

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

IJLRA

Copyright © International Journal for Legal Research & Analysis

EDITORIAL TEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.



Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

CONSTITUTIONAL PROVISIONS RELATED TO
MARTIAL LAWS WITH SPECIAL REFERENCE TO
AFSPA IN NORTH EASTERN STATES

AUTHORED BY - C BIAKREMPUII

LLM (CL)

A0342624004

BATCH: 2024-25

DISSERTATION SUBMITTED TO AMITY INSTITUTE OF
ADVANCED LEGAL STUDIES
AMITY UNIVERSITY, UTTAR PRADESH

IN PART FULFILMENT OF REQUIREMENTS FOR THE DEGREE OF
MASTER OF LAWS
(LLM)

UNDER THE GUIDANCE AND SUPERVISION OF
PROF ARUN UPADHYAY

DECLARATION

This is to certify that the material submission in the present research work titled “Constitutional provisions related to Martial Law with special reference to AFSPA in northeastern state”. Is my original and genuine research work. The work has not been submitted anywhere, in whole or in part of any other university degree or diploma.

At the appropriate spots, I have properly recognized my indebtedness to the work of other.

C BIAKREMPUII

IJLRA

CERTIFICATE

This is to certify that the Dissertation entitled “Constitutional provisions related to Martial Law with special reference to AFSPA in northeastern state”. Submitted by C BIAKREMPUII a student at Amity Institute of Advance and Legal Studies is a bona fide research work for the award of the Degree of LLM (Constitutional Law). She has been working under my constant supervision and guidance and her dissertation is complete and ready for submission.

I am confident that the current research dissertation is meritorious and satisfies all requirements established by Amity University, Noida, Uttar Pradesh for the awarding of the master’s in law degree. I highly recommended that it should be considered for the award of the Degree of Master of Laws.

Prof Arun Upadhyaya
Supervisor

Date

Place: Noida

ACKNOWLEDGEMENT

First and foremost, I am deeply grateful to the Almighty God for his endless blessing and for granting me the strength and perseverance to complete this dissertation.

I extend my sincere appreciation to my Supervisor and Mentor, Prof. Arun Upadhyay, for giving me the opportunity to work in this dissertation. His invaluable guidance and unwavering support have been instrumental throughout this journey.

I am also immensely grateful for Amity Institute of Advanced Legal Studies providing me with the necessary resources and conducive academic environment to carry out this research.

The journey would not have been possible without the unwavering love, support, and encouragement of my family. To my parents, your sacrifices, prayers, and constant belief in me have been my greatest source of strength. Your guidance unconditional love has shaped me into the person I am today.

To my siblings, thank you for always being my pillar of strength, for your encouragement during the toughest time, and for reminding me to keep going when challenges seemed overwhelming.

I would like to extend my heartfelt gratitude to two amazing individuals without whom I couldn't stand, Ms Lalremruati Ralte who is my cousin sister and companion. My ultimate inspiration comes from my best friend Ms Zothansiami for their constant support and treasured companionship throughout this journey.

Ultimately, I thank the most humble and polite non-teaching, office staff of Amity Institute of Advanced Legal Studies, who have been very kind towards my conduct of walking in and enquiring often about the deadlines and more.

TABLE OF CONTENT

S. No	Title	Page
1	Declaration	i
2	Certificate	ii
3	Acknowledgement	iii
4	Table of contents	iv-vii
5	List of abbreviations	viii-ix
6	List of cases	x-xi
7	Abstract	xii
8	Chapter – I Introduction	1
9	Statement of problems	2
10	Research objectives	3
11	Research Questions	3
12	Literature Review	3-5
13	Hypothesis	5
14	Research Methodology	5
15	Students Learning Outcomes	6
16	Chapter II: Conceptual framework of martial law and constitutional provisions	7-16
17	Definition and historical evolution of martial law in India and globally	7-9
18	Constitutional provisions related to martial law (Article 34,19 & 355)	10
19	Distinction between martial law, emergency provisions and	11-13

	preventive detentions	
20	Legal principles governing the imposition of martial law	13-16
21	Chapter III: Armed forces special power act (AFSPA): legal and constitutional dimensions	17-29
22	Historical background and enactment of AFSPA 1958	17-19
23	Analysis of the provisions of AFSPA	19-22
24	Constitutional basis of AFSPA under article 355 and related provisions	23-26
25	Judicial interpretation of AFSPA (eg, Naga people's movement of human rights v Union of India)	27-29
26	Chapter IV: AFSPA in Northeaster States: practical implications	30-42
27	Reasons for the enforcement of AFSPA in the Northeastern states	30-33
28	Analysis of its implementation and impact on governance and security	34-35
29	Human rights concern, including allegations of misuse of powers	35-39
30	Social political impact on the Northeastern regions	40-42
31	Chapter V: Overlaps between martial law and ASFPA: a comparative analysis	43-53
32	Comparison of the legal principles governing martial law and AFSPA	43-45
33	Examination of whether AFSPA mirrors aspects of martial law practice	46-47

34	Implications of the overlap between the two concepts	48-51
35	Case studies highlighting these overlaps between AFSPA and Martial Law	51-53
36	Chapter VI: Human rights and accountability under AFSPA	54-63
37	Examination of human rights concerns related to AFSPA	54-56
38	Role of Judiciary National Human Rights Commission (NHRC) and other oversight bodies	56-58
39	Accountability mechanisms and their effectiveness	59-62
40	Recommendations for improving human rights protections	62-63
41	Chapter VII: Conclusion/Suggestion	64-73
42	Summary of findings and analysis	64-65
43	Implication of the study for constitutional law and governance of India	66-67
44	Final remarks on the need for balancing national security, federalism and human right	67-68
45	Annexure	69-70
46	Bibliography/webliography	71-73

LIST OF ABBREVIATIONS

S. No	Abbreviations	Full form
1	AFSPA	Armed Forces Special Powers Act
2	Art	Article
3	IPC	Indian Penal Code
4	CRPC	Code of Criminal Procedure
5	SC	Supreme Court
6	SCC	Supreme Court Cases
7	AIR	All India Reporter
8	NNC	Naga National Council
9	UOI	Union Of India
10	ICCPR	International Covenant on Civil and Political Rights
11	ECHR	European Convention on Human Rights
12	UNHRC	United Nations Human Rights Commission
13	NSNC	Nationalist Socialist Council of Nagaland
14	OHCHR	Office of the United Nations High Commissioner for Human Rights
15	NHRC	National Human Rights commission
16	EEVFA	Extrajudicial Execution Victim Families Association
17	PIL	Public Interest Litigation
18	UN	United Nations
19	HRW	Human Rights Watch
20	RPA	Representations of peoples Act

LIST OF CASES

S. No	Case Name
1	Naga's Peoples Movement of Human Rights v. UOI
2	Extra Judicial Execution Victim Families Association v. UOI (2016)
3	Indragit Barua v. State of Assam (1983)
4	Luithukla v. Rishang Keishing (1988)
5	Duncan v. Kahanamoku (1946)
6	S.R. Bommai v. UOI (2 SER 644: AIR 1994 SC 1918:(1994)3 SCC 1)
7	Rajasthan v. UOI
8	Public Interest Litigation
9	Meneka Gandhiv. UOI
10	People's Union for Democratic Rights (PUDR) v. UOI (2005)
11	Harendra Kumar Deka v State of Assam and ors (2008)
12	Indira Gandhi v Raj Narain (1975)
13	A.K. Gopalan v state of Madras
14	Kesavananda Bharti v State of Kerala
15	I.R.Coelho v State of Tamil Nadu
16	D.K.Basu v state of west Bengal 1997

ABSTRACT

Armed Forces Special Powers Act (AFSPA) provides special and abusive powers to the Indian army in "disturbed areas" and gives legitimacy to some of their acts. The paper delineates the problems of the North-Eastern states, it was first enforced in the North Eastern states of Manipur and Assam and afterwards it was amended in 1972 to extend to all the seven states of the north-eastern region of India. The Act further did not follow the international conventions and treaties signed by India. The definition of the Act is so vague that, it gives the Armed Forces too much freedom to interpret the definition of the as per their whims and fancies and get away despite gross violation of human rights, international conventions and treaties, in this regard where AFSPA has been strongly criticized.

In a democratic setup, troops of the armed forces should be deployed for short durations and not indefinitely on the presumption that these states are "disturbed" in the past half century. To this extent, the article places the history of AFSPA and its application in North East India. Whereas the Supreme Court has adjudicated on the constitutionality of the law, the article is against AFSPA as a legislation on subject-matter, scope, and applicability grounds on constitutional and human rights grounds. The article subsequently calls for amendments and democratic re-scripting of the law.

The Armed Forces Special Powers Act of 1958, a statute granting authority to the armed forces to preserve public order in "disturbed areas," the northeast Indian states most particularly. AFSPA security forces are empowered to use force, search and arrest anyone at their will. AFSPA has also been in controversy of its use against human rights violation and extension to the northeast states. Its critics blame it for being in contravention of provisions of the Constitution under Articles 14, 19, and 21 assuring equalities before law, freedom of movement, and right to liberty and life. Its sweeping powers conferred by the Act and frail frameworks of oversight are held to be perpetrating impunity and abuse.

Keywords : Constitutional Provisions, Armed Forces Special Power Act (AFSPA) , disturbed areas, insurgency , Human Rights Violation , National Human Rights Commission (NHRC)

CHAPTER I

INTRODUCTION

Impounding martial law and legislation like the AFSPA is an interesting blend of constitutional government, military rule, and civil rights. This dissertation seeks to discuss the constitutional provisions with respect to the declaration martial law and consequences thereof mentioning that the AFSPA is found in the North-Eastern state. India, being a republic and democratic country, is the finest example of safeguarding constitutional rights without ruining law and order.

An exceptional a circumstance of this nature armed risings, internal agitations, and civil uprisings justifies strict measures, including the imposition of martial law as well as special legislative ordinances such as the AFSPA, otherwise of quasi-martial law nature. While defined categorically anywhere in the Indian Constitution, martial law is regulated under some articles under suspending regular procedure of law and bestowing exceptional powers upon soldiers under military officials to enforce public order. Articles 34, 352, and 355 on emergency powers as well as national security in the Constitution enacts in the shape of the same.

This is, however, exceptional and contentious law granting far-reaching powers with the military in regions within the class of being "disturbed." Priced primarily to deal with northeast insurgencies, AFSPA authorized the army to use the armed force, arrest civilians at suspicion, and keep public order without the usual checks and restrictions of civilian authorities. Its behavior in the North-Eastern states, i.e., Arunachal Pradesh, Assam, Manipur, and Nagaland, has been brought into cold-blooded controversy over human rights violations and its so-called conflict with protection under the Constitution. This study tries to examine the provisions of the martial law under the Indian Constitution and how such can be viewed as including AFSPA in the North-Eastern states.

AFSPA has been and continues to be a subject matter of debate, controversy, arguments, discussion and deliberation over the years. AFSPA has been strongly criticized for most of its provision by various sections of society on the basis of presumed apprehension of violation of human rights in the areas where it was implemented. It has been referred to as the evil need of the people of society opposing its abolition and an excess of surprise goes against the perception of the Armed Forces, who opine that it is the need of the times but is anything but an evil force.

1.1 Statement of Problem

Enforcement of the Armed Forces Special Powers Act (AFSPA) in Indian northeast states also evokes underlying issues about its legitimacy under the Indian Constitution to the adherence to the foundations of democracy, federalism, and fundamental rights. Even though the Indian Constitution does not have any express meant that of articulation of martial law, there are provisions to protect extraordinary remedies in the case of emergencies or internal disturbances. AFSPA, although not martial law, gives disproportionate authority to the army which actually balance civilian governance and fundamental freedoms and create a state of quasi-martial law in "disturbed areas." Problem statement includes the maintenance of the line of demarcation between constitutional protection for intrusion upon security interests and the potential removal of constitutional protection. AFSPA derives its source of power from Article 355, which provides the union with freedom of safeguard the states from inner unrest but in the process also creates issues about its impact on constitutional basic rights under Arts 14, 19, and 21 of the Indian Constitution. Enforced for decades in the northeastern states with intermittent periods of relative peace raises questions about its need and proportionality.

The constant application of AFSPA in the northeast has sown accusations of human rights abuse, wearing away trust among citizens and undermining the case for accountability and justice. This creates a contradiction between national security and democratic values, precipitating a question mark about whether the Act is compatible with the constitutional order or whether its provisions constitute intrusion into the sphere of martial law, not demarcated by the Constitution but implying suspension of civilian rights under military government. The problem is compounded by uncertainty in guidance on how to delineate "disturbed areas," judicial accountability, and potential for abuse in exercising wide powers conferred on members of the armed forces. This warrants more precise analysis of the whether legal.

AFSPA framework gives an equitable balance balancing national security with civil liberties of constitutional rights in northeastern states. AFSPA of northeastern Indian states of the source in serious constitutional and legal issues, if anything else related to the idea of martial law. AFSPA has no martial law but grants terrific powers to the armed forces which have a tendency blur of the line between military rule and civilian rule. Its enforcement has spurred debate about whether it is consistent with constitutional provisions like federal principle and fundamental rights.

1.2 Research Objectives

1. Examine the Constitutional Provisions in the Martial Law Context: Explores the constitutional and legal basis concerning martial law, such as its implied extent under the Indian Constitution and its connection to provisions for ensuring internal security and public order.
2. Examine the Constitutional Validity of AFSPA: Evaluate how AFSPA gets its power from constitutional provisions like the Article 355 and whether its application is consistent with the basic rights under Articles 14, 19, and 21.
3. Study Overlap between AFSPA and Martial Law: Study whether the AFSPA powers result in a de facto martial law situation and research legal and practical differences between AFSPA and martial law within the constitutional scheme.

1.3 Research Questions

1. What are the Constitutional Provisions and Legal Principles governing Martial Law in India, and how are they interpreted in the context of internal security?
2. To what extent does the implementation of AFSPA in the Northeastern States align with or deviate from the constitutional structure for ensuring law and order?
3. How does the Armed Forces Special Powers Act (AFSPA) derive its legitimacy from Constitutional Provisions such as Article 355, and how does it interact with Fundamental rights guaranteed under Arts 14, 19, and 21?

1.4 Literature Review

Books

1. M.P. Jain, Indian Constitutional Law, 8th edition, Lexis Nexis 2018: M.P. Jain's Indian Constitutional Law (8th ed, 2018) is an extremely popular and reliable treatise on Indian constitutional law published by LexisNexis. The recent edition contains valuable judicial interpretations, latest constitutional discussions, and developing legal principles, and hence is a convenient guide to students, lawyers, and academics.
2. V.N. Shukla's Constitution of India (11th edition, Eastern Book Company) is a highly regarded and well-liked students' textbook, lawyers' book, and researchers' reference to get an uncomplicated and uncluttered grasp of Indian constitutional law. Praised for its systematic approach and easy-to-grasp explanation, the book deals with core constitutional provisions, landmark cases, and developing jurisprudence. In contrast to more verbose commentaries, Shukla's book achieves the right balance of depth and readability and is especially handy for starters and competitive exam hopefuls.

3. H.M. Seervai, *The Constitutional Law of India*: H.M. Seervai's *the Constitutional Law of India* is a seminal and authoritative work on Indian constitutional jurisprudence, widely regarded as one of the most detailed and rigorous commentaries on the subject. Known for its analytical depth and meticulous legal reasoning, the book provides comprehensive coverage of constitutional provisions, judicial interpretations, and critical issues of the fundamental rights, federalism, and separation of powers.

4. J.N. Pandey's *The Constitutional Law of India* (57th edition, Central Law Agency) is a best-selling and student-friendly book on Indian constitutional law, very popular among law students and competitive exam aspirants. It is famous for its easy language, methodical approach, and practical approach, and it explains important constitutional provisions.

5. Sanjib Baruah's *India Against Itself: Assam and the Politics of Nationality* is a insightful analysis of the intricate politics of Assam with an emphasis on ethnic nationalism, identity politics, and the problem of integration in the Indian state. Baruah outlines of historical origins and Assam's nationalist movements, and more specifically the Assam Agitation and insurgencies, and critically examines India's federalism, governance policies, and effects of AFSPA.

Articles, Journals

1. *Journal of Legal studies*

Journal of Legal Studies is a refereed, peer-reviewed, international journal published bi-annually in January and July. It addresses a range of legal issues and seeks to offer a platform for academics, educators, and researchers to publish research articles, articles, and book reviews.

2. *Journal of Constitutional and parliamentary studies*: The *Journal of Constitutional and Parliamentary Studies* is a quarterly peer-reviewed journal that is affiliated with the Institute of Constitutional and Parliamentary Studies in New Delhi.

3. *Economic and political weakly (EPW)*: *Economic and Political Weekly (EPW)* is a widely acclaimed and highly respected multidisciplinary journal that is renowned for its incisive analysis of socio-economic, political, and legal problems in India and the world. It has been appearing weekly since 1966 and includes a combination of academic research, policy analysis, and well-informed commentaries that make it an invaluable sourcebook for scholars, policymakers, and activists.

4. *Journals of Human Rights Law: Journal of Human Rights and Law* is a peer-reviewed journal committed to arguing new ideas in contemporary issues of human rights and legal

scholarship. The journal provides an opportunity for academics, practitioners, and policymakers to publish and engage with critical examinations of subjects of interest like civil liberties, international human rights law, and intersection of legal systems with practice of human rights.

5. *Supreme Court Cases (SCC Journal)*: SCC Journal is a highly sought-after legal journal that has detailed analysis and commentary on key judgments handed out by the SC of India. Being published by Eastern Book Company (EBC), it is a valuable resource for lawyers, academics, and researchers by offering case law digests, interpretations of law, and views of experts on constitutional and statutory issues.

1.5 Hypothesis

Indian constitutional provisions regarding martial law and AFSPA grants the legal framework under which of the armed forces can act in extraordinary situations, but their applications in northeastern states are questionable regarding their conformity with fundamental rights and federal standards.

- 1.The sweeping powers under AFSPA can potentially result in clashes with constitutional assurances like Articles 14, 19, and 21.
- 2.The usage of AFSPA in northeastern states indicates to compromise parameters similar to martial law, and it might lead to abuse or excess of power.
- 3.Use of AFSPA in northeastern states leads the balance between State and Union governments astray and impacts federalism and state sovereignty.
- 4.Use of AFSPA with poor safeguards leads to infringement of human rights and leads the accountability mechanisms astray.
- 5.Reforming AFSPA to incorporate stronger oversight and accountability provisions can increase its alignment under the constitution and reduce its harmful effect on civilians. This thesis can be a starting point to discuss the constitutional, legal, and functional implications of AFSPA across the northeastern states and regions of possible reform.

1.6 Research Methodology

The research approach for examining to the constitutional provisions governing the martial law with special reference to the (AFSPA) in the northeastern Indian states. This guarantees thorough examination of legal principles, judicial dicta, and practical usage. The research on "Martial Law Constitutional Provisions Related to the Armed Forces Special Powers Act (AFSPA) in Northeastern States" is structured and comprehensive in its methodology of

exploring the legal, constitutional, and socio-political aspects of AFSPA and its implications. The methodology provides a comprehensive insight into how constitutional provisions are related to national security and human rights as well as resolving the problems of AFSPA in northeastern states.

