

THE ARMED FORCES SPECIAL POWER ACT : A FRESH INSIGHT

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ABSTRACT

The Armed Forces Special Power Act (AFSPA) is subjected to a discourse by the civil society and public in a largely negative undertone. The need to assess the aims of the Constitution of India and how the task of assimilation of the nation is being carried out will put the AFSPA in the correct perspective. However a fresh look at the Act in the light of the “State in Society” Approach of Migdal puts the Act in a different and positive perspective in spite of all its misgivings and criticism of human rights abuse.

KEYWORDS: AFSPA, Negative Discourse, State in Society Approach, Positive perspective

INTRODUCTION

AFSPA is a law assigned to deal with situations in exceptional circumstances especially when the sovereignty and integrity of the nation is at stake. The federal ethos makes it a challenging issue which goes beyond the level of affecting centre- state relations. However federalism and the need for internal security debate is fraught with competing discourse regarding the problem of how the vertical government arrangements lead to the issue of accountability and the way the arrangement enhances or does not enhance the efficiency of the public policy on the internal security. The term Federalism stands for three key issues and they are geo political division, independence and direct governance. Federalism basically involves two levels of government and at least one level in each level must be autonomous. The law and order is a state subject and it is left to the State government to handle it. The application of AFSPA puts this aspect as a bone of contention.

In a democratic country like India and its plural society with issues of national integration still in process (Kothari, 2012), the measures taken by the government to handle internal security issues are seen as efforts by the regional state government to question the very federal idea when the law and order situation falls within the purview of the respective federating units or are State subjects. Thus the need to analyze the need and the efficiency of special Acts such as AFSPA which protect the unity and integrity of the country is an important element in the study of the broad subject of Indian federalism. The issue needs to be seen in the overall rubric of the state and society relationship. When referring to the application of

the Act in exceptional circumstances, such as in Jammu and Kashmir and North East India, it reveals a different situational assessment. The fact that the situation lead to organized violence and contestation on the ground, even to the extent of demanding secessionism creates a tricky situation for the government. These conditions lead to the growth of full blown insurgency leading to the writ of the State getting questioned. Insurgency is all about political control. When the population of an area gets dissatisfied and resorts to both violent and non violent actions to highlight their discontentment then a situation develops where the writ of the state starts failing and the groups involved in these activities start gaining acceptance. The use of organized means of subversion and violence is what distinguishes the insurgency from normal political contestation. However coercive actions when employed lead to counterproductive results which undermine the attempt of the State to resolve the issue which have led to violent conflict with the State.

A FRESH LOOK AT THE AFSPA

According to Max Weber state is that organization which has monopoly over legitimate use of coercion within a given territory (Migdal , 2001). This view primarily deals with the federal situation from the point of view of the State. The central issue which many theories lay down is that State is the locus around which the discourses on domination and changes revolve. However, when dealing with the topic of Federalism and internal security the **State-in - Society Theory** is more applicable than a statist perception. Since various studies have come to the conclusion that the State itself cannot achieve the intended outcome of its policies without its interaction with the

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society, the theory of state- in- society approach can provide fresh insight on the subject (Migdal , 2001) (Evans, 1995) (Haggard, 1990) (Kohli, 2004).

In the context of a largely prevailing ‘statist’ views on matters such as AFSPA, this article approaches the latter from the point of view of state -society relations. Militancy and secessionist tendencies in the country were met with application of AFSPA as part of the policy of the state. Thus the application of the AFSPA is the state response when its unity and integrity gets questioned by the sections who are dissatisfied. The State and its application of AFSPA need not be seen as an isolated event. The State-in-Society Theory propounded by Joel.S.Migdal says that State is part of the society. “Society affects state as much as state affects society.” This is the key point in the model of state-society interaction: the state and social organizations continually compete for social and other types on control (Migdal, Kohli and Shue , 1994). The state, by its very nature, lays claim to the authority to regulate all social relations within its borders, thus pitting it against all social and tribal organizations that would resist this undertaking in case they are not integrated in the national mainstream. There is often a State reaction in such contexts if the action be the social and tribal organizations is violent and threatens the writ of the state. These secessionist movements are also shaping the state’s response to these challenges. The application of AFPSA gives a “cooling period” as elucidated by James Manor to enable the contesting parties to come to the negotiating table (Manor, 1995). The State-in Society theory strongly states that the state in not acting in isolation and the various social actors are constantly shaping the response of the state. The AFSPA is one such measure which is applied by the state to restore order when it comes across situations bordering on secessionism which in turn shapes the militants response. This leads to a spiral of violence and hardening of the stance of the state. The approach gradually evolves in such a manner that it leads to special constitutional measures and creation of autonomous councils to meet the aspirations of the population. Even the various approaches to the Constitution of India are seen as the process of constant evolution of the Indian State as part of the State-in-Society theory thereby ensuring that the application of the Act need not be seen in the negative perspective always. An analysis of the various approaches to the Constitution of India in conjunction with the State in Society Theory will place the AFSPA in the correct perspective.

