

# INDIAN COUNTER INSURGENCY APPROACH IN KASHMIR A FACTOR OF HUMAN CONCERN: CRITICAL ANALYSIS

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## **Abstract**

*The period of 1990s witnessed the rise of militancy as reaction against the failure of India state to allow the democratic values flourish in Kashmir. The policy of Indian state to control the affairs of Jammu And Kashmir State by compromising the democratic principles frustrated the common masses in Jammu and Kashmir. The lack of implementation of democratic principles provides an opportunity to national conference to establish a dictatorial rule by either suppressing or not allowing the democratic the dissent voices to flourish in Jammu and Kashmir. The condition of hopelessness and frustration resulted in the origin of the period of militancy in Jammu and Kashmir. As the lawlessness prevailed due to the rise of violence level posed a serious challenge for the national security of India. The Indian state decided to start a tough counter insurgency campaign to up root the threat of militancy which has posed a challenge for national security. The military campaign of Indian state receives criticism due to the gross root human right violations at the hands of security forces. The main objective of the paper is to analyse the counter insurgency campaign of India and its implications for human rights.*

**Key words:** - AFSPA, Militancy, Human rights, colonial

## **I. Introduction**

The origin of the conflict of Jammu and Kashmir can be traced from 1947, when the India and Pakistan becomes two independent states on the map of the world. As per the Indian independence act of 1947 the princely states have been given a free choice to either join India or Pakistan (Ganguly, 1997). The ruler of Jammu and Kashmir Maharaja Hari Singh did not like to either join to India or Pakistan. This was the reason he enter into a standstill agreement with India and Pakistan. The Pakistani government accept the agreement but rejected by the Indian government. The Muslims in the west Kashmir started an insurgency against the forces of Hari Singh with the purpose to make the Jammu and Kashmir a part of Pakistan. They were supported by the pathans from the Pakistan with later active support provided by the regular Pakistani army make the situation very tense between India and Pakistan (Indhurthy, 2005). When Pakistani supported tribal warriors reached very

close to Srinagar, then the Maharaja went to Delhi to ask for Indian government's help so that they can protect the state of Jammu and Kashmir (Bose 2003).

The Indian think tank headed by Nehru and Patel see the situation as the best opportunity to compel the Maharaja to sign the instrument of Accession with the Indian union. The Indian government send troops only after Maharaja Hari Singh signed the instrument of accession with India on 26 October 1947. As the result of this accession the Indian government send its troops in order to push invaders back who had already reached at the outskirts of Srinagar. The Indian army successfully push the invaders back and kept a major portion of the area of Jammu and Kashmir under its control. Later India requested United Nations intervention with respect to the Kashmir issue.

It was the Pakistani government who first refused to withdraw its forces from the area it has under its control and later on Indian government changed its stand due to the change in the political situation of Jammu and Kashmir. The situation in Jammu and Kashmir started deteriorated after the elections of 1980s when the demand for the restoration of autonomy were strongly raised by the Farooq Abdullah Government in series of four opposition conclaves held at Vijayawada, New Delhi, Srinager and Calcutta during 1983-84. The unwillingness of the Farooq government to form an alliance with the congress(1) in the 1983 lok Sabah elections prove for creating the conflicting relations between the congress and national conference government. The Indra Gandhi government dismissed the Farooq Abdullah by encouraging defects within the NC and appointed his brother –in- law as the new chief minister of the state (Ganguly 1997).

After the death of Indra Gandhi the situation took a sudden change when Rajiv Gandhi becomes the prime minister of India. The developments in the Kashmir valley prove very fruitful for both the national conference and congress to close to each other. The Kashmir valley during 1980s was witnessing the rise of extremism and the growing the influence of organisations like JamaatiIslami and other organisations. The Kashmir situation takes a dramatic change on the eve of the assembly elections of 1987. A new political party named Muslim United front dominated largely by the religious groups (Bose 2003).