1.7 Student Learning Outcomes

By learning about the subject "Martial Law Constitutional Provisions Related to the Armed Forces Special Powers Act (AFSPA) in Northeastern States," personally I know the following:

1. Knowledge of Constitutional Framework

A clear knowledge of constitutional provisions of martial law like Articles 34, 19, 21, and 355 and their interpretation regarding internal security and governance, understand how AFSPA is based on constitutional provisions and its implication with federalism and basic rights.

2. Analytical and Critical Thinking Make yourself familiar with critically examining AFSPA's constitutionality and legalese in view of fundamental rights, such as Arts 14, 19, and 21. Make yourself understand how much martial law and AFSPA overlap in case they are invoked and also the implications it has on the government and human rights.

3. Human Rights Issues Awareness Become sensitive to AFSPA's implications on human rights conditions in conflict affected regions of in the northeastern region. Identify the test and challenge by AFSPA to the values of accountability, oversight, and transparency in governance.

4. Research and Legal Interpretation Skills Learn how to conduct doctrinal research by reading constitutional documents, statutes, and court decisions. Acquire skills to interpret legal documents and analyze their implications in real-life cases. Synthesize data from different sources, i.e., government reports, human rights studies, and academic literature.

5. Enhanced Contextual Insight Acquire understanding of the political, socio-economic, and historical background under which AFSPA was enacted and under which it is enacted today in the northeast states. Understand how similar laws are enforced in other nations and compare best practices for the formulation of India's legal system.

6. Advocacy and Communication Skill Strengthen the skill to articulate arguments and legal interpretations both verbally and in writing. Learn skills to plead legal reforms and argue well-informed debates on controversial matters such as AFSPA and martial law.

7. Policy Suggestions and Formulation of Reforms Develop the skill to suggest policy suggestions reform bills such as AFSPA to improve their compatibility with constitutional values and human rights norms, learn to draft practical solutions to reconcile national security

requirements with personal rights and liberties.

CHAPTER - II

CONCEPTUAL FRAMEWORK OF MARTIAL LAW AND CONSTITUTIONAL PROVISIONS

2.1 Definition and historical evolution of martial law in India and globally.

Martial law is temporary suspension of regular law and imposition of direct military jurisdiction over civilian matters, typically in reaction to emergency like war, rebellion, or natural disaster. It gives military commanders extraordinary powers such as curfews, suspension of civil liberties and military trials for civilians. Its legality and scope differ though by nation.

Historical Evolution of Martial Law. Martial Law in India does not have a formal provision for martial law in its constitution, but Article 34 allows for restrictions on fundamental rights during military rule in disturbed areas. The imposition of military authority has historically occurred under British rule and independent India in limited circumstances. The British frequently used martial law to suppress uprisings. Notably, during the 1919 Jallianwala Bagh massacre, martial law was declared in Punjab allowing unrestricted military action. Post-Independence, while India faced internal conflicts (e.g., insurgencies in Kashmir, the Northeast and Punjab), the government has relied on emergency provisions (Article 352 for national emergencies, AFSPA for military intervention) rather than imposing full-fledged martial law. Similar to all common laws, martial laws owe their origins to the legal system of England. Initially, this term was unpopular. Instead of this phrase being used, there existed another which is 'martial law'. And the law courts that operated using this 'martial law' went by the names of 'Courts of the Constable and Marshal'. These Constable and Marshal courts exercised criminal and civil jurisdictions and dispensed punishments for all offenses when on the occasions of war, regardless of whether they were committed within the English territories or outside the boundaries of English territories.

India's Constitution does not explicitly mention Martial Law, though it does recognise the suspension of fundamental rights under emergencies (Articles 352, 356, and 360). However, Martial Law is still understood as a doctrine of necessity meant to be used only when civilian authorities are completely unable to function. The ¹most frequently cited instance of Martial

¹ SCC online.

Journal of Indian Legal Studies.

Constitution of India by V.N. Shukla, 11th edition, Eastern Book Company, Lucknow.

Law in India's history is during the Jallianwala Bagh massacre of 1919. General Dyer, acting under martial law imposed by the British colonial regime in Punjab, ordered troops to fire on peaceful protesters. That moment, etched in India's collective memory, showed how Martial Law, when unchecked, can lead to horrific human rights violations.

Post-independence, India has largely avoided the formal imposition of Martial Law. Instead, laws like AFSPA (Armed Forces Special Powers Act) and emergency provisions under the Constitution have been used to tackle internal disturbances. These mechanisms, though not Martial Law in the strictest sense, have often led to similar consequences military involvement in civil affairs, suspension of rights, and a heightened sense of fear among citizens.

Throughout history, when civil order crumbles, governments often reach for a powerful but dangerous tool. Martial Law is not a law people look forward to, but one that steps in when normal laws can no longer hold society together. It carries with it the weight of urgency, of desperation and, very often, of fear but what does martial law truly mean? And how has it evolved not just in India, but across the world? To answer this, we must step into history and walk alongside the societies that have lived under its shadow.

Martial law is not a routine legal measure. It's a state where military authority temporarily replaces civilian government usually during extreme emergencies like war, rebellion, or widespread unrest. Under martial law, basic civil liberties may be suspended, courts may be replaced by military tribunals, and normal constitutional procedures are often set aside. It's important to note that martial law is not clearly defined in most democratic constitutions. It's more of a doctrine that comes alive in times of necessity when the state believes there is no other way to restore order. Globally, martial law has been invoked at different times, for different reasons but its effects are often strikingly similar restriction of rights, increased military presence, and a chilling silence over civil society. India's experience with martial law is quite different. Though the Indian Constitution does not define martial law in exact terms, Article 34 does acknowledge its possibility. This article allows Parliament to indemnify any action taken by the military during martial law meaning it can protect actions that would otherwise be considered illegal, if they were taken in the name of restoring order.

However, India has never officially declared martial law since independence. Instead, it has relied on other mechanisms like Emergency provisions (Articles 352–360) and laws such as

AFSPA to deal with internal unrest and external threats. The authority to declare an area as a 'disturbed area' lies with the Governor of the state, the Administrator of the Union Territory, or the Central Government. They can issue a notification in the official gazette to declare either the whole area or just a part of it as disturbed. State governments can recommend whether or not the Act should be enforced, but it's important to note that under Section (3) of the Act, their suggestions can be overridden by the governor or the central government. When the Act was first introduced in 1958, only the governor had the power to confer AFSPA. However, this authority was extended to the central government with an amendment in 1978, which led to Tripura being declared a disturbed area despite the state government's opposition. Interestingly, the Act doesn't clearly outline the specific conditions that warrant a declaration of a 'disturbed area.' It simply states that the AFSPA requires the authority to believe that the whole area or parts of it are in such a dangerous or disturbed state that the Armed Forces need to step in to assist civil powers.

The Governor of a State, along with the Central Government, has the authority to declare any area partially or fully as a disturbed zone if they believe it's necessary to curb terrorist activities or any actions that could threaten India's sovereignty or disrespect the national flag, anthem, or Constitution. According to Section (3) of the Armed Forces (Special Powers) Act (AFSPA), if a state governor issues an official notification in The Gazette of India, the Central Government can deploy armed forces to support civilian authorities.

Once an area is labeled as 'disturbed,' it must maintain that status for at least three months, as outlined in The Disturbed Areas Act of 1976. Section (4) of AFSPA grants special powers to army officers in these disturbed areas, allowing them to shoot (even fatally) anyone who breaks the law or is suspected of doing so this includes gatherings of five or more people or carrying weapons. The only requirement is that the officer must issue a warning before firing. Security forces can arrest individuals without a warrant and conduct searches without consent. Once someone is taken into custody, they must be handed over to the nearest police station as quickly as possible. Additionally, prosecuting an officer for alleged human rights violations requires prior approval from the Central Government.

2.2 Constitutional provisions related to martial law (Article 34, 19, and 35)

India's Constitution does not precisely define Martial Law, but it contains some provisions where rights could be suspended and the military is authorized to employ force under some conditions.

Article 34: Restriction on Fundamental rights during Martial Law

The aim is to enable government to place restrictions on basic right when martial law is in operation in any region of India. It safeguards the government and military forces from legal consequences of action taken under martial law Parliament can pass legislation indemnifying government officers of the armed forces for acts done in martial law. It ensures that the basic rights, such as Article 19, can be restricted temporarily in view of security.

Article 19: Protection of Freedom of Speech and Expression, the applicability to Martial Law

Article 19 provides citizens with rights like freedom of speech, movement, and assembly. These rights can, though, be limited for the sake of sovereignty, security, public order, or in times of emergency. The government, under martial law, has the capability to suspend these freedoms in order to ensure law and order.

Article 355: Responsibility of the Union to Protect States from External and Internal Agitations. The objective of the imposes a responsibility upon the central Government to protect states from external threats or internal disturbances in the realm of Martial Law. The center is authorized to deploy armed forces in states according to this article. This can lead to military governance in worst-scenario situations, but it differs from Martial Law. It extends the constitutional provision to enact the Armed Forces Special Power Act 1958 to the disturbed areas.

Martial Law vs. Emergency Provisions (Article 352, 356, and 360)

Martial Law is the temporary military rule over an area, whereas emergency provisions empower the civilian government to invoke extraordinary power. Unlike emergencies, martial law is not directly provided in the constitution but is implied under Article 34.²

² AFSPA the need for the hour or a social evil <https://hubnetwork.in/is-afspa-the-need-of-the-hour-or-a-social-evil/><https://www.scconline.com/> last visited on 18th feb 2025 (1997) SCC 431.

2.3 Distinction between martial law, emergency provisions and preventive detention

FEATURE	MARTIAL LAW	EMERGENCY PROVISIONS	PREVENTIVE DETENTIONS
Definition	Temporary military rule imposed in extreme situations like war, rebellion, or internal disturbance.	Special powers given to the government to handle crisis (war, external aggression, internal disturbance, financial instability).	Detaining a person without trial to prevent them from committing an offence.
Constitutional basis	Not explicitly mentioned implied under Article 34.	Article 352, 356, and 360 provide for different types of emergencies.	Article 22 allows preventive detention under specific conditions.
Who declares it?	Military authorities take over civil administration.	The president of India (on advice of the government).	Executive authorities (government or police) based on suspicion.
Purpose	To restore order in cases of extreme lawlessness or rebellion.	To safeguard the country from external and internal threats, and financial crisis.	To prevent individual from engaging in activities that threatened security, public order, or state interest
Effect on civilian government	Civilian government is suspended or has limited powers military governs directly.	Civilian government remains but operates with expanded in Presidents Rule Art 356.	Civilian government remains functional.

FEATURE	MARTIAL LAW	EMERGENCY PROVISIONS	PREVENTIVE DETENTIONS
Effect on Fundamental Rights	Most Rights including Art 19 are suspended.	Some Fundamental Rights may be suspended. Eg, Art 19 during National Emergency.	A person's right to liberty Art 21 and protection against arbitrary detention Art 22 may be restricted.
Duration	Temporary, lifted when normalcy is restored.	Varies.	

Martial laws is the imposition of direct military control over civilian functions of government, usually during extreme emergencies like war rebellion, or major civil unrest. It typically suspends ordinary law and functional rights. Martial law is usually temporary and lifted once normalcy is restored. In many democracies, it requires legislative or judicial oversight to prevent abuse.

Declaring Martial Law is usually seen as a last resort, reserved for situations where peace and order are rapidly breaking down due to its potentially severe impact on a country and its people. Take, for instance, the governor of Idaho, who declared martial law back in 1892 after a group of unruly mine workers blew up a mill, resulting in the destruction of a four-story building and the tragic loss of many lives. Martial law can be declared to quell riots, public disturbances, or insurgencies. It may also come into play after a conflict when a nation's military is stationed in a foreign country. Typically, the authority to declare martial law lies with a nation's president or the highest civilian leader. The specific conditions under which it can be declared, as well as other regulations like how long it can last, are usually outlined in laws or the constitution of the country. For example, a president might be allowed to impose martial law for a maximum of 60 days in the face of significant civil unrest. Additionally, if a country is part of a multilateral agreement, international laws may also come into play to restrict how and when martial law can be enacted.

The President of India has the authority to declare a national emergency when the country, or any part of it, is under threat from war, external aggression, or armed revolt, as outlined in Article 352. Interestingly, the President can make this declaration even without a clear indication of war or an attack, as long as they genuinely believe such a situation could arise.

This provision was introduced with the 38th Amendment Act of 1975. When emergencies arise due to war or external threats, they are categorized as external emergencies. Conversely, if an emergency is declared based on these criteria, it is termed an "Internal Emergency."

The entire nation or just a portion of it can be declared under a national emergency. For example, the President might utilize the provisions of the 42nd Amendment Act of 1976, which narrows the scope of a national emergency. Initially, the Third Cause for declaring a National Emergency was labeled "Internal Disturbance," but this proved to be too vague and broad. As a result, the 44th Amendment Act of 1978 replaced "internal disturbance" with "armed rebellion." This amendment also established that the President can only proclaim a national state of emergency after receiving a written recommendation from the Cabinet, meaning that the Cabinet's approval is essential for the declaration, rather than just the Prime Minister's suggestion. In the 1980 *Minerva Mills* case, the Supreme Court ruled that a national emergency proclamation could be challenged in court if there were allegations of malfeasance or if it was deemed unjustified.

2.4 Legal principles governing the imposition of martially law

The imposition of martial law is governed by the several legal principles to ensure that it is applies lawfully and does not lead to arbitrary rule. While specific vary across jurisdictions, some general principles apply universally.³ Constitutional and Legal basis, in many countries, martial law is either explicitly mentioned in the constitution or derived from emergency powers, and some countries required legislative approval, while others are allowed to executive (President or Prime Minister) to declare martial law under extreme conditions. If not explicitly defined, courts may determine its legality based on precedent and constitutional interpretation. Example: In the United States, the constitution does not explicitly mention martial law, but courts have recognized in it extreme cases (e.g, *Ex parte Milligan* 1866) which limited its use when civilian courts are operational. In India, the constitution does not mentioned martial law explicitly, but Article 34 allows for restriction on fundamental rights during martial law. Justifiable grounds for imposition to the Martial law can only be imposed under extraordinary circumstances, such as, war or external aggression threatening national security. Internal rebellion, insurrection, or violent uprisings that cannot be controlled by civilian authorities.

³ What is AFSPA, Demand of its repeal, and Constitutionality <https://www.writinglaw.com/about-afspa/> last visited on 18th March, 2025.

Breakdown of law and order where civilians' governance is ineffective the imposition must be proportional to threat and lifted once normalcy is restored.

Temporary and Exceptional Measure. ⁴Martial law is not meant to be permanent. It is imposed only for a limited duration and must be lifted once the crisis is under control, some countries required periodic viewed and renewal by the legislature or judiciary. Example, in the Philippines, the president can declare martial law for 60 days, but congress must approve any extension (Article VII, section 18 of the constitution) Protection of Fundamental Rights (Where possible): While some rights may be restricted, basic human rights should be upheld as much as possible. International law (such as the international covenant on civil and political rights-ICCPR) sets limits on the rights that can be suspended. Courts often review whether review martial law violates constitutional guarantees of due process, free speech, and protection from arbitrary detention, examples of the European Convention on Human Rights (ECHR) allows derogations during emergencies but prohibits torture and inhumane treatment under any circumstances. Judicial Oversight and Review the courts may review the legality of martial law and determine if it was declared lawfully and proportionality, some countries allow habeas corpus petitions to challenge unlawful detention under martial law.

If martial law leads to unconstitutional action court may intervene to limit its scope. The examples are the U.S. case of *Duncan v. Kahanamoku (1946)*, the Supreme Court ruled that military tribunals could not replace civilian courts when the latter were still functioning. Role of the Legislature and Executive Oversight: Some legal system required the legislature to approve or review martial law declarations. The executive (President, Prime Minister) typically law but may need parliamentary approval of extension. E.g, in Pakistan, the constitution requires the President to report to Parliament when martial law is declared. International Law and Humanitarian Considerations: Martial law must comply with international human rights treaties and convention. The Geneva Conventions regulate military authority over civilian times of conflict. Martial law cannot justify war crimes or violation of international law.

In every democracy, law is supposed to be the anchor even in the storm. But what happens when the storm becomes too strong, and the usual anchors no longer hold? That's when the state turns to its last line of defence of Martial Law. It's a measure taken not in normal times,

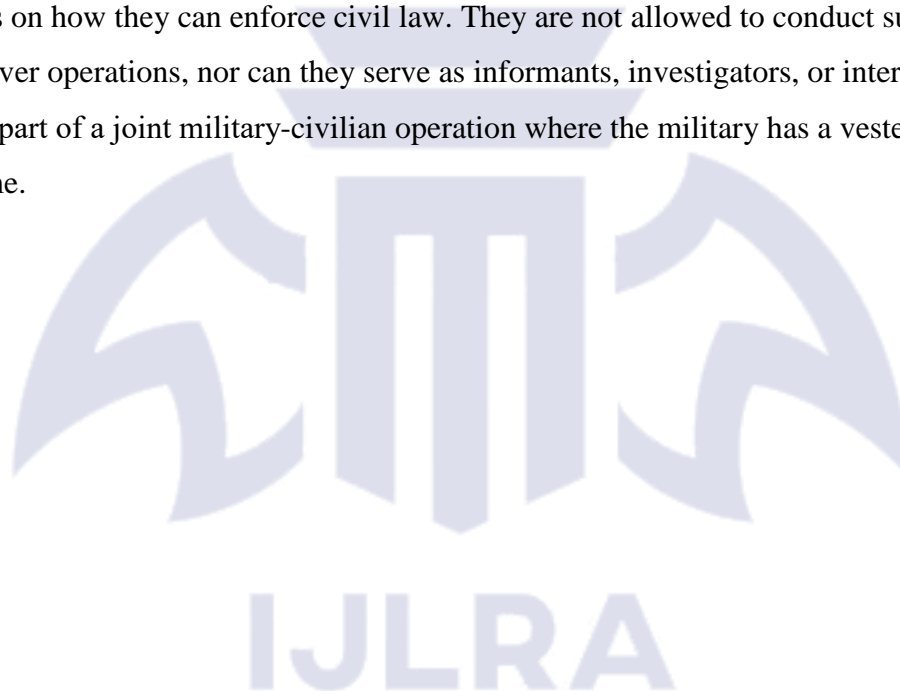
⁴ Constitution of India (44th amendment) 1978.
SCC journal.
The armed forces special power act of 19581.

but in moments when normalcy breaks down. But even in those desperate hours, can power be exercised without principle the answer lies in the legal framework or rather, the lack of a clear one. While martial law is one of the most serious powers a state can exercise, it often operates in legal grey zones. And that is exactly why understanding the legal principles behind its imposition becomes so important not just for lawyers and scholars, but for every citizen who might one day live under it.

