies is of the opinion, that whole or any part of such State is in such a disturbed or dangerous condition that the use of armed forces in aid of civil power is necessary, it may, by a notification published in the official gazette, declare the whole of the State or part of the State to be a 'disturbed area'. Such a power can also be exercised by the central government by virtue of the 1972 Amendment Act. This Section, however, does not specifically say either that the Governor may, after issuing a declaration, request the Union government to depute the armed forces nor does it say expressly that the central government may, on issuance of a notification under the Section, depute armed forces to the State to act in aid of the civil power. Probably, these steps were thought to be implicit in the situation.

10. Section 4 enumerates the special powers of the armed forces, which are deployed in a State or a part of the State to act in aid of civil power. The Section reads as follows:

“ *Special powers of the armed forces.* —Any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces may, in a disturbed area, —

(a) if he is of opinion that it is necessary so to do for the maintenance of public order, after giving such due warning as he may consider necessary fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of firearms, ammunition or explosive substances;

(b) if he is of opinion that it is necessary so to do, destroy any arms dump, prepared or fortified position or shelter from which armed attacks are made or are likely to be made or are attempted to be made, or any structure used as training camp for armed volunteers or utilised as a hideout by armed gangs or absconders wanted for any offence;

(c) arrest, without warrant, any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest;

(d) enter and search without warrant any premises to make any such arrest as aforesaid or to recover any person believed to be wrongfully restrained or confined or any property reasonably suspected to be stolen property or any arms, ammunition or explosive substances believed to be unlawfully kept in such premises, and may for that purpose use such force as may be necessary."

11. Under this Section, various powers are conferred upon any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces. Of

course, these powers are available only in an area notified as 'disturbed area' under Section 3. The power conferred by clause (a), can be better appreciated, if its essential ingredients are separately set out:

"(i) Where there is in force, in the disturbed area, a law or an order prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire arms, ammunition or explosive substances;
 (ii) and a person is acting in contravention of any such law and order,
 (iii) any officer of the armed forces of the above named rank, may, if he is of the opinion that it is necessary so to do for the maintenance of public order, after giving such due warnings as he may consider necessary, fire upon or otherwise use force even to the causing of death of such person."

12. It is thus clear that according to clause (a) of Section 4, the power to fire upon the persons is not unregulated or absolute. Such a power comes into play only where the ingredients mentioned under (i) and (ii) are satisfied and furthermore where such officer of the armed forces is of the opinion that it is necessary to fire upon such person(s) or to otherwise use force against such person(s) for the purpose of maintaining public order. It goes without saying that the 'opinion' must be formed honestly and fairly.

13. Clause (b) is of course independent of clause (a). The requirement of a law or an order prohibiting the assembly of five or more persons referred to in clause (a) is not necessary for acting under clause (b). Under this clause, the officer of the armed forces is empowered to destroy any arms dump or other

fortified position / shelter or any structure mentioned in the clause, if he is of the opinion that "it is necessary so to do". Though the clause expressly does not say, it necessarily means that such a course or action is necessary for effectively discharging their duties.

Clause (c) confers upon an officer of the armed forces the power to arrest any person, without warrant, who has committed or who is reasonably suspected to have committed a cognizable offence. Such power of arrest can also be exercised to prevent a person who is 'about to commit a cognizable offence'. This power is comparable to the power conferred upon a police officer by clause (a) of Section 41 of the Code of Criminal Procedure. For effecting such arrest, the officer of the armed forces is also empowered to use such force as may be necessary. This power, however, is circumscribed by Section 5, which says that any person arrested and taken into custody under this Act shall be made over to the officer-in-charge of the nearest police station "with the least possible delay, together with a report of the circumstances occasioning the arrest". The words "with the least possible delay" in Section 5 appear to have raised a doubt in the minds of some persons that this may even exceed 24 hours. We do not think there is any basis for such a doubt inasmuch as clause (2) of Article 22 of the of the Constitution of India does cast such a duty. Indeed, the said clause in the Constitution confers a right upon the person arrested and detained in custody to be produced before the nearest Magistrate within a period of 24 hours of such arrest excluding the time necessary for journey from the place of arrest to the court of Magistrate and further declares that such person shall not be detained in custody beyond the said period without the authority

of a Magistrate. The constitutional right so conferred upon the person arrested is available whether the arrest is made by an officer of the armed forces or by the police. It is, therefore, clear beyond doubt that a person arrested under clause (c) of Section 4 has to be produced before a Magistrate within 24 hours excluding the time taken for journey from the place of arrest to the court of Magistrate. To put it more clearly, the person arrested under clause (c) of Section 4 has to be produced before a Magistrate within 24 hours of his arrest (excluding the time taken for journey) and it is within this period that the officer of the armed forces who made the arrest shall hand over the person to the police and the police shall produce the person before the Magistrate. In this connection, it would be appropriate to notice Article 33 of the Constitution of India, which, as amended in 1984, reads as follows:

"Power of Parliament to modify the rights conferred by this Part in their application to Forces, etc -

Parliament may, by law, determine to what extent any of the rights conferred by this Part shall, in their application to, -

- (a) the members of the Armed forces; or
- (b) the members of the forces charged with the maintenance of public order; or
- (c) persons employed in any bureau or other organisation established by the State for purposes of intelligence or counter-intelligence; or

(d) persons employed in, or in connection with, the telecommunication system set up for the purpose of any Force, bureau or organisation referred to in clauses (a) to (c); be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them.

14. Under this clause, the Parliament is empowered to make a law determining "to what extent any of the right conferred by this Part shall, in their application to (a) the members of the Armed forces or (b) the members of the armed forces charged with the maintenance of public order", be restricted or abrogated so as to ensure the proper discharge of their duties. But it is not brought to our notice that the Parliament has chosen to make any such law modifying or qualifying the right conferred by clause (2) of Article 22 upon the person arrested where he is arrested by the members of the Armed forces or of the Forces charged with the maintenance of public order. It is, therefore, clear that the right conferred by clause (2) of Article 22 upon a person arrested to be produced before the Magistrate within 24 hours (excluding the time for journey) remains untrammelled and unaffected and has, therefore, to be obeyed.

15. Clause (d) of Section 4 of the Act confers upon the officer of the Armed Forces (mentioned in the Section) the power to enter and search without warrant to make an arrest under clause (c) of Section 4 or to recover person wrongfully detained or to recover any property suspected to be stolen property or any arms, ammunition, etc., kept unlawfully. He is also empowered to use such force as is necessary for the said purpose.

16. Section 6 confers a protection upon the persons acting under the Act. No suit, prosecution or other legal proceeding can be instituted against such person "in respect of anything done or purported to be done in exercise of the powers conferred by this Act", except with the previous sanction of the central government.

CHAPTER II:

Article 355 of the Constitution places an obligation upon the Union of India 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. Prior to the Constitution (44th Amendment) Act, Article 355 was relevant both for the purpose of Article 352 as well as Article 356. Under Article 352 (as it obtained prior to the said Amendment Act), "the President, if satisfied that a grave emergency exists whereby the security of India or any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance," he could, by issuing a proclamation, make a declaration to that effect. In short, he could proclaim emergency and assume the powers mentioned in the said Article. The expressions 'external aggression' and 'internal disturbance' were common to both Article 355 and Article 352. Similarly, if the Government of a State was not carried on in accordance with the provisions of the Constitution, the President could take action under Article 356 and assume to himself the powers of the government of that State and exercise other powers mentioned in that Article. However, by Constitution (44th Amendment) Act, the expression 'internal disturbance' in Article 352 (1) was substituted by the expression 'armed rebellion'. With this the connection between Articles 355 and 352 got snapped partially. In other words, in case the security of India or a part thereof is threatened by internal disturbance in a State, the power under Article 352 may not be available. Even so, the obligation of the Union government to protect every State from internal disturbance remains; it is now an independent

obligation to be performed in such a manner as the Union government thinks appropriate.

2. By the Constitution (42nd Amendment) Act, the Parliament brought in the following provisions/amendments, which are relevant to our purpose. Article 257A was introduced providing for assistance to States by deployment of armed forces or other forces of the Union. The said Article, which was deleted by the Constitution (44th Amendment) Act, read as follows:

"257-Assistance to States by deployment of armed forces or other forces of the Union. —(1) The Government of India may deploy any armed force of the Union or any other force subject to the control of the Union for dealing with any grave situation of law and order in any State.

(2) Any armed force or other force of any contingent or unit thereof deployed under clause (1) in any State shall act in accordance with such directions as the Government of India may issue and shall not, save as otherwise provided in such directions, be subject to the superintendence or control of the State Government or any officer or authority subordinate to the State Government.

(3) Parliament may, by law, specify the powers, functions, privileges and liabilities of the members of any force or any contingent or unit thereof deployed under clause (1) during the period of such deployment."

3. Along with Article 257A, Parliament had also introduced Entry 2A in the Union List in the Seventh Schedule to the Constitution. This entry, however, has not been deleted by the Constitution (44th Amendment) Act. It reads as follows:

"2-A. Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power, powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment."

Entry 1 in List II (State List) read as follows before the Constitution (42nd Amendment) Act:

"(1) 'Public order' (but not including the use of naval, military or air force or any other armed force of the Union in aid of the civil power)".

By the said Amendment, however, the said Entry was amended to read as follows:

"(1) 'Public order' (but not including the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof in aid of civil power)".

4. It may be noticed that Entry 2A in the Union List does not refer to or use the expression 'public order'. Indeed, Article 257A contemplated Government of India deploying the armed forces of the Union for "dealing with any grave situation of law and order in any State" – a grave encroachment into the domain reserved to the States under the Constitution. (Under the Constitution, law and order as well as public order are both within the exclusive province of the States. Even where the armed forces of the Union are deployed in aid of the civil power of the State to maintain public order – whether on the basis of a request for such armed forces from the State or whether such deployment is

made by the Union government acting under a law made under Entry 2 A of the Union List, the law and order and public order yet remain within the domain of the States.) In fact Article 257A did not use the words "in aid of civil power" though the said words were used in Entry 2A which was simultaneously introduced in the Union List. Of course, these words were there in Entry 1 of the State List even prior to the Constitution (42nd Amendment) Act and they remain even now. In this connection, one must bear in mind the difference between the concepts 'law and order', 'public order', 'internal disturbance' and 'armed rebellion' - all the expressions employed by our Constitution, as pointed out hereinabove.

5. The aforementioned provisions are mentioned with a view to clarify certain issues relevant to this Report. The first question is, is there a distinction between "public order" (State List, item 1) and "internal disturbance" referred to in Article 355? For this purpose we have to examine the meaning and content of both the expressions. As pointed out by the Supreme Court in the case of Ram Manohar Lohia (1966 S.C), "law and order" is a larger circle within which public order constitutes a smaller circle.(The concept of "security of the State" was said to be a yet another smaller circle within public order-'concentric circles'. This was so held in the context of the language in the then prevailing Preventive Detention law). For example, a simple murder is a law and order problem but where a murder is committed on communal grounds, which is meant to or designed to create a fear and a feeling of insecurity in one or more communities, it becomes a 'public order' issue. A communal clash is a 'public order' problem but where, say, the communal clashes take place on a large scale, affecting an entire State or a part of the State,

paralyzing the administration, it would be a case of "internal disturbance". Now, coming to the meaning and content of the expression "internal disturbance", it is necessary to turn to Constituent Assembly debates, in the absence of a judicial pronouncement.

6. We may first refer to the speech of Dr B.R.Ambedkar in the Constituent Assembly, explaining the principle behind Article 355. He said:

"When once the Constitution makes the provinces sovereign and gives them plenary powers to make any law for the peace, order and good government of the province, really speaking, the intervention of the Centre or any other authority must be deemed to be barred, because that would be an invasion of the sovereign authority of the province. That is a fundamental proposition which we must accept by reason of the fact that we have a Federal Constitution. That being so, if the Centre is to interfere in the administration of provincial affairs, it must be by and under some obligation, which the Constitution imposes upon the Centre. [The] article. ...says that it shall be the duty of the Union to protect every unit Similar clauses appear in the American Constitution. They also occur in the Australian Constitution where the Constitution, in express terms, provides that it shall be the duty of the Central Government to protect the units or the States from external aggression or internal commotion. All that we propose to do is to add one more clause to the principle enunciated in the American and Australian Constitutions, namely, that it shall be the duty of the Union to maintain the Constitution in the provinces as enacted by this law." (C.A.D.Vol.IX. P.133)

7. The provisions of the American and Australian Constitutions, which Dr. Ambedkar referred to, may also be set out for a clear understanding of the meaning of the expression 'internal disturbance'. Article VI (4) of the US Constitution says "the United States shall guarantee to every State in the Union a republican form of government and shall protect each of them against invasion and on application of the Legislature or of the Executive when the Legislature cannot be convened, against domestic violence". Similarly, Section 119 of the Australian Constitution Act says, "the Commonwealth shall protect every State against domestic violence". It would be seen that both the American and Australian Constitutions use the expression

'domestic violence', though under the US Constitution, the federal government steps in the case of domestic violence only at the request of the State or Legislature of the State concerned. As against these provisions, Article 355 empowers the Union to act on its own i.e., without a request from the State Government, to protect the State from internal disturbance. We may refer in this connection to the speech of Sri Alladi Krishnaswami Ayyar in the Constituent Assembly as well. Speaking upon this Article, Sri Alladi said: "Therefore, it is the duty of the Union Government to protect States against external aggression, internal disturbance and domestic chaos and to see that the Constitution is worked in a proper manner both in the States and in the Union" (C.A.D. Vol.IX.P.150). It would therefore be legitimate for us to infer that the expression 'internal disturbance' means 'internal commotion' (the expression used by Dr Ambedkar in the above speech) 'domestic violence' (expression used in both the American and Australian Constitutions) and 'domestic chaos' (the expression used by Sri Alladi Krishnaswami Ayyar in the Constituent Assembly during the debate on the said Article).

8. It therefore follows that every 'public order' problem does not necessarily amount to "internal disturbance" while the converse may be true i.e., in case of 'internal disturbance', public order is bound to be affected. The duty and power of the Central Government under Article 355 comes into play only in case of "internal disturbance" i.e., 'domestic chaos' or 'internal commotion'. The said power is not available in each and every problem of public order. "Internal disturbance" means failure of public order on a large scale and in a sustained manner, for whatever reason it may be, affecting the entire State or part of the State. The expression "internal disturbance" itself is

expressive of the level of disturbance, chaos and commotion it contemplates. It must be remembered that prior to the 44th Amendment, 'internal disturbance' was one of the grounds on which the President could proclaim emergency under Art.352. This consideration also induces to hold that "internal disturbance" connotes disturbances on a large, on a sustained and serious level and is distinct and different from issues of public order which arise from time to time in one or the other place, village, town or city of a State. In the latter type of cases, it is for the State Government to tackle it. It is for the State Government to decide, in a given case, whether it requires the help of armed forces/para-military forces of the Union to help tackle it. Indeed, if it is of a purely local level, the Executive Magistrate (of the highest rank) can deal with it under Section 130 of the Code of Criminal Procedure.

9. The above distinction between the "public order" in entry 1 of List II of the Seventh Schedule to the Constitution and "internal disturbance" referred to in Article 355 has to be kept in mind and observed, in the interest of preserving the federal character of our Constitution and to ensure that the field reserved to the States under our Constitution is not trenched upon by the Centre. Article 257-A was a serious, and an unbelievable encroachment upon the powers of the State (Dr. Ambedkar referred to them as the sovereign and plenary powers of the States) and it is good that it was repealed soon enough.
10. In this connection, it is relevant to point out that entry 2A in the Union List speaks of deployment of the armed forces of the Union in any State in aid of civil power but it does not speak of or refer to "public order". It only empowers the Union to make a law providing for such deployment and their powers and procedures. It does not and cannot trench upon the power and province of the States to maintain public order. It is important to notice how

entry 1 in the State List reads: “1. Public Order (but not including the use of the army, naval, military or air force in aid of civil power)”. It means that the State cannot make a law with respect to the deployment of the armed forces, while it can legislate with respect to public order. The State can, no doubt, request the Central Government to send its armed forces for maintaining public order but it cannot itself direct such deployment.

CHAPTER-III

The Unlawful Activities (Prevention) Act, 1967
(as amended by the Unlawful Activities (Prevention)
Amendment Act, 2004) - A Cognate Legislation.

The ULP Act was enacted by the Parliament in 1967 to confer powers upon the State authorities to deal with activities directed against the integrity and sovereignty of India. The Act defined 'unlawful activity' in clause (o) of Section 2. In short, it meant any action taken by an individual or an association, in whatever manner, "intended, or supports any claim, to bring about, on any ground whatsoever", the cession of a part of the territory of India or cession of a part of territory of India from the Union or which disclaims, disrupts or is intended to disrupt the sovereignty and territorial integrity of India or which causes or is intended to cause disaffection against India. The expression 'unlawful organisation' is defined in clause (p) to mean that any association which has the objective of carrying on any unlawful activity or any activity punishable under Section 153A or 153B of the Indian Penal Code or which encourages or aids any person to undertake such activity. The Act provided for declaring an association as unlawful association whereupon certain consequences provided in Sections 10 to 14 in Chapter III followed. The declaration as an unlawful association shall, however, be subject to scrutiny by a tribunal constituted under Section 5 whose decision was binding upon the government. The government was also empowered to prohibit the use of funds of an unlawful association and also to notify places where such activities take place.

2. In the year 2004, the Parliament repealed the Prevention of Terrorist Activities Act and simultaneously introduced certain provisions / chapters into ULP Act to curb terrorist activities. A schedule is also added containing a list of 'terrorist organisations', which expression is defined in clause (m) of Section 2. The expression 'terrorist act' is defined by clause (k).

'Terrorist act' carries the meaning assigned to it in Section 15, which is introduced in the year 2004 by way of Chapter IV. Section 15, which defines a 'terrorist act', reads as follows:

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

3. When analysed, the section yields the following ingredients: (i) whoever, with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people in India or in any foreign country, (ii) does any act by using bombs and other explosives / inflammable substances, fire arms, etc., (iii) in such a manner as to cause or likely to cause death or injuries to any person or persons or loss of or damage to or destruction of the property or disruption of

any supplies or services essential to the life of the community of India or in any foreign country or causes damage or destruction of the property or equipment used or intended to be used for the defence of India or in connection with any other purposes of the Government of India, any State Government or any of their agencies or detains any person(s) and threatens to kill or injure such person in order to compel the Government of India or the Government of a foreign country or any other person to do or abstain from doing any act, (iv) commits a terrorist act. In short, the first portion deals with the intent, the second portion deals with the act and the third ingredient deals with the effect or likely effect. If all these three ingredients mentioned under (i) to (iii) are satisfied, it amounts to a 'terrorist act'. Section 16 provides punishment for terrorist act while Section 17 provides punishment for raising funds for the purpose of committing a terrorist act. A conspiracy towards the same objective is punishable under Section 18. Section 19 punishes those who voluntarily harbour or conceal or attempt to harbour or conceal any terrorist. Section 20 provides punishment for being a member of a terrorist gang or terrorist organisation. Section 21 punishes any person holding proceeds of terrorism while Section 22 provides punishment for threatening the witnesses. Section 23 provides for enhanced penalties in certain situations mentioned therein.

4. Chapter V commencing with Section 24 provides for forfeiture of proceeds of terrorism. Section 25 specifies the powers of the investigating officer and designated authority and also provides for an appeal against an order of the designated authority. Section 26 empowers the Court also to forfeit the proceeds of terrorism in a matter that comes before it. Section

27 prescribes the procedure to be followed before forfeiting the proceeds of terrorism while Section 28 provides an appeal against an order made under Section 26. Sections 29 to 34 are machinery provisions, which need not be detailed herein.

5. Chapter VI which has also been introduced by the 2004 Amendment Act deals with terrorist associations. The Central Government is empowered, by an order published in the official gazette to add an organisation to the schedule or to remove an organisation therefrom and/or to amend the schedule in such other manner as it may think appropriate (S35(1)). Sub-section (3) of Section 35 says that an organisation shall be deemed to be involved in terrorism if it commits or participates in acts of terrorism or prepares for terrorism or promotes or encourages terrorism or is otherwise involved in terrorism. Section 36 provides for denotification of a terrorist organisation. This section provides for an application being made for removing an organisation from the schedule to the Act and the procedure to be followed thereon. Section 37 obligates the Central Government to constitute one or more review committees for the purposes of Section 36. Section 38 makes the membership of a terrorist organisation a punishable offence while Section 39 punishes a person giving any kind of support to a terrorist organisation. Section 40 makes the raising of funds for terrorist organisation a punishable offence.

6. Chapter VII contains miscellaneous provisions. Section 41 says that an organisation shall not be deemed to have ceased to exist by reason only of any formal act of dissolution or change of name but shall be deemed to continue so long as any actual combination for the purposes of such association continues between any members thereof. In other words, by mere change

of name or by mere formal act of dissolution, a terrorist organisation does not cease to exist, so long as its members have the same objectives and purposes. Section 42 empowers the Central Government to delegate its powers under certain specific sections upon State Governments. Section 43 deals with the powers of investigating officers under the Act. Section 44 deals with protection of witnesses. Section 45 says that no Court shall take cognizance of any offence under Chapters 4 and 6 without the previous sanction of the Central Government or the State Government as the case may be. Section 46 makes the evidence collected through interception of communications admissible. Section 47 bars the jurisdiction of any civil court or other authority to question any proceedings taken or orders passed under the Act. Section 48 gives an overriding effect to the Act and the rules made thereunder over other enactments.

7. Section 49 is relevant and needs specific and a detailed mention. It provides protection of action taken under the Act in good faith. It reads as follows:

"49. Protection of action taken in good faith - No suit, prosecution or other legal proceedings shall lie against -

(a) the Central Government or a State Government or any officer or authority of the Central Government or State Government or District Magistrate or any officer authorized in this behalf by the Government or the District Magistrate or any other authority on whom powers have been conferred under this Act, for anything which is in good faith done or purported to be done in pursuance of this Act or any rule or order made thereunder; and

(b) any serving or retired member of the armed forces or paramilitary forces in respect of any action taken or purported to be

taken by him in good faith, in the course of any operation directed towards combating terrorism.