The unfair methods used by the congress NC alliance like booth capturing, use of government machinery for their own electoral gains and the partial role of election commission raised doubts up on the results of the elections (Schofield 2010). The setback provided but the fraud democratic process results with the insurgent movement started largely by the Kashmiris youth. The first organisation who starts the insurgent movement was JKLF. In the latter part the pro independent approach of the JKLF compelled the Pakistan to support Hizbul mujahedeen headed by the SayeedSalahuddin (Bose 2003). The law and situation goes from bad to worse with the killings of the persons by the militants especially who were a part of congress- NC- alliance and take front role in the election rigging. The killing of the judge who sentenced MaqboolBhat death sentence was one of the prominent examples. Due to the deteriorating condition the Indian government dismissed the Farooq Abdullah government and impose governor rule in 1989. In order to tackle the problem of militancy Indian government passed Jammu And Kashmir Armed Forces special powers act in 1990.

## **II. Armed Forces Special Powers Act**

The act had a colonial origin, as it was used by the British government to deal with the challenge posed by the Quit India movement in 1942. This act was implemented by the Indian government to suppress the rebellion from Nagaland who wanted an independent status for Naga tribe out of Assam. The ordinance related to implement AFSPA was later approved by the Indian parliament on September 11, 1958. This act was subsequently applied to other north eastern states of India. The states come under this act like Arunachal Pradesh, Assam, Manipur and Tripura etc. This act was later implemented in Jammu and Kashmir in 1990. The following are the main provisions of this act:

According to Section 4 of the Armed Forces (Jammu & Kashmir) Special Powers Act 1990, in an area that is proclaimed as "disturbed", an officer of the armed forces, including even a non – commissioned officer, has powers to:

(a) After giving such due warning, shoot to the extent of causing death, on the basis of a mere suspicion that person is acting against law or order in the disturbed area.

(b) Destroy any arms dump, hide-outs, prepared or fortified position or shelter or training camp from which armed attacks are or may be committed by the armed volunteers or armed gangs or absconders wanted for any offence.

(c) To arrest without a warrant anyone who has committed cognizable offences or is reasonably suspected of having done so and may use force if needed for the arrest.

(d) To enter and search any premise in order to make such arrests, or to recover any person wrongfully restrained or any arms, ammunition or explosive substances and seize it.

(e) Stop and search any vehicle or vessel reasonably suspected to be carrying such person or weapons.

Section 5 of this act says: 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.

Section 6 of this act says: No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government against any person in respect of anything done or purported to be done exercise of powers conferred by this Act.

## **III. AFSPA and Human Right Violations in Kashmir**

The main purpose for the implementing AFSPA in Jammu and Kashmir in 1990 was to protect the honour, lives and liberties of the people of the State of Jammu and Kashmir. It was the reason why the Armed forces were given such huge powers to curb the growing strength of the militancy in the state of Jammu and Kashmir. But the act becomes a matter of serious concern as far as the issues of human rights are concerned (Schofield 2010). The act gives security forces an opportunity to violate the fundamental rights enshrined in the Indian constitution. There are few examples which will show how this act becomes a tool in the hands of security forces to violate the rights of the people of Kashmir. There are number of incidents in which the act

protects the guilty security forces that are responsible for the gross root human violations against the common people in the Kashmir valley.

On May 21, 1990, Mirwaize Farooq, the leading cleric in Kashmir, was assassinated by the militants belonged to Hizbulul Mujahedeen. The then the Governor Jagmohan was advised by his chief secretary to attend the funeral of the Mirwaize (Bose 2003). The Governor decided against it due to the security threat and the anti-Indian stand of the Maulvi Farooq. The problem arises when the security forces open fire on the funeral of Maulvi Farooq in which more than thirty mourners were dead on the spot. The security authorities Stated that the attack on the funeral was the response of the firing from some people among those who were apart of the funeral procession (WajahatHabibulla 2008). The way the security forces killed 37 people and later on justified their illegal act, by saying that in order to maintain law and order situation they are acting under the spirit of law, especially the freedom that AFSPA give to them to conduct their operations.