Unlike well-defined legal codes, martial law is often based on convention, practice, and judicial interpretation rather than a single statute. It refers to a temporary substitution of military authority for civilian rule, usually during emergencies such as war, rebellion, or internal collapse of law and order. But here's the catch and most constitutions including India's don't provide a detailed legal structure for martial law. That doesn't mean it's lawless it means it's exceptional. The few guiding principles we have are scattered across case law, constitutional provisions, and historical usage and legal principles that shape Martial Law, despite its murky nature, there are some core legal principles that must be observed even when the military takes charge. These principles act like invisible fences, trying to contain a force that can easily overstep. The Principle of Necessity Martial law can only be imposed when civilian authority is no longer able to function. It's not a convenient tool for political control it's a last resort. The military is meant to restore normalcy, not replace governance indefinitely. This principle asks a vital question: Is martial law truly necessary, or is it being used as an excuse to suspend democracy, and Martial law is not meant to last. It must be temporary, with a clear intention to return power to civilian hands. The longer it stays, the more it risks becoming a dictatorship in uniform. The history teaches us that temporary military rule often tries to stretch its welcome. But the law insists: exceptional powers must never become permanent solutions. India's Constitution does not define martial law explicitly, but it indirectly acknowledges it through Article 34, which allows Parliament to pass laws indemnifying military personnel for actions taken during martial law.

When martial law is enacted, the military leader in charge of a specific area or country gets the authority to create and enforce laws without any restrictions. This drastic step is usually justified when civilian authority has collapsed, is entirely absent, or has become ineffective. Under martial law, all existing laws are suspended, along with civil authority and the normal justice processes. In the United States, martial law can be declared by either the President or a State governor, although a formal announcement isn't always required. While the U.S.

Constitution doesn't clearly define how martial law should be implemented, most states have rules that allow the government to do so. Historically, the powers associated with martial law were viewed as nearly absolute, but there are limitations; for example, civilians cannot be tried in military courts as long as civilian courts are functioning.⁵ Nevertheless, within the boundaries set by court decisions, a military commander's authority during martial law is almost limitless. Since World War II, martial law has been declared nine times, with five of those instances focused on tackling resistance to Federal desegregation efforts in the South. Although there has always been a collaborative spirit between military and civilian law enforcement and that should continue Department of Defence personnel have specific restrictions on how they can enforce civil law. They are not allowed to conduct surveillance or undercover operations, nor can they serve as informants, investigators, or interrogators unless it's part of a joint military-civilian operation where the military has a vested interest in the outcome.



⁵ AFSPA extended in Manipur, Nagaland and Arunachal for 6 months: MHA
<http://timesofindia.indiatimes.com/india/afspa-extended-in-manipour-nagaland-and-arunachal-for-six-months-mha/articleshow/119751848.cms> 19th feb, 2025
<http://amnestyinternational.com/>

CHAPTER III

ARMED FORCES SPECIAL POWERS ACT (AFSPA) LEGAL AND CONSTITUTIONAL DIMENSIONS

3.1 Historical background and enactment of AFSPA 1958

The Armed Forces (Special Powers) Act of 1958 is the result of post-independence and colonial India's attempts at dealing with internal security.

The AFSPA ordinance was enacted in 1942 by the British colonial regime for suppressing the Quit India Movement. The ordinance provided blanket powers to the armed forces for maintaining public order. These regulations were enforced post-independence in 1947 for dealing with internal security issues emerged due to partition. Post-Independence Context. In the early 1950s, Naga National Council (NNC) suggested an independent state of Naga which led to grave unrest in Assam's Naga Hills. The situation became worse with the boycott of the 1952 general election and the formation of a parallel government in 1956 by the NNC. All their endeavors proved futile. Extension of AFSPA to meet mounting violence, the union government in May 1958 enacted the Armed Forces (Assam and Manipur) Special Powers Ordinance, subsequently repealed and re-enacted in September 1958 as the AFSPA Act. The Act provided special powers to the armed forces in "disturbed areas" in Assam and the Union Territory of Manipur, to enhance public order in hand.

AFSPA then came to cover other areas that were experiencing insurgencies such as its extension to Jammu and Kashmir in 1990. The act has been controversial all along because of human rights concerns as well as its effect on civil liberties. The Armed Forces (Special Powers) Act of 1958 was passed to deal with the resultant insurgencies in India's northeast states, particularly in the Naga Hills of Assam. The moves of the Naga National Council for autonomy caused massive agitation, and as such, the government applied AFSPA to equip armed forces for maintaining order within the masses. The Act gives special power to the armed forces in "disturbed areas," to operate with added strength to combat rebel activities. After India became independent from British rule, the government were forced to face a lot of internal security issues which led to the passing of 4 ordinances - United Provinces Disturbed Areas (Special power of armed forces) ordinance, Assam Disturbed Areas (Special Power Armed Forces) Ordinance; the East Bengal Disturbed Areas (Special power of Armed Forces) ordinance and subsequently the 1948 AFSPA was passed with an effort to consolidate all the above mentioned ordinances into one umbrella.

In the case of ⁶*Harendra Kumar Deka v State of Assam and others (2008)*, the petitioner's son was involved in a tragic incident where he knocked down a 13-year-old boy while trying to flee the scene. There were six other people in the car with him, and after the accident, a crowd began to follow them as they sped away at an alarming rate. The police managed to stop him at the first checkpoint, but the driver never slowed down. He ignored the second checkpoint as well and ended up hitting a police officer at the third flag. In response, the officer fired shots at the car, aiming for the wheels. It's worth noting that the Nagas had voted for Indian independence in a referendum back in 1951 and chose to boycott the general election in 1952. Due to widespread looting and arson in certain areas, the Armed Forces (Special Powers) Act (AFSPA) was enacted in 1957, following the rescindment of the 1948 AFSPA, which had to be reenacted the following year because of the deteriorating law and order situation in the state. In the years after India gained independence in 1947, the nation was brimming with hope as it set out to establish a democracy rooted in constitutional values, secularism, and the idea of unity in diversity. However, the road ahead was anything but smooth. The newly-formed Republic faced the daunting task of bringing together a country rich in languages, cultures, and identities—some of which felt sidelined in the Indian Union. One area where this tension was particularly evident was the Northeast.

This is where the story of the Armed Forces (Special Powers) Act, 1958 (AFSPA) begins—not as an abstract discussion, but as a direct response to unrest, political movements, and the rising insurgency in Nagaland and its neighbouring regions. What started as a temporary measure to curb violence eventually morphed into one of India's most contentious and long-lasting laws. The 1950s were a challenging time for the Indian state in the Northeast. Tribal groups in Nagaland were asserting their right to self-determination, and by the mid-1950s, a full-blown Naga insurgency had taken hold. The Indian government, lacking experience in handling internal armed conflicts, found its usual policing methods ineffective against the rebellion led by the Naga National Council (NNC).

In 1955, things took a turn for the worse with a rise in attacks on government facilities and officials. The central government perceived this as a threat not just to peace but also to the sovereignty and territorial integrity of the fledgling republic. The regular police forces were ill-equipped to tackle the armed insurgents, which led to the deployment of the Indian Army in the region. The Legal Response. To legally empower the armed forces operating in these

⁶ <http://indiankanoon.org/doc/83144198> last visited on 1st March 2025.
<https://lawjournals.net/>.

“disturbed” areas, the government first issued an ordinance in 1958. This was quickly followed by the formal passage of The Armed Forces (Special Powers) Act, 1958 by Parliament.

The Act gave the military extensive powers allowing them to make arrests without a warrant, search homes, and even use lethal force based on mere suspicion. Although the law was short, with only a few sections, its implications were massive. Section 3 allowed the Governor or the Centre to label any area as “disturbed.” Section 4 gave armed forces the green light to act without prior approval or legal accountability. The official reason was to enable soldiers to respond quickly and decisively in unstable regions, but what the law failed to capture was the emotional toll it would take on generations of people in the Northeast. When it was first introduced, AFSPA was viewed as a temporary and necessary evil. The government assured everyone that the law was only meant to restore order in certain areas and would be lifted once peace was achieved. However, as time went on, not only was the law kept in Nagaland, but it also spread to other states like Manipur, Assam, Arunachal Pradesh, and eventually to Jammu & Kashmir in 1990. For the people living in these areas, AFSPA became more than just a piece of legislation it turned into a part of everyday life. Armed soldiers patrolled the streets, homes were searched without notice, young men were taken away on suspicion, and there was a constant sense of being watched these became the hallmarks of life under AFSPA. Children grew up not just with their schoolbooks but also with the sounds of gunfire, the sight of military camps, and the haunting stories of disappearances and violence. Families grieved not only for lost loved ones but also for the erosion of their freedom, dignity, and trust.

3.2 Analysis of the provisions of AFSPA

AFSPA has been and continues to be a subject matter of debate, controversy, arguments, discussion and deliberation over the years. AFSPA has been strongly criticized for most of its provision by various sections of society on the basis of presumed apprehension of violation of human rights in the areas where it was implemented. It has been referred to as the evil need of the people of society opposing its abolition and an excess of surprise goes against the perception of the Armed Forces, who opine that it is the need of the times but is anything but an evil force.

The majority who oppose the act are either civic societal activity who claim its fronts abrogation on the grounds that it infringes human rights, ethical and moral code. The proponents and opposers of its revocation are argued on the grounds that it protects our nation of our interest, sustains level of national security and maintains our integrity.

AFSPA has been employed in the states where the geo politics of the region have not been

restricted to the internal but also consisted of an element of external interference in the back drop. Security forces continue to argue that the law is supreme for the operations of the counter insurgencies and in the de minimis of militancy in the valley AFSPA has been termed quite frequently as martial law but certainly that is not the situation here. In the course of the following AFSPA, an officer is bound by the Indian constitution and he acts well within his right. But in the matter of Martial law, the idea of constitution takes a backseat and a military officer is the acting government of the states. If the act is watered down, soldiers will not want to fight militants or get themselves killed in the process of engagement. No commanders would want to speed up tie racing around in civilian courts to justify his act against insurgent and terrorist, where certainly, local, alienated, witnesses will turn against him.

In confrontations with terrorists, locals often gather at the scene, usually facing the attackers directly. They do this because they believe that any defeat will be blamed on the military. Just to give you some context, the Indian Army has lost over 700 officers and 9,000 soldiers to insurgencies. While the Armed Forces Special Powers Act (AFSPA) might seem like harsh legislation, it's easier said than done; there's no denying that political convenience often dictates the deployment of security forces for internal security. The forces know they can't afford to fail when it comes to protecting the nation's integrity, and they need the right legislation to effectively utilize their combat capabilities. As Amnesty International India has pointed out, the AFSPA not only legitimizes sexual violence against women but also opens the door to extrajudicial killings in areas deemed disturbed. It highlights that women in conflict zones deserve the same security and dignity as those in other parts of the country. The committee proposed that these crimes should fall under conventional criminal law, suggesting an amendment to the AFSPA to remove the requirement for anticipatory sanction from the central government when punishing security personnel for offenses against women during violence. Initially, it was thought that International Human Rights Law didn't apply to armed conflicts within a country, which are typically governed by different regulations. However, that distinction is fading, and it's now widely accepted that International Human Rights Law applies equally in situations of armed conflict within a nation.

The Armed Forces (Special Powers) Act (AFSPA), which came into existence in 1958, was initially intended as a temporary solution to address the rising insurgency in India's northeastern states. However, over the years, it has morphed into a permanent presence in conflict-ridden areas like Jammu & Kashmir, Nagaland, Manipur, and parts of Assam. While the Act was designed to empower the armed forces to restore order, its broad provisions and

the implications of its long-term enforcement have turned it into one of the most contentious and debated laws within India's legal system. According to Section 3 of AFSPA, the Governor of a state or the Central Government can declare any area as a "disturbed area" if they believe that armed forces are needed to maintain law and order. The problem is, the Act doesn't clearly define what a "disturbed area" is, leaving this important decision up to the subjective judgment of the authorities. This ambiguity has resulted in the law being applied and extended in various regions without clear criteria or accountability. Section 4 gives extraordinary powers to armed forces personnel, allowing them to use force even deadly force against individuals suspected of breaking the law, destroy potential hideouts used by insurgents, and arrest anyone without a warrant based solely on suspicion. They can also enter and search properties without prior permission. While such powers might seem necessary in high-risk conflict zones, the lack of proper safeguards often leads to unchecked authority and numerous reports of misuse. Section 5 states that individuals arrested under AFSPA should be taken to the nearest police station "without unnecessary delay." However, in reality, there have been many reports of extended detentions, custodial torture, and a failure to adhere to due process, raising significant concerns about civil liberties violations. Section 6 provides an additional layer of protection for armed forces personnel by requiring prior approval from the Central Government before any legal action can be taken against them.

⁷The Armed Forces (Special Powers) Act (AFSPA) has sparked intense debate in India, with many labelling it as harsh and unconstitutional. Initially introduced to tackle insurgency and keep public order in check, AFSPA gives the armed forces extensive powers, such as the authority to shoot to kill, make arrests without a warrant, and carry out searches without any judicial oversight. Supporters of AFSPA argue that it's crucial for ensuring national security and maintaining stability in areas affected by insurgency. On the flip side, critics assert that it infringes on basic rights, leads to human rights violations, and erodes democratic principles. This article takes a closer look at AFSPA, exploring its constitutional legitimacy, its effects on internal security, and the various arguments for and against its ongoing existence.

AFSPA has been in effect for over two decades without interruption. Its minimal protections have facilitated human rights abuses. What was once intended as a temporary measure has now become a permanent fixture. Reports of torture, deaths in custody, forced disappearances,

⁷ The armed forces (special powers) act, 1958.
Journal of Indian Legal Studies.

sexual violence, and fabricated cases continue to emerge. AFSPA has granted security forces excessive power, enabling them to use disproportionate force to suppress the voices of the local population in the name of maintaining "peace" in the region. The paper argues that such a situation is unsustainable, especially in light of India's democratic principles, and therefore calls for the repeal of AFSPA. There are quite a few pros and cons when it comes to AFSPA. This law gives the armed forces the power to arrest individuals and search properties without a warrant, which many believe infringes on people's rights. The biggest debates surrounding this law have taken place in regions like Nagaland, Assam, Manipur, Jammu and Kashmir, and parts of Arunachal Pradesh. As mentioned earlier, AFSPA has sparked a lot of discussion, with many people voicing their opposition. The primary goal of this act was to ensure that duties were carried out smoothly and to maintain order in the country. However, following some tumultuous events, residents in various Indian cities began to push back against this legislation.

The starting point here is the assumption that 'violence' has become a new reality in the region, something that's almost taken for granted. When you dig deeper, it becomes clear that the groundwork for granting excessive power to the armed forces is laid out and justified under the guise of counter-insurgency operations. This Act essentially gives certain officers of the Armed Forces a 'special power'—a sort of 'license to kill'—in what is often referred to as the 'world's largest democracy.' As Binalakshmi Nepram pointed out in an interview with Cultural Survival, an NGO, on September 15, 2023, "the imposition of martial law on Indigenous Peoples in Manipur and Northeast India has resulted in at least 20,000 deaths in Manipur and over 50,000 in Northeast India, along with countless incidents of rape, arrests, torture, and extrajudicial killings." Similarly, Rosemary Dzuwichu, an advisor for the Naga Mothers' Association, told Deutsche Welle, a German broadcaster, on December 8, 2021, "the protection afforded to security forces is a significant barrier to justice in this troubled region." Numerous human rights organizations have labelled this law as 'draconian' and have repeatedly called for its repeal. Section 1 of the Act is officially titled "The Armed Forces (Special Powers) Act," 1958, and it applies to all states in Northeast India, with the exception of Sikkim. It's worth noting that before AFSPA came into play, there were other laws aimed at addressing both internal and external disturbances. Notably, the "Disturbed Areas Act (DAA)" of 1992, the Assam Disturbed Areas Act of 1955, and the Punjab Disturbed Areas Act of 2008 are significant examples. While the Disturbed Area Acts are essentially a scaled-down version of AFSPA, they grant similar powers to the armed forces to take control in order to quell violence.

3.3 Constitutional basis of AFSPA under Article 355 and related provisions

The Armed Forces Special Power Act finds its constitutional roots mainly in Article 355 of the Indian Constitution. This article requires the union government to safeguard each state from external threats and internal unrest, ensuring that state governance aligns with constitutional provisions. Article 355 places the responsibility on the union to protect states from “external aggression” and “internal disturbance,” making sure that every state's government operates according to the constitution. Over time, the interpretation of this article has evolved. There are various perspectives on the second part of this responsibility to ensure that state governance adheres to constitutional guidelines. The first perspective relates to law and order. It's important to note that “public order” and “police” are state subjects, meaning states have the exclusive authority to legislate on these issues.

This arrangement was made because states are generally better equipped to handle law-and-order challenges. Managing police forces at the state level was also viewed as a more administratively efficient approach. However, there are situations where states may struggle to maintain public order and protect their citizens. In such cases, the central government can invoke Article 355, allowing it to take control of law and order in the states, including deploying military forces if necessary. This article proves particularly useful during incidents of communal violence. The second perspective involves the controversial use of emergency powers, although Article 355 has rarely been invoked for this purpose. It has often been seen as a justification for declaring emergencies under Articles 352 and 356. Here, we should focus on two key terms: “internal disturbance” and “armed rebellion.” While Article 352 allows the centre to declare an emergency in the event of armed rebellion, the Supreme Court clarified in the ⁸*SR Bommai case* that such a declaration cannot be made solely for internal disturbances.

Further, Sarkaria Commission also express view that Article 355 not only imposes duty on the union but also grants it, by necessary implication, the power of doing all such acts and employing such the means are reasonably necessary for the effective performance of that duty, thus saying that Article 355 merely justify action under articles 352 and 356 is not justified. In fact, despite being in Part XVIII (Emergency Provisions), this article is not seen exactly as an emergency provision.

In Rajasthan v. Union of India, Beg, CJI noted that provisions relating to the proclamation of emergency under Art 352, which would have to be grave and immanent, would be covered by

⁸ <http://indiankanoon.org/doc/83144198/> last visited on 4th April 2025

the first part of union's duty towards a state under Art 355 viz. in order to safeguard the state against perpetual hostility and home rebellions, and the second half of the obligation, viz. to see that the government of every state be conducted in conformity with provision relating to the constitution is attempted to be brought within proclamation under Art 356. But the enhanced field of application of Art. 355 is not limited to the instances of external aggression and internal disturbance within the state.

In *H. S. Jain v. Union of India*, where the issue involving the question of a proclamation in respect of restoring President's action under Art.356, due to absence of any reasonable mode of the making of democratic government following the elections to the Legislative Assembly, was held that the constitutional duty imposed upon the union by virtue of Art.355 ensured that Government of a State be administered on the basis of the requirements of the Constitution gave assurance to the Union that after the establishment of new Legislative Assembly, all practicable formation of popular Government of Uttar Pradesh were envisaged under the democratic form.

Considering the case of fact, it was concluded that prior to promulgating the proclamation under Art. 356, very few or no other options were thought of, even though it was the legal and constitutional obligation to do so. Promulgation under Art. 356 was therefore lowered and significantly it was decided that under Art. 355 responsibility to ensure that the Government of the State is done in accordance with provision of the constitution and not being done accordingly. Therefore, it can be reasonably inferred that the second half of Art. 355, provided the condition that the union sees to it that the Government of states is conducted in terms of the Constitution, is no longer only a ground for action under Art. 356 but creates independent powers and obligation as well.

