

# Analysis Of AFSPA: Efficiency And Impact

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## TABLE OF CONTENTS

1. Abstract.....	2
2. Introduction.....	2
3. Overview of AFSPA.....	3
4. Legal Framework and Provisions of AFSPA.....	5
5. Historical and Political Context.....	12
6. Efficiency of the Act.....	17
7. Impact on Human Rights.....	19
8. Socio-Political and Economic Impact.....	21
9. Reform and Recommendations:.....	25
10. Conclusion.....	26
11. References.....	26

## 1. Abstract

The Armed Forces (Special Powers) Act (AFSPA) has been subjected to heated debate, nationally and internationally. This legal research paper delves into AFSPA's legal framework by critically evaluating its historical context, operational efficiency, and multidimensional implications on numerous dimensions—human rights, socio-political environment, and economic growth. Post-Partition AFSPA was enacted in Assam and Manipur to tackle insurgency challenges by granting special powers to the Armed forces. This paper also addresses the allegations of human rights violations and abuse of excess power by security personnel as reported by different civil societies and human rights groups. It then explores the legal judgments by Indian Courts concerning AFSPA, making a comparison with similar overseas laws and examining the impacts on communities affected by this Act. The paper sheds light on significant debates surrounding the Act and finally proposes a few recommendations, calling for a reformed legislative framework with amendments to the Act's propositions to balance national security with human rights protection and promote economic development with a more humane security law in India. The objective is to provide a balanced analysis of AFSPA's role in India's security framework and suggest reforms to escalate its virtue while safeguarding human rights.

**Keywords:** Armed Forces, AFSPA, disturbed areas, law, militancy, security personnel

## 2. Introduction

The Armed Forces (Special Powers) Act (AFSPA), enacted in 1958, provides special powers to the armed forces in those regions that have been categorized as 'disturbed areas' with the commitment to maintaining public order and suppressing insurgency. Initially ingrained in a British colonial ordinance from 1942, intended to crush the Quit India Movement, AFSPA's bequest has grown exponentially. Post-independence, it was re-enacted to discourse interior threats to security due to Partition, particularly in Assam and Manipur. The present-day framework of the Act as passed in 1958, expands its scope to inculcate regions affected by insurgencies, especially the North-eastern part of the country and later in J&K in 1990. AFSPA sanctions the military to arrest without warrants, conduct operations, and use deadly force while ensuring legal immunity to its personnel. It is a subject of considerable debate and analysis within the context of India's legal and political landscape, for it has been supported as well as criticized for alleged violations of human rights.

This legal research paper will assess the impact of AFSPA's provisions on human rights, conflict resolution, and security issues. The paper will ascertain which clauses of the Act have been controversial and suggest possible remedial solutions to help the sufferers get better. To address these questions, the paper employs a multi-dimensional methodology, by reviewing existing literature on AFSPA such as legal documents, and scholarly articles; case studies of areas that have been severely impacted (both positive and negative) by the enactment of AFSPA, and a comparative analysis with similar legislation in other countries to comprehend the implications on society and governance. This approach is aimed at providing a refined understanding of AFSPA's role in India's security gear and its influence on the fundamental rights of citizens hailing from 'disturbed areas'. This paper aims to contribute to the unending discourse by examining the historical background, legal framework, and multifaceted arguments surrounding AFSPA, ultimately exploring potential pathways for reform and resolution.

### **3. Overview of AFSPA**

Under Section 3 of the Armed Forces (Special Powers) Act, 1958, which is a significant piece of legislation in India, the Indian Armed Forces are granted special authority and powers in regions declared 'disturbed areas' because of disputes or clashes between members belonging to different racial, religious, language or caste groups or communities. This Act was introduced with the dual aim of maintaining public order and suppressing insurgency or armed rebellion situations. As per this Act, armed forces have the command to restrict any gathering that includes five or more people in an area, and use force or even open fire upon giving due warning if the person(s) involved is breaching the law, arrest people without warrants and conduct searches without consent. One of the main objectives of the Act also includes providing necessary legal backing to the armed forces to conduct operations obligatory to maintain law and order and restore peace. Initially, the States were at authority to declare any region as 'disturbed' but in 1972 this power passed onto the Centre. This Act also has provisions to protect security forces from legal proceedings unless there is a preceding sanction from the Centre.

AFSPA, an act of the Parliament of India, enacted on 11th September 1958, grants the Indian Armed Forces the following authority:

- a. Use force, even to the extent of causing death, against any person contravening laws or orders prohibiting the assembly of five or more persons, carrying weapons, or conducting activities that may disrupt public order.

- b. Arrest without a warrant and with the use of necessary force anyone who has committed certain offenses or is suspected of having done so.
- c. Enter and search any premises to make such arrests or to recover any person wrongfully restrained or any arms, ammunition, or explosive substances believed to be unlawfully kept in such premises<sup>1</sup>.

However, the Act doesn't come without certain ground rules, to protect the larger interests of common citizens.