8. It is worthwhile to note that while no provision in the Act specifically refers to the deployment of any armed force or para military force for achieving any of the objectives of the Act, clause (b) of Section 49 expressly gives protection to any serving or retired member of the armed forces or para military forces in respect of any action taken or purported to be taken by him in good faith, "in the course of any operation directed towards combating terrorism". Now, it is a well-established presumption – a presumption which is affirmed by innumerable decisions of the courts – that the Parliament does not make any provision without a purpose. None of the provisions in an Act can be understood or construed as superfluous. If so, a question arises why did the Parliament introduce clause (b) of Section 49? Why did it think it necessary to provide a protection to "any serving or retired member of the armed forces or para military forces" in respect of any action taken in good faith "in the course of any operation" directed towards combating terrorism? In our considered opinion, this provision does contemplate, by necessary implication, use of armed forces/para military forces for combating terrorism and also contemplates the armed forces / para military forces conducting "operations" towards combating terrorism. This intent must be read in the context of the Schedule appended to the Act wherein there are specifically included quite a few organisations engaged in insurgency / militancy in the States of Assam, Manipur and Tripura. As a matter of fact, the Act makes it clear that the terrorist activity is not restricted to the activities of the organisations mentioned in

the Schedule; it means any and every activity of the kind mentioned in Section 15 carried on by any person, organisation or gang. This section indicates that the Parliament did take note of the fact that in many cases it may be necessary to employ the armed forces or para military forces to combat terrorism and terrorist activities. Indeed, the Parliament must have taken note of the fact that armed forces and para-military forces were already engaged in such operations against the organisations listed in the Schedule and others engaging in similar activities. At the same time, it must be noted, the protection extended by Section 49 is not unconditional. Both the clauses in (a) and (b) qualify and restrict the protection only to acts done in good faith. The expression "good faith" is indeed used in the heading of the section, which circumstance also goes to emphasise the nature and extent of protection provided.

9. Section 50 is in the nature of saving clause, which says that nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any Court or other authority under any law relating to the navy, army or air force or other armed forces of the Union. Section 51 provides for impounding of passport and arm licence of persons proceeded under the Act. Section 52 confers the rule making power upon the Central Government. Section 53 provides for orders and rules made under the Act to be laid before both Houses of Parliament.

10. The schedule, which is referable to Section 2 (1) (m) and Section 35 of the Act, gives a list of "terrorist organizations". We may notice some of them, which are relevant for the purposes of this Committee. Serial Nos.12 and 13 speak of United Liberation Front of Assam (ULFA) and National Democratic Front of Bodoland (NDFB), the organisations active in Assam. Serial

Nos.14, 15, 16, 17 and 18 mention the organisations operating in Manipur. They are Peoples Liberation Army (PLA), United National Liberation Front (UNLF), Peoples Revolutionary Party of Kangleipak (PREPAK), Kangleipak Communist Party (KCP), Kanglei Yaol Kanba Lup (KYKL) and Manipur Peoples Liberation Front (MPLF) respectively. Items 19 and 20 refer to All Tripura Tiger Force and National Liberation Front of Tripura respectively. All of them are designated as "terrorist organisations" within the meaning of Section 2(1)(m) and Section 35 of this Act. (For the present purposes it may not be necessary to mention the organisation mentioned under serial Nos.1 to 10 and 21 to 32.)

11. The specific language in which "terrorist act" is defined and the terrorist activity is sought to be fought and curbed by use of armed forces and para-military forces also, wherever necessary, coupled with the fact that several organisations in the States of Assam, Manipur and Tripura are expressly listed as "terrorist organizations", induces us to call the ULP Act a cognate enactment.

CHAPTER-IV

Other Statutory Provisions providing for assistance to Armed Forces.

Chapter 10 of the Criminal Procedure Code deals with 'maintenance of public order and tranquility'. Part A of the Chapter deals with 'unlawful assemblies'. Section 129 empowers the Executive Magistrate or the officer-in-charge of a police station and any officer not below the rank of a Sub Inspector to command an unlawful assembly to disperse and if such unlawful assembly does not so disperse, he may use such force as may be necessary for dispersing it. The named authorities are also empowered to arrest and confine persons in order to disperse such unlawful assembly.

2. Section 130 provides for use of armed forces to disperse unlawful assemblies, while Section 131 sets out the powers of and the procedure to be followed by the armed forces' while dispersing unlawful assemblies. Section 130 and 131 read as follows:

"Section 130. Power of certain armed force officers to disperse assembly.

(1) If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Executive Magistrate of the highest rank who is present may cause it to be dispersed by the armed forces.

(2) Such Magistrate may require any officer in command of any group of persons belonging to the armed forces to disperse

the assembly with the help of the armed forces under his command, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.

(3) Every such officer of the armed forces shall obey such requisition in such manner as he thinks fit, but in so doing he shall 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.

Section 131. Protection against prosecution for acts done under preceding sections.

3. When the public security is manifestly endangered by any such assembly and no Executive Magistrate can be communicated with, any Commissioned or Gazetted Officer of the armed forces may disperse such assembly with the help of the armed forces under his command, and may arrest and confine any persons forming part of it in order to disperse such assembly or that they may be punished according to law; but if, while he is acting under this section, it becomes practicable for him to communicate with an Executive Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate, as to whether he shall or shall not continue such action."

4. According to section 130, if the unlawful assembly cannot be dispersed by the officer mentioned in section 130(1) with the forces under his command, and it is necessary to disperse such unlawful assembly in the interest of public security, the Executive Magistrate of the highest rank who is present at the spot, is empowered to direct the armed forces to disperse it. Sub Section (2) elucidates the power under sub-section (1); it

provides that such Magistrate may require any officer in command of armed forces to disperse such unlawful assembly with the help of the forces under his command, and to arrest and confine such persons as he may direct or as may be necessary for the purpose of such dispersal. Sub section (3) declares that an officer of the armed forces, whose services are requisitioned by the Magistrate, shall obey such requisition but the manner in which he carries out the task given to him, is left to him, with the rider that while dispersing the unlawful assembly, he shall use as little force as the circumstances warrant and cause as little injury to person or property as possible consistent with the circumstances of the situation. The same rider applies even while arresting or detaining the members of the unlawful assembly.

5. Section 130, in our opinion, clearly lays down and affirms the supremacy of the civil power in the matter of maintenance of public order; it requires the officers of the armed forces, whose help is requisitioned by the Magistrate to obey such requisition; of course, the manner in which he should do the task entrusted to him is left to him; even there, there is the requirement of using as little force as possible and cause as little injury to person or property as possible, in the circumstances of the case. These features of this section, in our considered opinion, are highly welcome and salutary provisions, the absence of which could lead to arbitrariness and capricious behaviour - which may in fact give rise to another kind of problem while subduing one kind of problem.

6. Section 131 provides for a situation different from the one envisaged by Section 130, namely a situation where the public

security is manifestly endangered by any such unlawful assembly and no Executive Magistrate can be communicated with. In such a situation, any Commissioned Officer or Gazetted Officer of the armed forces is empowered to disperse such unlawful assembly with the help of the forces under his command and for the said purpose; he is also empowered to confine any person who is a member of such unlawful assembly. At the same time, the section takes care to provide that while so acting, if it becomes practicable for the officer of such armed forces to communicate with the Executive Magistrate, he shall do so and thenceforward obey the instructions of the Magistrate as to whether he shall, or shall not, continue such action. This section is indicative of the concern of the Parliament that the armed forces shall not act on their own while dispersing unlawful assemblies except where the situation is grave (manifestly endangering public security) and no Magistrate can be communicated with. These sections and the concern exhibited by them may be contrasted with the blanket powers given by Section 4 under the Armed Forces (Special Powers) Act, 1958, recognizing at the same time that Section 130 and 131 contemplate a temporary local phenomenon and not a long term insurgency or terrorism spread over a large geographic area.

7. Section 132 provides protection to the persons acting under section 129, 130 and 131 against any proceedings in a criminal court. It states that no proceedings can be instituted against any such person except with the sanction of the Central Government where the person to be proceeded against is a member of the armed forces and with the sanction of the State Government where the persons to be proceeded against is member of any other force. This section also expressly provides that no person

acting under sections 129 , 130 and 131 shall be deemed to have committed any offence while acting under and in accordance with the said provisions.

8. It is evident that sections 130 and 131 are meant to meet situations where an unlawful assembly endangers the public security. By way of illustration, we may refer to the anti-Sikh riots following the assassination of late Prime Minister Smt. Indira Gandhi or the situation arising consequent upon demolition of the Babri Masjid, or communal riots. These are situations; it is necessary to point out, where the authority of the State is not challenged. These are situations, which arise unexpectedly or on account of a sudden incident or event like the examples stated above. Such situations must be distinguished from those arising in the North Eastern States like Manipur, Nagaland or Assam where the militants not only challenge the authority of the State but by their composition, strength, aims and objectives present a problem which is spread over a large geographical area and is long term in nature. In situations of the latter kind, the provisions of the Criminal Procedure Code would not be adequate. A permanent legal provision would be required which permits the army and the other Central forces to operate over an extended area and time period - of course, consistent with the rights and interests of the citizens and the security of the State.

9. We have kept the above facts and circumstances in mind while examining the issues referred to us.

PART- III
FEED BACK RECEIVED BY THE COMMITTEE
(REPRESENTATIONS, PUBLIC HEARINGS, ETC.)

CHAPTER-I

Manipur

The Committee, with a view to ascertain the views, opinions in Manipur on the AFSPA and its implementation, issued a notification calling for responses from the public. The Committee visited the State of Manipur in the first instance. This was for the reason that the latest upsurge against the AFSPA took place in Manipur following the death of Ms.Th. Manorma Devi while in the custody of the Assam Rifles. The visit to Imphal took place on December 27-30, 2004 and the hearings were held in the premises of the Manipur Human Rights Commission. The Chairman of MHRC, Justice (Retd.) W.A. Shishak was kind enough to make necessary arrangements for our hearings.

2. There was a *bandh* called by a faction of the Apunba Lup, which demanded the immediate repeal of AFSPA, when the Committee was in the State. Despite that, many groups, individuals and organizations made depositions before the Committee. The family of Manorama Devi also met the Committee. The list of individuals and groups who made representations to the Committee is at **Annexure-III**. From the views expressed before us and from the representations received, the following distinct view-points emerged:

(a)The dominant view-point expressed by a large number of organizations/individuals was that the Act is undemocratic, harsh

and discriminatory. It is applicable only to the North-Eastern States and, therefore, discriminates against the people of the region. Under the protection provided by the Act, several illegal killings, torture, molestations, rapes and extortions have taken place particularly since the Act does not provide for or create a machinery which provides protection against the excesses committed by armed forces/para-military forces deployed in the State. The Act should, therefore, be repealed. The Committee specifically put questions to the persons who appeared before it whether they wanted both the Act and the Army to go , or whether they want only the Act to go but the Army to remain. To this question, the overwhelming response was that while the Act should be repealed, the Army should remain to fight the militants and guard the borders.

a) A certain view-point voiced by some persons was that both the Act and the Army should be removed from Manipur. According to them, the problem in Manipur is essentially a socio-economic one and not of law and order. If the basic issues of socio-economic and of political nature are attended, it would not be necessary to have the presence of the Army in the State.

(b) A different view-point voiced by a few elderly persons and associations was that both the Act and the Army should remain in the interest of and for ensuring the safety of small ethnic groups and other minorities.

3. The Committee gathered the impression that there is a certain amount of confusion in the minds of many citizens regarding the respective powers of the State police organizations and that of the armed forces of the Union. They are under the impression that the State Police Forces were also acting under

the protection of the Act. As a consequence, the excesses committed by the State Police and Commandos are generally laid at the door of the Act.

4. Certain organizations filed elaborate lists of alleged atrocities committed by the security forces and in particular against the members of the Assam Rifles. These lists also cite instances of killing of innocents, including women and children. This material, being too bulky, is not enclosed to the Report but is sent to the Government along with this Report for such use as may be found appropriate by the concerned authorities. It was also brought to our notice that in several cases of alleged excesses, enquires were held by competent authorities and the guilty personnel awarded punishment and compensation was also given to the aggrieved persons in some cases.

5. The current situation in Manipur is a complex amalgam of factors. There are longstanding animosities among ethnic, tribal, plains and hill groups. The Meitei people who constitute the majority in the State have a deeply felt historical perspective of Manipuri territorial and cultural unity. The nexus between crime and politics on one hand, and foreign involvement through funds, arms, and sanctuaries on the other, make for a highly volatile security situation. Over the years, the nature of insurgency has – as elsewhere in the North East – shifted to acts of terrorism, extortion, coercion of the population giving rise to a situation of internal disorder. In the last two decades the numbers of militant groups, their arsenals and lethality have grown immensely. The situation, it appears, cannot be managed by the State law and order machinery as at present. The Army and other Central forces may continue to play a major role in the security management of Manipur, till the political process and socio-

economic measures begin to take effect and the governance in the State improves.

6. The Committee is also of the opinion that there is a deliberate and carefully planned attempt by militant organizations to damage the reputation and morale of the Armed Forces. The requirement therefore is to ensure that the powers of the army to conduct operations against militant organizations remain while at the same time, ensuring that these operations do not impinge upon the rights and the safety of the citizens.

Hill Districts of Manipur **Senapati**

7. The Committee also visited the hill-districts of the State and held hearings at Senapati and Churachandpur on April 21 and April 23, 2005

8. At Senapati the various Naga organizations had met earlier and discussed the issue in detail, exchanged views amongst themselves and made out a common written representation on behalf of the Naga Peoples' Organisation. However, as many as 11 representatives of the Civil Society groups made oral presentations. Three more written representations were also handed over.

9. Initially, however, they said that they would not be satisfied with 'review'. Their demand was nothing short of repeal of the Act. It was explained to them on behalf of the Committee that Review was a very wide term and included repeal also. They were quite satisfied with this clarification. They made a grievance that though the Nagas had been suffering and complaining

against the Act for almost 50 years, nothing was done until the Manorama Devi incident in Imphal prompted the Govt. of India to set up this Committee.

Churachandpur

10. Six written representations were received by the Committee at Churachandpur on behalf of the organizations representing the Kukis, Zomis, Paites, Koirengs (Korens) and others on April 23, 2005. Representatives of four organizations (a total of 17 persons) appeared for oral hearings.

11. The views expressed at Churachandpur were qualitatively different from those received from elsewhere in the State. One view was in favour of replacement of the Act by a more effective law so that peace and harmony could be restored in the State. Some others wanted that the Act should not be lifted from Churachandpur area where the people were the major victims at the hands of underground outfits, as a result of which development work had come to a standstill. One view was that the Army should stay but the excesses committed by them should be stopped. Only one organization was in favour of complete withdrawal of AFSPA.

CHAPTER-II

Tripura

The Committee visited Agartala(Tripura) on February 8, 2005. The representatives of Twipra Students Federation, Borok Peoples Human Rights Organization, Indigenous Nationalist Party of Tripura and the Tripura Pradesh Congress Committee met the Committee.

2. We must mention at the outset that a misconception was prevailing among the people who appeared before us viz. that the state security forces are also covered by the Act and are entitled to exercise all the powers and enjoy the immunities provided by it. The Committee sought to erase this impression stating that the Act has no application to the Tripura State security forces but only to the armed forces and other paramilitary forces of the Union. Be that as it may, the representatives of the three first mentioned organizations complained of excesses and atrocities said to have been committed by the Tripura security forces and requested for the repeal of the Act. They also made a fervent plea that the influx of Bangladeshis into Tripura should be stopped lest the tribal population of the state is further marginalised.

3, The representatives of Tripura Pradesh Congress Committee, however, took an opposite stand. They submitted that since there is no let up in the insurgency, the Act should continue. They complained that militants were targeting peaceful citizens. They suggested that with a view to check excesses committed by the security forces, there should be a mechanism to give exemplary punishment to the guilty among them. They

also submitted that the SPOs appointed by the state government were indeed fleeing with arms and joining militant groups.

4. The Hon'ble Chief Minister met the Committee. He brought to our notice that neither the army nor any of the armed forces controlled by the Central govt. are deployed in the state, barring a few units of the Assam Rifles. Predominantly, it is the state security forces that are dealing with insurgent activities. He pointed out that there were no complaints of atrocities against Assam Rifles in this State.

5. The main problem emphasized by the Administration relates to the illegal immigration of Bangladeshis and the presence of a large number of camps along the Tripura border, within Bangladesh territory, where insurgents were being provided with funds, arms, ammunition and refuge.

6. We must also point out that the Act is enforced only in the hill district of the State, viz. the Tripura Tribal Autonomous District Council, and not in the entire State. The list of individuals and groups and a gist of their submissions is placed at Annexure-IV.

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CHAPTER-III

Assam

To ascertain the views and opinions of the people of Assam, the Committee visited Guwahati on February 9 and 10, 2005. A large number of Lawyers and a good number of representatives of civil society organizations expressed their views. The list of individuals and organization who appeared before the Committee and the gist of their submissions is placed at Annexure. Overwhelming view was that the Act should be repealed. The Committee was impressed, particularly by the representation made by Shri T.C. Mazumdar, Sr. Advocate and former Member of Rajya Sabha (accompanied by two other advocates of Guwahati) relating his personal experience. While traveling from Guwahati to Tezpur in Assam, his car was stopped enroute by the members of the armed forces. He was asked to get down from the car and surrender the car to them. Mr. Mazumdar says, he told them that he is a heart patient having undergone heart surgery and that in view of his old age and health; he should be allowed to proceed to the nearest town, wherefrom they could take his car. But his request was rejected and the car was taken away, leaving him high and dry on the highway. He strongly urged for the repeal of the Act. He opined that Unlawful Activities (Prevention) Act, which is in force in the entire country, is adequate to meet the militant activities and there is absolutely no necessity to have the AFSPA. We also heard similar complaints from an Advocate, (a retired Sessions Judge). The President of the Lawyers Association, Guwahati, and several other advocates pleaded for the repeal. However, one advocate who is now a counsel for Central Govt. took a different line and asked for dilution of the Act to accord with the human rights.

2. Some students of Post Graduate courses in Guwahati University also pleaded for the repeal of the Act. This was also the refrain of the representatives of North-East Net-Work, Guwahati, Assam Pradesh Mahila Society, Assam Jatiyabadi Yuva-Chhatra Parishad, Manab Adhikar Sangram Samiti, Guwahati and KARBI Tehnical Unemployed Youth Association and KARBI Youth Organisation. BMSS (Bishnupriya Manipuri Samaj Sanstha, Guwahati) pleaded that the interests of Bishnupriya Manipuris should be protected while reviewing and modifying AFSPA.

3. Guwahati High Court Bar Association, Nagarik Mancha, Guwahati, Socialist Unity Centre of India uniformly complained of the excesses allegedly committed by the Assam Rifles and other Armed Forces, taking advantage of the immunity granted by the Act.

4. When the Committee questioned the above persons whether they want the Army also to leave Assam (besides asking for repeal of the Act), two strands of opinion emerged. One opinion was that Army should also be withdrawn (except from the borders) while the other was that while the Act should go, the army should remain to fight insurgency and further that there should be an adequate legal mechanism to provide for and regulate the operations of the armed forces.

5. Contrary views were expressed by the Commissioner & Secretary to the Govt. of Assam (Home and Political Department) who stated that the entire State of Assam was declared as a "disturbed area" by the Central Govt. on 27.11.1990, in view of the prevailing dangerous situation arising out of the activities of

ULFA. He stated that since 20.8.1997, the Govt. of India has been reviewing the extension of the Act every six months and the last extension was ordered on 4.11.2004 up to 3.5.2005. He stated further that ULFA and NDFB had, of late, increased targeting civilians and Security Forces. He stated that though some militant groups, including NDFB have come forward for negotiations, ULFA still remains defiant and continues to harp upon sovereignty. In conclusion, he stated that the Act continues to be a critical requirement for curbing counter insurgency operations under a unified command and should therefore continue.

6. DIG, CISF, Guwahati submitted a two-page written representation to the Committee. He requested that the powers conferred upon CRPF and BSF should also be conferred upon the CISF.

Dibrugarh

The Committee also visited Dibrugarh in Assam on April 24 and 25 for hearings and discussions. It received a representation from the Sadou Asom Mottock Yuba-Chhatra Sanmilan, which called for the repeal of the Act on the ground that innocent people had been harassed and harmed by it.

8. The Committee had an extensive discussion with about 31 scholars, lawyers and representatives of business at Dibrugarh University. The Vice Chancellor was also present. The basic theme underlying the discussion was that the Act should be repealed because it was discriminatory and anti-people. A few speakers suggested that there should be a grievance redressal and review mechanism to give basic information about detained persons to the families of the victims.

CHAPTER-IV

Meghalaya

To ascertain the views and opinions of the stakeholders in Meghalaya, the Committee visited Shillong on 11.2.2005. It must be mentioned that the Act is in force only in the 20 Kilometers belt along the border of this State with Assam; it is not in force in the entire State. No complaints of excesses or other wrongful activities on the part of the Armed Forces was brought to the notice of the Committee. Even so, the Committee held its hearings and the following is the condensed version of the representations received by the Committee.

2. DG, Assam Rifles, Shillong gave a detailed presentation on the Assam Rifles. He explained the role of Assam Rifles in the North-Eastern States and their deployment in each State. He justified the retention of AFSPA saying that it would be difficult for the Armed Forces to work without any legal protection. The guidelines given by the Supreme Court could also be included in the new legislation.

3. Govt. of Meghalaya, Shillong represented by Shri A.Pradhan, Addl. DG of Police and Shri Marbanjang. AIG of Police mentioned that the State Govt. has not enforced this Act in Meghalaya since its birth in 1972. However, the Union Govt. in its notification dated 27.11.1990 has declared 20 kilometers wide belt in the State of Meghalaya bordering Assam as a disturbed area under Section 3 of the Act.

4. Dino D.G. Dympep, Secretary-General, Meghalaya People's Human Rights Council handed over a written representation to the Committee, stating that AFSPA has failed to contain insurgency situation and that there are other Acts already in

force like the Unlawful Activities (Prevention) Act, 1967 (which has been amended in 2004 equipping it to deal with terrorism) which are sufficient to deal with militancy.

5. An interaction was held at the North Eastern Hill University with faculty members, presided over by the Vice Chancellor Dr. Mrinal Miri, where a large number of academicians participated, spoke against the Act and the need to end discriminatory treatment.

6. A list of individuals and organizations who met the Committee at Shillong is placed at **Annexure-VI**.

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CHAPTER-V

Nagaland

For nearly half a century, the Naga Hills have been in turmoil. The initial trigger was the armed movement seeking independence from India. The uprising led to a major conflict with the Government of India, which rushed troops, supplies and weapons to the area to meet the challenge of armed insurrection.

