

The Armed Forces (Special Powers) Act (AFSPA) in Northeast India: An Examination of its Compatibility with International Human Rights Standards and the Quest for Legal Reform

¹**Author** Joshua Hmar

²**Author** Jasmine Gurung

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ABSTRACT

This paper examines the Armed Forces (Special Powers) Act (AFSPA) and its implementation in Northeast India, particularly focusing on its compatibility with international human rights standards and the need for legal reform, in 21st Century India.

Enacted in 1958, AFSPA as an act, grants extensive powers to the Indian armed forces in regions that are declared as 'disturbed areas,' including the authority to shoot to kill and arrest without a warrant. This paper thereby, provides an overview of the legal framework of AFSPA, its historical context, and the rationale behind its enactment. It further explores the human rights concerns and criticisms associated with AFSPA, supported by reports and findings from various human rights organizations and testimonies from affected individuals and communities. The paper also compares AFSPA's provisions with relevant international human rights laws and standards, highlighting significant breaches of the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights. Judicial responses and legal challenges to AFSPA are discussed, alongside policy debates and calls for reform from governmental and non-governmental perspectives. The study concludes with policy recommendations aimed at reconciling security needs with human rights protections.

Keywords:

AFSPA, Human Rights, Northeast India, Judicial Response, Insurgency.

¹ Corresponding Author : Student, Saitual High School II, Saitual, Mizoram, IN

² Author : Mentor and Principal Investigator, Northeastern Centre for High School Research, Kohima, Nagaland, IN

Email – nehcr.research@gmail.com

INTRODUCTION

One of India's most controversial laws to still exist to this date, is the Armed Forces (Special Powers) Act (AFSPA) which was introduced as a piece of legislation by the Indian Parliament on September 11, 1958. It was introduced to empower the armed forces to maintain public order in what the government declared as "disturbed areas,"; regions experiencing armed insurgency and violence. However there still isn't a clear definition of what this disturbed area entails. This law was first introduced in the undivided state of Assam and was later extended to Nagaland, Manipur, Tripura, parts of Arunachal Pradesh, and Meghalaya, and in the 1990s, to Jammu and Kashmir. This controversial act provides significant immunity to the armed forces, allowing them to operate with considerable autonomy and legal protection in areas designated under AFSPA.

HISTORICAL AND LEGAL BACKGROUND

The origins of AFSPA can be traced back to colonial times, with the Armed Forces Special Powers Ordinance of 1942, promulgated by the British to quell the Quit India Movement. This ordinance granted extraordinary powers to the armed forces to detain and use force against those involved in the Indian Independence Movement, and many leaders such as Nehru and Gandhi were booked under this ordinance. After independence, India faced substantial insurgency in its northeastern region, particularly in the Naga areas. Most of Northeast, then, was uncharted and inhabited by various tribal groups, who were mostly hostile towards outsiders. The integration of these regions into the Indian Union therefore was fraught with difficulties, leading to dissatisfaction and movements advocating for greater autonomy or independence. By the late 1950s, this situation became dire, especially in the undivided state of Assam (which included the present-day states of Nagaland, Meghalaya, and Mizoram). Various

groups were expressing their discontent with the Indian government through armed resistance and protests, leading to widespread unrest and instability. Among these groups, the Naga National Council (NNC) led by Angami Zapu Phizo was the most prominent. The NNC had sought complete independence from India, and their once peaceful movement, often referred to as the Naga Rebellion, became an armed struggle. To address these challenges, inspired by the *British-era* Armed Forces Ordinance, AFSPA was enacted as a temporary measure in 1958 to restore order and support counter-insurgency operations. It provided them with the authority to use force, conduct searches, and make arrests without a warrant, aiming to restore law and order swiftly.

Over the years, the scope of AFSPA has expanded. The Act was initially applied in Assam and extended to Nagaland in 1958, then to Manipur in 1980, Tripura in 1972, and parts of Arunachal Pradesh and Meghalaya. Later 1972, breaching India's quasi federal model of governance, an amendment transferred the authority to declare an area as "disturbed" from state governments to the central government. This centralization of power aimed to ensure a more coordinated and effective response to insurgency across the northeastern region. Consequently, AFSPA was applied in Nagaland, Meghalaya, Tripura, and Arunachal Pradesh.