The legal meaning of this view was that Art 355 enunciates obligation of the union upon the state, and such an obligation was to be interpreted by lending reason to the use of emergency provisions under Art 352 and 356 and does not perceive any other measure in lieu of this obligation. The Act has been called draconian because it grants overriding powers to the military. It enables them to shoot at whim, even to kill, on any individual illegally or who is armed and carries ammunition action by the union, or the same application by the Governor or State Govern It also empowers them to arrest a person without warrant, on "reasonable suspicion", and break into houses without warrant and the Act gives absolute immunity to the security personnel involved in such actions.

There can be no trial or judicial proceeding against them without approval of the center first.

Under the directive of Art. 355 accordingly, ⁹the Union can therefore be said to be acting like a chivalrous protector of the States. It implies that when there is cause for concern in a specific State, the Union first should not act but should the act result in an additional reaction, then the union cannot abandon the States' obligation under Art. 355.

It does not mean that it behaves erratically and impose emergency measures. Given the federal nature of the constitution and the need for checks on blanket misuse of emergency powers, the union can draw from other powers that are under its purview which would be convenient to the performance of its duty to the States efficiently. It must be observed, however, that the abatement on the same, would be done only in the absence of the disease and obnoxious motives. The only motive behind the Union in making its obligation under Art. 355 is to make sure that the government and day-to-day affairs of the state are governed smoothly. This result must be irreversible surmounting the governments' argument against Union intervention into the States' jurisdiction.

Recent Union actions at the suggestion of the Karnataka Governor of issuing a notification under Art. 356 (May, 2011) are teased on examination, as a director to direct a floor test and directing an advisory, declining to act under Art. 356, was showing sensitivity to the duty under Art. 355 but declined to encroach to itself the whole working of the state government. The misuse of Art. 356 of the Constitution has been regretted time and again by some analysts, but if the above approach of the Union is adopted, we may as well sleep soundly.

India is a democracy proud of its Constitution an intricate tapestry woven with threads of justice, liberty, equality, and dignity. But woven into that same fabric are provisions that give the state extraordinary powers in times of extraordinary threat. Among these, one of the most debated and often feared laws is the Armed Forces (Special Powers) Act, or AFSPA.

While AFSPA is not explicitly mentioned in the Constitution, it draws its legal legitimacy from it particularly from Article 355, which quietly stands in the background like a guardian of national integrity. But how does this constitutional provision, meant to protect states and citizens, become the doorway to a law often criticised for overriding human rights

Article 355 the duty to protect of the Indian Constitution imposes a duty on the Union

⁹ <https://byjus.com/free-ais-prep/understanding-the-armed-forces-special-powers-act/> last visited on 1st April 2025

The National Security Act, 1980.
<https://theeconomictimes.com/>.

Government and at the first glance, this article sounds like a protective shield, a constitutional assurance that the Centre will step in when a state is in danger. But this clause is more than poetic it's a trigger for exceptional powers, including the imposition of laws like AFSPA.

When a region is declared "disturbed," it is often because the Centre believes internal disturbance has reached a point where normal civil authority cannot manage it alone. In such cases, Article 355 becomes the constitutional justification for deploying the armed forces to restore order even if it means curtailing certain freedoms in the process. AFSPA and Its Roots in Article 355 was enacted in 1958, not as a constitutional amendment but as a parliamentary law, passed under the powers given to Parliament by the Constitution to legislate for the maintenance of public order and national security. Article 355 supports this framework by giving the Union not only the authority but the responsibility to act when internal stability is threatened. AFSPA exists because the Constitution permits the Centre to act in crisis but the way it acts, and the impact it has on civilians, is where the real debate begins.

A fundamental analysis aimed at determining which subjects should be assigned to various levels of government in a federation suggests that matters of national significance should be handled by the central government, while local interests should remain with the states. This is a broad evaluation, more of a collection of ad hoc principles, and it doesn't lead to a consistent method for distributing subjects between the two levels of government across all federal nations. The inconsistency arises from the challenge of deciding, in advance, which subjects are of national importance and which are more local in nature. Certain topics, like defence, foreign affairs, and currency, are universally recognized as national priorities and are therefore managed by the central government. However, beyond these, the allocation of other subjects to the central authority depends on the specific circumstances within the country, the public's attitudes, and the prevailing philosophy at the time the constitution was drafted, as well as the anticipated future role of the central government. There's also a third area where both the central and state governments can operate at the same time. This unique aspect, however, is subject to the overarching authority of the central government, meaning that any law passed on a subject in the concurrent list will take precedence over any law made by a state. The seventh schedule of the Constitution of India lays out a detailed framework for distributing powers and responsibilities between the Centre and the States. The members of the constituent assembly recognized that India faced particularly extraordinary challenges that had not been encountered by other federations in history. They believed that theoretical approaches were not suitable for

resolving these issues because “federalism” lacked a stable foundation.

While Article 355 provides the moral and legal justification for the Centre to intervene, there are other constitutional provisions that make such intervention operational of Article 245 & 246. These empower Parliament to make laws for the entire country or any part of it, including for matters relating to the military and public order under the Union List. Seventh Schedule (List I, Entry 1 & 2): These entries allow the Centre to legislate on defence and deployment of armed forces to aid civil power. Article 352 (Emergency Provisions) though not directly linked to AFSPA; this Article shows how the Constitution allows the suspension of normal governance during crises highlighting the broader framework within which laws like AFSPA operate. The Constitution is a balancing act. On one hand, it recognises the need for national security and unity. On the other, it promises citizens fundamental rights like equality (Article 14), personal liberty (Article 21), and protection against arbitrary arrest (Article 22). The act gives soldiers sweeping powers—to search, to detain, even to shoot to kill under certain circumstances. And while the Constitution enables such laws for public order, it also insists that these powers not become tools of unchecked state control. When Article 355 was written, it was intended as a promise of protection a safeguard against chaos. But in areas where AFSPA has been enforced for decades, that promise feels broken.

3.4 Judicial interpretation of AFSPA (e.g. Naga people’s Movement of Human Rights v. Union of India)

Naga People's Movement of Human Rights v. Union of India is a flagship case for constitutional legitimacy of AFSPA, 1958. There were four separate ordinances for four different states, which were replaced by the Armed Forces (Special Powers) Act (AFSPA), 1958 by the Indian Parliament after independence of India in order to manage long-standing security issues internally within certain areas, e.g., Punjab, Jammu & Kashmir, and Northeastern Arunachal Pradesh, Assam, Nagaland, and Manipur states. Even though the Act was developed to curb security concerns within the interior areas of India, it resulted in infringement of some of the constitutional rights. Among the most concerned issues that have emerged as a direct result is whether or not AFSPA vests too much authority into the army. The court's decision on this issue was delivered on November 27, 1997, by a Constitutional five-judge bench. The judgment of the Supreme Court in *Naga People's Movement of Human Rights v. Union of India* highlights the fine balance between national security and human

rights.¹⁰ AFSPA is needed in the conflict area, yet the Court's guidelines are a necessary safeguard against the likely misuse and ensures rule of law even in most difficult situations.

It's often been said that in fulfilling its responsibility under Article 355 of the Constitution to protect states from internal unrest the Centre has supported the civil forces of the affected states by implementing the AFSPA. Additionally, it's been emphasized that this Act offers states a way to request help from the Centre to maintain peace and calm.

Nagaland has a rich cultural heritage since it is home to many Naga tribes, each with its own tradition and culture. There is not much written history of the state before the British came because the Naga tribes lived a very secluded life and practiced animistic traditions. In the early years of the 19th century, the British missionaries and explorers had begun to enter the state. In the middle of the nineteenth century, the British East India Company had already begun to establish dominance and bring the country under British India. The British had occupied Assam in 1826, and the Naga Hills were already under British India since 1881.

The Indo-Burmese border Naga Hills came together in the Naga National Council (NNC) for a shared purpose of home and self-rule.

It was in 1946 that Angami Zapu Phizo established the Naga National Council (NNC). With the departure of the British, the Nagas' leader forcibly opposed Indian control of his nation. According to the provisions of the Hydari Agreement between the NNC and the Indian government, Nagaland had been formed into a region of safeguarded tenures for ten years, and subsequently, it would be left to the choice of the Nagas whether to remain with or without India. But hardly more than a fortnight after the British left did independent India annex Naga Territory as part of its new Republic. Nagaland was a semi-autonomous administrative division of Assam in 1957 and was formed as a 16th Indian state in 1963. NNC had declared Nagaland independent, and Indian troops had taken Naga leaders into custody. It resulted in an armed struggle with huge casualties on both sides. Armed Forces Special Powers Act was the result of such a charged environment.

The Naga insurgencies is the world's longest insurgency, with groups waging war for autonomy or independence. Decades have witnessed numerous peace talks and agreement abused with mixed outcomes. Armed Forces (Special Powers) Act was enacted in 1958 to empower the Indian Armed Forces to impose law and order in "disturbed areas." Nagaland was declared a

¹⁰ <https://nenews.in/nagaland/afspa-extended-to-one-more-district-in-nagaland/22751>. 24th March 2025

"disturbed area" and AFSPA in view of the ongoing insurgencies and hostilities. Presumed human rights violations the armed forces were believed to have while working under AFSPA during the year generated mass protests and calls for repealing the Act. Naga People's Movement of Human Rights petitioned the court on constitutional grounds in a writ petition arguing that AFSPA was violative of many of the articles of the constitution dealing with Article 14 equality before law and protection of certain rights in freedom of speech, protection of life and liberty of self and others, and protection from arrest and detention under certain circumstances.

There were challenges here to the constitutional validity of the Armed Forces (Special Powers) Act, 1958 (amended), enacted by the parliament, and the Assam Disturbed Areas Act, 1955, enacted by the State Legislature of Assam, which were brought before a five-judge constitutional bench. The court welcomed both the AFSPA and the Assam Act as constitutional.

The AFSPA was introduced (and later amended) to enable some special powers to be given to the members of the armed forces in the interested areas of particular states. It now extends to Assam, Manipur, Meghalaya, Mizoram, Nagaland, and empower the State Government or Central Government to declare the whole or part of such a state as a disturbed area, if necessary, as per their discretion.

In aggrieved notified areas, certain Armed Forces officers have been delegated exceptional powers in the concerned subject given in clauses (a) to (d) of the above-mentioned section. They provide warrant of dismissal and even of murder, unwarranted arrest, and rifle down dumps. Section 6 immunizes the person acting under the Act and states that no prosecution, suit or other legal proceedings shall be brought except with sanction of the Central Government, prior to its issue, against any person in regard to anything done or purporting to have been done in exercise of powers conferred by the Act.

The problems in *Naga People's Movement of Human Rights v. Union of India* were: -

Whether the Indian Parliament can enact such a law and Whether AFSPA, 1958 violates the constitutional rights enumerated in the Constitution of India.

The Supreme Court decision in *Naga People's Movement of Human Rights v. Union of India* continues to be a milestone vindication of the constitutionality of AFSPA. By cautious respect for legislative sovereignty, federal boundary, and protection against the risk of abuse, the Court attempted a meaningful reconciliation between concerns of national security on the one hand and security of constitutional foundational rights on the other.

CHAPTER - IV

AFSPA IN NORTHEASTERN STATES: PRACTICAL IMPLICATIONS

4.1 Reasons for the enforcement of AFSPA in the northeastern state

The Armed Forces (Special Powers) Act (AFSPA) has been invoked within the northeast Indian States due to ongoing insurgencies, ethnic conflict, and security threats to the nation. The Act provides special powers to the military to uphold public order in "disturbed areas." The AFSPA was originally applied in the Northeast in 1958, the central government had declared the Northeast as a "disturbed area" because of the serious law and order situation. The AFSPA has been extended step by step since 1958 to include the seven States of the North East. AFSPA gives the army "special powers" that have been applied very reluctantly. The act gives the army power shoot to kill, inflict injury on property and detain suspects for a limited time. Members of the army working under the AFSPA are immunized against all proceedings which might be launched against them under other ¹¹Indian Penal Code laws, Criminal Procedure Code and civil suits except as permitted otherwise by the central government.

It's important to highlight that when it comes to legislative matters, the term "public order" is interpreted quite broadly. However, the Supreme Court has made it clear that the state can't infringe on citizens' fundamental rights under the guise of maintaining "public order." In fact, "public order" has been interpreted more narrowly in cases involving violations of fundamental rights for everyone. Section 2 of the Act provides some definitions but leaves a lot open to interpretation, such as (a) what exactly constitutes a "disturbed area"; (b) the specific details needed to objectively assess disturbances in an area before declaring it a "disturbed area"; and (c) the actions that would be considered offenses by armed forces personnel acting outside the intended scope of AFSPA. A "disturbed area" is defined as any area that has been declared as such under section 3 of the Act. The governor of the state, the administrator of the union territory, or the central government can declare any area a "disturbed area." Surprisingly, the Act doesn't specify the conditions that would justify such a declaration. It merely states that the authority must be "of the opinion" that the area is in a "disturbed or dangerous condition" that necessitates the use of armed forces to assist civil power. Even more troubling was the ruling in *Indrajit Barua v. State of Assam*, where the Supreme Court stated that the vague definition of a "disturbed area" wasn't a problem because "the government and people of India understand its meaning."

¹¹ Indian Penal Code 1960
Criminal Procedural Code 1973
<http://timesofindia.indiatimes.com>.

This means that the classification of an area as disturbed relies solely on the government's interpretation, leaving no room for the public to contest this decision!

While the AFSPA may seem harsh by any measure, it grants sweeping powers to those in charge, often leading to ruthless actions. However, in extreme situations, such measures can be deemed necessary. Critics of the AFSPA might not fully grasp that many insurgents today are highly trained. These insurgent groups, sometimes backed by foreign powers, aim to stir up secessionist movements within India. The armed rebels are equipped with modern weapons and ammunition, often far superior to what local government forces possess, allowing them to unleash devastating firepower that results in significant casualties among security personnel. A tragic example of this was the ambush in April 2010, where over 70 members of the Central Reserve Police Force were killed by Maoist rebels in Dantewada, Chhattisgarh.

Several northeastern states have experienced armed insurgencies by groups demanding secession, autonomy, or ethnic rights. Examples include: Nagaland (NSCN-IM, NSCN-K) fighting for an independent Naga state, Manipur (UNLF, PLA, KYKL) demanding sovereignty, Assam (ULFA) seeking independence from India and Tripura (NLFT, ATTF) involved in ethnic separatism. Cross-Border Terrorism & Security Threats; Many insurgents groups have link with Myanmar, Bangladesh, and China, using these regions as safe havens and arms smuggling, illegal migration, and drug trafficking have added to security concerns.

The Northeast has diverse ethnic groups with historical rivalries, clashes between communities (*e.g., Nagas vs. Kukis, Bodos vs. Muslims*) have led to violence, requiring military intervention. Weak Civilian Law Enforcement; The police and state were forces often unable to handle large-scale violence and the AFSPA allowed the army to step in and control insurgencies effectively. Strategic Importance of the Region; The Northeast shares borders with China, Myanmar, Bangladesh, and Bhutan, maintaining stability is crucial for national security, trade, and infrastructures projects Failure of Peace Talks & Agreement despite peace efforts, rebel groups. For its own part, the army lacks good and rudimentary public information system.

The weak information system stems from the army's apparent obsession with "secrecy," which requires multiple levels of hierarchical authorization. When the army shares its account of events following an accident, it often comes off as defensive and is usually too little, too late. The real debate shouldn't be about whether to invoke, amend, or repeal the AFSPA; instead, it should focus on how to effectively utilize the army during internal conflicts. When military force is deployed, it signals a failure of government. The rise of secessionist politics in the

country reflects a political failure, and it's the government's duty to address the underlying issues. Until that happens, the AFSPA continues to empower the army, and the law remains a last resort.¹²

AFSPA didn't arrive in the Northeast uninvited. It was born out of a deep concern for national security. But over time, many have questioned did it come to protect or to control to understand that we have to go back in time and unpack the reasons behind its enforcement in this often-misunderstood region.

1. Post-Independence Turmoil and Political Integration

When India became independent in 1947, the Northeast was not yet politically integrated like other parts of the country. The region consisted of tribal communities with distinct languages, cultures, and systems of governance. The process of merging these regions with the Indian Union was not always smooth. Many felt left out of the national narrative decisions were being made in Delhi, but the consequences were felt in Dimapur, Imphal, or Itanagar. This disconnect bred discontent. By the 1950s, the Naga movement for independence had begun to gain momentum. What started as a political demand soon escalated into an armed insurgency, leading to the first imposition of AFSPA in Naga Hills (then part of Assam) in 1958.

2. Rise of Ethnic Insurgencies

Unlike many other parts of the country, the Northeast is home to hundreds of ethnic groups, each with a strong sense of identity. In states like Manipur, Assam, and Tripura, several insurgent groups emerged over time some seeking secession, others fighting for autonomy, and still others protesting perceived discrimination and exploitation. The situation became more complex when rival groups began fighting each other. Maintaining peace became not just a challenge it became a crisis. The Indian government responded by invoking AFSPA, believing that normal policing wasn't enough.

3. Difficult Terrain and Limited Governance

The Northeast's geographical isolation with hilly terrain, dense forests, and limited connectivity has always posed logistical challenges for the state. Many areas were historically

12 Explained: What is AFSPA, and why are states in Northeast against it?
://indianexpress.com/article/explained/nagaland-civilian-killings-indianarmy-repeal-of-afspa-northeast-7661460/ 16th feb, 2025.

under-governed, lacking infrastructure, healthcare, and even a permanent police presence. In such a fragile environment, insurgent groups found safe havens, and cross-border movement of arms and fighters (especially with countries like Myanmar, Bhutan, and China nearby) further worsened the problem. The government saw the armed forces as better equipped to operate in these terrains and counter militancy, which led to the enforcement of AFSPA in several parts of the region.

4. Breakdown of Civil Administration

In many places, especially during peak insurgency years (1970s to early 2000s), local administration collapsed under the pressure of violence. Civil officials and police were targeted, government offices attacked, and many citizens lived in fear not just of militants, but of lawlessness itself. Under these circumstances, the Central Government, relying on Article 355 of the Constitution, believed that deploying the armed forces was necessary to support the crumbling civil order. AFSPA was seen as the legal tool to allow such deployment with powers considered essential to operate in high-risk areas.

5. Cross-Border Dynamics and Strategic Concerns

The Northeast shares long international borders with countries like China, Myanmar, Bhutan, and Bangladesh. Over the decades, these porous borders have been used by insurgent groups for training, shelter, and arms smuggling. To protect India's territorial integrity and prevent foreign interference or safe havens for separatist groups, the government believed it needed military presence with legal backing, which AFSPA provided.

6. The Politics of Fear and Control

While the original reasons for AFSPA may have been security-driven, over time, many in the region have come to believe that the law has become less about protection and more about power. The fear among citizens, the lack of accountability for military excesses, and the prolonged enforcement even during peaceful times have led to growing resentment.