2. Fifty years down the line, despite ongoing peace negotiations with the Centre, the standoff with New Delhi continues, albeit in a non-armed sense. In these past decades, the presence of the armed forces and non-State combatants from the Naga side have played havoc with society in the state and elsewhere in the region where there are insurgencies or armed militancy. The people of the state have been the worst sufferers.

3. It was to deal with the uprising in the Naga Hills, then in Assam, that the AFSPA was introduced in Parliament in 1958 by the then Home Minister, Shri GB Pant, against opposition from members from Manipur. The measure has continued for nearly 47 years.

4. During this period, the record of the application of the Act, has, by any measure, been controversial. People in the State complain of, what they call, arbitrary killings and torture, fake encounters and disappearances, rape of women, molestation and other alleged excesses. A failure on the part of the armed forces

to understand local customs, communities and views has accentuated the problem.

5. This too has begun to change over the past years, with greater sensitization of the armed forces to issues of human rights. Since the issuance of the guidelines contained in the judgement of the Supreme Court in the Nagas Peoples Movement for Human Rights Vs. Union of India (1987) and those issued by the Army Chief, there has been a decline in allegations against the armed forces. The State has responded to some of the violations with disciplinary measures and responses of the Army Chief and others also indicate a preparedness to change mindsets and approaches.

6. It must be also stressed that in recent years, the armed groups operating against the State too have shown scant regard for basic rights, with kidnappings and extortion on the rise as well as little tolerance for the cadres of the other groups.

7. After the signing of a ceasefire agreement with the Nationalist Socialist Council of Nagaland (I-M) in 1997, procedures of ground rules for the ceasefire were worked out. Negotiations seeking a permanent political solution are continuing. This is to serve as a background and does not seek to be a commentary on the existing political conditions in Nagaland.

8. The Committee visited Kohima and held hearings on March 21 and 22, 2005. A large number of persons appeared and made their representations. These are summarized below:

a) Leaders of the Naga HOHO, an umbrella organization of 29 tribes were very vocal in their criticism of AFSPA, which, they said, had deepened hatred and enmity in every Naga family. They said, the AFSPA should be totally repealed and there were enough Acts/Provisions in the armoury of the Govt. to tackle the

situation. The Army should be deployed only for defence of borders while police and paramilitary forces should be used for maintaining law and order.

- b) The Naga Mother's Association, Kohima, spoke of the of the misuse of the Act and urged its repeal.
- c) The President and General Secretary of the Naga Students' Federation, also asserted a similar view for repealing the Act.
- d) The Members of the Peace Consultative Committee said that the Govt. was only looking at insurgents and is not worried about the general public. The public, in fact, was bearing the brunt of the violence of the militants and Armed Forces. This situation, they said, creates the most conducive atmosphere for insurgents to thrive.
- e) The Nagaland Bar Association represented by its President and two other office bearers, made a detailed presentation and said that India being the largest democracy, such Laws needed to be repealed.

9. The State Govt. of Nagaland was represented by senior civil and police officials of the rank of Addl. Chief Secretary and Addl. DGP. They said that the Act should be replaced with a more humane legislation since it had generated hatred and suspicion between the Nagas and others. They said that the law and order position had improved and the State Govt. had not recommended further extension of this Act. A list of individuals and organizations who appeared before the Committee is at **Annexure-VII.**

10. The Assam Rifles in Kohima also made a presentation. They submitted that since the declaration of ceasefire, there has been no clashes or confrontation between the Assam Rifles and the militant groups of the organizations. They, however, stated

that the terms of ceasefire are not being observed by the militant groups, which are party to the ceasefire. They said that if the on-going negotiations between the Naga groups and Central Govt. reach an agreement then the problems of insurgency could end. If, however, these talks do not succeed, the operations would have to be recommended. A legal mechanism should be in place providing for the conduct of operations by the Armed Forces.

CHAPTER-VI

New Delhi

The Committee organized a 3-day public hearing at New Delhi (January 19 - 21, 2005), which was attended by prominent persons, Delhi based human rights organizations and students from the north-eastern region studying in Delhi. Maj. Gen. (Retd.) Satbir Singh, who is residing in Gurgaon, handed over a representation and also made an oral presentation to the Committee. He said that allegations of atrocities on the people committed by Armed Forces were exaggerated. On the other hand, nearly 2,000 soldiers had laid their lives on internal security duties. He stated that, "One wrong does not wrong the whole Army". The rules should be strictly applied and followed. He said that the State administration should be responsive and the present imbroglio was due to ineffective and un-responsive State machinery. In the interest of national security, AFSPA should continue.

2. Gen. V. K. Nayar, former Governor Nagaland and Manipur, made a very forceful presentation before the Committee and dwelt at length on the causes of insurgency in the north-east and particularly in Manipur; such as socio-political-economic problems, group clashes, inaccessible areas, constraints of economic development, rampant corruption in the State administration and nexus between politicians and insurgent groups. He said that a new phenomenon had come in the forefront now where emotive issues were being raised by the public and then hijacked by militants due inadequate response

from the State administration. Because of lack of socio-economic development and response to the public grievances by the State administration, public anger like in the case of Manorma episode was being exploited by the militants. The situation was so bad that even the intelligence agencies were reluctant to accept responsibility, as the State machinery was completely ineffective.

3. Shri Suhas Chakma, Director, Asian Centre for Human Rights, submitted a detailed representation and made a very good presentation before the Committee. He stated that practically the State Administration was ineffective as a result, of which the misery of the people had increased. He said that the Army was not accountable from the time of arrest of the person to the time of handing him over to the Police. The Armed Forces needed to be properly educated about the human rights and there should be proper checks and balances in the AFSPA, which does not have detailed procedure/guidelines to be adopted by the Armed-Forces personnel. The focus of operations should be limited to the pockets of insurgents and not the entire State.

4.. A delegation of Yuva Bharat, New Delhi, appeared before the Committee. It stated that AFSPA was in force for nearly four decades but it had failed to achieve its objectives and should be repealed.

5. A delegation of United NGOs Missions, Manipur, led by. Novokishore Singh submitted a representation to the Committee terming the AFSPA as a draconian law and should be repealed.

6. Ms.Nandita Haksar, Advocate, New Delhi, submitted a memorandum to the Committee pleading for repealment of AFSPA as it violated the provisions of the Indian Constitution and International Human Rights Standards. She said that if POTA could be repealed why should AFSPA not be repealed. She

ridiculed the do's and dont's issued by the Army. She cited certain cases against this Act, which were pending in different courts.

7. A delegation of Progressive Students Union Forum on behalf of national campaign for the repeal of AFSPA appeared before the Committee. It stated that there was no scope to amend this Act or make it more humane as it had failed to achieve the objectives for which it was enacted and therefore the Act should be repealed immediately. A list of individuals, organizations and NGOs along with a gist of the submissions made by them is placed at Annexure VIII.

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CHAPTER-VII

Arunchal Pradesh

After completing the public hearing at Dibrugarh (Assam) on April 24, the Committee proceeded to Tirap district of Arunachal Pradesh. Tirap and Changlang districts of Arunachal Pradesh have been notified as "disturbed areas" under the AFSPA.

2. Presentations were by made by the Commandant, Assam Rifles and the Superintendent of Police, Tirap district at Khonsa on April 25, 2005. The Commandant of the local unit of the ITBP also participated in the discussions. The Commandant of the Assam Rifles recommended that the AFSPA should continue without any dilution while the Supdt. of Police, Tirap stressed on modernization of the State Police Force. He also recommended that some areas of Lohit should also be brought under AFSPA. While presentations indicated heightened underground activity and lack of intelligence on account of the fear psychosis generated by militants, no pro-active action was being taken and as such there were no public complaints against the security forces. A copy of the report of the Committee is at **Annexure-IX.**

3. On April 26, some prominent local persons also met the Committee. They highlighted the prevailing insecurity due to Naga militants activities and recommended the retention of the Act.

CHAPTER – VIII

Views of Army, Assam Rifles, BSF, CRPF and State Governments

The Committee was given briefings by Army Headquarters, DG Assam Rifles and the BSF. Some of the State Governments in the North-East communicated their views in writing. These are summarized in the following paragraphs.

Army: Presentations were made by Army Headquarters and its subordinate headquarters in the north east. Data and analysis was also provided to the Committee. The assessment and recommendation of the Army are listed below:-

(a) The insurgency situation in the north-east has worsened since the AFSPA had been applied in the 1950s. The insurgent groups have greatly increased. Their cadres, weapons, tactical capabilities have expanded and improved immediately. They have very large funds at their command. They also receive support and shelter from other countries. These insurgent groups cooperate and network with terrorist groups elsewhere in India and abroad.

(b) The groups which started as insurgents seeking secession from India have now become extortionists, oppressors of the people, and are more interested in holding up the functioning of the State through 'bandhs'. They are in every sense of the word, a set of purely terrorist groups.

(c) The Army and Assam Rifles under its command have to conduct continuous operations over a large territory to dominate such groups and provide an acceptable level of security to the States and people. The number of patrols, search and cordon operations required to conduct such all weather, all terrain

operations are very large. This requires that Non-Commissioned Officers lead such operational teams. The NCO is an experienced and highly trained individual and is to be trusted to exercise tactical judgment, caution, and prudence in operations.

(d) The Army requires adequate authority to conduct effective operations. Such authority should cover actions involving entry and search without warrant, seizure of weapons and explosives, use of force including opening fire when needed, and destruction of armed camps and military stocks held by insurgent groups. The Army also requires adequate safeguards against spurious and motivated accusations of excesses being leveled and legal proceedings commenced against its personnel. Such authority and legal safeguards are provided by the AFSPA.

(e) The Army recommended that the authority and safeguards contained in the AFSPA should form the framework of any new Act or amendment to AFSPA, which the Committee may recommend.

(f) The Army provided data and evidence to indicate that it is zealous and diligent in adhering to the guidelines of the Supreme Court and the Do's and Don'ts issued from the office of the Chief of Army Staff. The Army also indicated that it would welcome recommendations to make its operational conduct more transparent and in keeping with Human Rights statutes.

(g) It was pointed out that a change in the AFSPA or its replacement by another act would have an impact on the similar laws now in force in J&K.

Assam Rifles: The Assam Rifles has had a long presence and history of operations in the North-East. They have, in recent years, come under for criticism from civil rights organizations and other groups on alleged excesses against citizens. The Director

General, Assam Rifles, in a detailed presentation argued for the retention of the AFSPA. His analysis of the situation, and the need for both the authority to conduct operations and safeguards against irresponsible legal action, were on the lines of those of the Army.

BSF: In its detailed presentation, the BSF emphasized that the Army and other forces of the Union of India would continue to be required to contain the insurgency situation. The BSF, like the Army, mentioned that any decision to amend or replace the act would have an impact on the laws which operate in J&K. It also recommended that the principle of 'minimum force' should be incorporated as an operational principle. .

Ministry of Home Affairs: In its presentation to the Committee, the MHA stated that Armed Forces and other forces of the Centre would be progressively withdrawn from the north-east, once the capabilities of the State armed police are up to the required standards. Until then the forces operating in the north-east will require both the authority and legal safeguards provided in the AFSPA. It was also stated that the provision of declaring an area as a 'disturbed area' is a necessary one.

2. DG, CRPF conveyed their recommendations (Delhi - 21.2.2005) that the AFSPA should continue as there was no respite in the violent activities of insurgents operating in North-Eastern Region and there was a sense of insecurity in the minds of the general public. It is stated that withdrawal of AFSPA from the Municipal limits of Imphal in August 2004 has resulted in increased incidents of violence. There were inbuilt cautionary measures against misuse of AFSPA by the Security Forces in the guidelines issued by the Supreme Court of India.

3. The Govt. of Meghalaya informed (Shillong - 11.2.2005 - Copy at **Annexure X**) that the State Govt. has not enforced this Act in Meghalaya but the Union Govt. has declared 20 Kilometers wide belt bordering Assam as a "Disturbed Area" under section 3 of AFSPA.

4. The State Government of Assam intimated (vide their letter dated February, 2005 - copy at **Annexure-XI**) that the entire State of Assam has been declared as a "Disturbed Area" under Section 3 of AFSPA by the Govt. of India since 1990. During 2004, 346 violent incidents took place resulting in killing of 202 civilians, 135 extremists and 25 SF personnel and 1080 extremist were arrested. In 2003, 473 violent incidents occurred in which 260 civilians and 276 extremists were killed. As such AFSPA remains a critical requirement for augmenting counter insurgency operations under the "Unified Command" in the State.

5. The Mizoram State Govt. has intimated (vide letter dated 1.2.2005 - Copy at **Annexure-XII**) that AFSPA has not been used for the last two decades after the Peace Accord was signed on 30.6.1986. The State Govt. is of the view that if the AFSPA is not repealed, this Act should not be revived or extended to the State of Mizoram as they do not require this Act for maintenance of law and order.

6. State Govt. of Arunachal Pradesh has intimated (vide letter No.HMB(B)-59/2004 dated 13.5.2005 - copy at **Annexure-XIII**) that the Act should continue so that the Armed Forces, in exercise of powers provided under the Act, can deal with insurgency and maintain law and order. At present the districts of Tirap and Changlang and 20 KM wide belt in Arunachal Pradesh bordering Assam has been declared as Disturbed Areas

under the AFSPA. The situation in these areas is reviewed periodically and Govt. of India is extending the Notification with written consent of the State Govt.

15. Official views from the States of Manipur, Tripura and Nagaland have not been received.

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PART-IV
Recommendations

The Committee has carefully considered the various views, opinions and suggestions put forward by the representatives of organisations and individuals who appeared before it as also the presentations and representations made by the concerned departments of the governments, security agencies and other organisations and individuals.

2. While devising a solution to the problem referred to the Committee, it has to bear in mind the following three basic conditions viz.,

ONE - The security of the nation, which is of paramount importance. Security of the nation involves security of the States as well. The very first entry in the Union List in the Seventh Schedule to the Constitution speaks of defence of India and every part thereof which means and implies that it is the power and obligation of the President, the Parliament and the Union Government to ensure the defence of India and of every part thereof. Though purporting to be a division of legislative powers between the Union and the States, the Seventh Schedule to the Constitution, it is well accepted, does represent the division of powers between the Union and the States. Even if a law is not made under and with reference to a particular entry / legislative head, the executive power would still be available under that entry. Lists-I and II set out the legislative heads / powers of the Union and the States respectively while List-III sets out the legislative heads, with reference to which both the Parliament and the State Legislatures can make laws, subject, of course, to

the rule of parliamentary predominance recognised by Article 254. For ensuring the defence of India and of its every part, the Parliament can make such law and / or the Union government can take such executive action, as may be found necessary or proper. Some of the ways in which the Union government performs the said obligation are mentioned in Articles 352 to 356, (as pointed out in Chapter II of Part II of this Report. Article 355, which places an obligation upon the Union to protect every State against external aggression and internal disturbance and also to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution, has also been referred to at some length in the said part of this Report). It is necessary to clarify that the Constitution does not contemplate that the obligation to protect the States in the Union shall be carried out by the Union Government only by invoking Article 352 (external aggression or internal rebellion) or Article 356 (to ensure that the government of every State is carried on in accordance with the provisions of the Constitution); the said obligation can be performed in such manner as may be found appropriate, without of course violating the spirit and letter of the Constitution. Now, coming to Article 355, it may be reiterated that the obligation created by Article 355 includes the duty to protect every State against internal disturbance as well. "Internal disturbance", as pointed in Part II of this Report, represents a very serious, large scale and sustained chaotic conditions spread over a large area of the State. It is no doubt the power and obligation of the State Government to maintain public order as is evident from Entry 1 of State List in the Seventh Schedule to the Constitution. However, the said entry read with Entry 2A of the Union List means that (a) where the

State Government finds that it is not able to maintain public order and it is of the opinion that the aid of the armed forces / forces under the control of the Union is necessary for maintaining or restoring the public order, it can request the Union Government to send the armed forces to maintain and restore the public order; (b) even where the State Government does not so request but the Union Government is satisfied that for protecting the State from "internal disturbance" i.e. to save it from domestic chaos or internal commotion, it is necessary to deploy armed forces of the Union, it can do so under Art.355.

TWO – It is equally the duty of the Union and the States to not only respect the fundamental rights conferred upon the citizens of India by Part III and other provisions of the Constitution; they are also under an obligation to ensure the conditions wherein the citizens can enjoy and avail of the fundamental and other rights available to the citizens. In particular, Article 21 of the Constitution expressly declares that no person shall be deprived of his life or personal liberty except in accordance with the procedure established by law. Article 14 in Part III of the Constitution ensures to its citizens equality before law and equal protection of laws within the territory of India which means that no citizen or group of citizens shall be discriminated vis-à-vis any other citizen or group of citizens. Article 19 confers upon the citizens six valuable freedoms viz., freedom of speech and expression; freedom to assemble peacefully and without arms; freedom to form associations or unions; freedom to move freely throughout the territory of India; freedom to reside and settle in any part of the territory of India and the freedom to practise any profession or to carry on any occupation, trade or business - subject of course to such

reasonable restrictions thereon as may be placed by a law made by the Parliament or State Legislatures under clauses (2) to (6) of the said article. Clauses (1) and (2) of Article 22 confer equally valuable rights upon the citizens of India. Clause (1) declares that 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 the legal practitioner of his choice. Clause (2) declares that every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours excluding the time taken for journey from the place of arrest to the nearest court of the Magistrate. Inasmuch as no law has been made by Parliament under Article 33 of the Constitution (as pointed out in Part II of this Report), the above mentioned rights remain sacrosanct and effective even where the armed forces of the Union are deployed to restore public order and/or peace or to protect a State against internal disturbance. Articles 25 to 30 ensure the freedom of religion and ensure to every religious denomination or any section thereof to manage its religious affairs; they ensure freedom of worship, right to conserve one's own culture and also confer a right upon the minorities to establish educational institutions of their choice.

THREE - The armed forces of the Union viz., the army, navy and the air force are meant to ensure the defence of the Union and all its parts. In other words, the armed forces are meant to guard our borders against any aggression by any foreign power or foreign agency, irrespective of the manner in which such aggression is perpetrated. The armed forces are trained and are equipped for this purpose. May be that in an

emergency like a flood or other natural calamity, armed forces are also called in to provide relief and help the people but that is only a temporary phenomenon. The Union Government has also been creating and indeed expanding various para military forces under various enactments like the Border Security Force Act, Assam Rifles Act, Indo-Tibetan Border Police Act, CRPF Act, CISF Act and so on. The Union Government has also created what is known as "India Reserve Battalions". Though these para military forces have been created for certain specific purposes, yet, on account of the disturbed situation in certain parts of the country, the Union Government has been obliged to deploy, from time to time, these forces as well as its armed forces to redress these situations. It must be recognised, at the same time, that the deployment of armed forces or para military forces of the Union to restore public order in any part of the territory of India, or to protect a State from internal disturbance is, and ought to be, an exception and not the rule. The deployment of armed forces for the said purposes should be undertaken with great care and circumspection. Unless it is absolutely essential for the aforesaid purposes, the armed forces of the Union should not be so deployed, since too frequent a deployment, and that too for long periods of time, carries with it the danger of such forces losing their moorings and becoming, in effect, another police force, a prey to all the temptations and weaknesses such exposures involve. Such exposure for long periods of time may well lead to the brutalisation of such forces - which is a danger to be particularly guarded against. This concern applies no less in the case of other armed forces of the Union as well. All this means that as soon as the public order is restored or the internal disturbance is quelled, the forces have to be withdrawn to their

barracks or to their regular duties, as the case may be. This very concern and consideration underlies Sections 130 and 131 of the Code of Criminal Procedure, which have been referred to and dealt with in Chapter IV of Part II of this Report. These sections of the Code of Criminal Procedure make it repeatedly clear that where it is necessary to call in the army to disperse an unlawful assembly endangering public security, the armed forces so called in shall act according to the directions of the Magistrate though the manner in which the armed forces perform the task entrusted to them lies within their discretion. Even where the armed forces are called in for meeting a more serious threat to public order or public security, or where the deployment of the armed forces is required on a fairly long-term basis, this concern remains equally valid. It has also to be ensured that the legal mechanism under which they function is sufficiently clear and specific and accords with the spirit and provisions of the Constitution as adumbrated hereinabove. While providing protection against civil or criminal proceedings in respect of the acts and deeds done by such forces while carrying out the duties entrusted to them, it is equally necessary to ensure that where they knowingly abuse or misuse their powers, they must be held accountable therefor and must be dealt with according to law applicable to them. It is not unusual that there will be some indisciplined individuals in these forces as well, but their wrong actions should not be allowed to sully the fair name of the armed forces and the para military forces. While our armed forces are one of the most disciplined in the world, situations may arise when they are deployed outside their regular duties, i.e., when they are deployed for maintaining public order or for quelling internal disturbance in a part of the territory of India, when certain members thereof may seek to

take advantage of their power and position to harass or otherwise trample upon the rights of the citizens of this country. The legal mechanism should ensure that such incidents do not take place and should also ensure that adequate remedial measures do exist where such incidents do take place.

3. Bearing the above considerations in mind, we have to proceed ahead. At this juncture it would be appropriate to recall the terms of reference given to this Committee. They read as follows:

"Keeping in view the legitimate concerns of the people of the North Eastern Region, the need to foster Human Rights, keeping in perspective the imperatives of security and maintenance of public order to review the provisions of the Armed Forces (Special Powers) Act, 1958 as amended in 1972 and to advise the Government of India whether:

(a) To amend the provisions of the Act to bring them in consonance with the obligations of the Govt. towards protection of Human Rights; or

(b) To replace the Act by a more humane Act.

The Committee may interact with representatives of social groups, State Governments and concerned agencies of Central Govt./State Govt. legal experts and individuals, as deemed necessary by the Committee in connection with the review of the Armed Forces (Special Powers) Act, 1958 as amended in 1972.

The Committee will meet as often as required and visit the North Eastern Region, if felt necessary."

