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**WOMEN IN ARMED CONFLICTS IN CONNECTION WITH THE ARMED  
FORCES SPECIAL POWERS ACT (AFSPA).**

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**I. ABSTRACT:**

*For decades there have been serious human rights violations by the virtue of armed conflict in our country. When we reflect on the role that is played by the law in the protection of civilians, particularly women from the effects of violence, the first and very obvious starting point is the regime of human rights. This is because, during an armed conflict, individuals to a great extent rely upon the protection that is offered to them by law. The debate of extending the protection of the dignity and lives of women to the provisions of the law of armed conflicts via human rights has been on-going for years now.*

*The present laws regarding armed conflicts are deficient to the extent that the existing body of human right laws are inadequate to take into account the reality of women's experiences, let alone protect them. Moreover, despite the recent focus on rape and abuse in armed conflicts due to international outrage the shortcomings and gaps in law only remain unaddressed. Not only this but the laws dealing with women including protection against rape or protection laws on pregnancy are regarded as less important and the infringement of such laws is not taken seriously. Also, the sad reality is that a woman's protection against sexual violence has very little to do with the woman's perception of sexual violence but is merely titled towards a woman's honour, a concept that is constructed by men for their own purposes.*

*The purpose of this article essentially revolves around the various violations faced by women during warfare, while highlighting the gaps in the provisions of law regarding an armed conflict in India.*

*Keywords: Armed conflict, human rights, women, warfare, sexual violence*

## **II. INTRODUCTION:**

The discussion of women and the infringement of their rights in armed conflicts invoke various phases such as conflict, armed conflict and post-conflict. However, differentiating between these terms is particularly difficult. The post-conflict period establishes that the society has made a transition from a state of conflict to a state of peace. This idea can potentially be misleading in the context of women's lives. Various pieces of evidences showcase that most forms of violence, if not all, which are against women aggravate during the post-conflict settings.<sup>1</sup> Violence against women during warfare is not an event which is exclusive to India. Widespread violation of human rights of women has been documented in the very current conflicts including those in Columbia, Afghanistan, Peru, Sierra, Leone and the former Yugoslavia.

The experience of women of conflict and its aftermath depends massively upon factors as to whether they are combatants or civilians or whether they have been displaced. Various other factors like their age, health, location, national identity are important circumstances to be taken into account. Moreover, even if women escape the immediate violence during a conflict, they are subjected or vulnerable to in further abuse in refugee camps, where there are more chances of them facing an increased risk of sexual and gender-based violence. The present scenario of armed conflicts has diminished the rights of women to land, housing and property throughout the world.<sup>2</sup> The honourable Supreme Court of India is overburdened with endless cases that challenge that challenge the very constitutional validity of the AFSPA itself. The act has been used as a toolkit for various violations during armed conflicts especially in the north-eastern states of Assam and Manipur and the in the state of Jammu and Kashmir. And although the Supreme Court has held the act to be constitutional, it clearly violates the provisions of our constitution, one of them being the guarantee to basic human rights.

## **III. EFFECT OF WARFARE ON WOMEN IN RELATION TO HUMAN RIGHTS LAW:**

In warfare, the main actors involved are combatants who are predominantly males. Usually, women are not directly involved during the times of an armed struggle, but arguably are the

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<sup>1</sup> Committee on the Elimination of Discrimination Against Women, General Recommendation No. 30 on Women in Conflict Prevention, Conflict and Post-Conflict Situations.

<sup>2</sup> Valerie Oosterveld, *Review of Women, Armed Conflict and International Law*, 96 THE AMERICAN JOURNAL OF INTERNATIONAL LAW 760-763 (2002).

major victims of armed conflicts. Although the acts of sexual abuse of women during the time of and after warfare has been documented, rape, in an armed struggle which surpasses all cultural boundaries has been consistently unreported and unrecorded, although it has resulted in death and suffering for countless women over the years.<sup>3</sup> Rape during warfare has surfaced as a horrific but tolerated crime. Moreover, in medieval times, although it was prohibited in theory, rape was regarded as part of the spoils of war and was a major incentive for continued fighting, especially in siege situations<sup>4</sup> and very little has changed over the years. But sexual abuse is just one of the sufferings that women experience during an armed conflict.

The other distinct ways wherein warfare affects women are more often than not less easily identified and rarely draw attention. One of the endless issues is the position of all civilians in a civil conflict which is getting worse with each passing day. Not only are there almost no relevant rules whatsoever but attempts at regulating these conflicts are made particularly difficult by the fact that they are conducted on the basis that there is no distinction made between civilians and combatants.<sup>5</sup> Although not all women have experiences in identical ways there is always a common thread to be identified between them. And even though women have no part in the decision-making process which precedes an armed conflict, they become the ones to live with the results.

