

The Armed Forces (Special Powers) Act in Nagaland: Constitutional, Legal, and Human Rights Perspectives

Imtimatsung

Assistant Professor, Department of Political Science, Jubilee Memorial College

Abstract

The Armed Forces (Special Powers) Act (AFSPA), enacted in 1958 as a temporary security measure to counter insurgency in India's Northeast, has remained in force in Nagaland for over six decades, raising profound constitutional, legal, and human rights concerns. This paper critically examines the legal foundations of AFSPA, its compatibility with fundamental rights under the Indian Constitution, and its compliance with international human rights obligations. Drawing on judicial pronouncements, government reports, and personal testimonies, the study argues that AFSPA institutionalises impunity, erodes democratic accountability, and perpetuates intergenerational trauma among the Naga population. The analysis explores how the partial withdrawal of AFSPA in 2022 and its subsequent re-extension in 2025 reflect an ambivalent state policy oscillating between peacebuilding rhetoric and militarised governance. Personal narratives illustrate the lived experiences of violence, fear, and civil resistance under prolonged military presence. The study concludes that AFSPA has outlived its original mandate and now functions more as a political instrument than a security necessity. It calls for a rights-based approach to internal security grounded in constitutional values, transitional justice, and institutional accountability. The findings contribute to broader debates on federalism, state violence, and the challenges of democratisation in conflict-prone regions.

Keywords: AFSPA, Constitutional Law, Human Rights, Militarisation, Nagaland

1. Introduction

One of the most contentious and long-standing pieces of legislation the Indian government has enacted to address internal security issues is the Armed Forces Special Powers Act (AFSPA) of 1958.

Originally enacted as a temporary provision to quell insurgent activities in the Naga Hills, its continued presence in Nagaland for over six decades has invited sharp criticism from legal scholars, human rights organisations, and local civil society. The Act grants extraordinary powers to the armed forces to operate in 'disturbed areas,' including the authority to use lethal force, conduct warrantless arrests, and enjoy immunity from prosecution. While its defenders argue that AFSPA is a necessary tool for ensuring national security and territorial integrity, its critics contend that it has institutionalised impunity, curtailed civil liberties, and exacerbated alienation among the Naga population.

In the context of Nagaland, AFSPA has evolved from being a security measure to a symbol of state control, often perceived as a colonial relic that undermines democratic values. This paper undertakes a critical exploration of AFSPA's constitutional and legal framework, its human rights implications, and the lived

experiences of the Naga people who have endured generations of military excesses. Through an examination of judicial pronouncements, governmental commissions, and recent policy shifts, the study aims to assess whether the continued enforcement of AFSPA is legally justifiable and ethically sustainable in a society that has adopted democracy.

2. Research Methodology

This study adopts a qualitative, interdisciplinary methodology combining doctrinal legal analysis with primary, field-based insights. It examines constitutional and statutory texts, landmark judgments, and policy documents to assess the legal and human rights dimensions of AFSPA. Primary data in the form of personal testimonies from individuals affected by AFSPA in Nagaland were collected through interviews. These narratives provide critical insight into the lived experiences of militarisation, trauma, and civil resistance. Secondary sources, including government reports, academic literature, and human rights documentation, were used to support contextual and historical analysis. The combination of legal scrutiny and grassroots voices enables a comprehensive understanding of the Act's impact.

3. Legal and Constitutional Basis of AFSPA

3.1. Origin and Scope

The AFSPA was enacted by the Indian Parliament in 1958 under Article 246 of the Constitution and Entry 1 of the Union List in the Seventh Schedule, which grants the central government authority to legislate on matters related to the armed forces. This was initially designed to address the escalating insurgency in the Naga Hills, but its ambit gradually extended to other northeastern states. AFSPA empowers the governor of a state to declare any region within a state or union territory as “disturbed” under Section 3 of the Act. This declaration provides the legal ground for the deployment of armed forces in aid of civil administration. The provision to declare an area “disturbed” lacks stringent procedural safeguards and is often criticised for being vague and open to misuse. In the case of *Inderjit Barua v. State of Assam* (AIR 1983 Del. 514), the court emphasised the need for legislative guidelines in such declarations. Furthermore, the Supreme Court in *Naga People's Movement of Human Rights v. Union of India* (AIR 1998 SC 431) ruled that such declarations must be reviewed every six months to prevent indefinite application.