4. The Committee finds that there are four options available for it to adopt viz.,

(a) to recommend the repeal of the Armed Forces (Special Powers) Act, 1958;

(b) to recommend that the present Act should continue as it obtains today or with such amendments as may be found appropriate;

(c) in case the repeal of the Armed Forces (Special Powers) Act, 1958 is recommended, to recommend that it should be replaced by an appropriate legislation;

(d) in case of recommendation for repeal of the Act, to recommend insertion of appropriate provisions in an existing /cognate enactment

5. Keeping in view the material placed before us and the impressions gathered by the Committee during the course of its visits and hearings held within and outside the North-Eastern States, the Committee is of the firm view that:

(a) The Armed Forces (Special Powers) Act, 1958 should be repealed. Therefore, recommending the continuation of the present Act, with or without amendments, does not arise. The Act is too sketchy, too bald and quite inadequate in several particulars. It is true that the Hon'ble Supreme Court has upheld its constitutional validity but that circumstance is not an endorsement of the desirability or advisability of the Act. When the constitutional validity of an enactment is challenged in a Court, the Court examines (i) whether the Act is within the legislative competence of the Legislature which enacted it and (ii) whether the enactment violates any of the provisions of the Constitution. The Court does not - it is not supposed to - pronounce upon the wisdom or the necessity of such an enactment. It must be remembered that even while upholding its constitutional validity, the Hon'ble Court has found it fit and necessary not merely to approve the "Dos and Don'ts" in the instructions issued by the Army Headquarters from time to time

but has also added certain riders of its own viz., those contained in clauses 8, 9 and 14 to 21 in para 74 of its judgment (at pages 156 and 157 of the judgment in NAGA PEOPLES' MOVEMENT OF HUMAN RIGHTS v UNION OF INDIA – (1998) 2 SCC 109). The Committee is of the opinion that legislative shape must be given to many of these riders. We must also mention the impression gathered by it during the course of its work viz., the Act, for whatever reason, has become a symbol of oppression, an object of hate and an instrument of discrimination and high-handedness. It is highly desirable and advisable to repeal this Act altogether, without, of course, losing sight of the overwhelming desire of an overwhelming majority of the region that the Army should remain (though the Act should go). For that purpose, an appropriate legal mechanism has to be devised.

(b) The Committee is also of the firm view that it would be more appropriate to recommend insertion of appropriate provisions in the Unlawful Activities (Prevention) Act, 1967 (as amended in the year 2004) – which is a cognate enactment as pointed out in Chapter III Part II of this Report instead of suggesting a new piece of legislation.

6. The reasons for adopting the course of introducing requisite and appropriate provisions in the Unlawful Activities (Protection) Act are as follows:

ONE – The ULP Act defines “terrorism” in terms which encompass and cover the activities of the nature carried on by several militant/insurgent organisations in the North-east States. Use of arms and/or explosives so as to cause loss of life or property or to act against a government servant, with intent either to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people

in India or in any foreign country (as provided by Section 15), the kind of activity carried on by various militant / insurgent organisations in the North-east, falls within the four corners of Section 15. It is terrorism within the meaning of the Act.

TWO - The ULP Act not only defines 'terrorism' in expansive terms but also specifically lists some of the organizations engaged in militant / insurgent activity in Manipur, Tripura, Nagaland and Assam as terrorist organizations in the schedule appended to the Act. In other words, the Act recognizes that the activities carried on by the schedule mentioned organizations fall within the definition of 'terrorism' and 'terrorist activity' as defined by the said Act. Furthermore, as pointed out in Chapter III of Part II of this Report, the ULP Act does contemplate, by necessary implication, the use of armed forces of the Union as well as the other para military forces under the control of the Union to fight and curb the terrorist activities in the country. It is for the said reason that it has expressly barred, in Section 49, any suit, prosecution or other legal proceedings against "any serving or retired member of the armed forces or para military forces in respect of any action taken or purported to be taken by him in good faith, in the course of any operation directed towards combating terrorism". In this sense the ULP Act, as it now obtains, does provide for deploying the armed forces or para-military forces for fighting the militant/insurgent/terrorist activity being carried on in some or all North-eastern States¹. The Act is designed to curb the terrorist

¹ As a matter of fact, it can be said that there are two enactments for fighting militant/insurgent /terrorist organizations, groups and gangs in the North-eastern States viz., the Armed Forces (Special Powers) Act whose application is limited to the North-eastern States alone and the ULP Act which extends to the whole of India including the North-eastern States.

activities of not only the organisations mentioned in the schedule but any and every terrorist activity.

THREE - a major consequence of the proposed course would be to erase the feeling of discrimination and alienation among the people of the North-eastern States that they have been subjected to, what they call, "draconian" enactment made especially for them. The ULP Act applies to entire India including to the North-eastern States. The complaint of discrimination would then no longer be valid.

FOUR - The ULP Act is a comprehensive law designed to (i) ban unlawful organisations; (ii) to curb terrorist activities and the funding of terrorism; and (iii) investigation, trial and punishment of persons indulging in terrorist acts, unlike the Armed Forces (Special Powers) Act which deals only with the operations of the armed forces of the Union in a disturbed area. After the proposed amendments, ULP Act would be more comprehensive in the sense that it would expressly permit deployment of armed forces and para-military forces of the Union to achieve its object viz., curbing terrorism. In other words, operations of the armed forces of the Union would be one of the ways of curbing terrorism. It would also mean that persons apprehended by the armed forces of the Union would be made over immediately to the nearest police station and would be tried in accordance with the procedural laws of the land. The prosecution too would be quicker and more effective because of the special provisions contained in Sections 44 (protection of witnesses) and 46 (admissibility of evidence collected through interception of communications). At the same time, the accused would also get the very important safeguard contained in Section 45 of the Act which provides that no court shall take cognizance of any offence

under the Act unless previous sanction therefor is granted by the appropriate government, in case the prosecuting agency proposes to proceed against him for any offence in Chapter IV or Chapter VI of this Act. We may clarify that in law it lies within the discretion and judgement of the investing officer to decide, after due investigation, whether to proceed against the accused or to drop the proceedings and in case, he decides to proceed against the witness, to determine the offence with which the accused is to be charged. In short, just because, a person is arrested by the armed forces acting under this Act, and is made over to the police, the police is not bound to proceed against him only for offences under this Act, the police is free, depending upon the evidence/material gathered during investigation, to file a charge sheet for offence under this Act or under IPC or such other appropriate enactment, as may be applicable.

7. As stated hereinabove, the ULP Act does contemplate, by necessary implication, use of armed forces or para-military forces to conduct operations and to take steps to fight and curb terrorism. It does not, however, contain any provision specifying their powers, duties and procedures relevant to their deployment. It does not also provide for an internal mechanism ensuring accountability of such forces with a view to guard against abuses and excesses by delinquent members of such forces. It is this lacuna, which is to be supplied by inserting appropriate provisions in the ULP Act. The provisions so introduced should be clear, unambiguous and must specify the powers of the armed forces/para military forces while acting to curb terrorist/insurgent activities.

8. We may also refer in this connection to the necessity of creating a mechanism, which we may designate as the

"Grievances Cell"- Over the years many people from the region have been complaining that among the most difficult issues is the problem faced by those who seek information about family members and friends who have been picked up and detained by armed forces or security forces. There have been a large number of cases where those taken away without warrants have "disappeared", or ended up dead or badly injured. Suspicion and bitterness have grown as a result. There is need for a mechanism which is transparent, quick and involves authorities from concerned agencies as well as civil society groups to provide information on the whereabouts of missing persons within 24 hours.

9. To ensure public confidence in the process of detention and arrest, grievances cells are proposed to be set up in each district where armed forces are deployed. These cells will receive complaints regarding allegations of missing persons or abuse of law by security/armed forces, make prompt enquiries and furnish information to the complainant. Where, however, the complainant is not satisfied with the information furnished and is prepared to file an affidavit in support of his allegation, it shall be competent for the Cell to call upon the State level head of the concerned force or organization to enquire into the matter and report the same to the cell as early as possible, not exceeding in any event, one week. The State level officers from whom these Grievances Cells seek information shall immediately make necessary enquiries and furnish full and correct information to the Grievances Cell as early as possible, not exceeding in any event one week. The Grievances Cells will be composed of three persons, namely, a senior member of the local administration as its chair, a Captain of the armed forces/security forces and a

senior member of the local police. These will have dedicated communications, authority to obtain information from concerned authorities and have facilities for recording and responding to complaints. They shall locate their offices in the premises of the Sub Divisional Magistrate or in the premises of the District Magistrates, as the case may be. Such a mechanism is absolutely essential to achieve the two equally important purposes viz., (a) to infuse and instill confidence among the citizenry that the State, while deploying the armed forces of the Union to fight insurgency/terrorism has also taken care to provide for steps to guard against abuses/excesses with a view to protect the people and to preserve their democratic and civil rights; and (b) to protect the honour and the fair name of the forces.

11. While deploying the forces under sub-section (3) the Central Government shall, by a notification published in the Gazette, specifying the State or the part of the State in which the forces would operate and the period (not exceeding six months) for which the forces shall operate. At the end of the period so specified, the Central Government shall review the situation in consultation with the State Government and check whether the deployment of forces should continue and if it is to continue for which period. This review shall take place as and when it is found necessary to continue the deployment of the forces at the expiry of the period earlier specified. It shall be permissible for the Central Government to vary the part of the State where the forces are deployed in case the earlier notification is in respect of a part of a State. Every notification extending the period of deployment of forces or varying the area of the State, as the case may be, shall be laid on the table of both the Houses of

Parliament within one month of the publication of such notification.

12. A draft of the Bill, which is recommended to be incorporated as Chapter VI A of the Unlawful Activities (Preventive) Act, 1967 is enclosed herewith. The draft bill is meant to serve as a guide in drafting the legislation to be introduced in the Parliament. We may also mention that the Appendix to the draft incorporates the Do's and Don'ts issued by the Army and which have been approved by the Hon'ble Supreme Court of India in its decision report in Naga People's Movement for Human Rights Vs Union of India (A.I.R 1998 Supreme Court 431) as well as the additional directions given by the Hon'ble Supreme Court. However, those directions which have been already incorporated in the Bill are not repeated in the Appendix.

13. A separate note submitted by Sri Sanjoy Hazarika, a Member of the Committee, is also enclosed at Annexure-XIV.

....

PART-V**Draft Chapter VI A to be inserted in the Unlawful Activities (Prevention) Act, 1967.****Deployment of the Armed-Forces of the Union.**

Section 40 A - (1) (a): If the State Government, is of the opinion that on account of the terrorist acts or otherwise, a situation has arisen where public order cannot be maintained in the State or in any part of the State, as the case may be, except with the aid of army, navy, air-force or any other force subject to the control of the Union, it may request the Central Government to deploy such forces for such a period (not exceeding 6 months) as it may specify.

(b) It shall however be open to the State Govt. to review the situation at the end of the period as specified and request the Central Govt. to extend the period of deployment of forces for such period (not exceeding 3 months) as it may deem necessary. Such review, and the request if any following the review, can take place from time to time. Every such request shall be placed on the table of the Legislative Assembly of that State and if there are two Houses, then on the table of both Houses.

(2): Where a request from a State Government is received under sub-section (1), the Central Government may deploy such forces under its control or such other armed forces of the Union, including army, navy, air-force, or such other force, as are, in its opinion, necessary for restoration of public order in the State or part of the State, as the case may be. While deploying the forces under this sub-section, the Central Govt. shall, by a notification

published in the Gazette, specify the State or the part of the state, in which the forces deployed shall operate and the period for which they are deployed. On the basis of the request of the State Govt., the period of deployment and area of deployment can be extended or varied, as the case may be.

(3): If the Central Government. is of the opinion that on account of terrorist acts^{or otherwise}, a situation has arisen in a State or a Union Territory or in a part of a State, as the case may be, where deployment of a force under its control or any other armed-forces of the Union, including army, navy or air-force have become necessary to quell internal disturbance, it may do so notwithstanding that no request for such force is received from the State Government concerned. While deploying the forces under sub-sections (2) or (3), the Central Govt. shall by a notification published in the Gazette, specify the State or the part of the state in which the forces are to operate and the period of deployment (not exceeding six months). At the end of the period so specified, the central Govt. shall review the situation in consultation with the State Govt. and may extend the period of deployment, if found necessary, provided however, that such extension shall not be for more than six months at a time. It shall also be competent for the Central Govt. to vary the area of deployment where the earlier notification is for a part of the State. Every notification extending the period of deployment or the area of deployment, shall be laid on the table of both Houses of Parliament, within one month of publication of such notification.

(4): The force deployed under sub-section (2) or sub-section (3), shall act in aid of civil power and shall, to the extent feasible

and practicable, coordinate their operations with the operations of the Security Forces of the State Government. However, the manner in which such forces shall conduct their operations shall be within the discretion and judgement of such forces;

(5) (a): The force deployed under sub-section (2) or under sub-section (3) shall take such steps and undertake such operations as are deemed necessary for the purpose of restoring public order or to quell internal disturbance.

(b): In the course of undertaking operations mentioned in (a) above, any officer not below the rank of a non-commissioned officer, may, if it is necessary, in his judgement, for an effective conduct of operations,

use force or fire upon, after giving due warning, an individual or a group of individuals unlawfully carrying or in possession of or is reasonably suspected of being in unlawful possession of any of the articles mentioned in Section 15 of this Act,

(i) enter and search, without warrant, any premises in order to arrest and detain any person who has committed a terrorist act or against whom a reasonable suspicion exists that he is likely to commit a terrorist act,

(ii) enter, search and seize, without warrant, any premises, and destroy, if necessary, the firearms or any of the articles mentioned in Section 15 from any premises/ vehicle, vessel or other means of transport and for that purpose to stop the vehicle, vessel or other means of transport, provided that where such premises happens to be in an inhabited area, the entry, search, seizure or destruction shall be effected in the presence of the elders of the locality or the head of the household, and in

his/her absence, any two independent witnesses, as the case may be.

(5) (c): While acting under clauses (a) and (b) of this sub-section, the forces deployed under sub-section (2) or sub-section (3) shall act in accordance with the directions contained in Appendix-A to this Act.

Section 40 B: (1) If the forces deployed under sub-section (2) or sub-section (3) of Section 40A arrest any person, under the preceding section, they shall forthwith hand over such person to the officer in charge of the nearest police station. In case, a police officer of the rank not below the rank of Sub Inspector is available on the spot, the person so arrested shall be handed over forthwith to such police officer. It shall be the duty of such police officer to hand over such person to the officer in charge of the nearest police station;

(2) While handing over the person arrested to the police station or to the police officer of the rank specified in sub-section (1) present on the spot, the member of the forces, shall prepare a memo setting out the circumstances in which such person was arrested. Such memo shall be deemed to be proof of the circumstances stated therein, and it shall not be necessary to call such member of the forces to prove his report, unless the court, for the reasons to be recorded, decides to call him;

(3) The officer in charge of the police station shall, as soon as a person is handed over under sub-section (1) to him, make appropriate entries in the relevant registers and shall also incorporate the contents of the memo referred to in sub-section (2) in such registers;

(4) If any property is recovered by the forces deployed under sub section (2) or sub-section (3) of Section 40A in the course of

their operations, the same shall also be dealt with in the manner specified in sub-sections (1) and (2) of this section.

Section 40-C (1) The Central Government shall constitute a Grievances Cell in each district of a State where the forces are deployed. The grievances cell shall consist of three members namely:

- (a) Sub-Divisional Magistrate, who shall be the Chairman,
- (b) A representative of the forces operating in that district, of the rank of Captain or an equivalent rank.
- (c) An officer of the State police not below the rank of Deputy Supdt. of police or officer holding an equivalent rank;

(2) The Grievances Cell shall be an independent body and shall be competent to inquire into complaints of violations of rights of citizens including unlawful arrest or detention, as the case may be. On receipt of any such complaint, the cell shall promptly obtain relevant information from the Commander of the unit or the local headquarters of the Unit operating in the State and the appropriate State Police authorities, complained against. The Commander of the unit or the force or the Police authority, as the case may be, shall furnish the relevant information to the cell forthwith, which information shall be promptly communicated to the complainant. Such information to the complainant shall be furnished within 24 hours of the receipt of the complaint. In case the complainant is not satisfied with the correctness of the information furnished and is prepared to file an affidavit in support of his allegation, it shall be competent to the cell to call upon the Commander of the force at the State level or the head of the State Police Department, to make appropriate enquiries and furnish information to the cell within a period not exceeding

one week, which information shall be promptly communicated to the complainant.

(4) The Grievances Cell shall be provided with dedicated communications and shall also have the necessary infrastructure for its efficient functioning. The office of the Grievances Cell shall be located in the premises of the Sub-Division Magistrate or the District Magistrate/Deputy Collector, as the case may be;

Section 40-D(1): In this chapter, the expression "force" and "forces" shall mean the armed-forces of the Union or any other force subject to the control of the Union or any contingent or Unit thereof.

(2) In this chapter, wherever necessary, as referring to "Union Territory" and similarly the expression " State Govt." shall be construed, wherever necessary, as referring to the Administrator or Union Territory.

Section 40-E: The Armed Forces (Special Powers) Act, 1958 is repealed herewith.

APPENDIX-A**(Section 40 A(5) b)**

The forces operating under this Act shall observe and abide by the following directives in the course of their operations under the Act:

1. Before conducting any search or raid, definite information about the premises to be searched or raided may be obtained from the local civil authorities.
2. During any search or raid, the representatives of the local civil administration shall be co-opted as far as possible.
3. It must be ensured that the innocent people are not harassed nor the property of the public is destroyed. A dwelling house not connected with any unlawful activities should not be entered into.
4. Women should not be physically searched or touched in any manner or arrested without the presence of the Women police. Only Women police should search women.
5. After arresting a person, a memo should be prepared containing the circumstances which occasioned the arrest which immediately should be handed over to the police station or the police officer on the spot, if any, along with the arrested person.
6. After conducting a search or a raid, a list of all arms, ammunition or other incriminating material /documents should be prepared which should be handed over to the police under a receipt.
7. A record must be kept of the area where operation is conducted showing the date and time and the persons

participating in search operation. The record should also contain the names of the Commander and other officers/JCOs/NCOs forming part of such group.

8. If any person is injured during the course of operation, it must be ensured that the injured person is given medical relief as early as possible.

9. If any person dies during the course of these operations, his dead body should be handed over immediately to the police alongwith the details leading to such death.

10. Once a person is arrested, no force should be used against him except when he is trying to escape. No third degree methods should be employed to extract information or to extract confession or to obtain any other information regarding unlawful activities.

11. Persons arrested by the force shall not be interrogated by the members of the forces.

12. Once a person arrested is handed over to the police, the forces shall not take him back.

13. While conducting operations, the forces shall be in the closest possible communication with the civil authorities through out, whether by telephone, radio or other means of communications.

14. If a Magistrate is present during the course of any operation, his permission should be obtained before conducting the operation. The forces shall ensure that as little force is used as possible and as little injury is caused to the person and property, consistent with the attainment of objective in view.

15. In case the force decides to open fire, give warning in local language that the effective fire will be used. Further attention should be drawn before firing by bugle or other means.

16. The Commanders of the units shall issue personal orders before opening fire.

17. While opening fire, aim low and shoot for effect. The fire must be stopped immediately once the objective has been attained.

18. After the firing is over, immediate steps should be taken to secure the possible and necessary medical help, for the injured, if any.

19. In no circumstances, excessive force should be used nor shall any one, in particular women and children, be ill-treated.

20. There should be no harassment or torture of the civilians.

21. No member of the force shall accept presents, donations or rewards.

21. The forces shall not indulge in indiscriminate firing.

23. The provisions of Cr.P.C. governing search and seizure have to be followed during the course of search and seizure conducted in exercise of the powers conferred under Section 4(d) of the Central Act.

24. If on enquiry, it is found that the allegations are correct, the victim should be suitably compensated and the necessary sanction for institution of prosecution and/or a suit or other proceeding should be granted under S.6 of the Central Act.

ANNEXURES

Annexure-I

No.11011/97/2004-NE.III

MINISTRY OF HOME AFFAIRS**(N.E. DIVISION)**New Delhi, dated 19th November, 2004**OFFICE ORDER**

**Subject: Setting up of a Committee to review the provisions of
the Armed Forces (Special Powers) Act, 1958.**

Following the demands made by the general public and civil groups, it has been decided with the approval of the competent authority to set-up a five member Committee to review the provisions of the Armed Forces (Special Powers) Act, 1958 as amended from time to time. The Committee will be headed by Justice Jeevan Reddy, former Judge of the Supreme Court of India. The other members of the Committee shall be:-

- (1) Dr. S.B. Nakade, Former Vice-Chancellor and Jurist.
 - (2) Shri P.P. Shrivastav, IAS (Retd.), Former Special Secretary, M.H.A.
 - (3) Lt. Gen.(Retd.) V.R. Raghavan, Former DGMO
 - (4) Shri Sanjoy Hazarika, Journalist.
2. The Committee will submit its report within a period of six months.

Sd.

(L.C. Goyal)

Joint Secretary (IS)

Phone No. 23092736

Distribution as per list.