- a. The Act prohibits the security forces from opening fire unless a due warning is given to the suspect.
- b. It further lays down the provision that the suspects detained by the armed forces must be handed over to the local police custody within 24 hours.
- c. It necessitates security forces must act in coordination with the district administration rather than as an independent authority.
- d. The Governor of a State and the Central Government have the power to declare any area or full of any state as a disturbed area if as per their opinion it has become imperative to disrupt the militant activity or any such activity that might exert an influence on the sovereignty of the nation or cause insult to the national flag, anthem or the Constitution.
- e. Section (3) of AFSPA establishes the special command of deploying armed forces to assist civilian authorities, provided to the Centre that if the governor of a state issues an official notification in The Gazette of India. When a region is categorized as 'disturbed' then it has to maintain the status quo for a minimum of three months, under The Disturbed Areas Act of 1976.

AFSPA applies not only to the three Armed Forces, namely the Indian Army, Navy, and Airforce but also to paramilitary forces including the Central Reserve Police Force (CRPF) and the Border Security Force (BSF). There have been recent developments in the application of AFSPA, reflecting changes in the security dynamics of the regions:

- a. In some areas of the Northeast, there has been a scale-down of forces, and for the first time since 1954, no army unit of the size of a brigade is being employed for counter-insurgency purposes.

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<sup>1</sup> [Ministry of Home Affairs](#)

- b. Over time, certain areas in Tripura and Meghalaya have been removed from the list of 'disturbed areas', indicating an improvement in the law and order situation.
- c. Currently, this law has been placed in several parts of the union territory of Jammu and Kashmir and some states in the Northeast such as Assam, Manipur, Nagaland, and Arunachal Pradesh.

The AFSPA has been a centre of debate and controversy, with some calling for its abolition from various quarters due to concerns regarding human rights violations, while some others argue for its requirement to maintain security in disturbed areas.

#### **4. Legal Framework and Provisions of AFSPA**

The AFSPA presents a unique and highly controversial legal framework within India's security and governance landscape. It grants extensive powers to the security forces, designed to maintain order and peace in regions labelled as "disturbed areas." Following are the key sections of this Act:

##### **1. Section 3 - Power to Declare Areas as 'Disturbed':**

- a. *Authority:* This section sanctions the Centre, the Governor of a state, or the administrator of a Union Territory with the authority to declare a region as "disturbed" if it deems that the use of armed forces is imperative to maintain public law and order.
- b. *Implication:* This declaration is crucial as it sets off the application of the Act. It not only accentuates the state's recognition of a significant threat to the security of the nation but also raises concerns about the broad and somewhat voluntary nature of this power, significantly leading to its overuse, and sometimes, misuse.

##### **2. Section 4 - Special Powers to the Armed Forces:**

- a. *Authority:*
  - i. Section 4(a): Security personnel are permitted to shoot to kill or use force against any person contravening laws or orders prohibiting the gathering of five or more individuals, carrying arms, or behaving in a manner that would disrupt public order.
  - ii. Section 4(b): They have the power to arrest any individual without a warrant who has committed a cognizable offense or is reasonably suspected of doing so.

- iii. Section 4(c): They are empowered to enter and search without warrant any premises to arrest or recover any person wrongfully restrained or property reasonably suspected to be stolen.
  - iv. Section 4(d): The act allows the forces to destroy any shelters that harbour arms, or from which armed attacks are likely to be conducted by insurgents.
- b. *Implication:* This section grants panoramic powers to the security personnel, enabling them to act with consequential autonomy and immediacy. Even though it is planned to enhance operational efficiency during insurgencies, these provisions also attract opposition on grounds of serious concerns about the potential for misuse and excessive force, with limited checks on the power exercised.
- 3. Section 5 - Handling of Arrestees:**
- a. *Requirement:* This section mandates that individuals detained and taken into custody under AFSPA must be taken into the nearest police custody 'with the least possible delay' accompanied by a report describing the circumstances leading to the arrest.
  - b. *Implication:* This provision aims to aid the military and civilian justice mechanisms, ensuring that detainees undergo the normal legal framework. However, critics question the transparency of the Act stating the ambiguity around what is considered "the least possible delay", as it can lead to prolonged detention and inadequate legal oversight.
- 4. Section 6 - Protection Against Prosecution/Legal Proceedings:**
- a. *Authority:* It provides immunity to the personnel acting under the Act, stating that no legal proceeding, prosecution, or lawsuit can be initiated against any member of the armed forces without the prior sanction of the Central Government.
  - b. *Implication:* This legal shield protects the security personnel from prosecution for actions undertaken in good faith during security operations. However, it has been a point for criticism on grounds of indemnity and lack of accountability for human rights violations, as it creates a sizeable barrier to judicial scrutiny.

These sections grant the armed forces substantial autonomy and authority in maintaining law and order in areas affected by insurgency or severe unrest. The act has been both supported for maintaining national security and called out for the extensive powers it grants, raising concerns about human rights violations. Despite the Supreme

Court's upholding of AFSPA's constitutionality, SC has stressed upon the need for periodic assessment and minimal use of force. There is ongoing debate about whether these judicial guidelines are sufficient to prevent misuse and ensure accountability. Several commissions and human rights authorities have suggested the repeal or amendment of the AFSPA.