3.2. Special Powers Granted

AFSPA confers sweeping powers to the armed forces under Section 4 of the Act. These powers include the power to apply deadly force to anyone who violates the law or is carrying a weapon (Section 4[a]), the authority to make a warrantless, suspicion-based arrest of someone (Section 4[c]), the authority to seize property and enter and search any location without a warrant (Section 4[d]). Furthermore, Section 6 of the Act shields members of the armed forces from prosecution, stating that no case can be brought against them without the Central Government's prior consent.

This clause has been criticized for fostering a culture of impunity, making it nearly impossible to hold security personnel accountable for violations committed during operations. The combined effect of these powers has led to widespread allegations of human rights abuses, arbitrary detentions, and extrajudicial killings, particularly in regions like Nagaland, where the Act has been enforced for decades. Critics argue that such absolute authority, devoid of institutional checks, stands in direct conflict with the principles of constitutional democracy.

4. Constitutional Challenges

4.1. Fundamental Rights under Threat

The AFSPA raises significant constitutional concerns, particularly regarding its compatibility with the rights enshrined in Part III of the Constitution of India. Critics express that the sweeping powers granted to armed forces under AFSPA conflict with the core principles of equality, liberty, and due process.

Article 14 of the Constitution guarantees equality before the law and equal protection under the law. However, AFSPA facilitates differential treatment of citizens residing in 'disturbed areas' by authorizing extraordinary powers of surveillance, arrest, and use of force. This results in arbitrary and unequal application of the law, thereby undermining the principle of legal uniformity.

Article 21, which protects the right to life and personal liberty, is also compromised under AFSPA. The provision to use lethal force against individuals based on suspicion, without prior judicial review, presents a direct violation of this right. Numerous instances of custodial deaths, extrajudicial killings, and enforced disappearances have been recorded in areas under AFSPA, particularly in Nagaland, reinforcing concerns about unchecked executive power.

Article 22 safeguards individuals from arbitrary arrest and detention. Yet, AFSPA permits arrests without warrant and grants military personnel the discretion to detain individuals indefinitely without immediate judicial oversight. This gets around the procedural protections that are the cornerstone of the criminal justice system in a democracy.

In *Naga People's Movement of Human Rights v. Union of India* (1997), the Supreme Court upheld the constitutionality of AFSPA but laid down certain procedural safeguards, including the requirement for regular reviews of 'disturbed area' declarations. Nonetheless, the Court refrained from striking down the Act, instead urging the government to exercise its powers with restraint. Despite this, violations continue unabated, raising questions about the effectiveness of judicial oversight in curbing abuse of power. Overall, the constitutional challenges posed by AFSPA underscore the need for legal reform that aligns national security measures with fundamental human rights. A democratic polity cannot afford to endorse laws that permit excessive state control at the cost of civil liberties

5. Human Rights Implications

5.1. Domestic Framework and Institutional Critiques

The AFSPA is a serious issue in terms of domestic mechanisms of human rights protection. AFSPA contradicts the fundamental goals of the Protection of Human Rights Act, 1993, which is to "protect the dignity, respect, freedom, and accountability of public institutions and individuals." Most significantly, the 2005 Justice Jeevan Reddy Committee Report characterised the AFSPA as a "symbol of oppression" and recommended that it should be repealed in its entirety. The Committee concluded: "Under the aegis of AFSPA, an environment was created in which oppression, hostility, and suppression of rights were permitted. The AFSPA has led to deep distrust between the civilian population and the Indian state and has led to disenfranchisement and alienation of local communities in the Northeast."