The law regarding armed conflicts is fairly inadequate and has time and again failed to take into account the reality of warfare on women. The most inadequate feature of the law relating to warfare is its inability to recognise that women experience warfare differently from men. One of the most massive inadequacies or gaging gap of the laws relating to armed conflicts is their failure to underline the fact that warfare that is experienced by women is different than men. This fact can be substantiated by taking into account the regulation of sexual violence against women in warfare or the inadequacy of the law that provides for the requirements for safeguarding the reproductive health of women.

Sexual violence, in particular, encapsulates most of the shortcomings of the law and also brings forth the perspective of women. Sexual violence is something which is the most distinctive experience of women which causes grave suffering and trauma and is universal to

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<sup>3</sup> Judith Gardam, *Women and the Law of Armed Conflict: Why the Silence?*, 46 THE INTERNATIONAL AND COMPARATIVE LAW QUARTERLY 55–80 (1997).

<sup>4</sup> Maurice Keen, *The Laws of War in the Late Middle Age* (1965).

<sup>5</sup> Judith Gail Gardam, *Non-Combatant Immunity as a Norm of International Humanitarian Law* (1993)

all kinds of armed conflicts. This reality of sexual abuse is however not reflected by the law. On an international level international scholars have also argued that rape could also constitute a crime against humanity. Violations of rights in armed conflicts have a deep impact on and broad consequences for equal enjoyment and exercise by women of their fundamental rights.<sup>6</sup>

#### **IV. AFSPA- VIOLATION OF WOMEN RIGHTS UNDER THE INDIAN CONSTITUTIONAL LAW:**

Various interest groups have alleged the violation of human rights, constitutional rights to life and liberty, and heinous crimes which fall in the category of war crimes. Every one of these claims originates from the forces given to military under arrangements of Armed Forces Special Powers Act. Women inevitably become the victims of warfare in various parts of the world and India, unfortunately, is no stranger to this suffering. The endless instances of subjugation of women in Kashmir and the North-Eastern states underline the experience of such conflicts. Women, inevitably, become victims of domestic, political and cultural violence, fragmentation of families, loss of children and men, the violence of dislocation and predatory masculinity and misogyny of war, rape and murder.<sup>7</sup>

The provisions of the Armed Forces Special Power Act are violative of human rights inclusive of women's rights. Over the years, AFSPA has developed more like a draconian law. Women have been raped, abused and tortured like the case of *Manorama Devi*, who was raped and thereafter killed in Manipur by the Assam riffles, the haunting case of *Kunan Poshpora* incident which occurred in Kashmir in 1991 wherein approximately 53 women were raped, the horrifying incident of *Langjing village of Manipur*, where women were raped in front of their husbands and pregnant women were killed brutally. But nothing has been done for these victims and this has pushed women into zones that are too vulnerable.<sup>8</sup>

In 2013, the most significant development was through the report given by the Justice *J.S Verma* Committee which looked into legal reforms related to violence against women called for a review of the AFSPA. It noted that impunity for systematic or isolated sexual violence

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<sup>6</sup> Committee on the Elimination of Discrimination Against Women, General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, UN Doc CEDAW/C/GC28 (16 December 2010) [11].

<sup>7</sup> Dr Neeru Sharma, *AFSPA AND VIOLATION OF WOMEN RIGHTS IN INDIA*, 3 (2016).

<sup>8</sup> RAVI NITESH, *WOMEN IN CONFLICT ZONES: AFSPA AND ITS ILL EFFECTS* (2013), <https://papers.ssrn.com/abstract=2246723>.

in the process of internal security duties is being legitimised by the AFSPA” and “women in conflict areas are entitled to all the security and dignity that is afforded to citizens in any other part of our country.<sup>9</sup> Even though the government adopted many of the recommendations given by the committee in a subsequent anti-rape bill but it did not inculcate those related to AFSPA.

### **V LIST OF DO’S AND DON’TS:**

The Supreme Court in *Naga People's Movement of Human Rights v. Union of India*<sup>10</sup> has issued a list of Do’s and Don’ts with regard to the application of the Armed Forces (Special Powers) Act 1958.

#### **V.I: LIST OF DO’S<sup>11</sup>:**

##### **1. Action before Operation:**

- a)** Act only in the area declared ‘Disturbed Area’ under Section 3 of the Act.
- b)** Power to open fire using force or arrest is to be exercised under this Act only by an officer/JCO/WO and NCO.
- c)** Before launching any raid/search, definite information about the activity to be obtained from the local civil authorities.
- d)** As far as possible coopt representative of local civil administration during the raid.

##### **2. Action during Operation:**

- a)** In case of necessity of opening fire and using any force against suspect of any person acting in contravention of law and order, ascertain first that it is essential for maintenance of public order. Open fire only after due warning.
- b)** Arrest only those who have committed cognizable offence or who are about to Commit cognizable offence or against whom a reasonable ground exists to prove that they have committed or are about to commit cognizable offence.
- c)** Ensure that troops under command do not harass innocent people, destroy property of the public or unnecessarily enter into the house/dwelling of people not connected with any unlawful activities.

