

Assessing the Desirability of the Armed Forces (Special Powers) Act, 1958 in Manipur and Nagaland

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Abstract

Specifically, the Armed Forces (Special Powers) Act, 1958 (AFSPA) enacted originally to quell insurgencies allows Indian security forces to work with minimal local oversight in “disturbed areas” declared under the act. Posing as a critical evaluation of AFSPA’s continued implementation in Manipur and Nagaland, the regions have been plagued by protracted conflict and socio-political instability, this article provides an analysis upon the rights of Afro Indians living in Manipur and the role AFSPA played in curtailing basic civic and political rights granted to them. The analysis employed a qualitative doctrinal research methodology that uses constitutional provisions, judicial pronouncements, scholarly literature, human rights bodies reports. It comes to light that AFSPA’s provisions (i.e. to use lethal force, make warrantless arrest etc) violate constitutional guarantees and international human rights standards. Severe implications are also found such as entrenched militarization of governance, escalation of ethnic tensions, systematic abuse of human rights and eroding of faith in democratic institutions. Despite efforts undertaken by the judiciary to mitigate the abuses, AFSPA continues to promote cycles of violence, underwrites democracy, and does little to address any cause of the insurgency. The argument for all-out reform or repeal of AFSPA is compelling; instead this research calls for alternatives in the conflict resolution framework centred on human rights, responsibility and community led governance. AFSPA, however, is completely incompatible with contemporary democratic values and human rights norm. It needs to be reconsidered at the earliest.

Keywords: AFSPA, Insurgency, Human Rights, Constitutional Law, Manipur, Nagaland.

Introduction

One of the most controversial legislations within post independent India’s counterinsurgency framework is The Armed Forces (Special Powers) Act, 1958 (AFSPA). As originally framed, AFSPA empowered military and paramilitary troops with extraordinary power in ‘disturbed’ areas meant to nip separatist movements in the Naga Hills in the bud. Such powers include the right to use deadly force, warrantless arrest, warrantless search and seizure and of course extensive immunity from prosecution [1]. AFSPA’s genealogy is colonial emergency governance, that is, the Armed Forces (Special Powers) Ordinance, 1942, used by the British to put down the Quit India Movement [2]. AFSPA therefore symbolizes the continuation of the tactics of governance during the colonial time to the postcolonial time in India, where security falls above civil liberties [3].

AFSPA does not so much in its legislative provisions, as it does in socio political implications and democratic structures Prone impact in regions like Manipur, Nagaland. For decades of insurgency and related state responses (under AFSPA), there has been deep mistrust between civilians and the state apparatus, [4]. As seen rather than making a breakthrough in achieving sustained peace or political reconciliation, AFSPA in fact has fuelled further unrest and tensions, or actively or clearly exacerbated separatist sentiment and ethnic cleavages [5].

Given AFSPA's extended implement beyond its initial temporary intent it is critically necessary to assess AFSPA. International scrutiny of the Act has been sustained, both at home (by India's Supreme Court, national human rights institutions) and abroad, including by Amnesty International and the United Nations Human Rights Council [6]. These criticisms are continually been present addressing the inevitable divides that AFSPA's operational independence of security forces, on one hand, and the constitutional protection of fundamental rights — all particularly in light of the right to life, and equality before the law under Articles 14, 19, and 21 of the Indian Constitution — on the other hand.

Thinking critically about AFSPA is to examine its rationale beyond its immediate security rationale, in order to examine what broader constitutional and ethical ramifications are created. The fact that AFSPA is continued to be invoked raises questions: does it pass the democratic standards test? Can it be helpful or more harmful to insurgency? Are its provisions in line with international human rights obligations? To answer these questions it involves the evaluation of AFSPA's legal legitimacy, its socio political consequences, and its human rights record thus integrating a critique of the policies of the State with regard to AFSPA [8].

Furthermore, the prolonged application of AFSPA in Manipur and Nagaland necessitates understanding its implications not only as a domestic security strategy but as a reflection of deeper political and governance failures. Strong studies indicate that show how militarization is persistent to its civilian governance and democratic accountability and perpetuates institutional impunity [9]. This has been a big source of such critiques and, a call to make a transition from security centric governance to conflict resolution frameworks rooted in human rights, closer to the norms around the globe [10].