In May 1990 a young bride, MubinaGani, was detained and raped by BSF soldiers in Kashmir at Anantang, while she was traveling from the wedding to her husband's home. Her aunt was also raped. The security forces had also fired on the party, killing one man and wounding several others (Puri 1995). The government claimed that the party had been caught in "cross-fire. "After the case becomes much published the Indian authorities conducted an enquiry, and accepted that the women had raped and seven BSF personal has suspended (Schofiled 2006). But the way AFSPA provide the immunity to the security forces from the prosecution in the civilian courts and allows the proceeding of the concerned cases only in the Army tribunals where the Army acts as the accused party and Army acts as a judiciary to decide the fate of the accused army personal without giving any information to the victims about the proceedings is not less than a joke in the democratic system like India.

The reported rape on February 23, 1991, of a large number of women from the village of KunanPoshpora by army soldiers of the Fourth Rajputana Rifles became the focus of a government campaign to acquit the army of charges of human rights violations. The incident provides a telling example of the government's failure to insure that charges of human rights violations committed by members of its armed forces are properly investigated and those responsible held to account (Bose 2002). The government appointed committee under the Divisional commissioner WajahatHabibulla came to the conclusion that the claims of rape on Army are baseless, due to the insufficient evidence against army personal. This incident is the worst rape incident that is committed by the security forces and no one is punished for that crime. This incident is responsible for sowing the seeds of hatred against the Indian government, and alienates further the Kashmiri people from the mainstream politics of India and strength the forces of separatism and prepare the ground for further involment of Pakistan. In a similar case a magisterial inquiry was ordered in the case of five women reportedly raped near Anatang on December 5, 1991, but the magistrate's report has never been submitted (Human rights watch 1993).

In 1993 United States senate unanimously expressed concern over the human right violations in Kashmir and condemned the excesses committed by the security forces against civilians in Kashmir. Similarly European Union (EU) expressed similar concerns over Kashmir, when its delegation was denied entry into Kashmir I 1 (puri 2008). According to the writ petition filed by the human right activist H.N. Wanchoo custodial deaths ranged from 15 in July 1992 to 30 in November 1992. A former advisor to the state government, Ashok

Jaitly, charged that he had failed to find out anything (from official records) about 81 missing people from 1989 to 1992. Expressing concern over the way the government flouted the high court orders on habeas corpus petitions on the behalf of 16 missing persons. Justice R.P Sethi observed: it would endanger the institution of judiciary (Puri 2008).

In July 1990, police in Sopore registered a case against the BSF for the rape of Hasina, a 24-year-old woman from Jamir Qadeem, on June 26, but due to reluctance from Army and lack of support from central government, no action has taken against the guilty BSF. The police under the heavy protests registered a case against the BSF officials. But due to the lawlessness and instability in the state in 1990s, the BSF shows lack of cooperation by completely deny any involvement of its Jawans in this incident and especially the lack of cooperation from the minority V.P. Singh Government no action has been taken against the BSF officials ( Human Rights Watch 1993)

Under the presence of the laws like AFSPA it becomes very difficult for the state government to investigate properly those cases of disappearances in which it is believed that they were killed by the army, for example Patherabal fake Encounter case of 2000.

This case raises many questions, about the credibility of security forces operated in the state of Jammu and Kashmir. This case is related with the ChitiSingpora massacre of Sikhs 20 March 2000 committed by the un identified gun men in which 43 Sikhs were killed, the government blamed up on the lashkartaiba militants for such killings but the circumstances and the location of the place very near to one of the army units raises many doubts about the identity of real culprits (Hindustan times 25 October 2010).

The Unified Jihad Council chairman SayeedSalahuddin blame on Indian intelligence agencies for doing this horrible massacre only to show the bad image of militants to the US President Bill Clinton who was at that time on his official visit to India. After that incident the army claimed that they killed five militants of lashkartaiba who were involved in the killings of 43 Sikhs at ChitiSingporaAnatang in 2000. But the situation took u- turn when the local people claimed that the persons who were killed by the army were not the militants but were civilians. The state government under tremendous pressure gave the order of inquiry. After the investigations CBI on 19 March 2012 in its report says that the persons who were killed by the army before 12 years ago were not militants, but they were civilians and advocated serve punishment for those guilty army men (India Express 2012).