### **Comparison of AFSPA with similar laws in other countries**

#### **1. United States:**

- a. **Laws:** Although there isn't any direct equivalent to AFSPA in the US, there are laws that allow armed personnel to use lethal force, but only within war zones. The Patriot Act (2001), enacted in response to the 9/11 terrorist attacks, focuses on enhancing law enforcement's capabilities to prevent terrorism. The provisions falling under this act include additional surveillance powers, such as wiretapping and monitoring of communications, focus on domestic terrorism, and permission to detain non-citizens suspected of terrorism without immediate charges. On similar grounds, the Military Commissions Act (2006), was enacted to institute military commissions for the trial of enemy combatants, especially those captured in the War on Terror. Its provisions authorize the use of military forums for non-citizens alleged of terrorism.
- b. **Criticism:** However, with these laws, there have been significant concerns over civil liberties and privacy, with critics arguing that they infringe on individual rights and freedoms. Moreover, there have been serious allegations of racial profiling, unfair treatment of non-citizens and minorities, and inhumane treatment of detainees in Guantanamo Bay and other facilities.
- c. **Comparison:** Both AFSPA and the Patriot Act/Military Commissions Act grant substantial powers to the State to counter perceived security breaches. AFSPA's provisions allowing for arrest without warrant and immunity from prosecution have parallels in the Patriot Act's detention authority and the Military Commissions Act's tribunal mechanism. The controversy around potential human rights violations is a common theme, with both AFSPA and U.S. laws facing criticism for undermining civil liberties in the name of security.

## 2. Israel:

- a. Laws: Defense (Emergency) Regulations (1945) provide broad powers to the military forces in situations deemed as emergencies. The provisions under this law permit administrative detention, house demolition, and curfews, and enable the military to prohibit movement and undertake searches without warrants. The Counter-Terrorism Law (2016) consolidated numerous anti-terrorism measures into a single legal framework. This law provides for the arrest of suspects without immediate charge and restrictions on movement and enhances the surveillance and investigative powers of security agencies.
- b. Criticism: These laws have been widely called out for leading to human rights abuses, especially in the context of the ongoing Israeli-Palestinian conflict. There have been concerns regarding the potential for abuse and infringement of civil liberties. Such laws have also been criticized for their impact on freedom of expression and association, mostly in relation to political dissent.
- c. Comparison: Both AFSPA and Israel's Defense Regulations/Counters-Terrorism Law grant significant powers to the military for restoring law and order in times of insurgencies. The use of administrative detention and broad search powers are common to both, with widespread criticisms in relation to the impact on human rights and civil liberties. In both states of affairs, the laws have been seen as amplifying conflict and resistance, underscoring the complex parallels between security measures and community relations<sup>2</sup>.

### Review of Court Judgements

The interpretation of AFSPA by courts has been a pivotal aspect of understanding the act's implications on civil liberties and the powers of the security forces.

#### 1. Naga People's Movement of Human Rights v. Union of India (AIR 1998 SC 431):

In this historic case, the constitutional validity of AFSPA and the enactments declaring regions in the States of Manipur, Tripura, and Assam were challenged in the Writ Petitions filed under Article 32 of the Constitution, asserting that it

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<sup>2</sup> [AFSPA: Clear ias](#)



breached fundamental rights secured under the Indian Constitution, such as the right to life and liberty. These petitions contained allegations regarding the infringement of human rights by armed forces personnel in the exercise of the powers conferred by the Central Act. In its entirety, this Act was opposed on grounds of violating Articles 14, 19, and 21 of the Constitution of India<sup>3</sup>.

The Supreme Court upheld the constitutionality of the act but laid down guidelines for the armed forces acting in regions under AFSPA. The court laid stress on the fact that the declaration of a “disturbed” area should be for a limited period of time and must be reviewed every six months to decide whether it should be continued. The judgment also provided “Do’s and Don’ts” for applying AFSPA, which directed to establish that the powers granted are used responsibly and with prudence.

The SC emphasized the need for the proportional use of force by the armed forces to achieve their objectives, and it suggested that any operation undertaken as per AFSPA should be documented and duly reported to the local civil administration, in an attempt to maintain transparency and accountability. This judgment is significant as it validated AFSPA but also imposed limitations to prohibit its misuse. It provided a foundation to ensure that the armed forces' powers are exercised judiciously<sup>4</sup>.

## **2. Indrajit Barua v. State of Assam (AIR 1983 DELHI 513):**

This case is a groundbreaking legal challenge with regard to the constitutional validity and implementation of the Assam Disturbed Areas Act, 1955, and the Armed Forces (Assam and Manipur) Special Powers Act, 1958. The Act is critical in realizing the judiciary’s interpretation of AFSPA’s provisions and its structuring with the principles of constitutional law in India.

**Facts of the case:** The petitioner, Indrajit Barua, an Assamese resident, filed a Public Interest Litigation (PIL) contesting the constitutional validity of the AFSPA, 1958. The petition argued that the implementation of AFSPA in Assam, particularly, contravened the fundamental rights mentioned in the

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<sup>3</sup> [Interpreting Provisions of AFSPA: Academike](#)

<sup>4</sup> [Interpreting the provisions of AFSPA: Lawctopus](#)

Indian Constitution, such as Articles 14 (Right to Equality), 19 (Right to Freedom), and 21 (Right to Life and Personal Liberty).

**Legal issues and arguments:** The petitioner contended that the Act's provisions allowed for arbitrary and extensive use of lethal force by the security personnel, leading to acute human rights violations and sabotaging the rule of law. The Act did not provide sufficient remedies for victims of excesses committed under its aegis. Barua also questioned the procedure of declaring a region as 'disturbed' under Section 3, claiming that it allowed for authoritarian designation without adequate checks and balances.