The introduction ends with a diagnosis of the most important themes of this study, constitutional legitimacy, socio-political impact, and human rights considerations. AFSPA is unconstitutional as it is challenging the fundamental principles of equality and accountability. Socio-politically, the Act increases ethnic fragmentation while weakening the basic local governance institutions. Systematic abuse and state sanctioned impunity are completely at odds with human rights terms and a serious contradiction with India's democratic ethos. Thus, this article is not only critical of AFSPA itself, but also explores potential alternatives in an effort to spark dialogue on replacing AFSPA with accountable, democratic and human rights based policies. In this way, it fills a critical gap in the literature on how democracy handles insurgency and conflict and at least partly seeks to reiterate the demand for such policy reform in democratic India's approach to dealing with conflict and insurgency.

Literature Review

An exploration of the literature on Armed Forces (Special Powers) Act (AFSPA), 1958 is rich but varied with critical analysis in legal, historical and socio political dimensions. For example, Legal scholars such as Chopra have emphasized many times AFSPA's abhorrent legal structure, arguing that judicial interventions are largely unsuccessful to monitor security forces under the Act [12]. The complement to this view is that the provisions of AFSPA are extremely controversial and AFSPA's very provisions that

give absolute legal immunity to military personnel significantly impinge on India's constitutional commitment, especially the right to life and personal liberty which is enshrined in Articles 14, 19 and 21 [11].

AFSPA persists, and is problematic, but this is also the case for a number of reasons: historical scholarship offers an important perspective. Spacek demonstrates that AFSPA is the product of India's colonial period history of employing emergency laws to quell dissent through military force, rather than through the democratic will of the masses [13]. Intending to extend this historical critique further, Lurie theorizes AFSPA as a modernization of a 'state of exception', which suspends normal constitutional order for as long as the state considers it necessary and has important implications for the legitimacy of the implicit ANW rule in a democratic polity [14].

As regards to socio-political impact, all the previous studies reveal that AFSPA has negative impact on local governance and ethnic harmony. AFSPA is also pointed out by Gogoi as one of the instruments aggravating ethnic tensions in Northeast India and, thus, the Act itself rather than creating peace, usually works towards aggravating community mistrust and hatred of each other by what is perceived to be the forced reaction of the law [15]. In an ethnographic investigation, Bhattacharyya also demonstrates how each day's interaction under AFSPA creates the ground on which violence is normalized, separation between communities and security forces is perpetuated, and trust in governance institutions is eroded, perpetuating cycles of violence and resistance [5].

As shown by Devi, Lanzet, and Pulla, gender perspectives expound on the severe side effects of AFSPA on gender, including sexual violence, intimidation and psychological damage that are experienced severely by women in an amplified way against broader societal issues of vulnerability and community cohesion. Such gender sensitive critiques are important because they highlight an important dimension to talk about how militarized governance structures affect people that is typically overlooked.

Comparative analyses from the international level also provide valuable insights for AFSPA; AFSPA must be placed in a global framework of counterinsurgency and emergency legislation. Through his comparative study, Ginsburg and Versteeg demonstrate that despite stringent securitizing laws like US PATRIOT Act, even those of the democratic context have robust judicial oversight mechanisms (unlike AFSPA), which in turn emphasize the primary accountability gaps within the AFSPA structure [17]. In his analysis of militarized governance in the Philippines, Arugay renders further how similar informal civil-military networks dissolve democratic processes, thus providing important lessons for Northeast India's context [18].

Though debated indirectly and extensively in the literature, a few research gaps remain. The current literature tends to study either the human right violations or AFSPA's historical and legal aspects in isolation, without a holistic and analytical approach amalgamating these with immediate practical policy recommendations for actual action. The existing international comparative studies, however, rarely and explicitly propose alternative frameworks adapted to the Indian state, and in particular to the socio-political environment of Manipur and Nagaland.