While AFSPA aimed to protect civilians by restoring order, it has been widely criticized for enabling human rights violations. The intention of the act was to allow the Central Government of India to deploy armed forces to protect every state from internal disturbances, as referred in the Article 355 of the Indian Constitution.

The scope of AFSPA extends to states and union territories in India that are declared 'disturbed' by the government, based on the prevalence of insurgent activities and threats to national security. The declaration of an area as disturbed is reviewed periodically, and the act remains in force until the area is deemed to be stable and

peaceful. However there is no specific clause that defines what it means for an area to be categorized as "disturbed" thereby allowing the central government absolute authority for the decision.

As a result, over the decades, allegations of extrajudicial killings, torture, rape, and other abuses have been commonly reported, leading to widespread condemnation. The Act, initially intended to safeguard civilians, has in many instances become a threat to their liberty and rights, resulting in significant social and political unrest in the affected regions.

The following Regions of Northeast India were or are still under this act:

- Arunachal Pradesh, (1972 - Present day)
- Assam, (1952 - Present day)
- Manipur, (1952 - Present day)
- Meghalaya, (1972 - 2018)
- Mizoram, (1972 - 1980)
- Nagaland, (1972 - Present day)
- Tripura (1972 - 2015)

KEY PROVISIONS AND POWERS UNDER AFSPA

Under the act, the Indian armed forces can perform a variety of actions that extends beyond the standard legal frameworks governing civil law enforcement. The key provisions of this act are found in Section 3, 4, 5 and 6.

Section 3 of this act allows the central and the state to declare any part of a state as a "disturbed area" if it is deemed necessary to prevent terrorist activities or maintain public order. This criteria is simply listed as,

"to declare any part of a state as a "disturbed area" if it is deemed necessary to prevent terrorist activities or maintain public order."

This thereby remains quite broad and is vaguely defined leading to potential of overuse

or misuse. This concern was also raised in the court case *Inderjit Barua v. State of Assam*, where it was argued that the discretionary power granted to declare an area as "disturbed" lacks clear guidelines and safeguards, thereby risking arbitrary application. The court had stated:

"The power to deprive a man of his basic human right of either life or personal liberty is necessitated because of the imperative of an organized society... However, this power cannot be arbitrary. All State actions must stand the test of being just, reasonable, and fair, and must not be oppressive, capricious, whimsical, unjust, or unfair."

This ruling is crucial as it underscores the necessity for laws that restrict personal liberties and fundamental rights to be implemented in a non-arbitrary manner. However to this date, there has been little emphasis by the Central govt. Of India to amend the clause.

Section 4 further grants special privileges to the commissioned officer, that in most cases are against the fundamental rights granted by the constitution. Clause a, of this section further authorizes any officer in the armed forces to "fire upon or otherwise use force, even to the causing of death," against any person acting in contravention of any law or order prohibiting the assembly of five or more persons or carrying weapons. There thus, isn't any clear guidelines for proportionality and leaves it to the arbitration of the officers. In many incidents it was found that the armed forces would fire upon unarmed protestors, notably in the Kakopathar Massacre of 2006, where they had placed firearms to justify the firing. The Malom Massacre in 2000, where ten civilians were killed by the Assam Rifles personnel in Manipur, is a notable example of misuse of this section of the AFSPA. In Assam, another investigation had revealed that 87 out of 183 encounter deaths were extrajudicial. (Amnesty International India, 2013)

Section 4(b) allows the armed forces personnel to destroy arms dumps, hideouts or fortified positions. The phrase in this clause "*or are likely to be made*" introduces a

subjective element, allowing for preemptive destruction solely on grounds of suspicion rather than evidence, leading to unwarranted destruction of property and potential displacement of civilians.

Section 4(c) of this act gives the authority to arrest without warrant any person who has committed a cognizable offense. However, the term "*reasonable suspicion*" as stated in the clause, is not clearly defined, allowing for arbitrary arrests. Lastly section 4(d) gives the army the power to enter and search any premises to make such arrests or to recover any person wrongfully restrained or confined. Again the authority is not clearly defined, leading to cases of warrantless searches which leads to privacy violations and arbitrary invasions of homes. Under this very provision of 4(c) Thangjam Manorama, was arbitrarily tortured and executed by the soldiers of the Assam Rifles.