In response, The State and Central governments defended AFSPA, stating that the Act was essential for maintaining public order and security in regions experiencing serious threats to security such as insurgency and violence. They also argued that the extraordinary powers conferred upon the armed forces were essential for combating insurgent activities and restoring normalcy in disturbed areas and that the declaration of an area as 'disturbed' lay well within the adeptness of the Parliament. They also claimed that the Act had enough provisions to prevent the misuse of special powers.

**Court's Judgement:** The Gauhati High Court upheld the constitutional validity of AFSPA. The Court underscored the necessity for AFSPA; stating that it was constitutionally valid and lay within the legislative competence of the Parliament under Entry 2A of List I (Union List) of the Seventh Schedule of the Constitution, which pertains to the 'defence of India and every part thereof.' The Act was judged crucial to address the extraordinary situations prevailing in the area and was not in infringement of the fundamental rights dedicated in the Constitution. The Court conceded the extensive authority conferred upon the armed forces under AFSPA but underscored the vitality of these powers in situations of severe internal security threats. It emphasized that the use of these powers should be proportional and exercised with coercion, ensuring compliance with the principles of natural justice and procedural unbiased.

**Legal Reasoning:** The Court's reasoning was based on the principle of proportionality, acknowledging the need for extraordinary measures in extraordinary conditions. It stabilized the state's duty to perpetuate public order with the necessity of protecting individual rights. The judgment also underlined the role of judicial oversight in warding off the misuse of powers listed under

AFSPA, so that declarations of ‘disturbed areas’ and actions taken under the Act are subject to legal scrutiny<sup>5</sup>.

### 3. The Santosh Hegde Commission Report (2013)

This seminal document in the legal and human rights discourse relates to a judicial inquiry, appointed by the Supreme Court, regarding allegations of extrajudicial killings by State Police and Security Forces in the state of Manipur, which lies under the jurisdiction of AFSPA. The analysis and recommendations of this commission have profound implications for the interpretation and implementation of AFSPA, underlining the need for legal reforms and augmented accountability systems to protect human rights.

**Background:** Countering a PIL filed by the Extra-Judicial Execution Victim Families Association (EEVFAM) and numerous human rights brackets, the Supreme Court established the Santosh Hegde Commission in January 2013. The commission was chaired by Justice N. Santosh Hegde, a retired Supreme Court judge, and included J.M. Lyngdoh, a former Chief Election Commissioner, and Ajay Kumar Singh, a former Director General of Police. The commission was tasked with:

- Investigating six specific cases of purported extrajudicial killings/fake encounters in Manipur.
- Evaluating the circumstances under which those deaths occurred.
- Assessing whether the actions of the armed forces were just following the provisions of AFSPA.
- Providing recommendations on measures to enhance accountability and preserve human rights in "disturbed areas" listed under AFSPA.

**Findings:** The Commission’s report, submitted in July 2013, had in-depth legal analyses and findings. The conclusions were in conformity with thorough investigations, such as eye-witness testimonials, forensic evidence, and site visits. It discovered credible proof that all seven deaths in the six cases under investigation were extrajudicial killings (fake encounters), not genuine encounters as affirmed by the security forces<sup>6</sup>. The evidence specified that the

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<sup>5</sup> [Indrajit Barua vs The State Of Assam And Anr. on 3 June, 1983 \(indiankanoon.org\)](http://indiankanoon.org)

<sup>6</sup> [Ministry of Home Affairs published article](#)

victims were not armed rebels engaged in combat but civilians illicitly executed in staged encounters. The commission drew the conclusion that the provisions of AFSPA were being misused by the armed forces to defend illegitimate encounters.

**Legal Significance:** The commission called out the lack of efficient accountability tools under AFSPA, which led to a culture of exemption from punishment among the armed forces. Section 6 of AFSPA, which provides legal immunity in the form of a prior sanction from the central government to prosecute security personnel, was pinned down as a major hurdle to holding the armed forces accountable for their actions. The report outlined dreadful violations of fundamental rights, such as the right to life and the right to due process, as enshrined in the Constitution of India and international human rights agreements. This commission report is a significant document in the ongoing discourse on AFSPA, which highlights the need for adherence to the rule of law, even in ‘disturbed areas’ falling under the jurisdiction of AFSPA.

## 5. Historical and Political Context

AFSPA was enacted in 1958 in the background of intricate political, social, and security issues prevailing in post-independence India. The following reasons led to its enactment:

1. **Pre-Independence Insurgency:** AFSPA originated during British colonial rule. During World War II, the colonial government enacted the Armed Forces (Special Powers) Ordinance of 1942 to subdue the Quit India Movement, a mass civil disobedience campaign launched against British rule, by Mahatma Gandhi<sup>7</sup>. This ordinance equipped the security personnel with extensive powers (‘a license to kill’) to maintain public order and tackle internal disturbances using brute force.
2. **Post-Independence Challenges:** After India became independent in 1947, the newly formed government faced severe internal security disturbances, especially due to Partition-related violence and regional insurgencies in the states of Bengal, Assam, East Bengal, United Provinces, and the Naga areas around the Burmese borders, where the Naga National Council (NNC) led an armed rebellion. The armed forces were often called upon, to aid civil institutions in handling these circumstances, leading to the need for a legal framework that would specially empower them to operate efficiently.