Hypothesis and Objectives

This article's central hypothesis is that the continuing use of the Armed Forces (Special Powers) Act, 1958 in Manipur and Nagaland does not respect constitutional provisions, deepen socio-political instability, and enshrine systemic human rights abuses, failing in its aim when it was introduced to secure peace and security. The present AFSPA, in its current form is completely against the democratic principles,

encourages militarized governance, and makes definable structural checks on the military which systematically erodes civilian trust, thus putting up an urgent need for substantial reform or repeal.

A number of specific objectives are pursued by the research to thoroughly test this hypothesis. The first aspect is by and large about the constitutional legitimacy of AFSPA and it takes up the conflicts of AFSPA in Articles 14 (Right to equality), 19 (Freedom of movement and expression) and 21 (The right to life and personal liberty) in a critical way. The analysis secondly looks at the socio political impacts of AFSPA, its role in adding to the intensification in ethnic divisions, the erosion of governance institutions and civilian mistrust of the state. Finally, the study records documented violations of human rights under AFSPA as documented in reports of credible national and international bodies (Amnesty International, United Nations Human Rights Council). Fourth, it studies the Judiciary's efforts to check AFSPA's excess, looking at important Supreme Court cases, among other things, and its limitations. The research in the final part attempts to further suggest different forms of governance and peacebuilding through a comparative international study, prioritizing human rights approach and bottom up led governance model. The article thus helps fulfil these objectives and contributes to existing scholarship in that it supplies integrated views on AFSPA's impacts and recommends actionable policy reforms.

Research Methodology

This article focuses on a qualitative and doctrinal research methodology that is employed reviewing primary legal texts, constitutional provisions, judicial decisions, academic literature, and human rights reports. It is particularly well suited for addressing the central research questions regarding AFSPA's constitutional legitimacy, its interpretation by the judiciary, its compatibility with India's democratic and human rights obligations.

Primary legal sources include the Constitution of India (Article 14, 19, 21 and 32), Armed Forces (Special Powers) Act, 1958 and key judicial pronouncements, Naga People's Movement for Human Rights v. Union of India. Union of India [8] and Extra Judicial Execution Victim Families Association v. Union of India [19]. Normative frameworks for evaluating AFSPA's implications in terms of the human rights, and international legal instruments including International Covenant on Civil and Political Rights, 1966 [20] and Universal Declaration of Human Rights, 1948 [21] are also available.

To boost the robust variant of the analysis, the comparative method is used to locate AFSPA next to the global counterparts, namely the USA PATRIOT Act (USA), Emergency Provisions Act (UK), and the Prevention of Terrorism Act (Sri Lanka). The comparative angle brings about crucial flaws of AFSPA's structure, which includes deficiencies of judicial oversight, democratic checks and balances, and accountability lastly.

Scholarly literature and authoritative reports prepared by the international and national human rights organizations like Amnesty International [6], Human Rights Watch [9], and National Human Rights Commission of India [10] are secondary sources. Next, they chose these sources because they were relevant for ethnic specificity, credible, and provided detailed analysis on how AFSPA is implemented as well as its effects.

It makes possible a comprehensive scrutiny of AFSPA both doctrinally and comparatively, at the same time, legal, socio-political and human rights frames. However, this kind of methodological approach also supports easily a rigorous academic inquiry which in turn it ensures a high practical relevance, offering concrete information which can be used for policy formulation and reform.

Critical Analysis and Discussion

Several inherent conflicts with India's constitutional guarantees, particularly Articles 14, 19 and 21, are presented by the Armed Forces (Special Powers) Act, 1958 (AFSPA). According to Article 14 of Indian Constitution, the laws of India shall be equal and for all and for respectively all. However, AFSPA's applied only in selected regions — like Manipur and Nagaland — and without addressing all the areas of insurgencies, creates a doubtfulness about discrimination and equality [7]. This has not only fuelled the perceptions of ethnic discrimination, but has seriously undermined the constitutional ethos of citizenship by equalizing, thereby relegating Northeast India into a permanent state of exception [14].