In the context of Nagaland, the potential for human rights violations is compounded by the protracted Indo-Naga political conflict. Over the decades, repeated instances of custodial torture, arbitrary detention, and extrajudicial killings have been reported. These violations may be broadly categorized into three historical phases: (a) the implementation of the Nehru-era "iron policy" (1953-1954), (b) the imposition of Emergency Rule (1970-1975), and (c) the fallout from the Shillong Accord of 1975, which continues

to influence the current political climate. Each phase witnessed systemic abuses that were largely shielded from public scrutiny due to AFSPA's legal provisions.

5.2. Conflict with International Human Rights Norms

India's enforcement of AFSPA stands at odds with its international obligations. As a document to the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), India is expected to uphold several fundamental guarantees:

- Article 3 of the UDHR affirms the right to life, liberty, and security of person.
- Article 7 of the ICCPR prohibits torture, cruel, inhuman, or degrading treatment or punishment.
- Article 9 of the ICCPR protects individuals from arbitrary arrest and detention.

Despite these commitments, the legal immunity granted under AFSPA, combined with the absence of independent oversight mechanisms, facilitates violations that are incompatible with the spirit of these international conventions. Although India has entered reservations to certain clauses, the ongoing implementation of AFSPA under the pretext of national security continues to attract condemnation from international human rights organisations and United Nations special rapporteurs.

6. Militarised Memories: AFSPA and the Generational Transmission of Trauma in Nagaland

The legacy of the AFSPA Act in Nagaland is etched not just in historical records but in the lived experiences, memories, and inherited trauma of its people. Spanning from the 1950s to the early 2000s, AFSPA enabled systemic violence, surveillance, and impunity, producing an enduring climate of fear that continues to shape the psyche of generations.

The decades between the 1950s and 1970s marked one of the darkest chapters in Nagaland's post-independence history. The story of Temsu, who was detained and tortured for an entire month during the 1960s and lived with physical and emotional scars until he died in 2010, serves as a chilling example. His case, while harrowing, is far from unique. Thousands of Nagas during this period were subjected to arbitrary detention, custodial violence, and degradation, often without trial or accountability. The normalisation of such brutality under AFSPA facilitated an environment where the state's coercive powers operated with near-total impunity.

The culture of suspicion and profiling persisted well into the 1980s and 1990s, particularly targeting Naga youth. Chris, who was a teenager in the late 1990s, recalled a Christmas Eve encounter in 1999 when he and his friends were returning home late after a community event:

"It was 1999, I remember it was 24th December. My friends and I were returning from a Christmas event late in the evening, around 10 pm. The army just surrounded us and trashed all five of us, all because we were young and out at night. I can't believe those days are now over."

Chris's narrative reveals how youth identity, characterised by visible markers like long hair, tattoos, or western-style clothing, was criminalised. Public spaces were rendered unsafe for young people who were routinely harassed and assaulted without cause. His testimony encapsulates the psychological terror that loomed over everyday life.

In another incident from July 2002, Meren, then a college student, witnessed firsthand the brutality inflicted by army personnel during a nighttime bus journey:

"The Indian army had many checkpoints. They dragged the men out of the bus and started beating them. I was spared only because I showed my college ID. But the others boarded the bus limping, with broken noses."

This incident illustrates how public transportation, a basic aspect of daily life, became a site of violence and humiliation. The fact that Meren was spared solely due to possessing an ID card underscores the arbitrary and precarious nature of civilian safety under military rule. The indiscriminate beatings of fellow passengers reflect a broader pattern of unchecked aggression toward perceived "non-compliance" or presumed militant affiliations.

The trauma extended beyond individual bodies to familial and communal suffering. Akala recounted how her grandfather's legs were broken during army interrogation, permanently disabling him. Naro, an elderly woman from a rural village, remembered the gruesome torture of a village elder:

"They thought he was a militant. They tied him upside down and dunked him repeatedly into a water tank. He died not long after."