Although Section 5 of this Act, aims to ensure accountability, in practice, many delays and lack of proper documentation has been reported. This is so, because the provision does not offer a clear timeframe in which the person has to be produced before the police station. It simply states that it must be done, "*with the least possible delay*". An Amnesty report had also revealed that many children and women were detained indefinitely during counter insurgency operations, especially during Operation All Clear (Amnesty International India, 2013).

The provision, Section 6 provides that "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 in exercise of the powers conferred by this Act." This thereby gives absolute immunity to the armed forces to act with impunity. This was also seen in the infamous Mon Massacre of December 4th, 2021. On this day, the Army's 21st Para Special Force who were stationed in Mon district for operation, had mistaken an incoming truck carrying coal miners from Tiru to Oting village for armed insurgents and without a warning,

ambushed and opened fire on the truck, killing the six miners on board. A nearby village hearing the gunshots the Naga villagers rushed to the scene picking up their daos along with them, causing chaos resulting in the soldiers opening fire and killing seven more civilians. Civilians then have also reported that the armed personnel were trying to cover up their tracks by burying those killed. However despite this, by the Provisions under section 6 of the AFSPA, no action was taken to this date against those involved in the firing. The soldiers in this case were simply dismissed by the Home Ministry. Further, we also see many soldiers not facing action despite having used Khasi women as human shields during Operation Birdie (Mehrotra, 2012).

HUMAN RIGHTS CONCERNs AND CRITICISMS

In Northeastern India, human rights violations under AFSPA include extrajudicial killings, torture, custodial deaths, arbitrary detention, and enforced disappearances. This has inadvertently also perpetuated widespread abuses and a culture of mass hysteria amongst the local population. Many human rights organizations such as Amnesty International and Human Rights Watch have documented numerous such cases of abuse. In its report "India: Briefing on the Armed Forces (Special Powers) Act, 1958," Amnesty International noted that "in Manipur and Nagaland, security forces have frequently been accused of extrajudicial killings and other human rights violations" (Amnesty International, 2013). Similarly, Human Rights Watch's report "These Fellows Must Be Eliminated': Relentless Violence and Impunity in Manipur" highlighted instances of torture and enforced disappearances, stating that "*the use of AFSPA in Manipur has led to a severe erosion of human rights protections*" (Human Rights Watch, 2008).

The testimonies of several individuals and communities affected by AFSPA in the northeast also adds invaluable insights on the act as a whole. For instance, from

Sharmila, an activist from Manipur, who had begun a hunger strike in 2000 stated, *"AFSPA has brought unimaginable suffering to the people of Manipur. We live in constant fear and without any sense of security"* (Human Rights Watch, 2008). A survivor of the Oinam Incident of 1987, where the Assam rifles had conducted extensive operations, recounted, *"We were treated worse than animals. They beat us, burned our homes, and violated our women. There was no justice for us"* (Amnesty International, 2013). In another incident in Matikhrü, the 16th Punjab Regiment posted at Kanjang Village, had conducted a search for naga militants. Here all villagers were rounded up, with men separated from women and children. The soldiers assaulted the villagers with gun butts, demanding information about militant hideouts and armaments. The men were subjected to continuous physical torture, forced to jump and do sit-ups for over five hours under the scorching sun, with wooden logs rolled over their bodies and boiling water poured on them. By late afternoon, women and children were then threatened to leave, and subsequently, the men were dragged into the village chief's house, where they were brutally butchered and beheaded by the Indian Army (NPMHR, 1997). As per AFSPA, those involved in this incident were never prosecuted.

COMPATIBILITY WITH INTERNATIONAL HUMAN RIGHTS STANDARDS

Countless, international human rights standards, such as those enshrined in the International Covenant on Civil and Political Rights (ICCPR), emphasize the protection of life, liberty, and security of the person. AFSPA's provisions, particularly those allowing the use of lethal force and arbitrary detention, appear to contravene these standards.

For instance, AFSPA clearly violates article 3 (*right to life, liberty and security of person*) and 9 ("No one shall be subjected to arbitrary arrest, detention or exile."), of the Universal Declaration of Human Rights (UDHR)'s that clearly establishes fundamental human rights.