AFSPA fuels the silencing of freedoms of movement, expression and assembly guaranteed by Article 19, though ARTs extensive powers of arrest, detention and restrictions on movement without due judicial oversight. Such unchecked powers severely limits civic engagement, political dissent, freedom of expression and all other components of a functioning democracy [7]. The freedoms concerned by AFSPA are curtailed effectively and the civilian spaces in Manipur and Nagaland are made into militarised zones in which democratic freedoms are severely curtailed [5].

Article 21, the most critically important, that is right to life and personal liberty, is totally compromised under AFSPA's provisions, particularly Section 4 that allows the use of lethal force with the least accountability. The landmark cases like Naga People's Movement for Human Rights v. This power has consistently been criticised by Union of India [8], the need for procedural safeguards being emphasised. Even the Supreme Court efforts, however, have had limited success [12], the unwillingness of executives to implement reforms. Similarly, in Extra Judicial Execution Victim Families Association v. In the second instance, the Supreme Court once more settled that extrajudicial killing under AFSPA is in violation of the right to life, particularly under Union of India [19]. However, despite these obvious judicial directives, there are inadequate practical mechanisms of enforcement and political will to legally and sanction security forces for the crimes, thereby entrenching impunity [10].

Apart from legal controversies, AFSPA has significant implication on the state of socio politics in Manipur and Nagaland. The prolonged enforcement has allowed the creation of a governance model that relies very much on military oversight and not civilian authority. Progressively, local governance structures and administrative bodies have been unable to effectively challenge the military's growing role in local governance. Similar erosion of democratic oversight, as Arugay shows through other cases, such as the Philippines, consistently results in a weakened state legitimacy and civilian distrust, both in the Northeast India under AFSPA [18].

The civil-military relations have become extremely bad as well. Due to persistent mistrust between local populations and military and central government authorities, the latter have institutionalized armed forces' dominance over civilian institutions, which is justified in terms of security, leading to their institutional dominance. In describing how AFSPA institutions enable the everyday interactions of civilians with a military interested only in will and force rather than in governance, Bhattacharyya shows how these normalize mistrust and enmity and create the conditions for further regional governance instability and severe set backs to the prospects for long term peace [5].

The presence of AFSPA has increasingly been a cause of ethnic tensions within these regions. The militarized approach may instead only aggravate the problems that have led to insurgency in the first place. Among other things of course, AFSPA instigates resentments and exacerbates stereotypes of ethnic targeting, hence significantly reinforcing cross communal pilgrimages [15]. In the approach, AFSPA not only fails to unify different communities around a common security framework but it selectively and

aggressively implements so that further divisions and entrenchment of communal grievances continue to fuel cycles of violence and retribution.

One of the most pungent criticism of AFSPA is its long record of human rights abuses recorded by a number of national and international bodies. Security forces have routinely been accused of grave human rights violations in Army Rules of Engagement (ROE) such as extrajudicial killings, torture, sexual violence, wrongful arrests and detentions. Amnesty International has issued explicit reports naming AFSPA as a legislation which permits the systematic human rights abuses by giving excessive legal immunity to the military and obstructing justice for the victims and extending cycles of violence [6].

Similar criticisms were made by Human Rights Watch that AFSPA is responsible for patterns of enforced disappearance, extrajudicial executions and custodial torture. Legal protections under AFSPA Section 6, in particular the need for prior government sanction for prosecution—a sanction rarely granted [9], make these abuses rare targets for investigation and prosecution. This structural impediment houses a systematic impunity from abuses, its perpetuation unfiltered, diminishes the credibility of democratic institutions as well as denies India the fulfilment of its obligations in ratifying the International Covenant on Civil and Political Rights (ICCPR) [20].

It is also particularly severe, so it is gender based violence under AFSPA. In Systematic sexual violence perpetrated by armed forces, devi, Lanzet, and Pulla document the extent of the occurrence and the psychological and social destruction caused to indigenous women by systematic sexual violence perpetrated by armed forces [16]. This is often violence used as an instrument of control, intimidation and suppression, directly in contravention with international human rights standards, and severely damaging its claim to be a force for building community trust with its authorities.