After a long tussle between the CBI and the Army on this issue, as Army says that they enjoy immunity and cannot be prosecuted without the central Approval on the other hand the CBI pressed for the speedy trial so that accused will be given stern punishment. In 2012 in a controversial decision the Supreme Court asked the army either allow the prosecution of the accused in the civilian court or either do the prosecution under an army tribunal. The army decided to do the enquiry under the Army tribunal found that all the acceded were innocent and closed the case (India Today25 January 2014). It was a surprising decision because after the highest Indian investigating agency found the Army personal guilty the Army decision was totally out of logic and it denied the family members of those who killed from justice and allow the guilty Army men to enjoy free and dignified life. After the Army decision came CM Omar Abdullah called it injustice and asked the army to revise the decision (India today 12Feburay 2014)

#### **IV. View point of Indian government**

The Indian government feels reluctant either in modifying or repealing this act from the state of Jammu and Kashmir, because not only the hindrance posed by militancy but the involvement of Pakistani factor which made it difficult for the government of India to withdraw this act from the state of Jammu and Kashmir (Schofield 2006). From 2002 onwards the groups like JeM and LeT involved in Jammu and Kashmir and take a front role in organising violence by launching a series of suicide attacks on the Indian forces, caused a heavy damage in terms of both casualties and material loss.

The Indian policy makers not only link the militancy in Kashmir as an internal security problem but they consider it as an external threat posed by Pakistan as a part of their anti-Indian policy goals which they want to realise through these non-state actors like LeT and JeM. The Pakistani factor in Kashmir becomes a big hindrance for the government to withdraw or modify the controversial provisions from this act. The government of India does not want to take any chance to remove this act as far as Pakistan continuously supports the militancy in Jammu and Kashmir (SumitGanguly 1997).

The home minister P. Chidambaram says that the central government wants AFSPA more humanitarian by making some modifications in this act but the stiff resistance of the army and defence ministry puts a biggest obstacle to bring consensus on the revocation or modification of this act (The Hindu 7 February 2013). But this statement looks immature as it is not in the hands of the army to revoke or amend the act but it will be the responsibility of the central government to see the issue and take a decision. The UPA government led by the Congress is also under the heavy pressure from the biggest opposition party in the form of BJP who strongly oppose either in any modification or repeal of this act as Sumatra Irani a BJP leader clearly says that our party will never allow to either revoke or modify this act (Indian Express 12 November 2011).

#### **V. State government view point**

The government of the state of Jammu and Kashmir from 2002, when the coalition government under the chief minister Mufti Mohammed Sayeed demanded the withdrawal of this act, because of the growing misuse of this act which becomes responsible for the large scale human rights violations in the state of Jammu and Kashmir. In 2009, assembly elections the removal of AFSPA from the state of Jammu and Kashmir remains as the main provision in the election manifesto of national conference (National conference manifesto 2009). Once NC returns into power in J&K chief minister Omer Abdullah continuously raised the demand of the revocation of this act from the state of Jammu and Kashmir.

There is a need to analyse the view point of the state government to understand the government stand. The state government wants a partial revocation of the AFSPA from those areas of the state where the army does not operate from 2006 onwards. The state government wants to retain this act in those areas of the state where the army operates due to the low presence of militancy. But the efforts of the government remain prove futile due to the continuous resistance shown by the army.

The central government feels reluctant due to the strong opposition of the BJP and the Army (The Hindu 7 February 2013). The strong agitation in 2009 and 2010 when more than 130 people killed in police

firing against the innocent killings of Kashmiri people at the hands of the security forces compelled the central government to appoint the three member group of interlocutors consisting of Deleep Padgonkar, Radha Kumar, and MM Ansari in 2010 (Zee news 16 June 2012). The committee submitted its report on 2011 by advocating the removal of AFSPA in Jammu and Kashmir. The committee after a long consultation with all the sections of the people throughout the state also recommend that article 370 which gives special status to the J & K must be removed from the temporary list and should give the permanent place in the constitution. The committee also raised the issue of economic exploitation of the state by the denying the state a proper share from the water resources (Zee news 16 June 2011).