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<sup>7</sup> [The Armed Forces Special Powers Act: A brief history | Al Jazeera America](#)

- a. In the Northeastern region, especially in Assam, the influx of migrants and refugees led to widespread political turmoil. To address this issue, the **Assam Disturbed Areas Act 1955** came into being; providing the legal know-how for deploying armed forces to restore peace in the face of such adversity.
- b. The NNC under the leadership of A.Z. Phizo, led a mass movement for independence from India, which converted into a full-blown armed insurgency in the Naga Hills. To suppress the insurgency and restore law and order, the government deemed it essential to grant special powers to the armed forces with some provisions to operate in these areas. In response to the escalating violence, the **Armed Forces (Assam and Manipur) Special Powers Act** was enacted in 1958, which later became AFSPA<sup>8</sup>.
  - i. **Armed Forces (Assam and Manipur) Special Powers Act, 1958:** This Act allotted the armed forces personnel sweeping powers to search, arrest, and use force, including lethal force, without the usual legal hurdles, in case of insurgent activities. This power came with attached legal protection from prosecution to the armed personnel deployed in 'disturbed areas'. It was later extended to all North-Eastern states.
  - ii. **The Armed Forces (Punjab and Chandigarh) Special Powers Act, 1983:** The **Armed Forces (Punjab and Chandigarh) Special Powers Act** was enacted in 1983 by the union government, after withdrawing **The Armed Forces (Punjab and Chandigarh) Special Powers Ordinance of 1983**, to sanction the security forces to operate in Punjab and the union territory of Chandigarh which were experiencing the Khalistan movement in the 1980s. Broadly, the clauses of this Act were similar to that of AFSPA, except for two sections that provided additional powers to the armed forces. Sub-section (e) was added to Section 4 which stated that any vehicle can be stopped, searched, and seized violently if it is under the suspicion of harbouring proclaimed offenders or ammunition. Section 5 was included in the Act enumerating that military personnel has the authority to break open any locks "if the key thereof is withheld". When the Khalistani rebellion abated, AFSPA was repealed in 1997, nearly 14 years after it came

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<sup>8</sup> [Armed Forces \(Special Power\) Act, 1958](#)

<sup>9</sup> [Understanding AFSPA](#)

into force. Although the Punjab government repealed its Disturbed Areas Act in 2008, it persisted in Chandigarh until September 2012 when the Punjab and Haryana High Court withdrew it.

- iii. **The Armed Forces (Jammu and Kashmir) Special Powers Act, 1990:** In the early 1990s, J&K underwent a rise in insurgency and cross-border terrorism, leading to critical internal security threats. To address these disturbances, the AFSPA was extended to the union territory (then-state) in 1990, providing the armed forces with similar powers to those in the northeast. J&K has its own Disturbed Areas Act (DAA) separate legislation that was introduced in 1992. Even after the DAA for J&K slumped in 1998, the government emphasized that the state could still be identified as a disturbed area as per Section (3) of AFSPA. Application of AFSPA in J&K has become highly debatable but it continues to be in force.

### **Calls for Repeal and Review (2000s)**

AFSPA, ever since its enactment in 1958, has undergone intense scrutiny and criticism over several reasons. Following are the key instances that called for the withdrawal of the Act.

1. **Jeevan Reddy Committee (2004):** Amidst widespread rebellions and allegations of human rights violations, the Central Government established the five-member, Justice B.P. Jeevan Reddy Committee on 19th November 2004, to critique AFSPA in the Northeast. The committee suggested the absolute withdrawal of the Act, as they signified it as ‘a symbol of hate and oppression.’ The committee’s report recommended the following reforms:
  - a. AFSPA to be repealed and relevant provisions to be included in the Unlawful Activities (Prevention) Act, 1967.
  - b. Modification of the Unlawful Activities (Prevention) Act to outline the authority of the security forces and paramilitary troops.
  - c. Grievance centres to be constituted in every district where armed forces were deployed under AFSPA.

Despite its recommendations, the Act was not repealed, and the committee’s suggestions have largely remained unimplemented.

2. **Second Administrative Reforms Commission (2007):** In its 5th report on public order, the commission also recommended the repeal of AFSPA. It favoured its opinion of a more humane and acceptable approach to dealing with internal security hazards.

### **Partial Withdrawals and Declarations (2010s-2020s)**

1. **Reducing AFSPA's Jurisdiction:** Over the years, some states have witnessed the eventual repeal or reduction of AFSPA's application. In 2004, after the execution of Thangjam Manorama in Manipur and the consequent public outcry, AFSPA was lifted from certain parts of Imphal. In 2015, Tripura withdrew AFSPA after 18 years, displaying a betterment in the security situation.
2. **Periodic Reviews and Extensions:** The Centre has intermittently assessed and extended AFSPA in different states, frequently citing ongoing insurgency or security threats as reasons. In 2021 and 2022, AFSPA was partially lifted from some districts of Nagaland, Assam, and Manipur, reflecting an improvement in the security environment in such regions.
3. **Northeast Insurgency Resolution:** Efforts to resolve long-standing insurgencies through peace talks and political agreements, such as the Naga Peace Accord, have also influenced the application of AFSPA. As peace processes progress, there is potential for further reductions in the areas where AFSPA is enforced. There has been a scale-down of forces in the Northeast, and for the first time since 1954, no army unit of the size of a brigade is being employed for counter-insurgency. Some residual army units have been moved to border areas.