Such testimonies expose a systemic pattern of state-sponsored violence, often justified by counterinsurgency narratives but executed without due process or evidence. The torture of the elders, symbolic custodians of Naga traditions, was particularly traumatic for communities, representing not only physical violence but the shattering of cultural dignity.

Together, these accounts form a collective memory of repression, fear, and resistance. They reflect how state violence under AFSPA disrupted the fabric of Naga society, displacing trust, silencing dissent, and instilling intergenerational trauma. From tortured bodies to broken families, the impacts of this era continue to echo across time, shaping both historical consciousness and contemporary demands for justice.

7. Navigating Uncertainty: Partial Rollbacks and Political Responses to AFSPA in Nagaland (2022-2025)

In recent years, the enforcement of the AFSPA Act in Nagaland has witnessed selective recalibrations shaped by evolving security dynamics, civil resistance, and shifting political narratives. These developments, while suggestive of progress, simultaneously underscore the persistent ambivalence of the Indian state caught between gestures of peace and an entrenched reliance on militarised governance.

7.1. The 2022 Partial Rollback: A Symbolic Shift

On 1 April 2022, the Government of India announced a partial withdrawal of AFSPA from several districts of Nagaland. This included a total revocation of the Act from Shamator, Tseminyu, and Tuensang districts, alongside partial de-notification in others, resulting in a reduction of AFSPA's jurisdiction by roughly 25% across the state. The official rationale cited improved security metrics, a decline in insurgency-linked violence, and ongoing dialogue with Naga political entities, particularly in the aftermath of the 2015 Framework Agreement with the NSCN-IM.

While welcomed by many, including state authorities and community leaders, the rollback was widely perceived as largely symbolic. Critics pointed out that the foundational framework of AFSPA remained intact, with the majority of the state still under its purview, thereby rendering the move insufficient for substantive demilitarisation.

7.2. The 2025 Re-Extension: A Reassertion of the Status Quo

Contrary to the optimism of 2022, the Ministry of Home Affairs extended AFSPA on 1 April 2025 for an additional six months in eight districts, namely Dimapur, Niuland, Chümoukedima, Mon, Kiphire, Noklak, Phek, and Peren and in 21 designated police station areas spread across other districts. Consequently, 13 out of 17 districts in Nagaland remained either fully or partially under AFSPA, with only Meluri, Shamator, Tuensang, and Tseminyu being fully exempt.

This extension has reignited widespread criticism from human rights advocates, legal scholars, and civil society groups who argue that the state's continuing dependence on AFSPA contradicts its admission of improved security. The move is seen as indicative of a deeper reluctance to relinquish militarised control, despite evident progress toward peace.

7.3. Civil Society and Political Mobilisation

The re-extension of AFSPA in 2025 triggered renewed resistance across civil society. The Naga Students' Federation (NSF) issued a strong condemnation, characterising the move as a "direct violation of the rights, dignity, and democratic aspirations of the Naga people." The organisation reaffirmed its stance of non-cooperation with the Indian armed forces and called for the immediate and unconditional repeal of the Act.

Parallel sentiments were voiced by the Dimapur Naga Students' Union (DNSU), which formally petitioned the Governor of Nagaland to advocate for the Act's withdrawal. These organisations collectively argue that sustained military presence erodes civil liberties, undermines public trust, and poses a significant barrier to long-term reconciliation.

On the political front, the Nagaland Legislative Assembly, under Chief Minister Neiphiu Rio, has passed multiple unanimous resolutions calling for the repeal of AFSPA. The most significant was in response to the Mon district killings in December 2021, where 14 civilians were fatally shot by Indian security forces during a failed counterinsurgency operation. This incident galvanised public outcry and reignited national conversations on the urgent need for legal reform.

8. Conclusion and the Way Forward

More than sixty years since its enactment, the Armed Forces (Special Powers) Act (AFSPA) remains one of the most controversial and morally fraught instruments of Indian statecraft. Originally introduced as a temporary legal measure to address insurgency, its continued enforcement in Nagaland and other parts of Northeast India highlights deeper structural failures in democratic governance, constitutional accountability, and peacebuilding.