India is also party to the International Covenant on Civil and Political Rights (ICCPR),

and yet AFSPA's provision 4(a) clearly goes against ICCPR's article 6, which states,

"Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

Further Section 4(c) and 5 of AFSPA, violates article 9 of the ICCPR, which provides every civilian the right to liberty and security of person. Since AFSPA does not clearly state the authority of the offices, it goes against the clause, "No one shall be subjected to arbitrary arrest or detention" of the ICCPR. The derogation provisions under Article 4 of the ICCPR also require notification to other state parties during times of emergency, a requirement often overlooked in the context of AFSPA. In addition to this, AFSPA disregards the ICCPR's requirement for state parties to notify derogations during emergencies. (UNGA, 1966; Saikia, 2014).

The United Nations' Basic Principles also restrict the use of firearms by law enforcement to situations of self-defense or defense of others from imminent threat. Despite this, AFSPA's broad authorization for the use of force, even without immediate threat and simply due to mere suspicion, violates these UN principles (UN, 1990).

International norms and standards also dictate that lethal force should always be a last resort, and any detention should be proportionate. However AFSPA's broad authorization of force and allowance of arrest without warrant, simply out of mere suspicion fails these guidelines.

JUDICIAL RESPONSES AND LEAGAL CHALLENGES

Over the years, the AFSPA act has been faced with many court and legal challenges, one of the major challenges AFSPA has faced was the *Naga People's Movement of Human Rights (NPMHR) v. Union of India in 1997*. It questioned the power act's alleged violation of Human Rights, claiming armed forces have engaged in murders, torture, assault, rape, property destruction and arsoning of villages in the Naga regions in Senapati District during "Operation Bluebird". The Supreme court responded by upholding the constitutionality of the Act, However, the Court also laid down important guidelines against the misuse and abuse of the act, i.e *Section 4 (a)* of the act, allowing

armed forces in 'disturbed area' to open fire and use force to eliminate possible threats, but has to give 'due warning' first. However, the Court has not clearly defined what constitutes a "due warning," leaving the term ambiguous and open to interpretation. This lack of clarity can lead to inconsistent application and potential misuse, as it provides no specific guidelines on what a lawful warning should include or how it should be delivered before the use of force under AFSPA. Additionally, the court also emphasized that, 'disturbed areas' were to be periodically reviewed.

Another significant case AFSPA faced was *Extrajudicial Executions of Victim Families Association (EEVFAM) v. Union of India (2016)*, where it was ruled that AFSPA does not grant absolute immunity to the armed forces and ordered investigations into these allegations. This decision was crucial because it reinforced the judiciary's stance that the armed forces are accountable for their actions and must operate within the confines of the law, even in areas under AFSPA. However it is yet to be seen in practice, wherein the armed forces are held liable for their actions, as can be seen in the recent 2021, civilian killings in Nagaland's Mon district.

Many human rights organizations in India and beyond, have argued that AFSPA grants excessive powers to the armed forces, including the authority to use lethal force, arrest without warrant, and search properties without judicial oversight, which undermines the fundamental rights enshrined in the Indian Constitution. Key legal challenges have focused on the act's violation of the right to life and personal liberty under Article 21, as well as the right to equality under Article 14.(Noorani 2004) The Supreme Court of India has however upheld AFSPA in various rulings, such as in the *Naga People's Movement of Human Rights v. Union of India (1997)*, where the court recognized the need for such special laws in disturbed areas but also emphasized the importance of accountability and safeguards against abuse. (Singh 2007)

Although the Court has not taken a clear stance, with regards to the act, it has been at the forefront of this balancing act, recognizing the necessity of AFSPA in maintaining public order in disturbed areas while simultaneously underscoring the need for accountability and judicial oversight to prevent misuse. Going forward, the Court

should mandate regular judicial reviews of AFSPA's application in conflict areas to assess its impact on human rights and necessitate strict adherence to safeguards against abuse.

POLICY DEBATES AND CALLS FOR REFORM

The Indian government has periodically reviewed AFSPA, often in response to public outcry and incidents involving the military. A significant development was the establishment of the Justice Jeevan Reddy Committee in 2004, following the public outcry after the custodial death of Thangjam Manorama in Manipur. The Committee recommended the complete repeal of AFSPA, deeming it "*too sketchy, too bald and quite inadequate*" and instead proposed amendments to the Unlawful Activities (Prevention) Act (UAPA) to incorporate necessary provisions for maintaining internal security. However this again was not implemented, and subsequent governments dismissed the findings of this report. The Second Administrative Reforms Commission, led by Veerappa Moily, supported these recommendations, emphasizing the need for a more humane approach to law enforcement in conflict zones.