### **Current Status and Ongoing Debates**

AFSPA continues to be implemented in parts of the northeast, such as in Nagaland, Assam, Manipur, and Arunachal Pradesh, as well as in J&K. There are ongoing debates and discussions regarding the application of AFSPA in relation to balancing security needs with human rights concerns, with many critics asking for its repeal or amendment to protect larger interests of the citizens.

1. **Assam:** The Ministry of Home Affairs (MHA) has lately conveyed its willingness for a partial withdrawal of AFSPA from Assam and Arunachal Pradesh owing to the enhanced safety circumstances in these states. As per the data published by the MHA through an RTI in July 2017, 31% of the complaints concerning human rights violations were received from Assam.

Following the fresh move of the government, now AFSPA will operate in the districts of Karbi Anglong, West Karbi Anglong, Dima Hasao, Dibrugarh, Tinsukia, Charaideo, Sivasagar, Golaghat, Jorhat, and the Lakhimpur subdivision of Cachar. In the hill districts of Karbi Anglong and Dima Hasao, a peace treaty with Karbi groups has been signed. It is said that the moment a peace treaty with DLNA (Dimas National Liberation Army) is signed, AFSPA will be removed from the hill districts as well.

2. **Jammu and Kashmir:** AFSPA, which provides special powers to military forces to operate anywhere and arrest anyone without a warrant, has been in force in J&K since July 5, 1990. MHA is responsible for all matters relating to the Union Territory of Jammu and Kashmir or the Union Territory of Ladakh. After the erstwhile state of J&K became a Union Territory; the DAA was not continued, nor AFSPA was repealed.
3. **Tripura:** AFSPA was enacted in Tripura in 1997 following the accusations of sheltering members of separatist groups from Bangladesh. Local bodies and political parties have always asked for its repeal, as they felt that it suppressed the interests of the tribal populace in the state. In May 2015, AFSPA was withdrawn after 18 years from Tripura due to the consistent dip in insurgent activities. In May 2015, AFSPA was lifted after 18 years due to the consistent fall in insurgency.
4. **Manipur:** Manipur was declared a 'disturbed area' in 1980. The army was deployed to tackle the insurgent activities as a result of separatist groups demanding for Manipur to be an independent State. In July 2016, the SC assessed the validity of AFSPA which has been in force since 1958. Amid increasing cases of fake encounters and extrajudicial executions, a Special Investigative Team (SIT) was formed to investigate the matter. As a result, the SC declared that the paramilitary forces weren't permitted to use "excessive and retaliatory force" in the state, and asked for a report on alleged fake encounters in the state. Recently in 2022, Manipur was partially freed from the 'disturbed area' status, in the districts of Jiribam, Thoubal, Bishnupur, Kakching, Imphal East, and Imphal West. However, the Act remains operating in the hills districts.
5. **Arunachal Pradesh:** The districts – Tirap, Changlang, Longding, and 16 other police station limits have been declared as 'disturbed areas' following Section 3 of AFSPA. Due to an increase in kidnapping and extortion activities and the execution of security personnel by the National Socialist Council of Nagaland, the government has continued to put AFSPA in force. In May 2017, the MHA extended the Act for 3 months as these districts sheltered militants who were escaping to Myanmar. In March 2022, AFSPA was extended from April 1 to



September 30. Also, the Act was also extended to the territories under the jurisdiction of Namsai and Mahadevpur police stations in the Namsai district.

## **Parliamentary Debates on AFSPA**

### **A. Lok Sabha:**

#### **1. 2019 - Debate on AFSPA in North East**

- **Speaker:** Amit Shah (Home Minister)
- **Summary:** The debate was focused on the importance of AFSPA in maintaining law and order in the North East. Amit Shah highlighted the necessity of the Act that provides special powers to the armed forces to operate effectively in areas experiencing insurgency. He argued that AFSPA is crucial for ensuring safety of civilians in these areas and that stationing of security personnel in the disturbed areas was significant for maintaining peace. Shah noted that 'peace has been restored' in the North Eastern states due to tactic implementation of AFSPA, crediting the armed forces for their role in stabilizing the regions. He highlighted the fact that there was a 74% decline in terrorism in the past 8 years.

He mentioned that the improved security situation has laid the foundation for various development initiatives in the North Eastern states such as boost in tourism. The government has been able to focus on infrastructural and economic growth, social development including education, healthcare and skill development programs, thus benefiting the locals. While acknowledging the concerns about human rights violations, he drew attention to the need to balance security and human rights. He assured that the government is committed to protecting human rights while ensuring national security. Shah stated that the government was open to reviewing the implementation of the Act and making requisite adjustments, taking into account legitimate concerns raised by various stakeholders like human rights and civil organisations<sup>10</sup>.

#### **2. 2020 - Question on Human Rights Violations**

- **Speaker:** Asaduddin Owaisi (MP)
- **Summary:** Owaisi raised necessary concerns about human rights violations under AFSPA. He emphasised on a number of reports and alleged breach of human rights in the 'disturbed areas', especially in Jammu and Kashmir. He put forth instances of extrajudicial killings,

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<sup>10</sup> [JK Policy Institute](#)

arbitrary detentions and torture by the military personnel. He advocated for the adverse impact of this Act on the resident population, instilling in them feelings of trauma and fear. Owaisi further argued that AFSPA contravened basic fundamental rights enshrined in the Constitution, including the right to life and personal liberty under Article 21. He challenged the constitutionality of granting such absolute powers to the Armed forces and called for a wider judicial review and accountability to ensure that the military operates within the bounds of the Indian law and acclaim human rights. He advocated for the repeal of AFSPA, stating that it was a 'draconian law' that had outlived its purpose. He put forth his suggestion for the government to bring in alternative measures to address insurgency without compromising human rights<sup>11</sup>. He called for amendments in the Act for protecting human rights and provisions for accountability, in the absence of a complete repeal of AFSPA.