4.2 Analysis of its implementation and impact on governance and security

The Armed Forces (Special Powers) Act (AFSPA) has been a contentious but effective instrument in addressing insurgency and ensuring security in India's north eastern region. The application of the AFSPA affects governance, security, and human rights both positively and negatively. The AFSPA was enacted in 1958 to confer special powers on the armed forces in "disturbed areas" that were witnessing insurgency and violence posing a threat to national security. The Act permitted security forces to use force, even deadly force, on individual violating law and order behavior conduct arrest without warrants, though the enter and search houses and property without previous permission allowances the immunity to soldiers from legal prosecution without government sanction and the law has been operational in states such as Nagaland, Manipur, Assam, and Arunachal Pradesh and was also applied in Tripura and Meghalaya earlier and effect on Governance and Administration and positive Impacts of resumed Order and Stability assisted in controlling armed insurgencies, averting complete states failure, facilitated governance designed to operate by repressing violence the reinforced counterinsurgency operations and the facilitate swift military action against.

Negative Impacts: ¹³The Erosion of Civilian Authority with the military playing a key role, local police and administrative institution weakened in the civilian government often relied on military solutions instead of political ones. Governance Paralysis & Alienation of Citizens. The Public distrust in the political state increased leading to alienation of local populations and state government had little say in revoking AFSPA, as the decision rested with the central government although the violation of Human Rights & Legal Concerns the allegations of fake encounters, torture, and extrajudicial killings have been widespread of the Manorama Devi case (2004) in Manipur sparked massive protest over alleged rape and murder by security forces. The Jeevan Reddy Committee (2005) recommended repealing AFSPA, stating it was too harsh and counterproductive, the impact on security and Counterinsurgency the Positive Impacts of the Suppressed Major Insurgencies groups like ULFA in Assam, NSCN in Nagaland, and PLA in Manipur have been weakened of many insurgent have surrendered leading to peace agreement it also reduced Cross-Border Threats to upheld curb arms smuggling, illegal migration, and drug trafficking from Myanmar and Bangladesh and of maintained territorial integrity to the prevented secessionist movement from succeeding ensuring the Northeast remained part of India.

¹³ <https://thehindu.com/>

Journal of constitutional and parliamentary studies.

<https://blogpleaders.in/>

The negative impact is the prolonged insurgency it ensures that the harsh military action led to more youth joining rebel groups out of resentment of the created a cycle where violence never fully stopped, as locals saw the army as an oppressor whereas, the undermined Democratic Institutions of the excessive military presence reduced the role of elected governance. The law was often used as a blanket solution instead of addressing root causes like economic disparity, ethnic conflicts, and political instability and International Criticism.

4.3 Human rights concerns, including allegations of misuse of powers

AFSPA has been condemned by the United Nations Human Rights Council as a human rights abuse, whereas in India, government attempts towards withdrawal or amendment of the law and the Current Status and Reforms of the government partially withdrawn AFSPA in some areas of Assam, Nagaland, and Manipur in recent times are more in the aspect of peace negotiation and development reduced the need of AFSPA in some areas of demands of AFSPA withdrawal or amendment still exist, with local leaders and human rights movements calling for middle course the AFSPA has been effective in security preservation but also harmed government to local trust. In the long run, gradual withdrawal of AFSPA with the presence of more efficient police, development, is better than relying so much on the army. Human rights problems like complaints of misuse of powers. The human rights aspect of the law also needs to be exposed extensively. Civilians who are killed in insurgency areas are usually termed as "atrocities" committed by the army.

It must be remembered that in most counter-insurgency actions the insurgent also fires first, it also almost always employs civilians as a buffer, it is not in any uniform and the gun is the sole differentiation from a civilian. Civilians will be injured or killed in such firefights as in any combat zone. The army is not to be held responsible for this. This is not to imply that atrocities or human rights abuses are justified. The demarcation line should be between casualties incurred in the heat of battle and casualties incurred in cold blood for fame or for the sake of being seen. Casualties for the sake of earning respect are not infrequent as it is if one takes the ratio of the number of soldiers deployed, duration for which they are deployed and the number of times they were placed in violent encounters like such casualties, such casualties are a small number to merit withdrawal of the AFSPA for the cause of "gross misuse."

As a general principle, the governor typically acts based on the advice and support of the council of ministers, rather than making decisions independently or against their guidance. Therefore, when a governor declares any region as a "disturbed area," it usually indicates that this decision aligns with the state cabinet's wishes. That said, there are certain situations where

the governor can exercise personal discretion. Determining whether a particular action falls under this “discretion” is ultimately up to the governor. If any disputes arise regarding whether a matter is within the governor’s discretion, the governor's decision is final. Moreover, the legitimacy of any actions taken by the governor in this capacity cannot be challenged on the grounds that he should or shouldn’t have acted with discretion.

The immunity provided to armed forces personnel under the Act means that they can't be prosecuted without approval from the Central government. Section 6 of the Act even prevents State governments from taking legal action against the armed forces on behalf of their affected citizens unless they get the Central Government's go-ahead. This creates a situation where those who break the law essentially enjoy both de facto and de jure immunity.¹⁴ For instance, while agencies like the CBI can charge army officers for the murder of innocent civilians, their trials can't proceed if the Central Government denies permission. To make matters worse, the minister in charge isn't even required to provide any justification for such decisions. This leaves the states feeling powerless, which can lead to frustration and tension in the relationship between the centre and the states. The states find themselves overshadowed by the central authority. However, the Supreme Court made an important ruling in the case of *Extra Judicial Execution Victim Families Association (EEVFAM) v. Union of India*, stating that abuses by the armed forces can't be justified in the name of maintaining order or combating anti-national elements in a society that upholds the rule of law. The Court emphasized that allegations of misconduct must be thoroughly investigated. It is clear, based on the consistent stance of this Court, that claims of a lack of reasonable connection between an official act and the use of excessive or retaliatory force cannot be ignored.

Armed Forces (Special Powers) Act, 1958 (AFSPA) has been a contentious issue of the human rights movement. AFSPA has been criticized by human rights activist vigorously, pointing towards its draconian nature and its ability to perpetuate the abuse of human rights by security forces. At the root of their grievances are some of the provisions of AFSPA that give them sweeping powers, normally at the cost of civilians' rights. Most controversial among them is sec4(a) of AFSPA, which authorizes any commissioned officer, warrant officer, non-commissioned officer, or any other person of corresponding rank to fire at or otherwise use force even to the extent of causing death against any person who is acting in disobedience of

¹⁴ journal of human rights and law

https://www.mha.gov.in/sites/default/files/armed_forces_special_power_act_1958.pdf 25th March 2025.

The constitutional law of India by J.N. Pandey, 57th Edition, central law agency.

Indian constitutional Law by M.P. Jain, 8th edition, lexis Nexis 2018.

law orders issued under this Act. This sweeping mandate activist contend, enable abuse of force and contribute to extrajudicial executions, arbitrary arrest and detention, and other violations. Further, AFSPA section 6 confer impunity to armed forces personnel against prosecution without prior sanction of the central government.

This wall of immunity, as per the critics, results in a culture of impunity where the security forces operate with impunity in the sense of fearlessness of sanction for misconduct. In considering the need for AFSPA, the vision of the Apex courts is of paramount importance. Although the Supreme Court of India has acknowledged the real concerns of the violation of human rights under AFSPA, it has also enunciated the compounded security situation in the area to which the act extends.

The Court has emphasized the necessity of balance which includes taking steps against misuse but taking due care of the security needs of the security forces sent into the insurgency areas. The courts have, nonetheless, issue directives so that there will be accountability and transparency in event of suspected violation of human rights under AFSPA, the requirement of the judiciary to impose constitutional norms even in insurgency or unrest-affected regions and to act as a watchdog. In periods of hopeless scenarios of domestic disturbance in India, the Indian Army is compelled to quell the resulting and imminent violence. If so, the Indian army is delegated special powers through the Armed Forces Special Powers Act. According to the Indian constitution, the use of the military against Indians will occur only when the military has been requested to go into the midst of an unavoidable crisis that has outsmarted the administration of the country by a state or central government. In fact, the army is called out only when local police operations have been unsuccessful and when insurgencies have gained momentum.

Here the danger is that in fact it does sometimes occur that the insurgents overwhelm cross-country force a state to leave the union, something clearly impossible to be accomplished in any democracy's gives unusual powers to the Army which must be exercised with gargantuan prudence. The AFSPA empowers the army to shoot on sight, destroy property and temporary arrest suspects. The army officers deployed under AFSPA are not liable for all acts in terms of other law of Indian Penal Code, Criminal Procedure Code and civil suits, except empowered otherwise by the central government. By any stretch the AFSPA grants brutal authority, but at times of ill fortune one is compelled to resort to stern actions. The adversaries of the AFSPA may remain unaware of the fact that insurgent forces these days are most likely well-trained. Rebel or insurgent movements can be sponsored and funded by other nations for the intention of having a secessionist movement in India.

The armed rebels possess good-quality weapons and ammunition that are generally superior to those of the local police and utilize the fire power to cause massive casualties among the security forces. Examples of instances of the massacre, in one such attack of more than 70 men of the Central Reserve Police Force by Maoist insurgents in Dantewada in Chhattisgarh state in April 2010. The army is employed only if secessionist violence outweighs the police to manage as a law-and-order issue. Trained to be operationally effective, troops and the situations under which to use force firmly and fatally, thus becoming more effective and the police during counter-insurgency operations. This operational effectiveness pressures the insurgents, who are compelled to force the locals to protest against the claimed "draconian" AFSPA. Even though the masses remain in the dark, the rebels know well that the revocation of AFSPA would be equivalent to the army receding precisely their objective but, the army was suffering from an archaic public information network which was failing. Its emphasis on secrecy and multi-level clearance system yields slow and defensive reactions after the incidents usually unable to put it side of the story. The military is normally criticized by default though the actual burden is of the government. The deployment of troops under AFSPA is to prevent conflict-torn states from seceding from the Indian union.

Lastly, the decision to deploy multiple arms so that the union is not disturbed in areas where separatist movements exist is a political decision. Instead of India's army counter-insurgency campaign under AFSPA, India would have lost Jammu and Kashmir during the 1990s. And then the government would be defeated but the army never abandoned its constitutional duty of defense and keeping all areas of Indian territory in order, a line which still directs its actions to this day.

Army public information system can be strengthened in an attempt to create an enlightened and common attitude towards the secession threat. It is not simple in most cases for the military to be in a position to challenge the increased perception in the case of insurgent if the insurgent can publish their account first such as in Sri Lanka, Jammu & Kashmir, the Northeast, and Punjab in 1984. The debate should then be about the manner in which one conducts the army during internal strife and not whether or not one can call in destroy or rebuild the AFSPA. After conducting one's army, the nation's then having to contend with the conduct of military force as a governance failure.

The secessionist uprising in the nation is an indication of political failure and that it's the responsibility of the government to correct things at the beginning. AFSPA previously makes the army strong, and the legislation is sacred weapons of ultimate resort.

The Armed Forces (Special Powers) Act (AFSPA) is perhaps India's most controversial

legislation as a piece of law it has human rights implications as much as civil liberties. Although it was required from the national security and counter-insurgency standpoint, the sweep of its activities had brought shabby allegations of abuse in terms of extrajudicial killings arbitrary detentions torture rape. The absence of accountability in the form of legal immunity granted to security personnel has also given rise to heightened public anger and disillusionment within operational zones. despite Supreme Court intervention and demands for withdrawal by human rights groups, AFSPA continues to function in some areas, even though suspended in part in others. A middle way a way that is securing security without trampling human rights is the necessity. Enhancing transparency, accountability and civilian control and eradicating the causes of insurgency through political growth and negotiation might be the formula for more durable solutions.

¹⁵Human rights organizations, both domestic and international, have consistently raised alarms about the violation of fundamental rights under AFSPA. It is seen as being in direct conflict with Article 14 (equality before the law), Article 21 (right to life and liberty), and Article 22 (protection against arbitrary arrest and detention) of the Indian Constitution. Institutions like the United Nations, Amnesty International, and numerous Indian human rights groups have called for the repeal or significant overhaul of the law.

The lack of accountability under AFSPA is perhaps its most troubling feature. The requirement of prior sanction before prosecuting security personnel has led to very few convictions, even in cases where prima facie evidence exists. The Justice Jeevan Reddy Committee, which reviewed the Act in 2005, recommended that AFSPA be repealed, describing it as a symbol of oppression and suggesting its replacement with a more humane legal framework. The impact on civilian life in AFSPA-imposed areas cannot be overstated. In regions like Manipur and Kashmir, where the Act has been enforced for decades, there is a deep sense of alienation among local communities.

The Armed Forces (Special Powers) Act (AFSPA) has long been a subject of intense debate in India. While it was enacted to help the military tackle insurgency and maintain law and order in “disturbed areas,” the law has been consistently criticized for giving the armed forces excessive powers—often at the cost of human rights and civil liberties and shadow of AFSPA.

4.4 Socio political impact on the northeastern region

¹⁵ Journal of human rights and law.

<https://www.iosrjournals.org/iosr-jhss/paper/vol.28-issue12/ser-1/0281201101103.pdf> 4th March 2025.

Unlawful activities (prevention) act 1967 (UAPA).

The Armed Forces (Special Powers) Act (AFSPA) has been profound socio-political consequences in the Northeast, shaping the region's governance, public sentiment, and relationship with the Indian states, the Political Alienation and Trust Deficit and prolonged presence of AFSPA has created a sense of alienation among the people, who often feel like second class citizen many view the law as a tool of oppression, deepening distrust between the Northeastern states and the central government. Armed movement has often gained support due to this perceive injustice, complicating peace efforts.

The militarization of society heavy deployment of security forces has led to militarized environment where civilian life is often disrupted by checkpoints, curfews, and army operation of fear and psychological stress among local populations have become widespread affecting daily lives and economic activities Human Rights Violations and Civil Unrest are the reports of extrajudicial killings fake encounters sexual violence, and disappearance have fueled long-standing resentment of the events like the Malom massacre (2000) in Manipur, where security forces allegedly killed 10 civilians, have led to widespread protest, including Irom Sharmila's 16-year hunger strike, civil society movement and human rights organizations continue to demand repeal or reform of AFSPA. Impact on Governance and Democratic processes and presence of AFSPA has weakened civilian governance as elected governments often have limited control over security matters the political leaders frequently struggle to balance public angers with the central governments security priorities in democratic process suffer when dissent is suppressed under the pretext of maintaining order.

The Economic and Developmental Impacts of the climate of conflict and instability has deterred investment and economic development in the Northeast numerous businesses tend to shun establishing in conflict regions, and this has resulted in a reduction in job opportunities as well as economic stagnation. While the tourism as a potential economic boost, has also suffered at the hands of the negative security perception of the region the Strengthening of Insurgent Narratives as in an insurgent organization are likely to use the popular anger against AFSPA to mobilize the members and garner sympathy to the law to legitimize armed resistance, instead of ending cycle of conflict.

The Armed Forces Special Powers Act (AFSPA) has been a significant part of counter-insurgency operations, but its long-term socio-political impact in the Northeast has been enormous. It has led to feelings of alienation, human rights violations, economic stagnation, and weakened democratic institutions. To tackle these issues, we need to move away from military interventions and focus on political participation, economic development, and ensuring citizens' rights in the region. Since the violence that followed Partition in 1947,

military forces have been stationed across vast areas of the country for decades. Legislation created during the conflicts in Punjab and West Bengal granted the Army extraordinary powers, allowing them to use force—even by non-commissioned officers—to conduct searches and seizures without warrants and to release individuals without fear of prosecution. This kind of legislation was also implemented in Nagaland after 1947, in response to calls for independence from certain groups of Nagas. Initially known as the Armed Forces (Assam and Manipur) Special Powers Act, 1958, it underwent two minor amendments and became the Armed Forces (Special Powers) Act, 1958, or AFSPA. Its roots can be traced back to the Assam Disturbed Areas Act of 1955, which was used to address the Naga insurgency in the undivided State of Assam. Since India gained independence, the relationship between the central government and the Northeastern states has been rocky. Indian Prime Minister Jawaharlal Nehru extended the AFSPA five years after independence due to unrest in Naga-dominated areas. The regions of Manipur, Assam, Mizoram, Arunachal Pradesh, Tripura, and Nagaland have faced secessionist violence and have been labeled 'disturbed areas' by the central government. However, unlike Mizoram and Sikkim, which are now considered peaceful, the ongoing rebellion in Manipur, Assam, and Nagaland has led to the continued extension of AFSPA in those states.

The way people in the North-East have often been treated as if they're cut off from the rest of the country has led to a cycle of secessionist movements and rebellions. The Armed Forces (Special Powers) Act, or AFSPA, is supposed to protect the armed forces, but ironically, it's also a major reason for the ongoing violence in these regions. Many view the political violence as a protest against AFSPA. Given that the North-East is a sensitive area grappling with issues of ethnicity and identity, its political and geographical isolation fosters a sense of being an abandoned region. The geopolitical history here is a leftover from colonial times, stemming from the partition of British Burma from British India, making the conflict incredibly complex on multiple levels.¹⁶ The North-East is home to a diverse mix of ethnic and cultural groups, which complicates relationships not only with New Delhi but also with the rest of India. Additionally, there's a lot of tension among various tribal societies in these states, each with their own goals and aspirations for political independence from India.

¹⁶ Explained: what is AFSPA and why are the states in Northeast against it?

<https://www.shankariasparliament.com/blog/pdf/explained-what-is-afspa-and-why-are-states-in-northeast-against-it> 3rd April.

<https://ipr.nagaland.gov.in/>.

supreme court cases.

Nagaland has been at the forefront of resistance against AFSPA, with its protests being the longest and most visible. The Nationalist Socialist Council of Nagaland (NSCN) is the key political group advocating for all Naga citizens in the North-East and Myanmar to be united under one political and administrative framework. In Assam, there's a similar organization called the United Liberation Front. The situation in Nagaland mirrors this, as it has been one of India's most militarized states for decades, with the government's use of force being significant. Manipur faces its own challenges, including tribal rebellions, corrupt politics, a lack of governance, and the rise of insurgent groups that have suffered under AFSPA's repression.



OVERLAPS BETWEEN MARTIAL LAW AND AFSPA: A COMPARATIVE ANALYSIS

5.1 Comparison of the legal principles governing martial law and AFSPA

In light of the ongoing discussions surrounding the AFSPA, it's important to take a closer look at the Armed Forces (Special Powers) Act of 1958 and its counterpart, the Armed Forces (Jammu and Kashmir) Special Powers Act of 1990. This topic is so vast that it could easily fill an entire book, so for the sake of this article, I'll focus on just a few key aspects of the controversial AFSPA, particularly those that resemble elements of martial law. Before diving into a summary of AFSPA's provisions, it's worth noting that a five-judge Constitution Bench of the Hon'ble Supreme Court established the constitutionality of AFSPA in the landmark case of *Naga People's Movement of Human Rights v. Union of India* (1997). In this ruling, the Supreme Court also laid out a set of guidelines for the military regarding the implementation of AFSPA. The joint interpretation of Article 246(1), Entry 2A of List I (Union List) in the Seventh Schedule, and Article 355 of the Indian Constitution lends legitimacy to AFSPA. Specifically, Section 3 of AFSPA empowers the central government, the Governor of a State, or the Administrator of a Union Territory to designate any area as a 'disturbed area.' This designation allows for the extension of AFSPA, based on their assessment that the situation is so precarious that armed forces need to step in to assist civilian authorities in restoring order.