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<sup>9</sup> RIGHT TO RAPE?, , <https://www.telegraphindia.com/opinion/right-to-rape/cid/293225>.

<sup>10</sup> (1997) ICHRL 117 (27 November 1997) (India).

<sup>11</sup> *Ibid.*



- d)** Ensure that women are not search/ arrested without the presence of female police. In fact women should be searched by female police only.

**3. Action after Operation:**

- a)** After arrest prepare a list of the persons so arrested.
- b)** Hand over the arrested persons to the nearest police station with least possible delay.
- c)** While handing over to the police a report should accompany with detailed circumstances occasioning the arrest.
- d)** Every delay in handing over the suspects to the police must be justified and should be reasonable depending upon the place, time of arrest and the terrain in which such person has been arrested. Least possible delay may be 2-3 hours extendable to 14 hours or so depending upon a particular case.
- e)** After raid make out a list of all arms, ammunition or any other incriminating material/document taken into possession.
- f)** All such arms, ammunition, stores etc. should be handed over to the police station along with the seizure memo.
- g)** Obtain receipt of persons and arms/ammunition, stores etc. so handed over to the police.
- h)** Make record of the area where operation is launched having the date and time and the persons participating in such raid.
- i)** Make a record of the commander and other officers/JCOs/NCOs forming part of such force.
- j)** [sick] Ensuring medical relief to any person injured during the encounter, if any person dies in the encounter his dead body be handed over immediately to the police along with the details leading to such death.

**4. Dealing with civil court:**

- a)** Directions of the High Court/Supreme Court should be promptly attended to.
- b)** Whenever summoned by the courts, decorum of the court must be maintained and proper respect paid.
- c)** Answer questions of the court politely and with dignity.
- d)** Maintain detailed record of the entire operation correctly and explicitly.

**V.II: LIST OF DON'TS<sup>12</sup>:**

1. Do not keep a person under custody for any period longer than the bare necessity for handing over to the nearest police station.
2. Do not use any force after having arrested a person except when he is trying to escape.
3. Do not use third-degree methods to extract information or to an extract confession or other involvement in unlawful activities.
4. After arrest of a person by the member of the armed forces, he shall not be interrogated by the member of the armed force.
5. Do not release the person directly after apprehending on your own If any person is to be release, he must be release through civil authorities
6. Do not tamper with official records.
7. The armed forces shall not take back a person after he is handed over to civil police.

**VI. CONCLUSION:**

Established standards of human rights are typically side-lined in the savagery of outfitted clashes, for example, J&K. Harmony turns into a term hard to fathom, particularly in the vocabulary of savage difficulty which conquers essential human conventionality and guideline of law. The systems of administration are accustomed to bringing similarity to arrange. It is this demonstration of the legislature that starts such necessities as announcing a crisis and bringing the locale under the gambit of „disturbed areas“. Where at that point do human rights figure in this talk? Pundits of AFSPA contend that in universal law, notwithstanding amid such brutality in strife zones, the rights to life and freedom stay central. Crisis laws too need to ever be used with certain inbuilt protections to guarantee that they don't wind up being tyrannical or oppressive in nature. The alternate focal point of global law is that the non-state on-screen characters would likewise have some way of composed structure, right off the bat to have the capacity to make states of contention, and also to have the capacity to seek after their points.

On account of J&K, this structure exudes from Pakistan utilizing its intermediary mechanical assembly. In conclusion, the assurances managed in such laws as AFSPA should be seen in the light of the military need of sending powers. On the off chance that AFSPA, in fact, makes conditions for the infringement of essential human rights and rights cherished in the

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<sup>12</sup> *Ibid.*

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Constitution, at that point the onus of revoking such laws lies with the administration. As is obvious from the legal surveys, the law perceives the necessity of such a law in bothered territories. In any case, the contention against the maintenance of such laws has offered driving force to the manner of thinking that these will perpetually bring disintegration to common freedoms. Over the long haul, these will demonstrate impeding to any harmony procedure.

From one viewpoint, deficient research has gone into setting up connections between a few or every one of these gatherings and the extremists or their intermediary accomplices in Pakistan. Without exact proof, it remains a guess, however worth examination. The comparative examination is required into Indian analysts being supported by abroad associations to scrutinize AFSPA. Then again, it is appropriate to comprehend that sending of the military without defensive components adds up to making them battle with one arm tied behind their backs; virtual gun grain. Subsequently, the necessity of AFSPA is past sensible uncertainty. The equivalent has been maintained by the Supreme Court as far as its established legitimacy. At the same time, every single conceivable road must be investigated to correct the arrangements of AFSPA with the end goal to make it more others conscious in nature. It is clear from the very aftermath and draconian provisions of AFSPA that there have to be serious amendments made in order to protect the basic human rights including women rights.