### 3. 2021 - Discussion on Partial Withdrawal of AFSPA

- **Speaker:** Rajnath Singh (Defence Minister)
- **Summary:** This discussion was held to deliberate about the partial withdrawal of AFSPA from certain districts in Arunachal Pradesh. Rajnath Singh highlighted the improved security situation and the government's efforts to balance security and human rights. Singh credited this improvement to successful counter-insurgency operations and peace treaties with insurgent groups, such as the Bodo Accord and Karbi Anglong Accord in Assam, and Peace Agreement with Kuki Millitant Groups in Arunachal Pradesh. He mentioned that owing to the reduction in violent activities and improved security metrics, it was possible to consider the partial withdrawal of AFSPA, highlighting the reduced need for extraordinary powers in the state. He justified this by explaining that the decision was taken after careful examination of the security situation which included frequency of militant activities, presence of armed groups and the overall maintenance of law and order. He said that the government was committed to respecting human rights while ensuring national security, and that any allegations of abuse of powers by the Armed forces was being thoroughly investigated<sup>12</sup>. He reiterated the government's efforts to the holistic development of the North East, ensuring peace and stability for the civilians.

#### B. Rajya Sabha:

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<sup>11</sup> [Indian Legal Wing](#)

<sup>12</sup> [CNBC TV18](#)

## 1. 2018 - Debate on AFSPA in Jammu and Kashmir

- **Speaker:** Ghulam Nabi Azad (Leader of Opposition)
- **Summary:** Azad raised questions regarding the prolonged imposition of AFSPA in Jammu and Kashmir. He argues that such an extension of the Act in J&K indicated a failure to restore peace and normalcy in the region. Later in an interview with the Financial Express, he said. “The PM and the BJP are responsible for it because they created such a situation that Kashmiris and Kashmiri leaders have been pushed into a corner. Their voice has been suppressed by threats and intimidations that they have been forced to talk in such a way<sup>13</sup>.”

## 2. 2022 - Discussion on AFSPA Reforms

- **Speaker:** P. Chidambaram (MP)
- **Summary:** Chidambaram called for reforms in AFSPA, stressing on the need for amendments in the Act to make it more humane and to restrict abuse of broad powers that allegedly caused human rights violations. He suggested that the deployment of paramilitary forces in J&K be reduced as it would significantly lower violence and that the local police take over the responsibilities of maintaining law and order. The senior Congress leader conveyed his thoughts on this at a programme in Kolkata, “there is a need to amend the AFSPA if you cannot repeal it. The law and order should be entrusted to the Jammu and Kashmir police and not on the paramilitary forces<sup>14</sup>.”

### What do Defence Experts have got to say on this controversial Act?

General GD Bakshi has been a vocal supporter of AFSPA, clearly favouring its necessity for maintaining law and order in ‘disturbed areas’. He states that AFSPA provides the paramilitary forces with the legal backing needed to operate effectively in regions affected by insurgency and militancy. While acknowledging the concerns about human rights violations, General Bakshi believes that the Act is crucial for the armed forces to perform their duties without any hindrance. He often stresses on the challenges faced by soldiers in conflict zones and the need of legal protection for their actions.

Lt General KT Parnaik, former General Officer Commanding-in-Chief of the Northern Command, expressed his views that the army would be ‘handicapped’ without AFSPA. He argues that the Act is essential for conducting counter-insurgency operations and maintaining law and order in regions like Jammu and Kashmir. He has highlighted that

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<sup>13</sup> [The Financial Express](#)

<sup>14</sup> [Indian Express](#)

the peace in certain areas is fragile and that removing AFSPA could cause a resurgence of militant/insurgent activities. He believes that the Act provides the requisite legal framework for the armed forces to operate effectively and ensure national security<sup>15</sup>. He further stated that unless the army was able to completely dismantle the militant infrastructure and unless it was able to remove interference from Pakistan, it wasn't the correct time for the revocation of AFSPA, as he feared that such revocation may give a chance to the terrorists to exploit the situation in disturbed regions.

On similar lines, Lt General DS Hooda, former Northern Army Commander, had called for a balanced approach to AFSPA. While recognizing the need for the Act in certain areas, he has also advocated for periodic reviews and reforms to address human rights concerns. He emphasized the significance of addressing public perception and ensuring that the actions of the army are seen as legitimate and crucial. He believes that transparency and accountability are key to maintaining public trust in the armed forces.