Yet, the critics such as jurists, scholars, and human rights activists believe that the military troops are kept in reserve for the external threats and deploying them to quell internal disturbances are tantamount to an excessive force, infringing on fundamental rights and principle of human rights. Otherwise, AFSPA proponents believe that the contemporary security threats, especially terrorism, have erased the distinction line between internal and external threats.

Generally, internal strife, insurgencies, and violent rebellions are such major threats that necessitate military intervention to bring about peace quickly and avert total lawlessness. Section 4(a) of the AFSPA has been severely criticized for giving uncontrolled powers to military personnel commissioned or not commissioned serving in 'disturbed areas'. They have the authority to employ any force they deem fit, even lethal force, to keep public order intact. This involves situations where law is being breached, for example, illegal gathering or five or more individuals in a restricted area. In another region in India, offenders of Section 144 Crpc against illegal gathering would normally be awarded light imprisonment for some months. But with AFSPA, for troubled areas, the very same offenses lead to death by means of the

military.¹⁷ The choice to use of lethal force is left entirely to the discretion of the armed personnel, including the number of warnings given before opening fire. Crucially, military personnel are not required to justify their actions, making accountability almost nonexistent. Many critics argue that such sweeping military authority is a colonial era remnant to the repressive laws imposed by the British on Indians before independence. The implications are that citizens living in disturbed areas today are treated by the Indian government and military much like the British treated Indians subject to military rule rather than equal citizens with full constitutional protections.

They argue that this directly contradicts important international human rights norms. Section 4(c) of the AFSPA allows any officer whether commissioned or non-commissioned of the armed forces operating in a 'disturbed area' to arrest someone without a warrant if they've committed a cognizable offense or are reasonably suspected of doing so. In fact, they can use any amount of force necessary to make that arrest. Critics claim that these arrests often turn out to be arbitrary and based solely on suspicion. Additionally, while the military is supposed to transfer these detainees to the nearest police station as quickly as possible, credible sources suggest that they frequently hold these individuals in custody for longer than the recommended twenty-four hours. Section 4(d) of the AFSPA also grants extensive powers to any officer commissioned or non-commissioned of the armed forces in a 'disturbed area' to enter and search any premises without a warrant to carry out arrests or recover illegal weapons. The ongoing debate about how closely AFSPA resembles martial law seems never-ending, and the points raised so far only scratch the surface of this complex issue. What makes AFSPA even more troubling is Section 6, which provides immunity to military personnel by preventing any legal action against them without prior approval from the central government. This has resulted in serious accountability issues, as highlighted by the tragic killings in the Mon district of Nagaland in December 2021, where innocent civilians were shot by security forces. Despite widespread outrage, no significant action has been taken against those responsible, reinforcing the belief that the military operates with unchecked discretionary power in these disturbed areas.

Although martial law has never been officially declared in India since Independence, the way AFSPA is enforced on the grounds resembles *de facto* martial law. It is easy to discuss the trade

¹⁷ Journal of Indian Legal Studies.

<https://researchgate.net>.

The armed forces (Assam and Manipur) special powers amendment act 1972(7 OF 1972).

between security and human rights from places where our own constitutional protections remain intact. However, expecting the innocent civilian of disturbed areas to sacrifice their fundamental rights. In this context the Indian government's recent efforts to reduce the number of disturbed areas is a positive and necessary step towards restoring normalcy and ensuring greater protection of human rights.

India, as a democratic republic, operates under the rule of law and the supremacy of the Constitution. However, there are exceptional circumstances such as internal disorder or armed conflict where the State may resort to extraordinary legal frameworks to maintain order. Two such frameworks are Martial Law and the Armed Forces (Special Powers) Act (AFSPA). While both involve the military stepping into roles traditionally handled by civilian authorities, they are rooted in very different legal principles, scopes, and implications.

The understanding of Martial Law is not defined in any Indian statute, nor is it expressly mentioned in the Constitution. Instead, it is a doctrine derived from common law and typically invoked during extreme emergencies, such as insurrections, wars, or complete breakdowns of civil governance. Under Martial Law, the military temporarily replaces civilian authority to restore order. The most striking feature of Martial Law is that it involves the suspension of ordinary legal processes, and in some cases, even fundamental rights. Courts may be closed, and military tribunals may be set up to try civilians. However, because India is a constitutional democracy, Martial Law is expected to be temporary, used only when the situation cannot be managed under the ordinary legal framework.

Unlike Martial Law, AFSPA is a formal statute, enacted by Parliament in 1958, to empower the armed forces to assist civilian authorities in maintaining public order in "disturbed areas." It does not suspend the Constitution or the judiciary, and civilians are still subject to civilian courts. Under AFSPA, civilian governance continues, but military personnel are granted extraordinary powers such as arrest without warrant, the use of force (even lethal), and search operations without prior approval. These powers are triggered by the declaration of an area as "disturbed" by the Governor or the Central Government. So, while Martial Law replaces civil law, AFSPA operates alongside it, albeit in a way that tilts the balance of power heavily in favour of the armed forces.

5.2 Examinations of whether AFSPA mirrors aspect of martial law practice

The Armed Forces (special powers) Act AFSPA and martial law both entail the military having a central role in law and order. Whereas AFSPA is statutory law enacted under a constitutional framework, martial law is an extreme measure suspending civilian rule. AFSPA enforcement is generally likened to de sac to martial law.

It should be kept in mind that the AFSPA is operational only after the government has been ruled as a state, or fractions of it, as being disturbed. That is, normal governance by the government has collapsed. And hence the army is introduced to bring normalcy back. I strongly believe that in a democratic system the armed forces should be employed for a short while only and its deployment cannot go on ad infinitum. But, unfortunately, quite the opposite is happening in the actual world and districts and states are being 'agitated' for decades and years. Even Nagaland State, is not yet characterized as, disturbed, even though hostilities had remained suspended for more than a decade and no security personnel have been lost in the last ten years.

The definition clause has been retained and explanation has only been provided for two words, 'disturbed area' and 'armed forces'. Section 3 vested the power to extend the operation of the act in a territorial sense in the sole discretion of the executive without leaving any scope for parliamentary judicial review, or in the insertion of provisions such as sunset clauses.

The exceptional military power over emergency civilians in Martial law grants absolute martial law to the military, allowing it act beyond normal legal limits, in AFSPA empowers the armed forces to use lethal force, conduct warrantless arrest and search premises without judicial oversight and the suspension or weakening of Fundamental Rights in martial law the often suspends constitutional rights including habeas corpus and due to process, in AFSPA, while the constitutional remains in force Article 21 (Right to Life) is diluted, as security forces can killed based on mere suspicion without immediate accountability.

Lack of accountability for military courts replacing civilian courts limiting legal resources for civilians. In AFSPA section 6 grants legal community to military personnel, preventing prosecution without central government approval, making accountability nearby impossible moreover indefinite duration of military control, in the martial law, typically imposed temporarily during extreme crises.

In AFSPA has been enforced for decades in some regions. Although AFSPA is not officially martial law its practical enforcement mirrors several key aspects of military rule such as sweeping military powers, suspension of rights, lack of accountability, and prolonged enforcement. The key distinction is that martial law completely replaces civilian governance, while AFSPA operates alongside a weakened civilian administration. The has led to the

argument that AFSPA create a state of permanent militarization making it functionally indistinguishable from martial law in disturbed areas ¹⁸AFSPA that grants special powers to the armed forces in “disturbed areas” to maintain public order.

Martial Law is a temporary rule by military authorities, usually in response to emergencies, where civil liberties may be suspended, and military authority overrides civilian government. Both involve military or armed forces taking a central role in maintaining order.

Difference: AFSPA is a statutory law passed by Parliament; martial law is not codified in Indian law and represents a more extreme, temporary suspension of normal governance.

Legal Authority & Immunity under the AFSPA, armed forces can arrest without warrant, shoot to kill under certain conditions, and have immunity from prosecution without central government sanction. In martial law, military courts may replace civilian ones, and actions of the military often go unquestioned legally. Both grant wide-ranging powers and immunity from legal accountability. AFSPA retains some civilian oversight through legal procedures, though minimal; martial law often eliminates civilian checks entirely.

AFSPA operates within a constitutional framework and is subject to judicial review (though rarely overturned). Martial law, if declared, would likely lead to suspension of fundamental rights under Articles 19, 21, etc., which AFSPA does not explicitly do.

The Supreme Court has upheld the constitutional validity of AFSPA but has also called for checks and accountability (e.g., Naga People’s Movement of Human Rights v. Union of India, 1997). The Justice Hegde Commission (2013) found many “encounter killings” under AFSPA unjustified, hinting at near-martial law conditions. Human Rights and Civil Liberties of both frameworks raise concerns about arbitrary detention, use of force, and suppression of dissent. AFSPA has been criticized by the UN, NHRC, and Amnesty International as enabling de facto martial law in specific regions.

5.3 Implications of the overlap between the two concepts

The overlaps between AFSPA and martial law significant legal, political and human rights implications. While AFSPA is a statutory law and Martial law is an emergency measure, their

18 https://www.mha.gov.in/sites/default/files/armed_forces_special_powers_act_1958.pdf

25th march, 2025

shared characteristics such as unrestricted military authority, limited civilian oversight and dilution of fundamental rights create serious concern regarding democratic governance and rule of law. Legal and Constitutional Implications of the weakening of Civilian Authority under the martial law, the military replaces civilian governance entirely under AFSPA, while civilian administration continues to exist, it is often overpowered by the military, eroding the effectiveness of civil institutions, the prolonged military presence in 'disturbed areas' creates a situation where civil authorities lose legitimacy in the eyes of people dilution of Fundamental Rights Article 21 (Right to Life) is significantly weakened under AFSPA, as the military can use lethal forces on suspicion without judicial oversight of the freedom of movement speech and assemblies are curtailed similar to martial law conditions. This creates a legal double standard where citizens in 'disturbed areas' do not enjoy the same constitutional protection as those in other parts of India.

Undermining judicial oversight in the martial law, civilian courts are often suspended. AFSPA (Section 6), security personnel have immunity from prosecution, preventing legal accountability while courts have technically jurisdiction legal challenges against AFSPA have rarely led to justice for victims. Political and Governance implications Prolonged Militarization and Crises Governance and martial law is meant to be temporary, but AFSPA has been in force in some regions for over six decades. Instead of addressing underlying political and social conflicts, the government relies on the military control, preventing long term conflict resolution the erosion of democratic principles in India, as a democracy, upholds civilian a democracy upholds civilian supremacy over the military, but AFSPA blur this distinction in 'disturbed areas.' Continued enforcement of AFSPA signals a failure of civilian governance and a shift towards militarized rule, contradicting democratic ideals.

It Strained Center-State Relations of the martial law is often imposed by a central authority, disregarding local governance the AFSPA, the central government has overriding power to declare an area 'disturbed,' even against the wishes of state governments it has also led to tensions between the union and certain states, particularly in the Northeast and the Human Rights and Social Implications in the Normalization of Human Rights Violations the AFSPA's sweeping power and lack of accountability have resulted in allegations of extra judicial killings, enforces disappearances sexual violence, and torture and cases such as the Mon district killings (Nagaland, 2021) highlight the real world consequences of unchecked military power. Loss of Public Trust in institution in the areas under AFSPA, civilian often views the military as an occupying force similar to how martial law is perceived this depends on alienation, resentment and hostility towards both armed forces and the government. Cycle of Violence and

Insurgency the lack of accountability under AFSPA fuels grievances pushing disaffected communities towards insurgencies or military the response then justifies the continued imposition of AFSPA, creating a self-perpetuating cycle of the conflict International and Diplomatic Implications and the Violation of International Human Rights Norms and martial law is seen an extreme.

Measure globally and AFSPAs provisions violate several international human rights treaties including Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), the UN international human right body have repeatedly called for AFSPAs repeal or reform. Impact on India's Global Reputation the presence of laws like AFSPA damages India's standing as the world's largest democracy and it gives credibility to criticism that India uses authoritarian measure to control dissent in conflict zones. International pressure could affect diplomatic relations trade agreements, and defense partnerships. The overlaps between AFSPA and Martial law ¹⁹. India prides itself on being the world's largest democracy a land governed by laws, not by the might of weapons. Yet, there exist exceptional circumstances where the rule of law wears a uniform, where civilian life is lived under the watchful eyes of armed men, and where the Constitution itself seems to whisper rather than roar. In such moments, AFSPA (Armed Forces Special Powers Act) and Martial Law though legally distinct begin to resemble each other not in form, but in impact.

While one is a statute passed by Parliament, and the other a constitutional anomaly that emerges in extreme emergencies, the implications of both laws often overlap in a way that can make democratic citizens feel like subjects in a war zone. At the heart of both AFSPA and Martial Law lies a common condition: the breakdown of normal civil governance. Whether it's an insurgency in Nagaland or violent riots in an unnamed city, these laws step in when the police is overwhelmed, when courts seem distant, and when the state's very machinery looks fragile.

Under both frameworks, the military enters the civilian space patrolling streets, conducting arrests, entering homes, even using lethal force. For the average citizen, the line between law and order blurs. Who do you turn to if the ones with guns also hold the law in their hands. Martial Law is, by definition, the suspension of civilian legal protections. It may override

¹⁹ <https://byjus.com/free-ias-prep/understanding-the-armed-forces-specialpowers-act/> last visited 1st April, 2025

constitutional rights, impose curfews, censor media, and hold people without charge. AFSPA doesn't officially suspend the Constitution, but in practice, many of the same liberties are curtailed.

Under AFSPA:

- You can be arrested without a warrant.
- Your home can be searched without notice.
- The military can use force up to killing based on suspicion alone.
- Legal action against such acts requires prior approval from the Centre.

Now compare this with Martial Law, where such powers are assumed temporarily by the armed forces during grave crises. In both cases, the citizen's access to justice shrinks, and fear often replaces freedom. One of the most concerning overlaps is legal immunity. Under AFSPA, Section 6 shields military personnel from prosecution without prior government sanction a protection that rarely translates into accountability. Under Martial Law, military officers often operate outside the standard judicial process. Both create an atmosphere where actions taken "in the line of duty" go largely unchecked, and victims of excesses face enormous challenges in seeking justice.

This lack of redressal breeds frustration, mistrust, and sometimes, radicalisation further perpetuating the cycle of violence they were meant to control for civilians, the emotional experience of AFSPA and Martial Law can be eerily similar. Constant surveillance. Checkpoints. Armed men at every corner. Suspicion as a daily reality. In such conditions, the spirit of democracy feels far away even if elections still happen and flags still fly. Young people grow up accustomed to fear, and older generations remember better times with aching nostalgia. The law may say it's a measure to restore normalcy, but for many, it becomes the new normal.

Martial Law is typically temporary imposed during war, rebellion, or natural disasters, and lifted once order is restored. AFSPA, however, has stayed in place in some regions for decades. In Manipur, for instance, AFSPA was enforced continuously for over 60 years before being partially lifted.

This long-term enforcement raises a troubling question. When does a temporary emergency become a permanent state of exception? And what does it say about the health of our democracy if some citizens live their entire lives under the shadow of a law meant for crises legally,

AFSPA and Martial Law are not the same. AFSPA is a law of Parliament, bound by constitutional limits. Martial Law, on the other hand, exists in constitutional silence, only invoked when the very structure of the state is under threat.

But when viewed through the eyes of the people those who live under both the difference can feel like a technicality. For them, the law doesn't just change how the state operates; it changes how they live, move, speak, protest, and dream.

5.4 Case study highlighting the overlap between AFSPA and martial law

Several incidents and case studies from regions where AFSPA has been enforced highlights its practical resembles to martial law, particularly in terms of military dominance, human rights violation lack of accountability and indefinite militarization. The following case studies illustrate these overlaps:

Manipur and the Extrajudicial Killings (1990s–2000s) Martial Law Features Reflected in AFSPA:

Unrestricted use of lethal force and Suspension of fundamental rights (Right to Life, Article 21) Lack of civilian and judicial accountability

Incident: Between 1979 and 2012, 1,528 cases of *extrajudicial killings* were reported in Manipur, allegedly carried out by security forces under AFSPA. Victims included suspected militants, but also innocent civilians, including women and children. In 2009, a photojournalist captured a security force killing an unarmed man (Chongkham Sanjit) in broad daylight in Imphal, triggering widespread protests. The Imphal Valley witnessed mass protest with women staging nude demonstrations outside the Assam Rifles headquarters in 2004, holding banners that read “Indian Army Rape Us” highlighting extreme demonstration with military impunity. The killings occurred without trials or judicial oversight similar to martial law conditions where the military operates outside legal constraint and security forces operated with immunity (Section 6 of AFSPA), making prosecution of those involved nearly impossible. The state remains under indefinite military control, reflecting the prolonged nature of martial law.

Nagaland: The Mon District Massacre (2021) Martial Law Features Reflected in AFSPA Use of lethal forces without accountability and the civilian casualties due to military operations and public backlash and erosion of trust in the government

Incident: On December 4, 2021, Indian security forces conducting a counter insurgency operation in Mon district, Nagaland, ambushed a vehicle killing six unarmed coal miners, mistaking them for militants. In the ensuing chaos security forces open fire on a protesting

crowd, killing eight more civilians. The incident led to widespread anti AFSPA protest across Nagaland and the Northeast and despite government assurances no military personnel have been prosecuted, reflecting the legal immunity granted under AFSPA.

The military acted with total authority similar to martial law conditions where civilian control is by passed and failure to hold soldiers accountable, reinforcing the perception of the region being under military rule rather than civilian governance the state government's request to repeal AFSPA was ignored by the central government demonstrative how local administration is override by hidden military authority similar to martial law governance.

On May 22, 1958, the President issued an ordinance known as the Armed Forces (Assam and Manipur) Special Powers Ordinance, 1958. Section 3 of this ordinance empowers the Governor of Assam and the Chief Commissioner of Manipur to declare any part of Assam or the Union Territory of Manipur as disturbed areas. Once this declaration is published in the Official Gazette, any commissioned officer, warrant officer, non-commissioned officer, or someone of equivalent rank in the armed forces can exercise the powers outlined in sections 4 and 5 of the ordinance within those disturbed areas.

AFSPA has since been extended to other regions, with some districts in Jammu and Kashmir still under its jurisdiction, which has faced significant opposition. However, we must also consider the other side of the argument: the army has a right to self-defence and human rights just like anyone else. While some argue that the law has been misused, it's important to recognize how soldiers can be targeted by terrorist groups even when they're off duty. The AFSPA is a distinctive piece of legislation. It was enacted in 1958 in response to escalating violence that had become a "way of life" in the northeastern states of India, which was beyond the control of state administration. Thus, it became essential for the army to step in to help restore order amid the turmoil stemming from the Naga rebellion. As a result, on September 11, 1958, the Indian Parliament enacted the AFSPA as a 'quintessential military response.' In the case of *Naga People's Movement of Human Rights v. Union of India*, the constitutionality of the controversial Armed Forces Special Powers Act, 1958 (AFSPA) was challenged in the Supreme Court of India. Given that the case involved a matter mandated by the Indian Constitution, it was referred to a Constitutional Bench of five judges. The court ultimately ruled, with Justice Agrawal authoring the unanimous opinion.