DETAILS OF MEETINGS/HEARINGS/BRIEFINGS OF THE COMMITTEE

Sl.	Place	Date	
1.	Delhi	24.11.2004	Meeting
2.	Delhi	26.11.2004	Meeting
3.	Delhi	08.12.2004	Meeting
4	Imphal (Manipur)	28.12.2004	Public hearing.
5	-do-	29.12.2004	Public hearing & briefing by GOC 17 Mountain Div.
6.	-do-	30.12.2004	Public hearing.
7.	Delhi	19.01.2005	Public hearing.
8.	-do-	20.01.2005	Public hearing.
9.	-do-	21.01.2005	Public hearing & briefing by MHA & CRPF.
10.	-do-	06.02.2005	Meeting.
11.	Kolkata(West Bengal)	07.02.2005	Briefing by HQ Eastern Command.
12.	Agartala(Tripura)	08.02.2005	Public hearing.
13.	Guwahati (Assam)	09.02.2005	Public hearing.
14.	-do-	10.02.2005	Public hearing.
15.	Shillong (Meghalaya)	11.02.2005	Public hearing & briefing by DG, Assam Rifles.
16.	Delhi	07.03.2005	Briefing by Army HQ.
17.	Kohima (Nagaland)	20.03.2005	Briefing by Assam

			Rifles.
18.	- do-	21.03.2005	Public hearing.
19.	Delhi	24.03.2005	Meeting
20.	-do-	01.04.2005	Meeting
21.	-do-	02.04.2005	Meeting
22.	-do-	03.04.2005	Meeting
23.	Senapati (Manipur)	21.04.2005	Public hearing.
24.	Imphal (Manipur)	22.04.2005	Meeting with State Functionaries.
25.	Churachandpur (Manipur)	23.04.2005	Public hearing.
26.	Dibrugarh (Assam)	24.04.2005	Public hearing.
27.	Khonsa (Arunachal Pradesh)	25.04.2005	Briefing by Assam Rifles & S.P., Tirap.
28	Deomali (-do-)	26.04.2005	Hearing in camera.
29	Delhi	07.05.2005	Briefing by BSF.
30.	-do-	08.05.2005	Meeting
31.	-do-	09.05.2005	Meeting
32.	-do-	27.5.2005	Meeting
33	-do-	28.5.2005	Meeting
34.	-do-	30.5.2005	Meeting

**Details of individuals/organizations who appeared before the Committee
or sent their views through mail.**

Kohima Nagaland	Individual	Organization	Political Party	Men	Women	Repeal	Repeal but Army should stay	Amend- ment	Retention
Wahap Kohima Delegation (Mail)	54	21	3	119	27	21	- 5	15	112
Kohima Delegation (Mail)	-	5	-	11	3	5	-	-	-
Kohima Delegation (Mail)	14	-	-	14	-	3	1	3	5
Wahap Kohima Delegation (Mail)	58	41	5	169	27	21	5	15	112
Wahap Kohima Delegation (Mail)	10	10	-	45	5	17	-	2	-
Wahap Kohima Delegation (Mail)	21	27	3	67	14	37	4	5	3
Wahap Kohima Delegation (Mail)	1	3	-	6	1	2	-	2	-

Kohima (Nagaland)	-	5	-	11	3	5	-	-	-
Overall Position	54	51	5	169	27	71	5	15	12
Kohima (Nagaland)	-	5	-	11	3	5	-	-	-
Overall Position	54	51	5	169	27	71	5	15	12

Public hearing at Manipur (Imphal) (December 28, 29, & 30,2004)28.12.2004

- W.Kulbidhu Singh,
Ex-MP, State President
Janata Dal (S)
- JD/S is of the view that AFSPA should be repealed in toto as already submitted to the Home Minister during his visit to the State on 5.9.2004. He requested the PM to grant significant economic package for the State of Manipur.
- K.Indramani Singh and party.
- K.Rajen Singh, Convener, Meehatpa Mayoknaba Lup requested for judicial enquiry into the death of a student of Class X K.Ojit Singh by the Assam Rifles/Police on 21.2.1997. They **appealed for repealing of AFSPA in the interest of the people of Manipur.**
- Manglam Singh, Secy.
Joint Action Committee
and his party.
- Smt. Wahengbam Ongbi Kunjarasi Devi w/o W.Udoichand Singh, Torbung Bangla of Churachandpur district submitted a memorandum prepared by the Joint Action Committee regarding the death of her son Wahengbam Brojendro Singh, aged 21 years at the hands of BSF personnel on Sept. 1/2,2001. She appealed for magisterial enquiry into the death of her son and **requested for repealing of AFSPA.**
- L.Krishnamohan Singh,
General
Secretary,Keirenphabi
Sporting Club, Bishanpur
District.
- L.Krishnamohn Singh submitted a Memorandum but he did not come for hearing. N. Pramo Devi, the victim, w/o Ningthoujam Basanta Singh appeared in person and narrated the incident of her rape inside her house by Army personnel. She requested for prosecution of the culprits and **to repeal the AFSPA.**
- Moirang Kendra Co-ordination Committee.
- The mother of Moirangthem Manibala Devi appeared before the Committee and submitted a copy of an old representation dated 13.6.1998 regarding shooting of her daughter in school uniform, studying in class IX by CRPF personnel on 9.6.1998. She requested **to repeal the AFSPA.**

Working Committee, Manipur of the Apunba Lup, Manipur. The Co-ordinators (6) of the Committee submitted a Memorandum to the Review Committee alongwith a booklet containing details of Human Rights violations in Manipur. The list has ben compilled under the headings extra judicial killings, rape, sodomy, torture, disappearances and illegal detentions. The Committee has recommended immediate repeal of AFSPA in the interest of citizens of India in general and the people of Manipur in particular.

Ajay Pebam
Keishamthong In his representation submitted to the Committee, Ajay Pebam, who appeared in his individual capacity, appealed for repealing of the AFPSA in the interest of the people of North-East. He suggested a new Act which should respect human life and ensure integrity of India, help the civil administration and should be in the interest of general public.

29.12.2004

K. Prongo, Secretary
Manipur Elders Welfare
Association, Dewlahland,
Imphal. He appeared before the Committee and made very strong plea against the removal of AFSPA from Manipur as it would be very dangerous. He felt that in case AFSPA is repealed, the life of the people would become miserable. Govt.'s appeasement policy would not work. Corruption must be stopped.

Malika Devi, Singjamei
Makha Naorem Leikai,
PO& PS Singjamei. Malika Devi (mother of Thingujam Dhirendra @ Michael aged about 36 years who was allegedly killed by the personnel of 17 Assam Rifles after arresting him on he night of April 5/6, 2002) appeared before the Committee and submitted a representation. She said that even though her son was killed by the Assam Rifles, no justice had been done to her family as the criminals were given immunity by the AFSPA. She pleaded **for immediate repeal of the AFSPA.**

Indian Association of
Lawyers, Imphal. Manipur State Committee of Indian Association of Lawyers led by N.Binodini Devi, its Secretary, submitted a memorandum and pleaded that it would be in he national interest to repeal the AFSPA and felt that only uniform criminal laws applicable all over India should be made applicable to Manipur also.

Young Lawyers' Forum,
Imphal The Forum led by S. Shyamacharan, its President and Smt. Ibetombi Devi, Vice President, submitted 15-page Memorandum giving justification for repealing AFSPA

completely in the interest of the people of North-East and the entire India. They termed AFSPA as a draconian law and it was a blot on democratic set up. **If POTA can be repealed, why not AFSPA?**

Ashirjit Luwang, A delegation led by Ashirjit Luwang presented a Memorandum to the Committee highlighting the atrocities committed by the Armed Forces particularly in the Manorama. Devi murder case and conveyed their request to repeal the AFSPA completely and, if necessary, should enforce other provisions of the Constitution to take care of the security concerns.

President, Manipur Students' Union.

Smt. Laitonjam Ningol Lanjita Devi D/o late L. Mnglemba Singh r/o Distt. Bishnupur. Smt. Laitonjm Ningol Lanjita Devi, the victim, submitted a Memorandum stating therein that her father L. Manglemba Singh and another person Thoudam Girani Singh were gunned down by the Security personnel of 8th Assam Rifles at Keinou Laisoi on 23.3.2000. She stated that the Govt. had agreed to provide employment to one family member each of the deceased persons but they have not fulfilled their promise. She **requested to repeal the AFSPA.**

Smt. Thoudam Ongbi Memcha Devi wd/o late Thoudam Girani Singh of Keinou Thongkha Mamang Leikai, District Bishnupur. She did not appear before the Committee However, a representation (un-signed) was submitted stating therein that her husband late Thoudam Girani Singh (aged about 50 years) and one more person were gunned down by the Security personnel of 8th Assam Rifles on 23.3.2000. Details of the incident are similar to the above mentioned person at Sl. No. 13. She **requested to repeal the AFSPA.**

T. Lunkim, Chairman, Kuki Movement for Human Rights, T.Lunkim submitted a representation to the Committee and appealed that AFSPA should be repealed and replaced with a more effective Act which should restore peace and harmony, enforce law and order and normalise public life in the whole Region.

Yambem Laba, Former Member, Manipur Human Rights Commission Yambem Laba appeared before the Committee and submitted a Memorandum stating therein that AFSPA should be repealed as the existing provisions of Criminal Provision Code were adequate to deal with the situation in Manipur. He has also enclosed a letter dated 24.4.2002 from Manipur Human Rights Commission to the Chief Minister of Manipur for reviewing the disturbed area status in the State of Manipur.

- Secretary, Lilong United Club Organisation. The Secretary of the Club has submitted a representation containing four cases of excesses committed by the Security Forces viz. Miss Farida Begum, Alauddin and Mu. Jameruddin and appealed to the Committee to **repeal the AFSPA.**
- Smt. Wahengbam Ongbi Memcha Devi wd/o W. Nobochandra @ Lukhoiba Singh of district Bishnupur. Smt. Wahengbam Ongbi Memcha Devi in her representation stated that her husband W. Nobochanra (aged 45yrs) and one more person Wahengban Manglemba Singh (aged about 47 yrs) were shot dead by the personnel of 2nd Battalion , BSF on 5.8.2001 who were attached to the Police Station, Kumbi without their fault. She sought rehabilitation and requested for repealing the AFSPA.
- S. Kumar Singh, Secretary Joint Action Committee, Malom Tuliha, Imphal. S. Kumar Singh submitted a representation to the Committee giving details of the incident occurred on 2.11.2000 regarding killing of 10 innocent persons by the personnel of 8th Assam Rifles (Malom massacre) There were no comments about the Act.
- Th. Dolendro Singh, younger brother of deceased Th. Monorama Devi of Bamon Kampu Mayai Leikai, Imphal East District, Th. Dolendro Singh, who was accompanied by 4/5 persons, in his Memorandum, has given details of the incident in which his sister was arrested, tortured, beaten up and raped by the personnel of Assam Rifles on the night intervening July 10/11,2004 and she was found dead on the Yairipok road, the next day. The State Government appointed a Commission to enquire into this case but so far its findings have not been made public. The delegation demanded complete removal of this Act so as to protect the dignity of human beings. He mentioned in his oral submission that they have no objection for Army operation in Manipur but not at the cost of dignity of citizens. The State Police could control the situation.
- Th. Haokhothang, President, Baite National Covenant Council, Sugnu. The President appeared before the Committee and narrated the incident which occurred on Nov. 25,2004 in the evening when three boys of a High School were shot dead in cold blood by five Commandoes of the State Police of Manipur leveling them as militants and no compensation has been paid to their families by the State Govt. so far. He promised to send written representation in this regard.
- Khagemba Sanabam and Adhikarimayum Dhanachandra Sharma (Businessmen) Mr. Dhanachandra Sharma made an oral submission before the Committee and stated that he was doing business for the last 20 years and there was extortion both by the police as well as the militants. The people are

caught between the two and panelized at the cost of their business though the newspapers/press are toeing the line of militants. He said that there was no security of life and wanted the rule of authority in the State to improve the current law and order situation. Army should not be moved out of Manipur. They should continue their operation against the militants.

G.O.C., 17 Mountain
Division (Manipur)

The G.O.C. made a presentation on the existence of various militant outfits operating in Manipur and the role of Army to contain insurgency. He recommended continuance of AFSPA and the powers given to JCO's under section 4 and 5 of the Act to arrest and issue warrant memo.

30.12.2004

Miss Rashitombi,
Kairang Maning Lekai.

She appeared before the Committee and stated that as mother they had suffered from this Act and this Act should be repealed. On a query, she replied that none of her family members suffered at the hands of the Army. No written representation was given.

Manipur Peoples' Party,
Imphal.

A delegation led by O.Joy Singh, MLA, President, Manipur Peoples' Party submitted a Memorandum to the Committee suggesting therein complete repeal of the Act from the entire North-Eastern Region including the State of Manipur. This Act was anti-people and a draconian law and was counter-productive and responsible for the growth of insurgency. The President added that this Act should go and not the Army.

All Manipur Nupi Marup

Smt.Y. Ibeni Devi, President, All Manipur Nupi Marup, Imphal, submitted a representation stating that this Act was not a solution to curb the insurgency problem in the entire North-Eastern region. The situation had become bad to worse and many atrocities have been committed. They suggested that the Govt. of India should declare unilateral ceasefire and initiate political talks with the insurgent outfits. On a query, they replied that they wanted removal of Act and not the Army.

S. Parikhuyman, Imphal.

S. Parikhuman (individual) and Th. Ingocha Mangang appeared before the Committee and wanted that AFSPA should be abolished totally but the army should stay to protect the people.

Representation submitted but not appeared before the Committee

- Smt. Athokpam (o) Smt. Bandna Devi submitted a Memorandum stating
Bandana Devi W/o late therein that her husband Athokpam Purnim Singh (aged
A. Purnima Singh of 32 yrs) who was a rationing agent, was badly beaten by
Singamei Pechu the personnel of 8th Assam Rifles on 1.9.2001 at their
Lampak. residence and demanded money. Thereafter they dragged
her father-in-law and kept one small gun under pillow to
frame a criminal charge. Next day on 2.9.2001, they
informed me about the death of my husband. The culprits
were protected by AFSPA. She requested to repeal
AFSPA.
- A. Romenkumar Singh, A write-up on Armed Forces Special Powers Act and
IPS, IG(Training & HR), Human Rights was received by the Committee on
Manipur. 29.12.04. It recommends toning down of the existing
AFSPA by reviewing and amending the entire provisions
of the Act incorporating the Supreme Court guidelines in
order to rule out misuse of the Act. The power of
arrest/issue of warrants Under Section 4 of the Act should
be limited to Commissioned Officers only.
- Communist Party of Dr. Yumnam Mehendra, Secretary, (CPI(M) submitted a
India (Marxist), Manipur representation on 29.12.04 demanding immediate repeal
State Committee, Imphal. of the AFSPA as the provisions of the Act are not
compatible with the democratic principles of the country.
- All Manipur Democratic The Association in its representation demanded
Women Association, immediate repeal of AFSPA as the Act was contrary to the
Imphal democratic principles of the country.
- Lamkhanpau Tonsing, In its representation dated 24.12.04 received on 4.1.05, the
Secretary, Zomi Human organisation demands review of the AFSPA for the entire
Rights Foundation, North-East India, Sections 4 (a), (c) and (d) of the Act are
Lamka (Manipur) against the fundamental rights of the individual. It needs
to be amended and the list of DO's and DONT's laid down
by the Supreme Court be incorporated into the Act.
Finally, it demands a Grievance Redressal Forum head by
the Retired Justice of the High Court to redress the
complaints of excesses or violations of human rights
committed by the armed forces.
- N. Binoy Singh, In their representation dated 27.12.04 the Society has
President, Senior demanded immediate repeal of AFSPA. It questions if
Citizens for Society infamous POTA can be repealed, why not AFSPA under
Manipur, Imphal. which the security forces have inflicted untold

miseries/atrocities on the innocent people.

Prof. Riyazuddin Choudhury, Chairman, Co-ordination Committee for Peace and Normalcy in Manipur. The Committee has submitted a representation dated 27.12.04 demanding immediate repeal of the draconian law – AFSPA 1958. This Act has created a sense of alienation in the minds of the people in this region.

Kh. Jibon Singh, Social Worker, Champa Foundation, Imphal (Manipur) 12.12.04 Kh. Jibon Singh has submitted a 5-page Memorandum giving the background of the Armed Forces (Special Powers) Act and the Human Rights violations committed under this Act. He has forcefully sought the repeal of the Act like TADA and POTA and stated that there are adequate provisions in the IPC, Cr.P.C. as also the Indian Arms Act, Indian Explosives Act, Indian Explosive Substances Act, Unlawful Activities (Prevention Act) to deal with the criminals. All such cases of militants can be tried under these provisions. He advocated that economic independence gets priority over political independence and in case any Law is required, this is required to check criminal nexus with politicians and police which can only protect the innocent citizens of the land. State terrorism must be checked by peaceful democratic demonstration.

HEARING AT SENAPATI - 21.4.2005

1. **Mr. M.Dili, President, Naga people organization, Senapati.** In his representation submitted to the Committee, M. Dili strongly criticized the AFSPA which was against any international law or human rights. He said that militancy had increased after imposition of the AFSPA and it had failed to achieve its objectives. He did not endorse the decision of the Govt. of Manipur to withdraw this Act from Municipal areas of Imphal as it should have been **repealed** from the Book of Statue once and for all. He appealed to the Committee to **repeal** this draconian Act.
2. **Paul Leo, Convener, Naga People's Movement for Human Rights.** Paul Leo has signed a combined representation with Naga People's Organisation. He stated that this draconian Law of British regime was imposed 47 years ago to crush the Nagas. During this period, the Nagas have suffered innumerable atrocities of death, molestation, desecration of Churches, etc. Why the Govt. has woken up now after the killing of confirmed UG Cadre Manorma Devi? Even the

United Nations Commission on Human Rights had castigated this Act. He wanted total repealment of this Act.

3. **M.M.S.Jerome of Naga Womens' Union NGO Forum.** She requested for complete withdrawal of this Act and no review or amendment. She said that the people wanted to live an honourable life as human beings. During the enforcement of this Act, they had been leading an abnormal life, as the Security Forces were not following the guidelines issued by the Supreme Court.
4. **S.Kho John, Tribunal Journal, All Naga Students' Association, Manipur.** M.r John said that their Association had no other stand but the complete **repealment** of the Act. They had suffered for 50 years and Govt. had closed their eyes and ears and was woken up now after the hue and cry in Imphal on Manorma murder who was a confirmed cadre of UG.
5. **R.K.Alex, Gen.Secy, SDNGOF** R.K. Alex and R. Peter (President) of SDNGOF, strongly pleaded for **repealment** of this Act as it had failed to control the insurgency. It had created a scar in the hearts of the people.
6. **Akham Binadhurgi, Stakeholder, Senapati** He said that this draconian Law must be completely removed. In a democracy, this Law was against the will of the framers of the Constitution. No review or amendment was acceptable except complete removal of this Act.
7. **M.Athili, Former President, Senapati District students' association, manipur.** The Association in their representation demanded complete withdrawal of AFSPA as the Armed Forces had no regard to civil rights of the people.
8. **P.A.Thekho, President, Central for Integrated Indigenous Research and Development.** P.A.Thekho said that many people were not aware about AFSPA and their sufferings without knowing were more intense since 1958. He wanted complete **repeal** of this Act.
9. **D. Dailord Pao, Central Secy., Poumai Masou Me** He stated that why AFSPA was made applicable to North-East and not against the Naxalites, LTTE or in J&K. If POTA can be repealed, why AFSPA cannot be repealed? The Nagas were suffering for the last 47 years and Govt. did not pay any heed to the excesses committed on them but one incident of Manorma Devi had woken up the Govt. AFSPA had

traumatized the people for the last 47 years. The people had 'uniform' fobia and in fact AFSPA was breeding terrorism in North-East. It should be repealed immediately.

10. **Prof. Akham Biradhwaja Singh s/o A. Ibohi Singh, R/O Achanbigai Vill. No. 4, PS Heingang, PO Mantripukhri-795002, Imphal East Distt. Manipur.** Prof. Akham Biradhwaja Singh appeared before the Committee and submitted a copy of the Memorandum, which was a reminder to his earlier Memorandum, sent by post in January 2005. In the representation, he has given the background of the Act, violation of human rights giving some reference from Maha Bharata. He has recommended to repeal/recall the Act, to replace the Act by the name " Right to formation of Human Rights Protection Volunteer Forces or frame other Acts/Policies like formation of Special Reserve Fund for Employment generation, maintenance of accurate statistics on birth and death, policy of multi-purpose Photo Identity Cards or right to work/employment/public assistance for employment and policy of population control."
11. **Capt. (Retd) Ashok K. Tipnis, Creative Fraternal Action Trust and Mission Fraternal.** Capt. Ashok K. Tipnis met the Members of the Committee at Imphal on 21.4.2005 and handed over a Memorandum titled "Remove AFSPA But Also Contain FASPA". In the Memorandum, he mentioned that the AFSPA cannot be removed without addressing the issue of FASPA – "Freedom (to) Assume Special Powers (with) Arms". This freedom was being extensively exercised in the North-East and Manipur as a result nearly 60 Armed outfits were operating in the North-East and Manipur claims the highest share of such 30 organizations. The issue of militancy needs to be addressed through a dialogue across the negotiating table as per the proposal of the Chief Minister of Manipur. Capt. Tipnis has given details of the proposal that before the dialogue, the preliminary agenda should be decided and thereafter-monthly review meetings and meetings with Civil Society Forum be held.

Churachandpur- 23.4.2005

1. **Lamkhanopau Tonsingh, Secretary, Human Rights, Zomi Human Rights Foundation, Post** A delegation (5) led by Siamzading, Chairman, Zomi Human Rights Foundation, submitted a Memorandum to the Committee requesting for review of AFSPA to make the Armed Forces accountable for excesses committed by them or

Box – 88, Lamka-795128.

violation of human rights and the deletion of the Clauses conferring arbitrary powers to the 'extent of causing death'. The power to arrest without warrant on mere suspicion was against the law of Human Rights jurisprudence, power to enter and search without warrants and use of force on mere suspicion was a direct interference in the liberty of human beings, Section 6 providing protection to the Security Forces was not justified, Do's and don'ts propounded by the Supreme Court should be incorporated into the Act and a Grievance Redressal Forum headed by a Retired Justice of the High Court should be constituted to look into the complaints of excesses or violation of human rights by the Armed Forces personnel. The allegation of forced labour by the Armed Forces without making payment should be looked into.

2. **H.Mangchinkhup, President, General Hqrs: SSPP Complex, Bungmual, Post Box No. 99, Lamka 795128** A delegation (6) led by H.Mangchinkhup, President of Paite Students' Welfare Association, submitted a Memorandum to the Committee suggesting amendments in Sections 4(a), 4(c), 5 and 6 of the AFSPA. They requested that the **Army should not be withdrawn** but the excesses committed by them should be stopped. Information of arrest should be conveyed within the least possible time. Grievance Redressal Machinery headed by an outside officer should be there. The Deputy Commissioner should be a non-Manipuri.
3. **T. Lunkim, Chairman, Kuki Movement for Human Rights, Post Box-52, Imphal-795001, Manipur.** T.Lunkim, Chairman of the organization submitted a representation to the Committee which states that the organization was functioning with the Kuki Movement Organisation. It recommends that AFSPA was not effective, it should be **replaced** with more effective Law to restore peace and harmony, law and order and normalize public life.
4. **James Sumkhanzam, Director, Lamka Institute of Tribal Research and Human Rights, Lamka, Churachandpur.** A representative of the organization handed over the representation to the Committee but did not appear before the Committee. This organization has recommended for complete **withdrawal** of AFSPA as it was a direct assault on civil liberty.
5. **N.Dongzachin, Social Worker, Bungmual** He submitted a representation, which states that the hill tribes living in the hills of Manipur were the

**Village,
Churachandpur,
Distt. Manipur.**

major victims at the hands of the underground outfits as a result of which development work had stopped. He has requested that the AFSPA should not be **lifted** from the hill areas of Manipur. (He did not appear personally).