For years, the United Nations Human Rights Council and UN Special Rapporteur on Extrajudicial Killings have repeatedly called on India to repeal or significantly amend AFSPA, on grounds of its incompatibility with international human rights law and, indeed, high socio-political cost on affected communities [24]. It continues to be used and thereby places India in flagrant violation of the fundamental norms of international human rights that are in many ways central to India's world reputation as a democratic force and the claim to the rule of law [20].

The critical examination presented then sums up to expose AFSPA to its inextricable legal contradiction, adverse social political impact and widely gross human rights abuse, all affirmative of the fact that AFSPA has no fit in the sense of democracy. Not only does it legalize constitutional guarantees but it destabilizes the structuring of regional governance and ethnic tensions, and systematically violate the basic human rights, all that calls for immediate legislative and policy reform.

Comparative International Perspective

Little attention has been given to the critical examination of AFSPA from an international comparative perspective due to the striking deviation of AFSPA from global democratic norms of counterinsurgency operations. Emergency and counterinsurgency laws have been adopted internationally, but democratic states' enforcement of them typically include such conditions as robust safeguards, transparency, judicial oversight and temporal bounds that are lacking in AFSPA [25]. For example, even in protracted conflicts, as in the case of the Northern Ireland Emergency Provisions Act, the United Kingdom has proved that even in terms of length, democratic accountability and judicial oversight were not jeopardized to a great extent. This British framework, facing controversies and criticism, had introduced regular parliamentary review, supervene of the judiciary, and transparency in reporting. Together, these features of the Act in no

way permitted anything close to systemic impunity and rights abuses, while in stark contrast to AFSPA's murky and unshunnable operational framework.

Just as in the United States, the USA PATRIOT Act granted wide powers in response to terrorism, but they still came under substantial judicial review, legislative oversight, and sunsets for periodic review of their utility [17]. Among other things, Ginsburg and Versteeg show how the US judicial system does not hesitate to rein in executive powers in response to disasters or crises like the period immediately following 9/11 by invoking rigorous procedural safeguards and robust protection of civil liberties. Finally, just as AFSPA attacked a basic institutional check and balance framework by keeping power out of bounds and out of reach, this ongoing institutional check and balance framework effectively minimized the possibility of systematic abuses of power and accountability, marking a contrast with AFSPA's unbounded, unending, unchecked deployment.

On the opposite end stand the Sri Lankan Prevention of Terrorism Act (PTA), widely censured internationally for violations of widespread human rights that are also comparable to AFSPA. Similarly, during his tenure, human rights abuses under the PTA are also documented by Human Rights Watch extensively with extrajudicial killings, arbitrary detentions and torture both of which are very much similar to the ones being reported under AFSPA [9]. The PTA, on the other hand, was unlike AFSPA in that although it had intense international scrutiny installed it also took steps to reform the act incrementally and under international pressure. India's persistent unwillingness to follow suit, despite similar foreign criticism, cannot serve as a sufficient explanation for why AFSPA, dubbed the 'bibilim of democracies,' was allowed to continue.

The insights from international counterinsurgency practices though lend a clear trend to integrate democratic oversight, accountability, transparency; and human circles (sic) standards within emergency legislation. The persistence of AFSPA in its original, for the most part unaltered form, is indisputably indicative of a massive institutional inertia as well as disbelief with respect to the changing international human rights norms and democratic ethos. Bodies, such as Amnesty International and the UN Human Rights Council, recommend explicitly, or even require in the case of the UN Human Rights Council, either the repeal or reforms of AFSPA in line with international standards, arguing that democratic states should take no role in civilian governance via the military without strict judicial oversight.

Therefore, it is an anomaly within the global democratic contexts, and it still allows India to deny its international credibility on human rights and rule of law. India needs to take critical lessons from international experience, adopt effective democratic oversight mechanisms and procedural safeguards as specified in its security legislations to maintain legitimacy as a democratic state committed to constitutional governance and adherence to international human rights standards.