Undermining judicial oversight in the martial law, civilian courts are often suspended. AFSPA

(Section 6), security personnel have immunity from prosecution, preventing legal accountability while courts have technically jurisdiction legal challenges against AFSPA have rarely led to justice for victims. Political and Governance implications Prolonged Militarization and Crises Governance and martial law is meant to be temporary, but AFSPA has been in force in some regions for over six decades. Instead of addressing underlying political and social conflicts, the government relies on the military control, preventing long term conflict resolution the erosion of democratic principles in India, as a democracy, upholds civilian a democracy upholds civilian supremacy over the military, but AFSPA blur this distinction in 'disturbed areas.' Continued enforcement of AFSPA signals a failure of civilian governance and a shift towards militarized rule, contradicting democratic ideals.



CHAPTER VI

HUMAN RIGHTS AND ACCOUNTABILITY UNDER AFSPA

6.1 Examination of human rights concern related to AFSPA

The Armed Forces (Special Powers) Act (AFSPA) is a controversial act in India, most disputed on its human rights dimension. The act provides additional powers to the army in "disturbed

areas" such that public order is maintained. However, it has cast a shadow of suspicion over human rights abuses, including extrajudicial executions, torture, and enforced disappearance.

It's high time the government takes a closer look at AFSPA, line by line, and considers rescinding it.²⁰ The violence we've seen in the past and continue to witness today simply cannot go on. A notable example is Operation Bluebird, which drew criticism from major international organizations. This operation took place in January 1987 in Oinam, Manipur, where nearly 30 Naga villages faced horrific acts of violence, including torture and mass killings, along with appalling crimes like sexual harassment and theft that lasted for several days. Interestingly, even government officials were barred from entering these areas during the operations. AFSPA has made life unbearable for the people, subjecting them to a perpetual state of curfew. This law fundamentally contradicts the principles of constitutional morality and is inherently arbitrary. Moreover, decisions made by the government regarding disturbances in these regions can't be challenged in any court, which means many incidents go unreported, leaving victims without justice. It's crucial that AFSPA is evaluated through the lens of constitutional morality and fairness, alongside modern standards that the Supreme Court believes are essential for a functioning democracy. In fact, this could lead to AFSPA being deemed invalid based on findings from various committees and events from the early 1990s.

The morale of the armed forces will take a hit if they are held accountable for their actions carried out under AFSPA. It's crucial to understand that simply amending the act won't solve the problem, especially since there are numerous loopholes that can't be fixed that way. The government needs to recognize that citizens' rights must be protected, and for that to happen, AFSPA should be repealed.

Not only is the fundamental right of citizens being infringed but it is also against the Declaration of Human Rights for which India has subscribed. In brief, AFSPA must be repealed. It is highly essential at this point to emphasize that the time has arrived and there is a critical need to consider the violation of human rights went in the past and extended by conflict of interest and whatever action is undertaken to put an end to the conflict situation with regard to Kashmiris should result in the termination of violence in Kashmir with specific consideration of political conflict. United Nation Human Commissioner (OHCHR) reports also show the

²⁰ What is AFSPA, demand of its repeal, and constitutionality <https://www.writinglaw.com/about-afspa> last visited on 18th March 2025.
<https://theeconomictimes.com>.
The repealing and Amendment act 1960 (58 Of 1960).

increased violence in the form of firing that caused the casualties finally harming the civilians and displacing a large number of people who were residing outside the Line of Control.

The human rights advisor and OHCHR representatives have pointed out that the movement restrictions imposed by both the Pakistani and Indian governments in Kashmir are seriously hindering the work of reporters and organizations striving to lift these limitations. They believe that easing these restrictions would not only improve conditions in Kashmir but also promote transparency, ultimately leading to development in the region. This situation also constitutes a violation of Article 21. Under AFSPA Clause 4(a), army officers are granted sweeping powers to shoot or kill anyone suspected of inciting civil unrest in conflict-affected areas. This infringes upon Article 21 of the Indian Constitution, which guarantees the fundamental right to life and liberty, stating, "No person shall be deprived of his life or personal liberty except in accordance with the procedure established by law." Furthermore, in the landmark case of *Maneka Gandhi v. Union of India*, it was established that the "procedure set forth in the law must be fair, just, and reasonable." Any law that grants such unchecked powers to use force is inherently unjust and unreasonable. It also violates the International Human Rights Convention, which restricts the use of lethal force. Section 4(c) of this law allows armed forces to arrest and detain individuals based on mere suspicion of a cognizable offense being committed or about to occur. This provision effectively undermines the fundamental rights to liberty and personal security. The phrase "on mere suspicion" gives armed forces considerable leeway to act arbitrarily. However, following the Nagaland people's judgment, the Supreme Court has mandated that any arrested individual must be transferred to the nearest police station within 24 hours. Unfortunately, the reality on the ground often falls short of this directive. This legal framework is meant to protect individuals from unlawful arrest and detention, as guaranteed under Article 22(5) of the Constitution, which ensures that any preventive detention must adhere to established legal procedures.

The armed forces are not subject to law while providing space of arrest that was deteriorated to the extent that section 6 of the above act provides immunity to the officer from legal recourse, if at all it is given with advance approval from the central government. Because of this, the Right to Remedy of the individual is infringed. The immunity that protects the army also allows them to make sometimes careless impulsive choices

The State can never be unjustified in bringing precautionary measures to thwart secessionist elements in the country. However, the State, in maintaining Law and Order in society, must function under some checks and balances to. Law and order cannot be enforced by law enforcement agencies in an inhuman and irrational manner. The laws like AFSPA must be

examined for review and repeal if necessary as it cannot carry out its very function and is being used mischievously by law enforcers. There must be transparency regarding public accountability and human rights issue. According to B.R. Ambedkar's words, "For the maintenance of democracy, we must hold fast to our constitutional method to achieving our social and economic objectives." State is under obligation to follow what promotes the constitutional morality which constitution makers have envisioned while framing the constitution.

6.2 Role of judiciary, National Human Rights Commission (NHRC) and other oversight bodies.

Human rights constitute basic freedoms of life, liberty, and equality. Indian constitutions' Article 21 has been judicially interpreted extremely loosely so as to encompass the right to dignity, food shelter, and even the good dying conditions of hospital patients who are on their death bed.

Judiciary also has been a major contributor towards the revolution in human rights, right to privacy, legal aid, speedy justice, and against torture all under the purview of Art 21. Judiciary's contribution has also made a contribution towards gender equality as can be seen through the revolution brought in the law of inheritance and also against work-place harassment. Judiciary also plays an essential vital role towards safeguarding the human rights through upholding constitutional values to instate that justice prevails for all citizens. Indian Supreme Court and High Court have been presumed to play the custodian's role of fundamental rights that secure the liberty of the individual as well as sort out problems concerning violation of the human right. Judicial autonomy is also key in guaranteeing human rights by providing a legal guarantee against infringement, as well as ensuring minority rights. Using the instrument of historical judgment and future intervention, the judiciary has reminded itself of equality dignity, and justice in a democratic society.

Rule of law is the foundation of a society not governed at will but governed by law. It is characterized by justice, equality, and dignity infused in the Indian constitution under Articles 14, 19, 20, 21, and 265. Judicial review was one of the basic avenues through which courts enforced this doctrine by holding an act of legislature or executive unconstitutional. Such milestone rulings, some of which are, are *Kesavananda Bharati v. State of Kerala* and *I.R. Coelho v. State of Tamil Nadu* have instilled rule of law in the very rudimentary framework of the constitution. Splitting power also justifies such an arrangement and judiciary acts as a check on legislature as well as executive.

Public Interest Litigations (PILs) and "continuing mandamus" doctrine have been claimed as a device to ensure accountability, especially in event of default by government interdependence between rule of law and human rights, rule of law and human rights are extremely dependent one another.²¹ It must be an air-tight legal system on which human dignity may be safeguarded and arbitrary governance evaded. Court impartiality and neutrality at the moment of guarantying the principles to fine balance individual right with public interest.

1. **Efficiency of Fundamental Rights:** Indian constitution under Art 32 and 226 gives authority to the Supreme and High Courts to issue writs for enforcing fundamental rights. It is a very effective tool in providing an opportunity of one to approach court in time when his or her rights are infringed.

Judicial Activism and Interpretation: Judiciary in judicial activism extended the meaning of basic rights. For example, in *Maneka Gandhi v. Union of India (1978)*, supreme court extended the meaning of Article 21 (Right to Life) so that right to live with dignity falls under the basic right. This was a revolution from protecting human rights where courts identify rights which are not separately mentioned under the constitution but which fall under the rubric of human dignity.

3. **Public Interest Litigation (PIL):** The principle of locus standi has also been diluted by the courts to enable any public-spirited individual to file a PIL on behalf of economically and socially disabled persons who are not in a position to approach the court themselves. This has safeguarded the rights of marginalized and vulnerable segments of society. *S.P. Gupta v. Union of India (1982)* is a case which gave greater room for PILs and access to justice to a larger extent

4. **Safeguarding weaker sections:** The judiciary has also been very active in safeguarding the rights of weaker sections like women, children, and socially and economically weaker section. In *Vishaka v. State of Rajasthan (1997)*, the Supreme Court of India formulated guidelines to safeguard women against sexual harassment at workplace, showcasing its positive attitude towards safeguarding women rights.

5. **Judicial Control of Violation of Human Rights:** Judiciary has also been intervening certain cases of violation of human rights in order to impose pressure on state action on constitutional grounds. The case of *D.K. Basu v. State of West Bengal (1997)*, with respect to the issue of guidelines issued by the Supreme Court to custodial violence, is a truly great example of how the judiciary will safeguard human dignity even in the domain of the power of the state.

²¹ Indian constitutional Law by M.P.Jain, 8th edition, Lexis nexis 2018.
Supreme court cases.

6. Compensation and Accountability: Compensation has been awarded by the courts in cases of abuse of human rights, i.e., judicial killings by torture. The National Human Rights Commission (NHRC) bridges the gap of intervention by the courts through redress for systemic abuses and ensuring accountability.

Protection of Human Rights Act, 1993. The Act provides the framework for protection of Human Rights in India and forms the National Human Rights Commission (NHRC) and State Human Rights Commissions (SHRCs). The commissions are vested with the authority to inquire into cases of violation of human rights and suggest redressal. State and National Human Rights Commissions and SHRCs are most effective in taking up the problem of abuse of human rights. They have the power to conduct inquiries, visit detention centers, and run human rights literacy courses. Because, for example, NHRC suo motu has considered communal riots occurred during 2002 in Gujarat as proof of its initiative when there was gross abuse of human rights.

The Armed Forces (Special Powers) Act, AFSPA, is strongly criticized for legalizing abuses of human rights like extrajudicial killings, enforced disappearance, torture and rape. Monitor institutions like judiciary, National Human Rights Commission (NHRC) and foreign human rights abuses are important to check these abuses through providing accountability, justice and law reforms and Indian judiciary's role. Supreme Court and High Court are both involved in constitutional interpretation of AFSPA validity and action against human rights violations.

Landmark Supreme Court Rulings *Naga People's Movement for human rights v. Union of India* (1997) The Supreme Court ratified the constitutional validity of AFSPA but contended that actions by the armed forces should take place behind legal veils and not in a wild manner. It highlighted the consciousness that armed forces need to act with restraint and responsibility and *extra Judicial Execution Victim Families Association (EEVFAM) v. Union of India* (2016).

The Supreme Court was aggrieved that AFSPA can never be a cover-up for the security forces for fake encounters. The Supreme Court directed CBI to probe more than 1,500 suspected fake encounters in Manipur. Pathribal Fake Encounter Case (2012) The Supreme Court ruled that troops who had engaged in the accused encounters would have to appear before ordinary courts denying pleas of sheer humanity under AFSPA.

Role of National Human Rights Commission (NHRC), NHRC has been requested to monitor human rights abuses and recommending action against security personnel abusing AFSPA. NHRC response in AFSPA case and inquiry report NHRC has come up with evidence of some cases of extrajudicial killings, torture, and enforced disappearance directed in AFSPA

zones. Reparation to the victims NHRC has suggested compensation to the extent of money to victims' families and police and military excesses victims. The NHRC charge of ineffectiveness has lakhs of enforcing power and has only the role of giving suggestions restricting it from being effective. The security forces would not listen to the NHRC suggestions regarding the immunity provisions of the AFSPA.

While judiciary NHRC, and even the global stage must function as checks over human rights violations under AFSPA, enforcement is curtailed due to legal immunity provided to security forces and political hesitation. Judicial reform must also be more substantial so that it can empower judicial control over security forces as well as their increased accountability in a manner that it bolsters national security without at the expense of human rights.

6.3 Accountability mechanisms and their effectiveness

The Armed Forces (Special Powers) Act (AFSPA) gives special power to security forces in "disturbed" regions to use force perform searches without warrant even fire to maintain public order. Accountability issues have been a chronic issue with AFSPA offering legal immunity to security forces making human rights abuse cases difficult to prosecute.

Mechanisms of Accountability in AFSPA: Internal Military and Security There are internal mechanisms within the military like court-martial and misconduct disciplinary hearings. Case remains these mechanisms are criticized overall on grounds of transparency. Judicial Encroachment the Supreme Court of India and the High Courts have encroached upon a few cases, i.e., in the form of Public Interest Litigations (PILs) in Extra Judicial Execution Victim Families Association (*EEVFAM*) *v. Union of India* (2016), the Supreme Court held AFSPA does not confer absolute immunity and ordered an investigation into extrajudicial killings Manipur. National Human Rights Commission (NHRC) may accept complaints and recommend action but is advisory and lack of enforcement powers and the commissions of inquiry to the various government commissioned committee, i.e., Jeevan Reddy Committee (2005) and Santosh Hegde Commission (2013), have inquired into AFSPA and recommended repeal or amendment.

They have not been utilized fully, however. Media and Civil Society Media, activists, and NGOs play a vital role in exposing abuses under AFSPA but encounter threads and censorship. Limited Enforcement despite court decisions, very few security personnel have ever been held to account legally under AFSPA. Institutional resistance the armed forces resist being held to account outside their ranks, asserting that AFSPA is necessary for counterinsurgency operations. Political Restraints and the Government have been apprehensive of repealing or modifying AFSPA because of the security issue, some recent positive change in the last few

years regions of Assam, Nagaland, and Manipur have witnessed AFSPA, withdrawn signaling a trend towards greater accountability. There are accountability mechanisms but legal immunity, lack of enforcement, and political reluctant tightening civilian control, securing independent investigation and implementation of adopted commission recommendations can strengthen accountability under AFSPA.

²²Lack of machinery for accountability for human rights abuse under AFSPA has been a serious issue even after recommendation by various committees or amendment or appeal of the act, government has not paid much attention to such proposals and hence there has been a trend of abuse without due watchfulness and one of the very serious criticisms has been lack of machinery for accounting the security officials working under AFSPA.

The bill grants impunity from prosecution unless where the center government requests authorization for prosecution this has given room for culture of impunity where the security forces are in control and will never be blamed the commission must ensure that it lays down clearly caution should be left in placebo in addressing the menace of the integrity and unity of the country by way of varied political contestations if they resort to violence if they can force their will.

The Indian federal-integrated Constitution contains provisions in regard to internal security issues which render the management of issues that are generally unity and integrity of the country extremely difficult to an extremely high degree relative to other federal countries in the world. The AFSPA regime thus becomes a Centre-State relations litmus test and thus merit an examination of how the Act has affected federalism in the context of conditions in the two states and how it fits into the various state and society responses to the unsatisfied aspirations of the society.

The Armed Forces (Special Powers) Act, better known as AFSPA, was never meant to be a symbol of fear. It was introduced as a law to restore order, to bring calm to regions in chaos, and to ensure that the Indian state remained unified even in its most fragile corners. But over time, AFSPA has come to stand for something much heavier power without accountability. In a democracy, laws must not only empower but also answer. Power must walk hand-in-hand with responsibility, oversight, and justice. But under AFSPA, the question remains. At the heart of the accountability debate lies Section 6 of AFSPA. It states that no legal proceedings can be initiated against any member of the armed forces without the prior sanction of the Central Government.

²² The armed forces special power (extension to union territory of Tripura) act 1970. Constitution of India (44th amendment) 1978.

This clause was designed to protect soldiers from frivolous litigation, especially when operating in high-risk areas. But in practice, it has often become a wall of silence. Even in serious allegations such as enforced disappearances, custodial torture, or extra-judicial killings the required sanction is rarely granted. The armed forces often respond to allegations by conducting internal inquiries or court-martials. While this offers a semblance of action, the lack of transparency in these proceedings raises serious concerns.

Families of victims are rarely informed of the process or outcome. Proceedings are not open to the public. In many cases, punishments (if any) are light or undisclosed. For the civilian, this does not feel like justice it feels like the state investigating itself and quietly closing the file. Over the years, the judiciary has tried to shine a light on AFSPA's dark corners. In 2016, the Supreme Court of India, in a landmark judgment related to extrajudicial killings in Manipur, ruled that AFSPA does not grant blanket immunity, and that all allegations of excessive force or abuse must be investigated. This was a glimmer of hope a recognition that even during armed conflict, human rights do not vanish. But implementing this judgment has been slow and difficult. Investigations often stall, evidence disappears, and the line between the military and civil administration remains uncomfortably blurred.

The Role of Human Rights Commissions: Powerless Witnesses and the National Human Rights Commission (NHRC) and State Human Rights Commissions exist to investigate violations and protect the dignity of citizens. But in AFSPA-covered areas, their powers are limited. They may make recommendations, but they cannot enforce them. The armed forces are not compelled to comply, and often simply decline jurisdiction or dismiss findings. For citizens hoping for justice, the NHRC becomes just another door that doesn't open fully. Despite these barriers, people have spoken out mothers of disappeared sons, widows of innocent men, survivors of unlawful detention. Movements like the "Extra Judicial Execution Victim Families Association of Manipur (EEVFAM)" have fought relentlessly to bring truth to light. Activists like **Irom Sharmila**, who fasted for 16 years against AFSPA, became symbols of peaceful resistance. Their courage has forced the country to ask uncomfortable questions: If this law is meant to protect, why do so many feel threatened by it? and Is Accountability Even Possible?

The real test of any law is not just how it is written, but how it treats the people it governs. Under AFSPA, the scales of justice feel tilted one side wields the gun, the other must carry

proof. And in a land of power imbalances, that proof is often hard to come by the efforts have been made judicial rulings, government committees, and civil society movements.

6.4 Recommendation for improving Human Rights protection

Strengthening Security of Human Rights under the Armed Forces (Special Powers) Act (AFSPA) necessitates a mix of legal reform, oversight and institutional changes in Legal Reforms the modify AFSPA to add Human Rights provisions make the intent of "special powers" more definite so as to prevent abuse and added a sunset clause, pursuing periodic review and parliamentary sanction for extension and removal of legal immunity for human rights violation repealed amend section 6 of AFSPA, that gives security against prosecution without the central government's sanction.