6. **T. Siamchinthang,
P.B.No.88, New
Lamka (D), PO
Lamka-795128,
Manipur.**

T. Siamchinthang submitted a reminder to his earlier representation dated 14.4.2005 which states that the AFSPA should be **reviewed** to make Armed Forces accountable for committing excesses or violation of human rights, deploy more Security Forces, restore civil administration in the hill areas of Manipur particularly in the South District of Churachandpur as it was badly affected by the activities of numerous militant groups. The civil population was living under constant fear. (He did not appear personally),

Hearing at Agartala (Tripura) on 08.02.2005

Twipra Students'
Federation.

(1) Upendra Debbarma,
President, (2) Gurupada
Debbarma, Gen. Secy.
(3) Santa Moni
Debbarma, (4) Rajesh,
Upendra Debbarma

In the representation, the leaders of the Tripura Students' Federation, have appealed to withdraw the AFSPA from Tripura and new Act should be enacted having more human legislation with special reference to the root causes of terrorism and unrest keeping in view of the overall socio-economic conditions of North-Eastern region. They also narrated some incidents of atrocities committed on students and large influx of Bangladeshi migrants. They apprehended that in case this influx is not checked, the tribal population of the State would be wiped out.

Borok People's Human
Rights Organisation. (1)
Anthony Debbarma, Jt.
Secy., (2) Narendra
Debbarma, Vice
Chairman, (3) Kabita
Jamatia, Secy., (4)
Elizabeth Jamatia,
Member.

Anthony Debbarma narrated some incidents of human rights violations by the Security Forces from 1997 to 2000. They alleged that during 2003-04, 28 persons were killed in fake encounters. They said that some of the premises of the schools have been occupied by the Security Forces which have not returned to them so far. They added that people were suffering because of human rights violations committed by the Security Forces and wanted that this Act should be applicable only in the hilly areas. They demanded that this Act should be withdrawn or Section 4 of the Act should be amended. As far as development of the area, people of Tripura were facing starvation and there was absolutely no development.

Indigenous Nationalist
Party of Twipra . (1)
N.C.Debbarma,
Chairman, (2) Ananta
Debbarma, Vice
President, (3)
B.K.Hrangkhaw.

In the Memorandum, INPT has mentioned the nature of atrocities being committed by the Security Forces and has appealed that the Act should be withdrawn from Tripura State and a new Central Act having more humane legislation should be enacted.

Tripura Pradesh
Congress Committee,
Agartala. (1) Arun

A delegation of Tripura Pradesh Congress Committee, Agartala gave an oral submission to the Committee. They mentioned that this Act should continue as there has been

Bhowmik, ex-MLA, (2)
Nirode Baran Das, Gen.
Secy., (3) Topas Dey, ex-
MLA & Vice President,
(4) Pijush Kanti, Gen.
Secy.

no let up in the insurgency. The militants are targeting peaceful citizens. In order to check excesses committed by the Security Forces. they suggested that there should be a mechanism to give exemplary punishment to persons responsible for the atrocities. They added that SPOs appointed by the Govt. were fleeing with arms and joining militant groups. They said that excesses committed by Armed Forces were far less than the State Police/SPOs. The Armed Forces in Tripura were very limited. One of the members suggested that this Act was unnecessary and should be withdrawn as the Cr.P.C. provisions were quite adequate to deal with the situation. They did not give any written Memorandum.

Hearing at Guwahati (Assam) on February 9 & 10, 2005

Lalan Prasad Thakuria, Bhaskar Nagar, P.O. Bamuni Moidan, Dist. Kamrup, Assam, Pin No. 781021.

In his representation, Lalan Thakuria mentions that AFSPA is a special Act to deal with extra-ordinary situation and the Act does not grant license to use this power by the Army without having any credible information. Sporadic insurgency does not warrant use of this Act. There is a need to have in-depth study to find out root cause of insurgency. As such **AFSPA must be repealed.**

1. Shri T.C Mazumdar, Senior Advocate, Former Member, Rajya Sabha.

T.C. Majumdar, Senior Advocate and ex-MP - Rajya Sabha, made a very strong presentation before the Committee and stated that AFSPA violates the spirit of Inter-National Human Rights and Articles 21, 352 and 355 of the Indian Constitution. This Act has narrowed down the jurisdiction of the High Court. The amended Un-lawful (Prevention) Activities Act, 1967, is a very strong parliamentary law and AFSPA was thus redundant. This colonial law must be denounced as **draconian, cruel and barbaric. It is creating panic among innocent people and as such should be repealed.**

2. Shri Arup Borbora, Senior Advocate, Guwahati High Court.

3. Shri R.C. Borpatra

4. Shri T.C. Chutia, Avocate, Guwahati.

1. Syed Nurur Rohman, Retd. Disstrict & Sessions Judge), Advocate, Supreme Court of India, New Delhi (Camp Guwahati).

Syed Nurur, Retd. District & Sessions Judge and Advocate, Supreme Court, read out the contents of the Memorandum submitted to the Committee in the hearing. He mentioned the excesses committed by the Security Forces on innocent people and fake encounters. He stated that AFSPA was not only unconstitutional but also arbitrary in nature and against the spirit of Human Rights. He said that insurgency was also prevailing in Maharashtra, Madhya Pradesh, Bihar, Jharkhand etc., why AFSPA was not enforced there and it was prevailing in North-Eastern region only. The deputation requested to **repeal this arbitrary, dictatorial, unconstitutional, un-warranted and un-called for "AFPSA " forthwith.**

2. Shri Rohini Kr. Das, Senior Advocate, Guwahati High Court, President, Lawyers Association, Guwahati.

3. Shri Jivan Jyoti Sharma Advocate, Guwahati High Court.

Presentation

Mr. Prasant N. Choudhury, Advocate/Additional Central Govt. Standing Counsel, Guwahati High Court.

Mr. Choudhury made a presentation before the Committee **recommending dilution in the Act** such as (i) it should not conflict with constitutional provisions and special laws in force, (ii) Armed Forces be given pre-induction training, (iii) the local strengthening of intelligence net-work and (iv) the power of arrest should vest with the officer of the rank of the Captain of the Army, or Dy. Commandant of the Central Police Organisation. Absolute immunity provided under Section 6 should be diluted and sanction should be granted by the Joint Secretary of Home Ministry/Finance Ministry as is done in Northern Ireland in terms of Northern Ireland (Emergency Provisions) Act, 1996.

Dr. Monisha Behal, Chairperson, North East Network, J.N. Borooah Lane, Jorpuhuri, Guwahati..

Chairperson, North East Network, has stated in the Memorandum that excessive powers under the AFSPA have not helped the matters but has created an atmosphere of insecurity, terror and violation of Human Rights and dignity. She referred to the speech of the Prime Minister at Imphal on 21.11.1004, and **appealed for complete removal of AFSPA in all areas where it had been imposed.**

Shri Liliban Kalita, L.L.M. Final Year, Guwahati University.

Shri Liliban Kalita has given a Memorandum on behalf of the Law students mentioning therein the violation of Human Rights in the various sections of AFSPA. He has **appealed to review and repeal the Act** immediately as it was incompatible with International Human Rights standards.

Miss Diptimoni Boruah, LLM, Department of Guwahati University.

A similar Memorandum was submitted to the Committee by Miss Diptimoni requesting **to repeal the "black statute" saying that if TADA and POTA can be repealed why not AFSPA.**

Mrs Kamal Kumari, Assam Pradesh Mahila Society, Guwahati, Assam.

She has conveyed the observations of the Society on **sections 4(a) and 4 (c) of the Act** terming these provisions as very dangerous.

1. Shri Putul Dutta, President, Asom Jatiyatabadi Yuba-Chatra Parishad, Central Committee, Silpukhuri, Guwahati.

AJYCP, which is a Student and Youth Organization, has demanded that the **AFSPA should be scrapped altogether** and the Armed Forces personnel guilty of crimes, who have not yet been tried, should be punished. The Govt. should move quickly to resolve political conflicts in a just and democratic manner.

2. Shri Dilip Patgiri, Chief Advisor, AJYCP.

3. Shri Pulak Choudhury, Gen. Secy. AJYCP.

1. Shri Lachit Bordoloi, Chairman, Manab Adhikar, Sangram Samiti, Guwahati.

2. Shri Tilak Mohan Secy. General, MASS.

1. Shri D. S. Teron, MLA, ASDC.

2. Sh. H. Timung, Advisor, KTYA.

3. Sh. L. Ronghong, Jt. Secy. UPDS.

4. Sh. J.S.Ingty, MLA, ASDC.

5. Sh. R.S.Teng.

6. Sh. R. Enger, K. S.A., Advisor.

7. Sh. Ashok Teron, K.S.A., Vice President.

8. Sh. M. Teron, President, KYO.

9. Sh. R. Kulong, President, K.S.A.

10. Sh. W. Mukhrang, Jt. Secy. , UPDS.

11. Sh. T. Teron, President, KTUYA.

12. Sh. T. Teron, Secy., Cherap Seroy (NGO)

The Samiti has enclosed details of some incidents investigated by it. In the Memorandum, it says that any amendment to AFSPA would not restore the confidence of the people. **They have reiterated the demand that the AFSPA should be scrapped altogether.**

A 14-member deputation of Karbi Technical Unemployed Youths' Association (KTUYA) and Karbi Youth Organisation (KYO) submitted a joint Memorandum to the Committee appealing to **scrap both the AFSPA and Assam Disturbed Areas Act, 1955 in the same manner as POTA was repealed.**

13. Sh. Suresh Simung, Gen. Secy.,KTUYA.

14. Sh. T. Nongtoda, Publicity Secy. UPDS.

1. Sh. Moni Raj Sinha, Retd. Bank Manager Advisor and President BMSS, Guwahati.

The deputation appealed to the Committee to protect the civil and fundamental rights of the people of the community – Bishnupriya Manipuris **while reviewing and modifying the AFSPA.**

2. Sh. Ranjit Sinha, Executive Member, BMSSS, Guwahati.

3. Sh. Bidhan Sinha, Member Secy., BMTCDC, Guwahati.

4. Sh. Pintu Sinha, President, LPNS of BMLESDC, Guwahati.

5. Sh. Pratap Sinha, Chairman, BMLESDC, Guwahati.

6. Sh. Chandra Kanta Sinha, Ex. Member, BMTCDC, Guwahati.

7. Dipashree Sinha, Advocate, Ex. Member, BMTCDC, Guwahati.

8. Sh. Hari Das Sinha, Ex. Member, BMLESDC, Guwahati.

Guwahati High Court Bar Association, Guwahati, Assam.

The Bar Association has submitted a copy of resolution passed by the Association to the Committee, which says that the **Govt. should scrap/withdraw the AFSPA as it has defeated the very purpose for which this Act was enforced. The Act has been misused/abused by the Security Forces.**

Syeda Mosfika Begum, Secretary, Hosetan Nagarik Mancha, Assam, Guwahati.

Syed Mosfika Begum submitted a Memorandum to the Committee saying that the Govt. should look into the problems of the people in the North-East seriously. It

has criticized various clauses of the Act and has appealed that the AFSPA should be **repealed** for the “**greater interest**” of the **NE Region**.

1. Kalyan Choudhury, Secretary,
Assam State Committee
Socialist Unity Centre of
India.

2. Bimal Kanta Nandi
3. Soynal Abedin
4. Chandralekha Das

Kalyan Choudhury, along with three other members of the Assam State Committee of SUCI submitted a Memorandum to the Committee stating that oppressive mechanism will not help to deal with the problems of terrorism. Package of economic programme for the industrial development of the State was of paramount importance, which might help creating job opportunities. SUCI has appealed that this “**draconian ant-people AFSPA**” should be **repealed immediately**.

Representations

**Er. Prashanta Kumar
Bordoloi, B.E. (Civil), Jyoti
Nilay,
Dinabandhu, Guwahati,
Assam.**

Prashanta Kumar Bordoloi submitted a Memorandum to the Committee, which mentions that insurgency was the illegitimate child of legitimate grievances of the region. He said that there was a need for bridging the gap of disparity and winning the trust of the people; not by use of brute force armed with AFSPA. **The draconian legislation like the AFSPA should be withdrawn to save alienation of the people.** He did not appear before the Committee as he was out of station.

DIG, CISF, Guwahati

DIG, CISF handed over a 2-page write-up to the secretary of the Committee at the airport at Guwahati on 12.2.2005. It contains the views of the CISF seeking powers equivalent to the CRPF and BSF being Armed Forces such as (i) legal powers, (ii) protection against vexatious prosecution for acts done during the discharge of their duties, and (iii) declaring CISF as an Armed Force of the Union.

*Commissioner & Secretary to
the Govt. of Assam, (Home
and Political Department).*

The State Govt. of Assam has conveyed that the entire State of Assam was declared as a disturbed area by the Union Government on 27.11.1990 on account of prevailing dangerous situation arising out of the activities of ULFA. On 17.9.2001, the areas falling within 20 kms. belt in the States of Arunachal Pradesh, Nagaland, Meghalaya and Assam were also declared as disturbed areas. Since 20.8.1997, The Govt. of India has been reviewing the extension of this Act every six months and the last extension was ordered on 4.11.2004 upto 3.5.2005. The activities of ULFA and NDFB have, of late, increased targeting civilians and Security Forces personnel. Though, some militant groups, including NDFB have come forward for negotiations, ULFA still remains defiant and continues to harp on sovereignty .

In view of the above, the State Govt. feels that the AFSPA continues to be a critical requirement for augmenting counter insurgency operations under the “Unified Command”.

HEARING AT DIBRUGARH (ASSAM) -
24.4.2005

*U. Borpata, President, DT
Committee of Sadhou Asom
Mottock Yuba-Chatra
Sanmilan
Dibrugarh.*

U. Borpata, President accompanied by Assistant Secretary and Secretary, D.T. Committee of Sadou Asom Mottock Yuba-Chatra Sanmilan appeared before the Committee and submitted a Memorandum. The President stated that the Security Forces were harassing the general public in the rural areas as a result of which development of the area had stopped due to the operation of AFSPA. Many innocent people had lost their lives. He appealed to the Committee to **repeal this Act** immediately or bring some uniform Act for the whole country in accordance with the provisions of the Constitution of India so that the people could live with dignity. There cannot be any military solution to political problems of the people.

*Udhe Saikia
(Dibrugarh)*

He appeared on behalf of the Society of Computer Software and Technology, Assam. He spoke about the collection of data but he had nothing to say about the AFSPA.

Hearings at Shillong (Meghalaya) on 11.02.2005

DG, Assam Rifles,
Shillong.

At the outset, DG, Assam Rifles, gave a detailed presentation on the Assam Rifles, its brief background history, present strength and composition. He also explained the role of Assam Rifles in the North-Eastern States and their deployment in each State. He mentioned about the powers vested with Assam Rifles under the Cr.P.C. and AFSPA. He justified the retention of AFSPA as it was difficult for the Armed Forces to work without any legal protection. He felt that the words in Section 4(a) 'to the extent of causing death' could be omitted and the name of the Act may be changed to make it more acceptable. The guidelines given by the Supreme Court could also be included in the new legislation.

Patricia Mukhim,
Shillong

In the suggestions given by Dr. Mukhim, it is mentioned that the AFSPA which was first enacted by the Britishers was still being used and it required a fresh look as it had failed to achieve positive results. In militancy prone areas it was crucial to win the trust of the people so that they may not feel alienated. Moreover, AFSPA should be used only under emergent situation as Army was not trained to deal with law and order situation. As such, a special police force and special effective laws should be applied and AFSPA should not be applied for too long.

Raid Laban Hima
Myllem Land
Conservation
Committee. (1) Dr.
K.M. Warjri, Secy., (2)
Dr. K.S.Swer,
President., (3)
H.B.Waalang, Group
Secy., (4) Amstar,
Asstt. Secy.

In their representation, they have strongly opposed the Act and requested to repeal it as in 20 Kilometers belt, Army had forcibly occupied land belonging to locals.

Govt. of Meghalaya,
Shillong.

The State Govt. has not enforced this Act in Meghalaya since its birth in 1972. However, the Union Govt. in its

notification dated 27.11.1990 has declared 20 kilometers wide belt in the State of Meghalaya bordering Assam as a disturbed area under Section 3 of the Act.

**Khasi Students' Union,
Shillong.(1) Samuel B
Jyrwa President,**

The President of Khasi Students' Union handed over a representation addressed to the Chairman, AFSPA. He has strongly demanded withdrawal of the Act from whole of North-Eastern region as it infringes democratic rights of the people and human rights. None from the organisation, however, appeared before the Committee.

**Meghalaya People's
Human Rights Council.
(1) Dino D.G. Dympep,
Secy. Gen., MPHRC.**

The Secretary General, in the representation, has mentioned that AFSPA has failed to contain insurgency in the North-East and that there are adequate laws to deal with insurgency situations like the Unlawful Activities (Prevention) Act of 1967 which has been amended in 2004 equipping it to deal with terrorism. MPHRC recommended that the State Govt. should be empowered to declare certain areas as 'disturbed' subject to approval by 2/3 majority in the State Assembly. Such declaration should not be extended beyond 2 times (6 months period at a time). A clear definition of 'disturbed area' needs to be provided. Regarding Section 4(a), it is suggested that only Commissioned Officers should be empowered to order use of fire arms in self-defence or defence of others. Similarly, in Section 4(b) presumption of innocent of alleged absconders be guaranteed. Under Section 4(c), it is suggested, no person shall be arrested without warrants by the armed forces. In case of arrest without warrant under exceptional circumstances as mentioned in Cr.P.C., the arrested persons must be handed over to the Police within 8 to 12 hours. In Section 4(d), it is suggested the Provision of Cr.P.C. governing search and seizure be incorporated. In Section 6, the supremacy of the judiciary must be upheld. They have recommended that the opinion of International Body including the UN Human Rights Committee on AFSPA should be incorporated in the legislation.

Annexure - VII**Hearing at Kohima on 21-22.03.2005**

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| <ol style="list-style-type: none"> 1. N. Vero, President. 2. K.J.Tetuo
Keiwhuo, Press
Secy., and 3. Dr. John Murry,
Gen. Secy., NAGA
HOHO, Kohima. | <p>The President of the Naga Hoho said that after the ceasefire, Nagaland is more peaceful than any other State. Naga Hoho is an umbrella organisation of Presidents of 29 Naga Tribes. Presently, he said, AFSPA was not the prominent issue. General Secretary and Press Secretary of Naga Hoho, however, were very vocal in their criticism of AFSPA, which they said, had deepened hatred and enmity in every Naga family. They said that Britishers had promulgated this Ordinance and Indian Government made an Act in 1958 to counter the Naga movement. Each Naga family had suffered at the hands of Security Forces. As such, they said, the AFSPA should be totally erased while there were enough Acts/Provisions in the armoury of the Govt. to tackle the situation. The Army should be deployed only for defence of borders while police and para-military forces should be used for maintaining law and order.</p> |
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**President, Naga Mother's
Association, Kohima.**

At the outset; the President of Naga Mothers' Association welcomed the Committee to Kohima. She was accompanied by 2 other office bearers of the Association. The President said that there were numerous violations of human rights by the Security Forces and there was blatant mis-use of the Act to terrorise the public. Delhi based Human Rights Organisations had also supported their move for repeal of the Act and the Govt. woke up only when there was hue and cry in Manipur. They strongly advocated the repeal of the Act completely otherwise they would continue their non-violent protests. They cited a few incidents of excesses/atrocities committed by the Security Forces in the recent past.

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| <ol style="list-style-type: none"> 1. Acuumbemo Kokon,
President and 2. Neizokhotuo Belho,
Gen. Secy., Naga
Students' Federation,
Kohima. | <p>The President, Naga Students' Federation made a scathing attack on the AFSPA and alleged that this Act was imposed by the Indian Govt. to counter Naga movement. He said that thousands of Nagas have been killed and atrocities on students/youth and women were committed under the cover of AFSPA. AFSPA needs to be repealed without any further delay, as it was a threat to Indian democracy. It was quite illogical and rational to have this Act. The other existing laws were adequate to deal with the situation. The Gen. Secy. criticised the Supreme Court also for its judgement in 1997 upholding the validity of the Act. The Chairman clarified that the</p> |
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criticised the Supreme Court also for its judgement in 1997 upholding the validity of the Act. The Chairman clarified that the Supreme Court examines various Laws and Acts only from the constitutional angle and not from the angle of the desirability.

**Peace Consultative
Committee Members,
Kohima.**

The Members of the Peace Consultative Committee said that the Govt. was looking at insurgents and was not worried about the general public. The general public, in fact, was bearing the brunt of both the militants as well as the Armed Forces. The Govt. should know that when the public turn against the Govt., it creates the most conducive atmosphere for the insurgents to thrive; when the Army atrocities increase, the insurgency also increase, similarly when the insurgents commit atrocities, the people turn against the insurgents.

**Nagaland Bar
Association, Kohima.**

Nagaland Bar association was represented by its President and two other office bearers. They made a very detailed presentation to the Committee and narrated, what they called, the incidents of personal torture and humiliation by the Security Forces. The Act has created a fear psychosis in the minds of the people, they said. Moreover, it created a bad image of our country in the International community. India being the largest democracy, such Laws need to be repealed.

State Govt. of Nagaland.

The State Govt. of Nagaland was represented by the Addl. Chief Secretary, Addl.DGP(Vigilance), Public Prosecutor and Special Secretary (Home). The State Govt. of Nagaland said that this Act should be replaced with some more humane legislation as it had generated a great amount of hatred and suspicion between the Nagaland people and others. He said that the law and order position had tremendously improved and as such the State Govt. had not recommended further extension of this Act yet the Central govt. deemed it fit to issue extension order for another six months, they complained. He said that political necessity should not be weighed as far as this Act is concerned. Addl. DGP mentioned that prior to ceasefire, there were large number of allegations of human rights violations but thereafter such incidents have reduced considerably. There were peaceful protests on the happenings in Manipur. He said that draconian provisions of the Act need to be reviewed and the Act deserves to be made acceptable to the people. He was supported by another officer (IG) who had said that time had come to review this Act as we have to live together. Proper amendments need to be made to hand over the suspects within 24 hours as stated in the Cr.P.C. The Public Prosecutor mentioned the problems faced by the investigating agencies in the cases registered under AFSPA as the prosecution never cooperates in producing evidence in the courts. He mentioned various cases of abuses/misuse of the Act. Special Secretary (Home) M.V.Chagsan gave certain suggestions for amendments of the Act regarding Section 3 it should be the State Govt. to issue the notification and not the Central Govt. Regarding

Section 4: only the Commissioned Officers should have the powers of arrest/issue of warrants for such etc. There should be uniformity in the Cr.P.C. and the AFSPA. Regarding Section 5: Time given to hand over the accused should be more specific. Regarding Section 6: Immunity given to the Armed Forces for action under AFSPA should be removed and they must be made accountable for their illegal actions. Summing up the debate, the Addl. Chief Secretary said that this Act was a bad Law which had been misused/abused and the people were against this Act. As such, it should be amended and made it friendlier. The Security Forces should be more friendly with the people.