Recommendations and Pathways to Reform

On the basis of the comprehensive critique presented, the case for legal amendments or repeal of AFSPA becomes inevitable as a path of democratic reform and sustainable peacebuilding in Northeast India. Explicitly, the AFSPA is recommended by the Justice Jeevan Reddy Committee (2005) to be repelled, because its powers are too extensive and have ultimately become counterproductive, they aggravate conflicts rather than settling them [6]. The fact that it is so relevant to this day, AFSPA is still exuding much of its effects, in that it persists to disturb meaningful governance reforms and to aggravate socio-political tensions.

However, repeal or significant reform of AFSPA would have to rely on substantial political resolve as we-

It is as legislative action to remove Section 6 from AFSPA, leading to ceasing any kind of accountability. Any new legal framework would have to have enhanced judicial oversight, clearly defined operational guidelines and strict procedures for finalising areas as disturbed. If passed, these amendments would extensively restrain arbitrary military power, obliging them to comply with constitutional and international human rights' standards [22].

But changing AFSPA will not be sufficient. Simultaneously the complementary strategies based on international best practices in conflict management, transitional justice and peacebuilding should be implemented. As rightfully used in post-conflict societies around the world, community based conflict resolution mechanisms are viable. Facilitating reconciliation and trust building may be possible through civilian led peace committees, dialogue forums and truth seeking processes [7] which engage the local communities.

Further effective mechanisms for accountability, reconciliation and community healing and that could be implemented, include transitional justice models which have proved successful in settings of post conflict, for instance South Africa and Colombia. They are urgent: truth commissions that 'transparently' document abuses, reparative justice measures to give to victims their rights and institutional reforms for rebuilding trust between citizens and state institutions [26]. This type of transitional justice framework is particularly applicable to Manipur and Nagaland where concrete ways for addressing the AFSPA's traumatic legacy in a constructive manner could be attempted.

Moreover, reflection of military governance structures in lawmaking also requires demilitarization of civilian governance structures. Decentralization would strengthen local governance, create pressure on military intervention, and transfer its dependence from the reliance on military force to civilian law enforcement agencies; all of which promote sustainable peace through democratic governance and in terms of respect for right to human life, freedom of conscience and expression [27]. Training of civilian police forces in conflict sensitive policing on the one hand, and promotion of inclusive governance model combining different ethnic groups on the other will greatly ameliorate the situation of ethnic tensions as well as foster confidence among the community.

Conclusion

This article critically assessed AFSPA's contradictory trend with Indian constitutional guarantees, adverse socio – political impact, wide human rights violations and departure from international democratic norms. By exploiting AFSPA's initial intent of re-establishing public order in a limited time frame, the scope of AFSPA has been extended to the point of become permanent militarised governance system which has majorly aggravated the trends of ethnic tensions and impunity of violence vis-a-vis democratic institutions. This evidence, among other things, compels the need for substantial reform or repeal of AFSPA in order to safeguard constitutional rights, restore democratic governance, and uphold international human rights commitments.

And continued application of AFSPA in such a manner is a direct challenge to Indian democracy, a signal to international community that India is tacitly accepting rights violations on the systemic level, and insult to its constitutional establishments. Solidary with Global day against forced disappearances, the act has inherent legal anomalies, exacerbated socio political divisions, and documented abuses which require and immediate response of legislative and policy interventions. The viable alternatives for India lie in the clear pathways leading to the accountable, transparent and democratic frameworks for conflict management that our country has been brought up to believe are international best practices.

However, practical, sustainable solutions in their place would be adopting community based peace building initiatives, transitional justice frameworks and strengthened civilian governance structures instead of AFSPA. Since they fit better with rule of democratic principles and international standards of human rights, and are more likely to result in permanent peace, stability and community reconciliation in Manipur, Nagaland and other conflict hit areas, these alternative frameworks promise greater promise for peace.

Overall, India confronts an imperative necessity in this shape: continuation of AFSPA safeguards institutionalized repression, consolidates conflict, and erodes the democratic legitimacy; alternatively, repeal or strong reformatory of AFSPA accompanied by major transformative justice taking and inclusive peacebuilding approaches round open the field for principled democratic governance, safeguarding human rights and realizing emancipatory peace, spanning. That choice taken at this moment will shape India's democratic future and its place on the international human rights stage.

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