Despite these recommendations, the repeal of AFSPA has faced substantial opposition, particularly from the Indian Army, which argues that the Act is crucial for maintaining order in insurgency-prone areas like Jammu and Kashmir and the Northeast. The military's stance is based on the belief that special powers are necessary to effectively combat insurgency and terrorism, ensuring that military operations are not hindered by legal proceedings. However, by prioritizing operational convenience over accountability, the military's stance risks eroding public trust and exacerbating tensions in regions already fraught with conflict. This approach not only undermines democratic principles but also alienates the very populations that the security forces are meant to protect.

Many academics have previously argued that AFSPA not only fails to curb insurgency but may actually exacerbate it by alienating local populations and fueling resentment against the state. For instance, studies have shown that heavy-handed military tactics

under AFSPA in regions like Jammu and Kashmir and the Northeast have often led to increased support for insurgent groups, who capitalize on public anger over human rights abuses (Bose, 2009). This phenomenon is not unique to India; similar patterns have been observed globally. In Northern Ireland, the use of emergency powers by British forces during the Troubles often led to increased recruitment by the Irish Republican Army (IRA) as communities felt oppressed and targeted by the state (Sluka, 2000). Likewise, in Palestine, the use of aggressive military strategies by Israeli forces has been linked to the strengthening of militant groups like Hamas (Hroub, 2006). These examples underscore the counterproductive nature of such laws, suggesting that militarized responses can perpetuate cycles of violence rather than resolving them.

The relevance of this argument to the Northeast region of India is particularly significant, where AFSPA has been in force for decades. Public opinion in these regions has consistently reflected a strong opposition to AFSPA, with many arguing that the Act perpetuates cycles of violence rather than contributing to peace. For instance, the Manipur Assembly has repeatedly called for the repeal of AFSPA, highlighting widespread discontent and the perception that the Act has led to human rights abuses and extrajudicial killings (Human Rights Watch, 2008). For instance, the infamous Malom Massacre in 2000, where ten civilians were allegedly killed by Assam Rifles personnel, led to massive protests and the prolonged hunger strike by Irom Sharmila, a prominent human rights activist demanding the repeal of AFSPA. This event not only intensified local opposition to the Act but also brought international attention to the human rights situation in the Northeast (Kikon, 2009). Previous studies such as that of Sanjib Baruah (2005) argues that the prolonged military presence under AFSPA has alienated large sections of the population in the Northeast, leading to a vicious cycle where counterinsurgency operations inadvertently strengthen insurgent narratives. The use of AFSPA, rather than resolving the insurgency, thus is counterproductive to various extents by undermining the legitimacy of the Indian state in these regions and perpetuating a state of perpetual conflict.

CONCLUSION

In considering the future of the Armed Forces (Special Powers) Act (AFSPA), it is clear that legal reform is essential to reconcile the imperative of national security with the protection of human rights. Amendments to AFSPA should prioritize the introduction of robust checks and balances, such as mandatory judicial review of military actions and a clearer, more precise definition of what constitutes a "disturbed area." These changes would enhance accountability and transparency in military operations, mitigating the risk of human rights abuses while still allowing the state to address security threats effectively. Furthermore, the development of alternative legal frameworks that integrate national security concerns with international human rights standards is critical. Such frameworks could draw on best practices from other jurisdictions that have successfully navigated the balance between state security and individual rights, offering a more equitable approach to conflict management in India's Northeast.

The pathway to reform must and should also include policy recommendations that emphasize accountability and the involvement of local stakeholders. Establishing independent oversight bodies to investigate allegations of abuse and misconduct would serve as a crucial mechanism for ensuring justice and rebuilding trust between the state and its citizens. Moreover, enhancing the role of local governments and civil society in decisions related to the declaration of "disturbed areas" would lead to a more inclusive and balanced approach, reducing the sense of alienation felt by affected communities. The international community and human rights advocacy groups can play a vital role in promoting these reforms by providing expertise, resources, and pressure for change. Ultimately, the future of AFSPA and human rights in India hinges on the country's willingness to adapt its legal and policy frameworks to better serve both its security needs and the fundamental rights of its people.

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