New Delhi 19.01.2005

Maj. Gen. Satbir Singh (Retd),
H.No. 543, Sector 23, HUDA,
Gurgaon-122017

Maj Gen. Satbir Singh submitted a representation and also made a presentation to the Committee in which he mentioned that there have been allegations of atrocities on people but these were exaggerated. There can be stray incidents if a soldier goes amuck. However, out of 55,000 cases registered, there were convictions only in 3 cases. 2007 soldiers have died while there has been damage to Govt. property to the extent of Rs. 80,000 crores. Whenever the armed forces are asked to do internal security duties there has been collateral damage during firing incidents. One wrong does not wrong the whole Army. The rules should be stringent in their applicability. System (Admn) needs to be responsive. In Manipur, even the police is infiltrated by extremist elements. People are coerced and forced to toe their line. The State machinery is ineffective and unresponsive. In the interest of national security, AFSPA should continue.

Sh. Suhas Chakma
Director, Asian Centre for
Human Rights, C-3/441-C,
Janakpuri, New Delhi –
110058

Shri Suhas Chakma has submitted a detailed representation on the AFSPA (F/B). He made a very balanced presentation to the Committee and stated that practically the State administration was not effective as a result of which the miseries of the people had increased. Section 4 of the Act was very confusing as there was no distinction between combatant or non-combatant as a result there was misuse of this Act. The Army was not accountable from the time of arrest to the time of handing over of the person to the police. The armed forces need to be properly educated about the human rights. There should be proper checks and balances in the Act itself. The Act does not have detailed procedure to be adopted by the armed forces. There was need to have more safeguards to check misuse of power. Focus should be limited to pockets of insurgents and not to the whole State. He suggested that it should be possible to control the situation with other existing laws applicable to the country as a whole. He said that he was not against the Army or the Act but he wanted detailed guidelines/procedures for implementation of the Act and strengthening of State machinery.

Arya Shri S.D.Sharma,
Freedom Fighter
Correspondent, Amar Vijeta,

He did not give any detailed representation nor was he aware of the AFSPA. He talked about freedom movement and building of character.

Correspondent, Amar Vijeta,
President, All India Freedom
Fighters Organisation, 7,
Jantar Mantar Rd, New Delhi.

and building of character.

Laingam Leimapokpam
Ph: 9811743156 (address not
given)

He submitted a representation in his individual capacity in which he strongly pleaded for repealing the Act as since its imposition, it had not solved the problems; instead the number of insurgent groups had increased besides chains of killings of innocent people, rape, dis-appearance or other forms of human rights violations committed by the Army, para-military forces and Manipur Police Commandoes. He claimed that insurgency can be tackled by starting a political dialogue with the militants and the Centre should come forward. He stated that the Act should go. State police could be modernized, extra police force should be raised to provide employment and there should be a proper check on supply of arms from across the border. He strongly felt that both Army and the Act should go, political dialogue should be started rather than fighting insurgents.

Ksh .O.Niel from Amnesty
International, C-161 Gulmohar
Complex, 4th Floor, Hemkunt
House, New Delhi-49
Ph: 51642501

He appeared before the Committee in his individual capacity and not on behalf of Amnesty International. He belongs to Manipur and studied there. Did his MA in Geography from Chennai. Basically, he is an environmentalist and has recently joined Amnesty International as an Internee. He stated that he had not properly studied the AFSPA but he felt that there should be proper checks and balances on the implementation of the Act. People in Manipur in general were against this Act because of human rights violations.

20.01.2005

Shri Nand Paramathma, Retd.
United Nations Officer,
DDA/SFS Flat 100, Shakti
Nagar Ext. Ashok Vihar
Phase-3, Delhi 110052

He appeared before the Committee but he could not make any fruitful contribution as he had not gone through the contents of AFSPA. He promised that he would acquire a copy and then give his views.

Shri Ashok Bharat
Yuva Bharat, 167A/GH2,
Paschim Vihar, New Delhi-63

A delegation comprising Ashok Bharat, Satya Parkash Bharat, Akshay Kumar, Dr. A.K.Arun and Dr. Rakesh Rafiq appeared before the Committee. Earlier they had given a Memorandum to the Committee. Ashok Bharat stated that the Armed Forces Act which was in force nearly for four decades had failed to fulfill the objectives

for which it was imposed. He questioned as to why the Army was sent whenever the people raised their genuine problems. Though Supreme Court had laid down DOs and DONT's but actually these were not implemented and miseries of the people had increased. Common man was suffering from the Army as well as the insurgents. Corruption was rampant in the administration. The militants were responsive to the needs of the people while the administration was dormant. This was a very dangerous trend and the situation might deteriorate to a point of no return. The Prime Minister's gesture of handing over the Kangla Fort was greatly appreciated by the local people. Akshay Kumar pleaded that a political dialogue with the militants should be started. Efforts should be made to bring about cultural integration and the Act should be repealed while the Army could stay in Cantonments as in other parts of the country. In case of need, the Army could be deployed. By attending to the problems of the people, they should be won over so that the terrorists could be isolated. Yuva Bharat, an All India Organisation of Youths was observing 'Lok Tantar Bachao Saptah' (Save Democracy Week) from Jan. 23 to 30, 2005 by organising meetings and seminars demanding repeal of AFSPA.

Gen. V.K.Nayar,
Former Governor, Nagaland &
Manipur
PH:9811380334
95120-2510860,2511674

Gen. Nayar in his presentation dwelt at length on the causes of insurgency in the North-East and particularly in Manipur such as socio-political – economic problems, group clashes, existence of a large number of ethnic groups, inaccessible areas, constraints of economic development, corruption in the State administration, nexus between politicians and bureaucrats and insurgent groups. He said that a new phenomena had emerged where emotive issues were being raised by the public and then high-jacked by the militants due to inadequate response from the State Govt. The State had failed to bring about socio-economic development. This problem was worsening because of lack of State response to the public grievances, as a result, public anger like in the case of Manorma Devi episode was being encashed by the militants. Had the Govt. responded for rehabilitation of the family members of Manorma Devi, the public anger could have been checked to a great extent. The situation was so bad that even the intelligence agencies were reluctant to accept responsibility as the State machinery was completely ineffective. The situation had deteriorated due

to procedural lapses and by default because of lack of

response from the State Govt.

United NGOs Mission
Manipur (UNM-M), Post Box
No. 192, Chingmeirong East,
Imphal, Manipur-795001.

The delegation of United NGOs Mission, Manipur comprised of U. Novokishore Singh, T.Ruivanao and Santosh Chakma. They submitted a representation to the Committee on the review of the AFSPA in which they termed the AFSPA as a draconian law and discussed clause by clause the provisions of the AFSPA and Cr.P.C./IPC. **In conclusion, they appealed to repeal the AFSPA. They recommended** that as per the recommendations of the Asian Centre for Human Rights that if AFSPA is repealed viz. (i) The State Govt. should have the right to declare certain areas or whole of the State as disturbed subject to the approval of the State Legislative. Therefore, Section 3 of the AFSPA be amended. (2) As per the judgment of the Supreme Court, the Armed Forces of the Union should operate under civil powers. Therefore, the provisions of Section 4 (a), (b), (c) and (d) need to be amended to cope with normal Criminal Procedure Code or Indian Panel Code. (3) Section 6 of the AFSPA has over taken Section 197 of Cr. P.C. The delegation said that they would study the provisions of Disturbed Area Act and come up with their views. They said that there should be peaceful negotiation with the neighbouring countries like Burma, Bangladesh so as to stop infiltration and supply of money and arms to the insurgent groups in the North-East,

21.01.2005

Shri Rajiv Agarwal, Joint
Secretary/NE, M.H.A. New
Delhi

The note on Armed Forces (Special Powers) Act, 1958 appended with the letter explains background of enactment of the Act. It mentions that provisions under Cr.P.C. are not sufficient to deal with the situation requiring use of armed forces in aid of civil power, constitutional validity and the Supreme Court guidelines delivered in its judgement on 27.11.97, follow up action on the judgement and the demand for repeal of the Act. The note also explains the current security situation in the Northern-Eastern States which are affected by insurgency (except Mizoram and Sikkim).

Ms. Nandita Haksar, 163,
Ground Floor, Vasant Enclave,
Vasant Vihar,, New Delhi-57

Ms. Nandita Haksar, Advocate submitted a Memorandum to the Committee strongly pleading to repeal the AFSPA as it violates the Indian Constitution and International Human Rights standards and the provisions of the Criminal Procedure Code. She said that if POTA can be repealed, why not AFSPA. She cited a court case filed in

subsequently over-ruled by Delhi High Court against Section 4(a) and Section 3 of the Armed Forces (Special Powers) Act, 1958. She ridiculed the DOs & DO'NTs issued by the Army. She said that there was no question of bringing reforms in the Act. She also cited certain cases which were pending in various courts against this Act such as Inderjit Baruah vs State of Assam, NPMHR vs UOI, Sebashair Hongray vs UOI and Boodhbas vs UOI.

Shri A.P.Sharma, Ex-Editor,
Rajya Sabha, RZF-40/18A,
Sadh Nagar II, Palam Colony,
New Delhi-45

He appeared before the Committee and submitted a Memorandum pleading for strict action against the secessionists.

National Campaign for Repeal
of AFSPA (4 Groups-PUDR,
Lokraj Sangthan, Progressive
Democratic Students Union
Forum for Democratic
Institutions) 27666986

A delegation comprising Vijju Nayak, Dr. Debashish, Dr. Nandini Sunder, Dr. Rakesh Shukla and Parveen R. belonging to PUDR under the banner of National Campaign for Repeal of AFSPA appeared before the Committee. Dr. Nandini Sunder in her presentation stated that her group had investigated 4 cases of 2004 relating to excesses committed by the armed forces. She said that there was no scope to amend the Act or make it more humane as the Act which was in force for the last over 4 decades had failed to contain insurgency for which it was enacted. She said that this Act should be repealed immediately and the process of political dialogue with the extremist groups initiated without any further delay. Parveen R. mentioned that the most disturbing factor was that on the one hand the people were suffering at the hands of the security forces, on the other the extremists were resorting to extortions and were winning over the general public by responding to their local problems quickly. Gradually, the people were being alienated from the main stream which was not a healthy trend for the country. The extremists were resorting to display of video footage to malign the security forces and trying to win over the general public. He mentioned that the State machinery was not effective. The Army should be called only when there was a grave situation. The delegation also handed over a copy of the report of the National Campaign Committee for the Repeal of AFSPA to the Committee.

Representations received at Delhi

DG, CRPF, New Delhi.
(21.1.2005)

DG, CRPF forwarded a note in the shape of a presentation, a hard copy of which is placed below (F/1).

The presentation contains details of its operations in the N.E. States since 2000, year-wise number of insurgents killed and the No. of CRPF personnel who laid down their lives. In conclusion, CRPF has recommended that AFSPA should continue as there was no respite in the violent activities of insurgents operating in North-Eastern region and there was a sense of insecurity in the minds of general public. The insurgents are also determined to continue their activities. They have cited the example of withdrawal of AFSPA from Imphal on 12.8.2004 where after movement of insurgents had increased on a large scale. The Cr.P.C. provides limited authority to the security forces and if AFSPA was withdrawn the security forces would not be able to put up the desired resistance due to fear of personal victimization. The AFSPA had got inbuilt cautionary measures against its misuse by the security forces besides DOS & DON'TS laid down by the Supreme Court of India.

Brig. Chandra B.Khanduri,
1685, Sector 29, Brahmputra
Aptts., Noida-201303
Ph. 2450772. (4.1.2005)

Brig.Khanduri has enclosed an article entitled "Do not bend before the insurgents" in which it is mentioned that 90% of the suspects and insurgents escape trial and turn heroes. The women force of Manipur provides covert support to the insurgents. The politicians have always been hand in glove with the insurgents. The writer feels that any hasty action on repeal AFSPA would be detrimental to the overall security imperatives.

W. Mani Singh,
B.O. Wabagai Bazar.
(Manipur. (4.1.2005)

In his representation, he has suggested that there should be a public dialogue on AFSPA. He says that it would be foolish to repeal the act without considering the case of insurgency. The activities of 32 militant groups should not be lost sight of who are indulging extortions from the public. He has suggested the measures such as (i) to open opinion cells at the Army Hqrs., and (ii) to keep a daily public opinion column in the newspapers or radio after receiving the opinion. In this manner by organising the platform for freedom of expression, it would be possible to receive views of cross-sections of society, instead of spending huge money on deployment of police and army, brain-washing of minds of insurgents is required. The problem of J&K can not be compared with the problem of North-Eastern region.

Shri Bimolendu Acharjee,
Subashnagar, PO Karimganj,
Assam-788710 (4.1.2005)

In his representation Bimolendu Acharjee has narrated some incidents of excesses committed by Armed Forces and has strongly pleaded for repealing of ASPA for the sake of saving human rights.

sake of saving human rights.

Shri Parthasarathi He has strongly pleaded that AFSPA should not be
Bhattacharya c/o Shri Chitta **repealed** but some amendments can be made to
Ranjan Bhattacharyee, **safeguards the lives of the people.**
Ramnagar Road No. 7, PO
Ramnagar, Agartala, West
Tripura-799001 (4.1.2005)

Shri O.Herojit Singh, Oinam He has represented that AFSPA, was a draconian Law
Maning Leikai, PO/PS which was in force for the last 45 years in Manipur should
Nambol, Manipur-134. be repealed.
4.1.2005)

Shri Dhruba Basu, A/1/2, He has represented that repeal or amendment of the
E.C.T.P., Phase-II, Kolkata- AFSPA would be historic blunder like partition of the
700107. (4.1.2005) country.

Shri Uma Shanker Yadav of In his representation has suggested that there should be
Ghaziabad. 4.1.2005) minimum amendment to the existing AFSPA and on the
other hand efforts should also be made to safeguard human
rights of the people. He feels that there is nothing wrong
with the Act but there can be some laxity in its
implementation.

Shri Sugriva Ray, In his letter he has stated that the AFSPA should neither be
Dahiyawan, Shiya Maszid amended nor replaced.
(Kinara), Chapra-841301,
Bihar. 4.1.2005)

Dr. Dhanendra Prakash Jain, He has suggested that the AFSPA mainly should mainly
A-21, PLGC Colony, Narora- be replaced by more human legislation. No reasons have
202389, Distt. Bulandshahr, been given.
UP (4.1.2005)

Shri Nitin Kr. Priyadarshi, c/o He has justified the continuation of AFSPA in the North –
Bhushan Kumar, Block 8, East as this area was surrounding by Bangladesh which
Makan No. 103-4, Trilokpuri, was the breeding Centre of militants after Pakistan.
New Delhi-91, Repealing of the Act would lead to demoralisation in the
Ph.9868150593. (4.1.2005) Armed Forces.

Mohendro Oinam Mohendro has enclosed two Articles written by him titled
mohendro- "who is attempting to design the fate of Manipur" and
oinam@yahoo.com(27.1.2005) "indoctrination of insurgency in young generation". In
these articles, he has given his dispassionate views on the
Manipur problem. He solicited views of citizens of
Manipur to the question as to who was attempting to
design the fate of Manipur. He welcomed the statement of

State to identify who was Th. Manorma, who are these people who are calling the agitation. He also accused the women groups of forcing families to send out atleast one member to take part in demonstration. He condemned the way Manorma was killed and raped by the Assam Rifles but the killing of Manorma was nothing other than just a terrorist killed by security forces. He states in the Article that "are we protesting the AFSPA which is in force to wipe out terrorists in Manipur and North-Eastern region or protesting to remove the Army so that the terrorists can operate with impunity and build a self-styled force like Taliban in Manipur or protesting against the security personnel in uniform like the case of Th. Manorma rape and murder". In the second Article, he advised that it would be better to prevent youngsters from demon of insurgency.

Shri Sachin Gogoi, The Press Trust of India, C/o Shri Samrat Choudhury. (21.1.2005)

He mentions that people at large in Manipur want the AFSPA to be repealed but at the same time most of the people want Army to stay in the State. He feels that it would not be advisable to go against the wishes of the people as that would alienate them from the mainstream. The Army should stay to put pressure on the insurgents, cracking on money and arms supplies and also cut down their mobility. There is need for intensifying developmental activities in the State. Army needs to play a defensive role.

Samrat Chowdhury, Hindustan Times (24.1.2005)

Remove the Act from the entire North-East. A stronger and faster police and judicial system should suffice.

Prof. Akham Biradhwaja Singh
S/o A.Ibodi Singh, r/o Achanbigei Village No. 4, P.S. Heingang, PO Mantripukhri-795002, Imphal East Distt., Manipur State.

Prof. Singh has sent a 10-page representation giving the background of the Act, violation of human rights giving some reference from Maha Bharata. He has suggested that the Committee should recommend to the Govt. to repeal/recall the Act, to replace the Act by the name "Right to formation of Human Rights Protection Volunteer Forces or frame other Acts/Policies like formation of Special Reserve Funds for Employment Generation, Maintenance of accurate statistics on birth and death, policy of multi-purpose Photo Identity Cards or right to work/employment/public assistance for employment and policy of population control.

T.Misao, Retd. Addl. DGP, West Bengal, Seraphim,

Shri Misao conveyed his views on the current situation prevailing in Manipur. He has given details about the

West Bengal, Seraphim,
Mission Road, Kangpokpi, PO
Kangpokpi-795129, Manipur.

prevailing in Manipur. He has given details about the excesses being committed by the Assam Rifles which is no more 'Friends of the Hill People' and says that the people are left between "THE DEVIL AND THE DEEP SEA" i.e. Assam Rifles and the insurgents. He suggests that a comprehensive legislation is required to eliminate insurgency taking into account the current situation. The Act must have provision of accountability. The Army should not have unbridled powers, DOs and DONT's should be clearly spelt out, the Act should have clear mandate to train personnel in law and order duties, prevent violation of civil liberties and before induction* of the troops, forces must undergo a training course and the syllabus should include customs and habits of the local people.

ARUNACHAL PRADESH-APRIL 26-27, 2005.

After completing the public hearing at Dibrugarh in upper Assam, Dr. S. B. Nakade and Shri P.P. Shrivastav proceeded to Tirap district of Arunachal Pradesh. Tirap and Changlang districts of Arunachal Pradesh have been notified as disturbed areas under the AFSPA, 1958.

2. Presentations were made by the Commandant, Assam Rifles and the Superintendent of Police, Tirap district. The Commandant of the ITBP Bn. Stationed in Tirap also participated in the discussions

3. The Commandant of the Assam Rifles recommended that the AFSPA should continue without any dilution while the Supdt. of Police, Tirap stressed on modernization of the State Police Force. He also recommended that some areas of Lohit should also be brought under AFSPA. While presentations indicated heightened underground activity and lack of intelligence on account of the fear psychosis generated by militants, no pro-active action was being taken and as such there were no public complaints against the security forces.

4 The next morning, some prominent local persons were also interviewed individually.

Dated Shillong, February 11, 2005

MEMORANDUM BEFORE, THE HON'BLE JUSTICE (RETD) JEEVAN REDDY, CHAIRMAN OF THE COMMITTEE TO REVIEW THE ARMED FORCES (SPECIAL POWERS) ACT.

The State of Meghalaya Sheweth;

1. That, the State of Meghalaya come into existence on 21st January 1972.
2. That, the Armed forces (Assam & Manipur) Special Powers (Amendment) Act 1972 extends to the state of Meghalaya also.
3. That, during the last 33 years of its existence, the Act has not been enforced in the whole State of Meghalaya. However, in order to contain the destructive activities of the ULFA in the neighboring State of Assam, the Union Government vide Notification No. S.O.916(E) dated 27-11-1990 declared 20 Km wide-belt in the State of Meghalaya bordering Assam as a "**Disturbed Area**" under Section 3 of the Act. The above notification has been extended from time to time by the Government of India after a review of the prevailing situation.

A copy of the latest notification is attached herewith as Annexure-I

4. That, operationally the state of Meghalaya on its own has never enforced the provision of the Armed Forces (Special) Act on any part of the State, Act even in the areas declared as "**Disturbed Area**" by the Government of India.
5. That, with regard to the operational activities by the Armed Forces from Assam in the areas of Meghalaya declared as "**Disturbed Area**" a few reports have been received by the state of Meghalaya. Copies of such reports are attached herewith as Annexure-II and III.
6. That, the above being the case, the State of Meghalaya does not have any experience to share with the Committee in respect of the exercising of power by the Army Personnel under the Act.

(D. Syiem)

Deputy Secretary to the Government of
Meghalaya, Political Department.

SECRET

COPY NO. _____

**MINISTRY OF HOME AFFAIRS
(NE DIVISION)**

PROCEEDINGS

Sub: Assam-Declaration as "disturbed area" under the Armed Forces (Special Powers) Act, 1958 review conducted.
MHA No. 11011/111/90-NE-IV 28.4.2004

- Ref. a) Ministry of Home Affairs Notification S.O.916 (E) dated 27.11.90
b) Ministry of Home Affairs Notification S.O. 603 (E) dated 17.9.91
c) Proceedings of the Ministry of Home Affairs No. 11011/111/90-NE-IV dated 4.5.98
d) Proceedings of the Ministry of Home Affairs No. 11011/111/90-NE-IV dated 3.11.98
e) Proceedings of the Ministry of Home Affairs No. 11011/111/90-NE-IV dated 4.5.99
f) Proceedings of the Ministry of Home Affairs No. 11011/111/90-NE-IV Dated 4.11.99
g) Proceedings of the Ministry of Home Affairs No. 11011/111/90-NE-IV Dated 5.5.2000
h) Proceedings of the Ministry of Home Affairs No. 11011/111/90-NE-IV Dated 31.10.2000
i) Proceedings of the Ministry of Home Affairs No. 11011/111/90-NE-IV Dated 2.11.2001
j) Proceedings of the Ministry of Home Affairs No. 11011/111/90-NE-IV Dated 2.11.2001
k) Proceedings of the Ministry of Home Affairs No. 11011/111/90-NE-IV Dated 2.05.2002
l) Proceedings of the Ministry of Home Affairs No. 11011/111/90-NE-IV Dated 31.10.2002
m) Proceedings of the Ministry of Home Affairs No. 11011/111/90-NE-IV Dated 2.05.2003
n) Proceedings of the Ministry of Home Affairs No. 11011/111/90-NE-IV Dated 5.11.2003

The entire State of Assam has been declared as a "disturbed area" under the Armed Forces (Special Powers) Act, 1958 (28 of 1958) with effect from 27.11.1990 vide this Ministry's Notification mentioned at (a) above, as, in the opinion of the Central Government, the State was in such dangerous condition that the use of Armed Forces in aid to civil power was necessary. Similarly, vide this Ministry's Notification dated 17.9.1991 mentioned at (b) above besides other areas, the areas falling within 20 kms wide belt in the State of Arunachal Pradesh,

Nagaland and Meghalaya, along their border with the State of Assam were also declared as disturbed area.