In 2012 the Home Minister P Chidambaram during a one day visit after consultation with the CM Omar Abdullah told a news channel that we want to bring three amendments in the existing AFSPA to make it more humanitarian. The amendments proposed by the MHA in AFSPA included making it mandatory for armed forces to take arrest warrants in advance before conducting searches for arrests of any person, taking away the power of the armed forces to open firing causing deaths and setting up of a Grievance Redressal Cell. Defence Ministry and Army have strong objections to first two amendments. But due to the lack of consensus between defences Ministry headed by AK Antony and Home Ministry the no action has not been taken till date (Pargal 2012).

The state government under the leadership of Chief Minister Omar Abdullah is of the view that keeping in view the improving situation in the state of Jammu and Kashmir, the Central government should either remove this act from the whole state or partially from those areas where the Army does not operate from the last few years, as the responsibility for any operation in these areas had already been taken by the police and CRPF jointly. But still he is not able to convince the central government thought as an ally in the present UPA government (economic times May 20: 2013).

#### **View point of the Army:**

The army raised many objections for any modification of this act.

1. That the army is fighting a proxy war in the state supported by Pakistan. It is not only the internal situation that AFSPA is necessary but a possible threat in the form of Pakistan needs AFSPA support for the security forces to deal with that threat.
2. Second, the army has its military establishments, intelligence set-up and even convoys that pass through areas where AFSPA is not operative. Therefore, the security of both men and material require the legal safeguards and operational powers of AFSPA.
3. The army needs the support of AFSPA keeping in view the growing strength of militant groups in Pakistan. The way Taliban gaining strength in Afghanistan and the possibility of civil war in Afghanistan after the NATO withdrawal may divert a large number of militants from Afghanistan into Kashmir.
4. Fifthly the revocation of AFSPA will demoralised the security forces, which will prove an obstacle in the way of conducting an effective counterinsurgency campaign against the

Pakistan backed insurgent groups, which posed a threat for the internal security of the state of Jammu and Kashmir.

5. Though all points are relevant and valid as far as the counterinsurgency operations in the disturbed areas are concerned. But the points raised by the Army in the defence of the AFSPA are not supported by the existing situation in the Jammu and Kashmir. If we analyse all the arguments raised by the Army in its defence for AFSPA they are not relevant in the Contemporary situation in the Jammu and Kashmir.

6. To make it more clear the laws like AFSPA are only need when the situation was as bad as we had seen in 1990. But under the current situation it cannot be justified that in presence of few hundred militants in the state of Jammu and Kashmir the government will provide huge powers to the security forces which become the cause of worsening the situation in the valley. As per the latest police report there are only 106 militants operate in the valley, out of which 59 are foreigners and mostly belonged to Lashkartaiba and Jaish Mohammed(Free Press Kashmir 24 February 2014).

7. Secondly it is unjustified that situation in Afghanistan after the withdrawal of NATO troops will decided the fate of the AFSPA, because other than Afghanistan there are problems in Pakistan's internal situation does not mean that the people of Kashmir became the victims of the situation in Pakistan and Afghanistan. It was rightly stated by the CM of J& K that we cannot wait till the last gun will disappeared from the J& K as he strongly advocated the withdrawal of AFSPA from the districts of Jammu, Samba, Khuta, Srinagar, BudgamEtc in which Army had not been operated from last couple of years( Times Of India 10 November 2011).

## **VI. Conclusion:**

To conclude we can say that there is a need to either modify the Armed Forces Special powers act or to withdraw this act permanently from all the parts of Jammu and Kashmir. This act becomes a tool in the hands of the security forces to violate the rights of the people of Jammu and Kashmir. There is a need to make armed forces more accountable for their activities and punish the guilty soldiers for their wrong doings. This is only possible only to withdraw AFSPA and restore the faith of the people of the Kashmir on the democratic institutions of the country.

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