

Don't blame the law

V R Raghavan Posted online: Wed Sep 15 2010, 03:20 hrs

There is a vociferous demand for the withdrawal of the Armed Forces Special Powers Act (AFSPA) from the states of the Northeast and from Jammu and Kashmir. This emotive demand places Indian political and security considerations in avoidable opposition. The first dichotomy is in the realm of politics and political expediency. AFSPA is by law, required to be promulgated only in exceptional circumstances and for a limited duration. After that duration, it is only to be extended by a decision of the legislature or Parliament, which should satisfy itself on the conditions requiring such extension. The reality is that governments in the states and at the Centre have made the extensions of AFSPA a routine process. Consequently, in some states of the Northeast, AFSPA has remained for five decades! Political parties have had no qualms in asking for revoking AFSPA when in opposition, and seeking its continuance on coming into power. Elected governments seem to feel no sense of helpless inadequacy that such actions demonstrate, of their need to govern by military force.

Militant groups all over the world, when confronted by the legitimate power of the state, unfailingly offer to negotiate, seek withdrawal of the military, the release of prisoners

and unconditional talks. This, more often than not, is an attempt to gain time and regroup their forces. When the Indian government did not help, AFSPA has been made into a rallying cry. In J&K and the Northeast,

the central issues of governance, empowerment and a negotiated consensus on a political solution are relegated to the background, while AFSPA has been turned into a field for political jousting.

The powers that are made available under the act are to be utilised, indeed, must be employed with military judgment and discretion backed by empathy for the innocent populace. It is essential to remember that this process of judgment is to be undertaken in a conflict situation, within minutes, where the opponents are armed, firing from a house in which women and children have been taken hostage, or when arms and munitions are being taken out of a hidden site and other similar situations.

If AFSPA's enabling powers are to be revoked, diluted, or made subject to normal processes of law, the military will conduct operations not on the basis of military judgment, but on the need to defend its actions in courts. That is what the state police and paramilitary forces do, and the limits of their operational efficacy are evident to all.

Modifying the powers granted by AFSPA is an unquestioned prerogative of the Indian Parliament. The merits of diluting the powers will no doubt be seriously discussed in Parliament. The consequences of such dilution of powers will, however, be felt outside Parliament. They will have a lasting and debilitating effect on the ability of the Indian state to apply military force as a last resort in the defence of its citizens, against internal and foreign-inspired armed groups determined to destroy the values that the Indian nation stands for.

An argument often made is of

AFSPA not having made a change either in the Northeast or in J&K, despite being in use for decades. This is clearly a case of misplaced blame. AFSPA is not a solution to the causes which have led to India's internal conflicts. Neither is it the cause of such conflicts. It is no more than one instrument the Indian state can employ to bring militancy under control. The Indian military has repeatedly obtained the conditions in which socio-politico-economic instruments can be used to deal with the causes of conflict. It is not as if the Indian

state has failed in this. In Mizoram and Tripura, this outcome has been effectively gained. It has been largely obtained in Assam and partly in Nagaland. If it is unobtainable in Manipur, the fault is not with AFSPA but with the political executive of all shades, which has sought and continues to seek its permanent promulgation.

It will be necessary to highlight that more casualties in all such conflicts have come about by the actions of forces other than the army. The ministry of home affairs will do well to publish the figures of deaths and injuries caused by the state armed police, the paramilitary forces, as also by internecine fighting between militant groups. That will set the record right on the role of forces other than the army.

The Justice Jeevan Reddy Commission's report on AFSPA is often referred to. The report is confidential, but is available on the web portal of at least one national newspaper. The commission had recommended significant changes, but did not dilute any of the enabling powers granted to armed forces in AFSPA for conducting operations. In its extensive hearings in the Northeast, more cases of killings and maiming were attributed to state armed

police than to the armed forces.

The decision on AFSPA's withdrawal from some parts of J&K is a political choice. It nevertheless has security consequences. In Manipur, such selective withdrawal led to militant groups regaining control. An offer to withdraw AFSPA, as an encouragement to secessionists to join talks, conflates security and political considerations. The government, by doing this, will be bartering its legitimate right to use force for an uncertain outcome.

While the armed forces cannot refuse a constitutional directive of the government, they will also leave no one in doubt of the security consequences of a flawed political choice. The nature of internal conflicts in 1950s was vastly different and simpler than today. Those who drafted the AFSPA then have been proved prescient about the nature of conflicts the Indian state is facing today. It is time to revisit the assumptions under which the act is used. The armed forces have performed their tasks in the confidence that AFSPA safeguards them in their onerous and thankless job. It will also be good to remember that AFSPA is not a colonial legislation, but one drafted by independent India's Parliament.

The writer, a former DGMO, was a member of the Justice Reddy Commission on AFSPA

express@expressindia.com