POLITICAL INSTITUTIONAL APPROACH

The Indian federalism can be approached from Political Institutional point of view, Socio Cultural view and Historical Institutional view. The political institutional view holds that the federalism is formed by the process of “aggregation and devolution” (Saxena, 2012) (Khan, 1992) .Thus devolution of power takes place along with the aggregation that takes place in the nation. This was the aim of the founding fathers and the same was ensured by the partition of the legislative and executive authority of the Centre and the State. However certain segments and groups have not agreed to the manner in which the demand aggregation and devolution occurs and raise the demand for secessionism and resort to unprecedeted violence. The existence of secessionist tendencies shows that the aggregation part is unfulfilled and in spite of the effort to carry out devolution of powers the affected parties are not ready to operate within the parameters of democratic discourse (Baruah S. , 2009). Splitting up states and creating new states are one of the many strategies available to new democracies to build nations and to contain ethnic conflicts. Ethnic accords, creating social regional councils, creating regional councils straddling several states, district level autonomous councils are means by which newly democratic nations face the challenge of nation making. Since the federal structure endeavours to make all segments part of the central decision making process and asymmetric federalism being a corner stone of Indian federalism, these ethnic demands and secessionist tendencies question the very basis of Indian federal structure . Asymmetric federalism is the means by which accommodation of special demands within federalism is made. In this way the security of these groups is ensured and the potential for conflict avoided. The Asymmetric Federalism forms the part of the **State in Society Theory** as it acknowledges that the state and society are interacting continuously and gradually evolving the Indian State. Hence in order to ensure that the devolution and aggregation process is not derailed by violence and demand for secessionism is checked, the Indian state has been resorting to the use of AFSPA to meet such unprecedeted challenges to the Indian federalism.

SOCIO CULTURAL APPROACH

Similarly the ‘Socio- Cultural’ view to federalism acknowledges the varied social, ethnic and cultural groups existing in the nation and the need to accommodate them in the national rubric (Chabe, 2012). It is with this aspect in mind that the various States have been carved out and

special arrangements have been made to accommodate the peculiar demands of the North East States and Jammu and Kashmir been addressed. Even after the formation of States based on various parameters the demands of various groups remains unfilled. These groups in order to convey their points of view resort to violence and want to secede from the Union. This leads to demand aggregation and contestation by various groups from time to time in the region in spite of constitutional guarantees being introduced even prior to Independence. The issues acquire violent overtones thus placing the government in a position were restoring order becomes the prime task of the government. The **State-in-Society Theory** acknowledges the existence of these groups and their constant demand aggregation and contestation and the State's endeavour to look after the interest of all the segments forms part of the State-in-Society model from where the socio cultural approach comes out. The need to make the Border States an integral part of the nation it is an extremely important task from both political and security point of view. The concern of these groups has to be addressed and need to be assimilated in the nation and is the prime concern of the government. The need to curb the centrifugal tendency and control violence forces the central government to employ the coercive arm of the State to counter the threats when it goes beyond a limit of the concerned state government.

HISTORICAL INSTITUTIONAL APPROACH

In addition the issue can also be seen from the perspective of 'Historical Institutionalism'. This can give a perspective as to how the very concept of the Indian State evolved and how the various Acts were invoked by the British government. The process of Constitution making and national integration was deeply influenced by it. The Constitution making in a way "constantly shapes, not erase" the institutional context in which groups and various actors of the State operate (Sinha, 2007). However this shaping and reshaping is constantly being carried out and need to be seen in the backdrop of the State-in- Society framework. The context in which AFSPA was introduced in Nagaland and later in other parts needs to be looked in the background of the history of the formation of the Indian State. The law enforcing and stability function of the State did not get erased after independence although it got more democratized , yet, the context of preserving the nation state continues to be the guiding principle. The reason for this shaping is that historical institutions or laws provide "political capacities" to the actors in this case

being the Indian Army in order to discharge their constitutional duties (Sinha, 2007).

CONCLUSION

The AFSPA is an important instrument in the hand of the state to bring order and peace in the society. The State in Society theory clearly substantiates the fact that state response is in relation to the society actions. This action reaction syndrome is in no way a barrier to the nation forming process but acts as a propellant to the nation to become powerful and address the needs of all the sections of the society. The experience in Tripura shows that once the political process of addressing the concerns of the tribal was met by constitutional means and the violence went down the AFSA was withdrawn and the normal democratic process assumed its role in the affairs of the state. Violence when not controlled leads to the application of AFSPA so that the insurgents and other parties can come to the negotiating table and work out an acceptable constitutional agreement to resolve the issue. The issue of human rights abuse, though an important issue, should be addressed on a different plane altogether but the AFSPA should be assessed in term of the interaction between the State and the Society. Thus the AFSPA should not be seen in its negative image and seen as a measure to bring peace and inclusiveness in the country.

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