While the partial withdrawal of AFSPA in 2022 was welcomed as a progressive step, its re-extension in 2025 has reignited widespread concerns. The contrast between official narratives of development and reconciliation and the actual persistence of militarised control reflects a duality at the heart of the Indian state's approach to the Northeast. This approach not only curtails democratic agency but also reinforces historical traumas, as communities continue to live under the shadow of impunity and fear.

AFSPA has systematically undermined core constitutional rights, specifically Articles 14 (equality before the law), 21 (protection of life and liberty), and 22 (protection against arbitrary arrest). Section 6 of the Act, which provides legal immunity to armed forces personnel, has created a framework of unaccountability, facilitating human rights violations, including extrajudicial killings, arbitrary detentions, custodial torture, and collective punishment. These are not merely abstract legal issues; they represent lived realities, as seen in the stories of individuals like Temsu, Chris, Meren, Akala, and Naro, whose experiences reflect the broader, systemic nature of state violence in the region.

The recent reinstatement of AFSPA in areas with improved law and order conditions raises urgent questions about its continued relevance. Increasingly, civil society, human rights organisations, and legal scholars argue that AFSPA has outlived its original purpose and now functions more as a political tool than a security necessity.

For genuine peace and democratic normalcy to emerge, symbolic rollbacks must evolve into substantive institutional reforms. The path forward must include the full repeal of AFSPA, the establishment of transitional justice frameworks, mechanisms for institutional accountability, and the restoration of civil and political rights. Empowering local governance structures, investing in socio-economic development, and fostering a culture of trust and dialogue between the state and its citizens are critical to this transformation.

Ultimately, the future of Nagaland and the Northeast more broadly depends on a conscious shift away from a security-centric paradigm towards a justice-oriented approach that recognises the dignity, voice, and rights of its people.

A rights-based and sustainable path forward must be grounded in both institutional reform and ethical responsibility. The following policy recommendations are critical for any meaningful transformation:

1. Full Repeal of AFSPA

A comprehensive repeal of AFSPA in Nagaland and other affected regions is the most urgent step. The Act has long outlived any credible justification for its existence and must be replaced with a security framework that upholds constitutional values and international human rights standards.

2. Judicial and Institutional Accountability

All past cases of torture, unlawful killings, and custodial violence should be subject to independent investigation through judicial commissions. Establishing accountability is vital to restoring faith in the rule of law and addressing the long-standing denial of justice.

3. Civilian Oversight of Armed Forces

Security operations must be brought under the scrutiny of civilian and parliamentary oversight. Clear operational guidelines, transparency in conduct, and respect for legal procedures in arrest and detention are essential for democratic accountability.

4. Truth and Reconciliation

The establishment of Truth and Reconciliation Commissions in affected regions can play a vital role in acknowledging past abuses, collecting testimonies, and enabling communities to heal through recognition, not denial. Reparative mechanisms must be incorporated to restore dignity and community cohesion.

5. Education and Memorialization

The experiences of militarisation and civilian resistance must be documented and incorporated into educational curricula and public commemorations. Such memorialization is crucial for ensuring historical justice and preventing the recurrence of violence.

6. Peacebuilding through Dialogue

The Indo-Naga peace process must prioritise inclusive, respectful dialogue over military coercion. Lasting peace demands mutual recognition, protection of cultural identity, and political negotiations grounded in justice and human dignity.

AFSPA represents more than a policy anomaly—it embodies a deeper moral and democratic crisis. A state that envisions itself as the world's largest democracy cannot allow entire populations to live under indefinite military occupation. Ending AFSPA is not only a legal imperative but a test of the nation's conscience. It is time for the Indian state to replace the echo of boots with the voices of its citizens who have borne the burden of silence, pain, and resilience for far too long.

Let justice replace fear. Let dignity replace domination. The people of Nagaland deserve nothing less.

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