It stipulates that abuse cases are being prosecuted in civilian courts, not only military tribunals and enacts recommendations of previous committees. The Jeevan Reddy Committee (2005) suggested repealing AFSPA and substituting it with a more humane act, the Santosh Hegde Commission (2013) found fake encounters in Manipur and urged tighter accountability and enhancing accountability mechanisms in the independent probe of human rights violations established special independent commission to inquire into complaints against security forces of strengthen the National Human Rights Commission (NHRC) by endowing it with enforcement powers Judicial Oversight & Fast-Track Courts ensures the Supreme Court's 2016 EEVFAM judgment (directing investigation of extra-judicial killings) is enforce and establish fast-track courts in AFSPA affected states to dispose of human rights cases civilian and parliamentary oversight parliamentary review committees in the form a Parliamentary Committee on AFSPA to review its implementation and impact regularly the state government role in AFSPA implementation empowers state governments to have more control over declaring "disturbed areas" rather than the central government it improved Training & Conduct for Armed Forces, human rights training and make human rights and conflict resolution training compulsory for all armed forces personnel deployed in AFSPA areas it specifies the strict enforcement rules of engagement and clearly demarcate when force can be employed, ensuring compliance with international Humanitarian Law.

Phased Withdrawal & Alternative Security Strategies and Gradual Revocation of AFSPA to emulate the Northeast model, where AFSPA has been phased out in some districts (e.g., Tripura, sections of Assam, Nagaland, and Manipur) it replaced AFSPA with new legislation balancing security necessity with human rights and introducing civilian policing bolster local police strengths and intelligence net to decrease reliance on the army for law and order and a

balance approach is necessary ensuring national security while protecting basic rights. Repealing increasing transparency, or amending AFSPA making those in possession liable and enhancing local governance can greatly increase protection of human rights²³

The AFSPA provides the army "special powers" that are being held to account utmost caution. The legislation gives the army the authority to fire to use lethal force for a short duration. Army personnel enforcing the AFSPA are exempted from allotments under other Laws of the IPC, the CRPC and Civil suits except for sanctions otherwise provided by the central government. The human rights dimension of this act also needs to be specially understood. Killings of civilians in insurgent areas are usually reported as "atrocities" committed by the Army. One should keep in mind that in most cases of counter insurgencies the rebel opens fire first he also takes shelter nearly always. In crossfire, civilian will get killed injured as in any war of zones

CHAPTER VII

CONCLUSION/SUGGESTION

7.1 Summary of findings and analysis

The Armed Forces Special Power Act came into force more or less initially to bring the situation in Nagaland into order with a broad feeling among the masses that the Act would be withdrawn after a year after insurgency movements have been brought into order. But nothing of that kind happened and the Act still remains in fashion in the majority of North-east India. AFSPA was challenged on the basis of its constitutional validity by filing motions petitions in the case of *Naga People's Movement of Human Rights v. Union of India (UOI)* before Supreme Court of India. It was held by a Constitutional Bench of Hon'ble Supreme Court of India that the AFSPA is not a Colorable Legislation. But the Court in the judgment regulations lines even personnel of the Armed Forces who work in AFSPA zones. These provisions were

23 The Armed Forces (Special Powers) Act, 1958 Act 28 of 1958, 11th September, 1958

https://www.satp.org/satporgtp/countries/india/document/actandordinances/armed_forces_special_power_act_1958.htm last visited on 12th march

made so that the Act would not perplex. The Supreme Court further held that the Act of 1955 in substance and essence in the view of a consideration of maintenance in public order enacted in exercise of legislative power and not challengeable. The court further held that review of the declaration of the disturbed area should be made from time to time before the expiry of six months. Most of the experts were of the opinion that AFSPA is against a list of significant documents of International Law such as the UDHR.

²⁴The ICCPR in the following referred to also as "ICCPR" The convention against Torture and principles especially pertinent customary law adopted Downey the UN Code of Conduct for Law Enforcement Officials, the UN Body of Principles for keepers of all human beings irrespective of any sort of detention and the UN Principles on Effective Prevention and Investigation of Extra-legal and summary killings. Its application under the Arms Forces Special Power Act to violate human rights is one of the primary reasons the Act is being protested, but a closer look at the legal perspective as well as the presented situation would be undertaken in the latter section of the paper. The act depicts thus far being active in much of the relatively stable parts of the nation. Even if there are sporadic outbursts of violence in such areas but that also can be effectively controlled with provisions under the Indian Laws. Large scale enforcement of the act and bringing the entire state under it only provides more opportunities of misusing the Act while defeating the purpose of the Act to use 'disturbed areas' only. The AFSPA-granted powers of search and arrest are also widely criticized, since it grants virtually unlimited detention powers to armed forces and constitutes another violation of Art 9 of the ICCPR. This can be justified in the way that no specific time limit has been given to prosecute persons arrested by the armed forces under custodial arrest, according to the act.

According to the covenant, under Art 9(3), a reasonable period of production to judicial authority and freedom is to be granted. But no such provision exists in the Act for protection of such rights. Likewise, the AFSPA is violative of provisions of Art 6 for protection of right to life, Art 7 prohibiting torture and Art 10 laying down a humane treatment to all. Such provisions of the ICCPR are nowhere existing. But AFSPA with such provisions arrest and indefinite in length of handing over to police contradict these provisions. Right to life is also in consideration violated in considering sanction to the soldier to inflict violence even if he himself is not immediately threatened to life. AFSPA is giving excessive powers to the army

²⁴ <https://amnestyinternational.com/>.

Facilitating rights violation <https://www.hrw.org/legacy/background/2008/india0808/> last visited on 2nd April 2025.

Supreme court cases.

with no adequate provision for seeking justices if there is a violation.

The immediate need of the day is a grassroots report to establish if such an Act is needed or not the North East Indian situation has been improving over the last few years and a ground level study and local discussions have to be done. Having in view the interest of National Security if at all there is any perception still left that the Armed Forces require special immunity, then the government will be compelled to make arrangements in order to bring a people freely act or make amendments in the presence act so that it can be brought to adjustment with the recommendations by the various commissions. But doing all such things keeping in view the people's view respect should be of utmost importance to avoid constant protest and allegations of abuse of power by the armed forces. Armed forces are for defense and people friendly relations and public goodwill can be the greatest help in the fight against anti-social elements.²⁵

7.2 Implications of the study for constitutional law and governance in India

The research on AFSPA is of utmost importance to Constitutional Law and Indian administration as a whole on matters pertaining to fundamental rights, federalism, judicial review and democratic accountability.

1. Constitutional Law implication and contradiction between Fundamental Rights and National Security Article 21 (Right to Life and Personal Liberty) AFSPA provides the security forces with the choice the use of the lethal force, which is a controversial point in the context of the violation of the Right to Life the Supreme Court has held that the excessive use of force has to be examined by the judiciary (Extra Judicial Execution Victim Families Association (EEVFAM) case, 2016) Article 14 (Right to Equality) Application of AFSPA in some reasons but not the other makes the legal system unequal and raises questions of discriminatory governance. Art 19 (Freedom of Speech and Expression).

2. Federalism and State Autonomy of the State of the State (Article 355 and 356). Art 355 has the duty of saving states from internal disturbances. AFSPA accords Union Government the authority to declare an area "disturbed" unilaterally without consulting the state, which

²⁵ <https://www.casemine.com/judgement/in/56eaa97607dba3c8ce3f479> last visited 4th April, 2025

undermines state autonomy.

3. Some states have resented the enforcement of AFSPA on the premise that it goes against cooperative federalism and Judicial Oversight and Due Process doctrine of judicial unaccountability caused by immunity provisions (Section 6 of AFSPA) being counter to checks and balance in governance principles. Courts were compelled to exert growing jurisdiction in AFSPA cases, emphasizing the necessity for security forces to operate within constitutional limits (e.g., EEVFAM case, *Naga People's Movement for Human Rights* case, 1997). Implications for India's Governance the Democratic Control and Civil-Military Relations AFSPA advances armed forces' control into civilian government at the cost of undermining democratic control.

4. AFSPA enacted in the long term contribute to a militarized governance system in the disturbed region. Limiting the scope of civilian governance.

5. Human Rights and Rule of Law it is human rights complaint of abuse under AFSPA has tried Indians International prestige, by institutions like UN Human Rights Council to reform and to urge the government to withstand local and international pressures in weighing security matter against Human Rights Protection. Legislative and policy reform of the committees (e.g., Justice Jeevan Reddy Committee, 2005) has recommended amendment or repeal of AFSPA to introduce more accountability and human rights safeguards for some.

6. Government withdrawal of AFSPA from Northeast, policy reform by gradual steps. Scholarship on AFSPA narrates deep contradiction between constitutional rights and national security. It is addressing government system reform efforts aimed at a balance of democratic accountability and counterinsurgency.²⁶ Judicial Activism, policy reforms and reconsideration goes the requirement of the laws in some manner could take Indian future action towards AFSPA in its political context.

7.3 Final remarks on the need for balancing National Security, Federalism and Human Rights

The Armed Forces (Special Powers) Act (AFSPA) is an example of the complexity of India's challenge to achieve a balance between national security, federalisms, and human rights. Though the act was meant to insurgency and disturbances its effectiveness for a longer duration has generated severe legal and ethical concerns. National security a legitimate concern to secure

26 Armed forces special powers act 1958 in Northeast India https://ijcrt.org/papers/IJCRT_189444.pdf
last visited 23rd march 2025.

national security is a constitutional duty (Article 355), and AFSPA has been applied in operations against insurgency in the northeast and Jammu & Kashmir. Measures of security, however, need to be proportional and temporary and not an ever-present aspect of government. Phasing out AFSPA in certain areas makes the case that security law-inspired must be constructed on changing ground realities the federalism is also providing increased autonomy to the state. The AFSPA provides the union government the power to call an area "disturbed", often overruling the faith of the state government. This undermines federalism and the state governments elected while ensuring internal security. Greater interaction with states involved in the decision-making process would preserve the principles of cooperative federalisms. Human Rights making sure of justice and accountability and AFSPA empowering security forces, its non-accountability has fueled charges of human rights abuse.

Judicial decisions such as the *EEVFAM* case (2016) have reminded us that AFSPA sanctioned excessive use of force is under judicial scrutiny which would ensure transparency, civilian accountability, and independent inquiry would ensure security operations in accordance with constitutional freedoms as well as rule of law, balanced approach to the bound procedure. AFSPA would have to be subject to regular parliamentary and judicial scrutiny to ascertain whether it was actually necessary, state focused approach to security policy states would be assigned a more powerful role when addressing security action in religion. and Institutional reforms amendment should have provisions for accountability, providing protection for human rights violation where required gradual demilitarization as security enhances governance should shift from military led to civilian led administration. India should achieve a fine balancing ensuring national security without undermining democratic values, state autonomy, human rights.

The future of AFSPA is not in its open-ended application but a balanced shifting policy that is consistent with Indian's constitutional pledge to justice, democracy and human dignity.²⁷

²⁷ <https://indiankanoon.org/doc/83144198/> last visited on 1st march, 2025

The logo of the International Journal of Law, Research and Advocacy (IJLRA) is a large, light blue watermark in the background. It features a central vertical element with horizontal bars at the top, flanked by two curved, wing-like shapes that curve upwards and outwards.

Annexure

Relevant legislative text (e.g., AFSPA,1958)

In Section 4 regarding the special powers of the Armed Forces, a commissioned officer, warrant officer, non-commissioned officer, or anyone of similar rank in the armed forces has the authority, in areas experiencing disturbances, to use force including lethal force if they believe it's necessary to maintain public order. This applies to anyone who is violating laws against gatherings of five or more people or who is found in possession of weapons.

Arrest without a warrant any individual who has committed a cognizable offence or in respect of whom there is a reasonable ground to suspect his having committed or being likely to commit an offence, enter and search any premises without a warrant for the purposes of arresting persons suspected or of the seizure of illegal weapons, explosives or other dangerous substances. Employ to other measures the need for the maintenance of public order.

Important judgement and case laws.

Naga Peoples Movement of Human Rights v. Union of India: Supreme Court upheld the

constitutionality of AFSPA but issued guidelines regarding its application thereto, held the court that AFSPA does not grant armed forces absolute immunity to personnel. Declaration of areas in disturbed status should be reconsidered after six months. Military must use the minimum necessary force and give notice of every use of force and report to the civilian authorities.

Extra Judicial Execution Victim Families Association (EEVFAM) v. Union of India (2016): charges of fake encounter in Manipur. The Supreme Court held that even in zones of war, security forces are not allowed to exercise excessive force and all such charges or extra judicial killings have to be investigated. It was a landmark judgement in bringing armed forces under the purview of AFSPA.

Indrajit Barua v. State of Assam (1983): Guwahati High Court held AFSPA to be constitutional but explained that its implementation must be in harmony with constitutional basic rights.

Luithukla v. Rishang Keishing (1988): The Gauhati High Court has ruled that a disturbed area needs to be notified on the grounds of objective facts and not imagination.

Reports from human rights organizations and committee

1. Jeevan Reddy Committee Report (2005): Commissioned by the Government of India. Recommend repeal of AFSPA, it was stated that AFSPA had become a symbol of oppression and misuse of power suggested incorporating necessary provisions into the Unlawful Activities (Prevention) Act (UAPA) instead.
2. Justice Verma Committee Report (2013): It was commissioned after the 2012 Delhi Gang Rape Case, it is examined sexual violence in conflict areas, recommended armed forces personnel should not have immunity in cases of rape and sexual crimes under AFSPA
3. Santosh Hegde Commission Report (2013): Commissioned by the Supreme Court of India investigated extra judicial killings in Manipur and was found that many encounters were staged and AFSPA was used to cover up human rights violations stated that AFSPA fails to address insurgency and only leads to alienation of local populations.
4. Amnesty International Reports: Consistently called for repeal or reform of AFSPA. It was documented cases of enforced disappearance, custodial killings and sexual violence in the Northeastern.

5. Human Rights Watch (HRW) Reports: HRW has urged the Indian government to repeal AFSPA and adopt measures to hold security forces accountable.



BIBLIOGRAPHY

Books

1. M.P.Jain, Indian Constitutional Law ,8th edition, Lexis Nexis 2018
2. V.N.Shukla, Constitution of India,11th edition,Eastern Book Company, Lucknow
3. . H.M.Seervai, The Constitutional Law of India
4. J.N.Pandey,The Constitutional Law of India, 57th Edition,Central Law Agency 5.
5. Sanijb Baruah, India against itself: Assam and the Politics of NationalityActs & Statute

Acts & Statute

1. THE ARMED FORCES (SPECIAL POWERS), ACT, 1958
2. THE ARMED FROCES (JAMMU AND KASHMIR), SPECIAL POWERS ACT, 1990
3. THE DISTURBED AREAS (SPECIAL COURT) ACT, 1976 (REPEALED)
4. UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967 (UAPA)

5. THE ARMED FORCES (ASSAM AND MANIPUR) SPECIAL POWERS AMENDMENT ACT, 1972 (7 OF 1972)
6. THE ARMED FORCES SPECIAL POWERS (EXTENSION TO UNION TERRITORY OF TRIPURA) ACT, 1970
7. THE REPEALING AND AMENDING ACT, 1960 (58 OF 1960)
8. INDIAN PENAL CODE, 1960
9. CRIMINAL PROCEDURAL CODE, 1973
10. THE NATIONAL SECURITY ACT, 1980
11. CONSTITUTION OF INDIA (44TH AMENDMENT), 1978

Articles (including news articles) & Editorials

1. AFSPA extended in Manipur, Nagaland, and Arunachal for 6 months; MHA <https://timesofindia.indiatimes.com/india/afspa-extended-in-manipur-nagaland-and-arunachal-for-six-months-mha/articleshow/119751848.cms> 19th feb, 2025
2. Explained: What is AFSPA, and why are states in Northeast against it? <https://indianexpress.com/article/explained/nagaland-civilian-killings-indian-army-repeal-of-afspa-northeast-7661460/> 16th feb, 2025
3. Explained: what is AFSPA, and why are states in NE against it? <https://www.shankariasparliament.com/blogs/pdf/explained-what-is-afspa-and-why-are-states-in-northeast-against-it> 3rd April, 2025
4. A look at the AFSPA in the Northeast <https://www.deccanherald.com/india/a-look-at-the-status-of-afspa-in-northeast-states-1221678.html> 2nd feb, 2025
5. https://www.mha.gov.in/sites/default/files/armed_forces_special_powers_act1958.pdf 25th march, 2025

6. <https://byjus.com/free-ias-prep/understanding-the-armed-forces-special-powers-act/> last visited 1st April, 2025
7. AFSPA Extended in Nagaland. <https://www.northeasttoday.in/2025/04/01/armed-forces-special-powers-act-extended-to-one-more-district-in-nagaland/> last visited on 15, feb, 2025
8. <https://nenews.in/nagaland/afspa-extended-to-one-more-district-in-nagaland/22751/> 24th march, 2025
9. <https://www.iosrjournals.org/iosr-jhss/papers/Vol.28-Issue12/Ser-1/O281201101103.pdf> 4th march, 2025
10. What is AFSPA, Demand of its repeal, and Constitutionality <https://www.writinglaw.com/about-afspa/> last visited on 18th March, 2025
11. Citizens, the Smoking Guns of AFSPA and Bare Life in Northeast India 2020 <https://journals.sagepub.com/doi/abs/10.1177/0038022920956746> last visited 1st April 2025,
12. Facilitating Rights Violation <https://www.hrw.org/legacy/backgrounder/2008/india0808/> last visited on 2nd April, 2025
13. The Armed fORCES (special powers) Act, 1958 Act 28 of 1958, 11th September, 1958 https://www.satp.org/satporgtp/countries/india/document/actandordinances/armed_force_s_special_power_act_1958.htm last visited on 12th march
14. Armed forces in Northeast India special powers Act, https://www.researchgate.net/publication/329972942_Armed_in_Northeast_India_Special_Powers_Act_or_No_Act last visited on 11st feb 2025
15. Armed forces special powers act 1958 in Northeast India https://ijcrt.org/papers/IJCRT_189444.pdf last visited 23rd march 2025.
16. <https://indiankanoon.org/doc/83144198/> last visited on 1st march, 2025
17. <https://www.casemine.com/judgement/in/56eaaa97607dba3c8ce3f479> last visited 4th April, 2025
18. <https://indiankanoon.org/doc/1766147/> 4th April, 2025 last visited on 14th march,25
19. S.R.Bomma v union of India <https://indiankanoon.org/doc/60799/> last visited on 26th April 2025
20. AFSPA the need for the hour or a social evil <https://hubnetwork.in/is-afspa-the-need-of-the-hour-or-a-social-evil/> <https://www.sconline.com/> last visited on 18th feb 2025

Website Referred

21. <https://thehindu.com/>
22. <https://timesofindia.indiatimes.com/>
23. <http://www.hindustantimes.com/>
24. <http://theeconomictimes.com/>
25. <http://amnestyinternational.com/>
26. <https://www.indiatoday.in/>
27. <http://mha.gov.in/>
28. <https://blog.ipleaders.in/>
29. <https://iosjournals.org/>
30. <https://researchgate.net/>
31. <https://lawjournals.net/>
32. <http://hrw.org/>
33. <http://ipr.nagaland.gov.in/>

34.

1. Journal of Indian Legal Studies
2. Journal of Constitutional and Parliamentary Studies
3. Economic and political weekly (EPW)
4. Journal of Human Rights and Law
5. Supreme Court Cases (SCC Journal)