2. In a statement filed before the Hon'ble Supreme Court of India, the Government of India had stated that all current notifications regarding declaration of areas as disturbed area under the aforesaid Act would be reviewed within a period of three in on the from 208.1997 and every 6 months thereafter. Accordingly, reviews of the law and order situation in Assam were conducted and it had been decided that this Ministry's Notifications dated 27.11.1990 and 17.9.1991 aforementioned would remain. Withdrawn earlier up to 4.11.2004.

3. Review of the law and order situation in Assam indicates that the States still faces critical law and order and militancy situation. There is continued extremists violence by the ULFA, UPDS, NDFB, DHD/NSCN and other such militant groups in the State, which have posed continuous threats to the lives and property of the inhabitants of the State of Assam. In view of the above, it is essential that power under the provisions of the Armed Forces (Special Powers) Act, 1958 may be extended for another term of six months in the whole of Assam and the 20 kms wide belt in the State of Arunachal Pradesh, Nagaland and Meghalaya along their border with Assam with effect from 4.5.2004 to keep up the present level of pressure on the militant outfits by way of effective counter insurgency operation.

4. Under the circumstances stated above, the law and order situation in Assam cannot be said to be normal. Conditions do exist for the Armed Forces of the Union to 27.11.1990 of the Ministry mentioned at (a) above will remain in force, unless withdrawn earlier up to 4.11.2004. Similarly, the 20 Kms wide belt in the State of Arunachal Pradesh, Nagaland and Meghalaya along their borders with Assam shall also continue to be "disturbed area" for the period up to 4.11.2004 unless withdrawn earlier.

(RAJIV AGARWAL)

JOINT SECRETARY TO THE GOVERNMENT OF INDIA

TO:

1. Chief Secretary, Government of Assam, Dispur, Guwahati
2. Chief Secretary, Government of Arunachal Pradesh, Itanagar.
3. Chief Secretary, Government of Nagaland, Kohima.
4. Chief Secretary, Government of Meghalaya, Shillong.
5. Secretary, Ministry of Defence, Government of India, South Block, New Delhi.
6. DGMO, South Block, New Delhi.
7. DGs of CRPF, BSF, CISF, RPF.
8. GOC IV Corps, Tejpur.
9. Resident Commissioner, Government of Assam, Assam Bhawan, New Delhi.

**OFFICE OF THE DIRECTOR GENERAL & INSPECTOR GENERAL OF
POLICE MEGHALAYA: SHILLONG**

Letter No. MG/XIX-31/98/101,

Dated Shillong, the 31 January, 2005

From :Shri H. Marbaniang, IPS,
Asstt. I.G. of Police (E)
Meghalaya, Shillong.

To :The Under Secretary to the Govt. of Meghalaya, Home (Police)
Department, Shillong.

Subject :Installation of Police Check Gates at Umsiang, Mawiong
Village.

Reference :Govt. Letter No. HPL.148/81Sl 27/27, dated 12.8.04.

Madam,

With reference to the above, I have the honour to inform you that recently during the last month, Army Personnel from Assam have up to Korkadem and pick up some people from there and also taken away guns belonging to the villagers. They have also carried away bamboo/ginger collected by the villagers for sale. This action by the army personnel who are in civies have created a fear psychosis among the villager there who are afraid to venture to their fields, etc.

A meeting was held at Umsiang which was Presided by Shri P.W. Muktieh, the local M.A.A. where it was unanimously decided to install a Police Check gate at Umsiang so that if any operation is to be carried out by the Army/Police they should be accompanied by a representative of the Meghalaya Police.

For this purpose a check gate has been installed at Umsiang and has been in operation for the last few months and the T/C. Umsiang O.P. has been instructed accordingly.

The Superintendent of Police, (Operation), Assam, Superintendent of Police, (City), Guwahati and Superintendent of Police Morigoan District have also been requested to instruct their staff to take a representative of the Meghalaya Police whenever they conduct any operation within the Borders of Meghalaya.

-SECRET-

**OFFICE OF THE ADDITIONAL DIRECTOR GENERAL OF POLICE
SPECIAL BRANCH:: MEGHALAYA:: SHILLONG**

NO. MSB.III-A/BRD/8/92-04/80

Dated Shillong, the 19th July, 2004

From: Shri L.B. Rapthap, MPS,
Spl. Superintendent of Police (SB-I),
Meghalaya, Shillong.

To: Smt. D. Syiem, MCS, .
Deputy Secretary to the Govt. of Meghalay,
Political Department, Shillong.

Sub: **Intrusion by the Army Personnel inside Meghalaya, Border.**

Madam,

With refrence to the subject cited above, I am to inform you that on 6th and 9th July 2004, the Army in Civil dress entered into Meghalaya territory at Umsiang, Koshadem, Umalper and came upto Mawahti village under Ri Bhoi District and they fell down trees/bamboos and also damaged vegetation/paddy fields, thus causing unnecessary harassment of the villagers further they also forcibly took away the gingers etc., belonging to the villagers.

Before the incident, the Superintendent of Police, Ri Bhoi District has written to the Superintendent of Police, Morigoan District, Assam that any operations/raids conducted in the Assam-Meghalaya Border, they should inform to the nearest PS/OP concerned for necessary assistance and guidance to avoid any problem or harassment caused to the villagers.

However, watch is being maintained for peace and tranquility in the area.

Yours faithfully,

Spl. Superintendent of Police (SB-I),
Meghalaya, Shillong

-SECRET-

**OFFICE OF THE ADDITIONAL DIRECTOR GENERAL OF POLICE
SPECIAL BRANCH:: MEGHALAYA:: SHILLONG**

NO. MSB.III-A/BRD/8/92-04/83

Dated Shillong, the 30th July, 2004

From : Shri A. Pradhan, IPS,
Addl. Director General of Police,
Special Branch,
Meghalaya, Shillong.

To : Shri G.P. Wahlang, IAS.,
Principal Secretary to the Govt. of Meghalaya,
Political Deptt., Shillong.

Sub : **Intrusion by Army Personnel into Meghalaya.**

Ref : This office letter No. MSB.III-A/BRD/8/92-04/80 dtd.19/7/04.
Sir,

In continuation to this office letter referred to above, it is further reported that the army personnel, in plain clothes, came to Korhadem village of Ri-Bhoi district on Jun.26, 2004, and picked up Shri Sparwell Delar. They also took away one air pistol and one air gun belonging to him. Reports indicated that he was detained and beaten up at the army camp near Tapoli area on Jagi Road. He was released on Jun. 27,2004, at Umalper village. A party of army personnel, using Tata Sumo vehicle (AS-21-3115), is reported to have gone to Umalaper village and entered the house of Smt. Margareth Dorphang and taken away one 12 Bore SBBL gun (License No. 11364, valid upto Dec. 12,2004), belonging to her brother, Shri Orlandoris Dorphang. Army personnel again entered Korhadem village on Jul.8,2004, and took away 3 (three) SBBL guns belonging to Shri Moldwin Teron. They threatened the villagers and also took away farm products. Regarding this, a case has been registered vide Khanapara PS Case No. 15(7)04 u/s 380/560/354/511 IPC. However, no case has been registered regarding the taking away of weapons as the owners did not file any F.I.R. Deputy Commissioner, Ri-Bhoi district, has been requested to take up the matter with his counterpart, so that the guns are returned to their respective owners.

Superintendent of Police, Ri-Bhoi, has written to the Superintendent of Police, Morigoan, Assam, to instruct the army personnel that in case of any operations/raids in the Assam-Meghalaya border, the nearest Police Station/Out Post be informed for assistance. This would avoid unnecessary harassment to the villagers.

Superintendent of Police, Ri-Bhoi district has been advised to keep a close watch on the situation.

Yours faithfully,

(A.Pradhan) IPS.,
Addl. Director General of Police,
Special Brach,
Meghalaya, Shillong.

Annexure-XI

**GOVERNMENT OF ASSAM
POLITICAL (a) DEPARTMENT**

NO.PLA. 213/96/483,

Dated Dispur, the 11th February, 2005.

From : Dr. B.K. Gohain, IAS,
Commissioner & Secy, to the Govt. of Assam,
Home and Political Department.

To

Shri B.S. Kanwar,
Secretary to the Committee to Review the Armed
Forces (Special Powers) Act, 1958,
Gate No. 23 A, Jawaharlal Nehru Stadium
New Delhi-110003.

Sub : Review of the Armed Forces (Special Powers) Act, 1958.

Ref : Your letter No. 1/RC/AFSPA/05, dtd.6-1-2005.

Sir,

I am directed to furnish herewith views of the State Government, Assam on the above mentioned subject for perusal of the Committee to Review the Armed Forces (Special Powers) Act, 1958.

Encl: As above.

Yours faithfully,

**Commissioner & Secretary to the Govt. of Assam,
Home and Political Department.**

.....

The entire State of Assam was declared as a **“disturbed area”** (27-11-1990) under the Armed Forces (Special Powers) Act 1958 by the Government of India as the use of armed Forces in aid of Civil power was found necessary on account of the prevailing dangerous situation arising out of the United Liberation Front of Asom (ULFA) sponsored militancy. Further on 17/09/2001, the areas falling within 20 KM of wide belt in the State of Arunachal Pradesh, Nagaland and Meghalaya along the border of the State of Assam was also declared as **“disturbed areas”**. Since 20/08/1997, the Government of India has been reviewing the extension of this Act every 6 (six) months and on 04/11/2004 it has been extended for a period of 6 (six) months till 03/05/2005. In this regard, the Government of India examined the emerging law and order situation in the State in detail and found it not to be normal, albeit signs of normalcy, in view of the tremendous strain, the law and order machinery in Assam has been subjected to on account of the militant activities sponsored by various militant groups operating in the State including **ULFA** and **NDFB**.

Though, the Royal Bhutanese Army’s **“All Clear Operation”** (December 14, 2003) against the ULFA and NDFB hideouts in Bhutan were successful in reducing the violence levels for a few months, since October 2004, there was again a spurt in violence in the State, significantly, in the form of increased use of sophisticated IEDs by the ULFA and NDFB for targeting of civilians and SF personnel. Though, a number of militant groups operating in the State including NDFB, in the meanwhile (Mid October,2004) have come for negotiations with the Government, the major militant group ULFA, active in the State, remains intransigent and continues to harp on the **“Sovereignty”** issue as a necessary condition for negotiating with the Government of India.

Further, in view of the diminishing mass support, the ULFA has also switched over from the insurgency mode to a terroristic mode by resorting to mindless violence against innocent civilians. This holds dangerous portends not only for the law and order scenario but also to the internal security of the region as the leadership of ULFA based in Dhaka is being guided by external intelligence agencies like DGFI and ISI. Further, the militant outfits also possess a huge stock of arms and ammunition including area weapons like mortars, RPGs, rockets and sophisticated IEDs like Programmable Time Delay Devices (PTDs), besides weapons in the AK-series etc. With an active cadre base of roughly 800, the ULFA still has the potential of carrying out terroristic activities all over the State, operating from bases in Bangladesh, Myanmar and the neighboring State of Arunachal Pradesh.

In view of the above, it is necessary to see the internal security scenario in Assam in a broader perspective. Besides, the ULFA’ significant presence in the State, the Districts of Karbi Anglong and NC Hills also remain theaters of violence on account of the violent activities of smaller extremist groups like the UPDS(Anti-talk), Black Widow group etc, owing allegiance to various tribal

groups, who do not hesitate in indulging in demonstrative violence against soft targets for pressurizing the State Government. Lastly, few Pan Islamic groups like Harkat-Ul-Jehad-E-Islami (HUJI) assisted by intelligence agencies like ISI are also making efforts at increasing their area of influence in the Muslim dominated areas of the State.

During 2004, the state witnessed a total number of 346 violent incidents resulting in the killings of 202 civilians and 135 extremists. While, the Security Forces were successful in arresting 1080 extremists, 25 SF personnel were also killed in various incidents. In comparison, during 2003, 473 violent incidents were witnessed, resulting in the killing of 260 civilians and 276 extremists. During this period while, the SF's arrested 1022 extremists, 15 SF personnel also lost their lives in various incidents. This clearly indicates that the improvement in the law and order scenario has been only marginal and at present the 105 companies of CPMF's deployed in the State is not adequate to effectively counter the violent activities of the various extremist groups.

In view of the above, in the recent times on account of the mindless violence on soft targets perpetrated by the above mentioned extremist groups like, innocent civilians, political leaders and vital installations of the Government, the **Armed Forces (Special Power) Act 1958** remains a critical requirement for augmenting counter insurgency operations under the "**Unified Command**" grid to meet its objective of combating militancy by increasing the pressure on militant outfits with a view to veer them around to the main stream.

-:o0o:-

Annexure-XII**NO.D.32020/152/2004-HM
GOVERNMENT OF MIZORAM
HOME DEPARTMENT****DATED Aizwal ,The 17th March, 2005**

TO

Shri P P Shrivastava,
Member Secretary,
Committee to Review the Armed Forces
(Special Powers) Act, 1958,
Near Gate No. 23-A,
Jawahar Lal Nehru Stadium
New Delhi.

**Subj :-Comment on Armed Forces (Special Powers)
Act 1958.**

Ref :-D.O.NO.P/AFSPA/MZ dt 1.2.2005

Sir,

In inviting a reference to the Letter on the subject indicated above, I am directed to furnish herewith following views of the Govt. of Mizoram on the subject for your consideration.

2. The Armed Forces (Assam and Manipur) Special powers Act, 1958 (Act 28 of 1958) was extended to the whole of the State of Mizoram vide the Armed Forces (Assam and Manipur) Special Powers (Amendment) Act, 1972 (Act No. 7 of 1972) and at that time, the erstwhile Mizo District now known as Mizoram was part of Assam. The then Lushai Hills or Mizo District being landlocked area which is geographically isolated from the rest of the country was very peaceful. There was neither insurgency nor problems of law and order barring normal political activities of the then political parties. The situation however, changed after the disturbances of 1966. The whole of Mizo District was declared as disturbed area in 1967 and the Armed Forces exercised the powers as contained in the Armed Forces (Assam and Manipur) Special Powers Act, 1958 as amended in 1972.

3. While exercising their powers there were instances where some of the Armed Forces Personnel committed excesses. With a view to giving awareness to the Mizos as well as the Armed Forces Personnel local Human Rights Committee under the chairmanship of Brig. T. Sailo (Rtd) was set up which took up many alleged excesses in violation of Human Rights with the Indian Army and played pivotal role as intermediary between the Armed Forces and the people of Mizo District prior to attainment of Union Territory status on 21.1.1972.

4. For the people of Mizoram, the Armed Forces (Assam and Manipur) Special Powers Act, 1958 leaves a scar on their mind and all sections of people regardless of political parties to which they belong are against this particular Act. With the attainment of Statehood on 20.2.1987 the Armed Forces stationed in Mizoram then left. The Armed Forces (Assam and Manipur) Special Powers Act, 1958 which was Assam and Manipur Act locally extended to the State of Mizoram only by way of Amendment in 1972 and later by adaptation of Laws Orders (No.2/1987) is a sleeping Act which remained unused for two decades after a Peace Accord was signed on 30.6.1986. So far as Mizoram is concerned, there is no reason for reviving the operational validity or applicability of the Act. The State Police Forces and other Para-military Forces presently stationed in Mizoram are able to manage the affairs of the State with regard to maintenance of law and order without Special Powers envisaged in such Special Powers Act.

5. In view of the above, the State Government is of the view that even if the Armed Forces (Assam and Manipur) Special Powers Act, 1958 is not repealed, the said Act should not be revived or extended to the State of Mizoram. The State Government does not require this Particular Act for maintenance of daily Law and Order.

Yours faithfully,

(C. ROPIANGA)
Secretary to the Govt. of Mizoram,
Home Department.

Annexure-XIIIGOVT. OF ARUNACHAL PRADESH

Tabom Bam
Principal Secretary (Home)
Phone-2212540 (o)
2217824(R)

Civil Secretariat
Itanagar-791111

D.O. No. HMB(B)-59/2004

Dated: 13/05/05

Dear Shri Kanwar,

Kindly refer to your letter No.1/RC/AFSPA/05 dated 27th April 2005 regarding review of the Armed Forces (Special Powers) Act 1958.

Govt. of Arunachal Pradesh is of the view that the Act should continue so that the Armed Forces, in exercise of powers provided under the Act, can deal with insurgency and maintain law and order. At present the District of Tirap and Changlang and 20 KM wide belt in Arunachal Pradesh bordering Assam has been declared as Disturbed Areas under the Armed Forces (Special Powers) Act. The situation in these areas is reviewed periodically and Govt. of India is extending the Notification with written consent of the State Govt.

Yours sincerely

(Tabom Bam)

Shri B.S. Kanwar,
Secretary,
The Committee to Review
The Armed Forces (Special Powers Act 1958,
Gate No. 23 A, Jawaharlal Nehru Stadium
New Delhi.

Annexure XIV**Note from Shri Sanjoy Hazarika, Member
At the end of a long night, there is a dawn ...**

When introducing the Armed Forces Special Powers Bill (1958) in the Lok Sabha, the then Home Minister Shri Govind Ballabh Pant declared that “certain misguided sections” of the Nagas were involved in “arson, murder, loot, dacoity etc.” He added, “So it has become necessary to adopt effective measures for the protection of the people in those areas. In order to enable the armed forces to handle the situation effectively whenever such problem arises hereafter, it has been considered necessary to introduce this bill.”

Some members of Parliament, especially from Manipur, and elsewhere opposed the Act; one of them, L. Achaw Singh of Manipur, described the proposal as “unnecessary ... an anti-democratic measure ... a lawless law.”

AFSPA in the North-East has continued for 47 years. The Committee’s essential recommendation, as laid out in both its conclusions and the proposed changes to the Unlawful Activities (Prevention) Act, 1967, (as amended in 2004), is that AFSPA must be repealed forthwith; the gains of the law are extremely moot, its negative impacts have been overwhelming.

Many of the security problems of the region can be tackled by local police and commando forces, with the assistance of the armed forces where essential. But the dependence of the states on the army must be reduced to the minimum and armed forces should be deployed only as a last resort.

Numerous representations from the public as well as from the army, paramilitary and police have informed the Committee that political problems must be addressed politically and not militarily. These must include the processes of development of participative planning, involving local traditional groups in the role of self-governance, instead of sheltering behind the army and other forces. As we have noted earlier, there has been a sustained and systematic failure of governance; without the restoration of governance and the faith of the public in the ability of governments to rule justly and provide security to their citizens, the problems may become more acute.

This is a long and difficult task and the pressures are enormous. The Committee does not underestimate the scale of the challenges. But there is no option for the Indian State or the states of the Union. Faltering and even failing, at

times, the states of the Union, and especially the North-east, must strengthen their own systems of governance, restoring the confidence of the people and providing the basics of governance.

What started as a political demand and insurgency in the Naga Hills, now Nagaland, has developed into a number of militant armed uprisings in not less than five other states – Manipur, Tripura, Meghalaya, Assam and Arunachal Pradesh. These have international connections with various armed groups and forces inimical to India and democratic forces. In addition, there are the problems of illegal migration into the region, especially Assam. The intensity of the challenges are immense: these range from ethnic standoffs and struggles for land and space as well as political rights.

In the past half century, another major change has affected the violence: on both sides of the “barrier”, the lethality of weapons and their easier availability has transformed the power and quality of the fighting. RDX, AK-56s, machine guns and sniper rifles are used extensively. The immediacy of communications has also effectively changed the profile of these organizations as well of fighting: people can see, hear and even communicate with them by email!

A consequence of such long-drawn out conflicts has been the collapse of governance in a number of the states; the security of the citizens is at extreme risk, from security forces and the militants. During this period, there have been some positive gains – awareness of human rights has increased in India and the world, the media is stronger as are non-government organizations and civil society groups. Violations of human rights by state forces and by non-state armed groups cannot, in these days of instant information, be hidden any longer.

The upsurge in Manipur after the death of Ms. Manorama Devi last June in the custody of the Assam Rifles is a demonstration of this awareness, although there are official views that the agitation was also orchestrated by the underground groups. The latter are not the concern of this Committee, which was appointed last November, as a democratic response by the Central Government to a democratic demand by the people of the state for the repeal of the Act. After a detailed process of hearings in Manipur, Nagaland, Assam, Meghalaya as well as New Delhi and interactions in Arunachal Pradesh and extensive internal deliberations, the Committee has reached a conclusion which is detailed in this report.

It is my view that the army must be deployed in the rarest of rare cases – not as a knee-jerk reaction of governments at the Central and state levels. The army and security forces have, despite obvious shortcomings as are documented and well-known, tried to do their best and upheld their country’s honour and integrity.

We have been encouraged by the openness with which people approached the committee and spoke their views without fear or favour, despite many pressures. We also are encouraged by the fact that many of the armed groups in the North-east are in the process of negotiation or seeking conversations which can

bring armed confrontations to an end and restore dignity to civil society and the rule of justice and law.

The United Nations Secretary General Kofi Annan said in March 2003 that “respect for human rights, fundamental freedoms and the rule of law are essential tools in the effort to combat terrorism – not privileges to be sacrificed at a time of tension.”

We hope that the report of the Committee will help in the process of reconciliation and democratization in the North-east, create a space for dialogue and discussion, reducing conflicts and helping the region write a new chapter of peace, change and happiness in its troubled history. We also hope that it strengthens the county’s unity, integrity and security and creates an atmosphere for people to live in dignity, honour and peace.

At the end of every dark night, there is a dawn, however delayed. And for every day, there is a dawn, whether we see it or not.

Sanjoy Hazarika
New Delhi
30 May 2005