Lt Gen Syed Ata Hasnain (Retd), in his op-ed titled "*AFSPA debate: What could be a possible solution?*", acknowledges the allegations against AFSPA due to its broad powers and immunity provisions, but underlines the need for such powers in a multi-ethnic, multi-cultural, and multi-caste nation facing external nemesis and internal threats. He says that the police by itself cannot handle such sophisticated threats, compelling military involvement under legislated authority without constant civil administration oversight. He supports his claim by mentioning that the Act delegates the army to take a leading role in high-threat situations, while also permitting the forces to assist local police in maintaining peace during less severe circumstances, albeit under civil authority oversight. There is a common belief that the military abuses its powers under AFSPA, but the ex-general counters this by stating the military's principle of 'minimum force' and adherence to strict operational guidelines, such as the Dos and Don'ts issued by the Supreme Court and internal military protocols. He proposed reforms in the form of simplifying AFSPA to focus on two key aspects: 'empowerment' and 'protection', removing detailed negative provisions and focusing human rights and sensitivity. The protection clause could include a time-bound review for prosecuting soldiers in cases of grave misconduct<sup>16</sup>.

## 6. Efficiency of the Act

AFSPA has been the foundation of India's approach to countering insurgencies maintaining internal security in conflict-prone areas, and ensuring the safety of critical

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<sup>15</sup> [Indian Express](#)

<sup>16</sup> [Indian Express](#)

infrastructure. To assess its operational effectiveness, it is to be evaluated whether AFSPA has successfully achieved its primary security goals and how it has impacted the regions where it is enforced, by taking into account the broader socio-political outcomes.

**1. Achievement of Security Goals:** The primary goal of the act is to provide the armed forces with the authority to maintain public order in regions recognized as "disturbed" due to insurgencies, terrorism, or critical internal disturbances. The effectiveness of this goal can be understood by analyzing the key measures:

**a. Decline in Insurgency and Violence:**

i. **North-East India:** AFSPA has been influential in curbing insurgent activities and militancy in the northeastern states. The stationing of armed personnel under the act has substantially weakened the competencies of separatist groups like the National Socialist Council of Nagaland (NSCN), the United Liberation Front of Assam (ULFA), and other factions in Manipur. For e.g., the insurgency in Mizoram was successfully crushed after the implementation of AFSPA, which led to the signing of the Mizo Peace Accord in 1986 and consequent stability in the region<sup>17</sup>. In recent times, roughly 7,000 insurgents in the Northeast have surrendered, and agreements like the Bodo Accord (2020) and the Karbi-Anglong Pact (2021) have touched base with the root causes of regional insurgencies<sup>18</sup>. According to the MHA, insurgency incidents in Assam reduced from 1,536 in 2000 to 308 in 2012. By 2020, this number had further declined to 27 incidents. Nagaland experienced a decline in such incidents from 62 in 1997 to less than 20 by 2020.

ii. **Jammu and Kashmir:** In J&K, AFSPA has allowed for continued military operations against terrorist organizations, curbing large-scale insurgent violence. Operations under AFSPA have been beneficial in neutralizing high-profile militants and disrupting networks, leading to a relative fall in terrorism since the heightened violence in the 1990s. Since the Union government is contemplating revoking AFSPA, the Army is undertaking joint training sessions with the J&K Police, to

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<sup>17</sup> The **Mizo Peace Accord of 1986** was a historic agreement between the Government of India and the Mizo National Front, ending two decades of insurgency in Mizoram and leading to the state's peaceful integration into India.

<sup>18</sup> [Explained: AFSPA and the Northeast -ForumIAS Blog](#)

prepare for counter-terror operations. The training aims to enhance coordination and combine the operational capacities of both forces<sup>19</sup>. According to a report by MHA, incidents of militancy dropped from 3,401 in 2000 to 614 in 2011. However, a resurgence in violence occurred after 2014, with incidents rising to 614 in 2018 before seeing a decline again in recent years. Civilian and armed personnel casualties followed a similar trend, with a substantial drop from the peak years but periodic spikes reflecting ongoing conflict.

- b. Restoration of Administrative Control:** AFSPA has enabled the revival of civil administration in regions harshly affected by insurgency. The deployment of armed forces has been a deterrent to insurgents, permitting local governments to revoke control and governance structures. For e.g., in Assam and Nagaland, AFSPA has enabled the government to reassert administrative authority and provide a facade of normalcy. Nagaland and Mizoram have seen relatively peaceful elections post-implementation of AFSPA, indicating restored confidence in democratic processes. The northeast experienced a higher voter turnout and a surge in political activity due to enhanced security. Assam recorded one of the highest voter turnouts: 82% in the 2021 legislative assembly elections<sup>20</sup>. Assam's economy showed signs of recovery, with the Gross State Domestic Product (GSDP) rising from ₹1.65 lakh crore in 2011-12 to ₹3.85 lakh crore in 2019-20<sup>21</sup>.
- c. Support for Peace Processes:** The Act has, at times, performed as a point of leverage in peace negotiations with militant groups. The security pressure exerted under AFSPA has forced insurgents to come to the negotiating table. The ceasefire agreements with Naga factions and peace talks with similar groups in Assam are instances where the threat or use of force under AFSPA has enabled dialogue and conflict resolution.

## **2. Impact on Local Populations and Governance:**

- a. Enhanced Security and Stability:** In several areas, AFSPA has facilitated a more stable and secure environment, decreasing the immediate threat of violence and controlling militant activities. This has enabled socio-economic development and the return of the displaced.

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<sup>19</sup> [Deccan Herald](#)

<sup>20</sup> Report by Election Commission of India

<sup>21</sup> [Business Today](#)

For e.g., the eventual repeal of AFSPA in Tripura in 2015, was followed by efforts to augment economic activities and the return of tribals who had been displaced due to ethnic strife. The enhanced security in the state led to the implementation of development programs, infrastructure projects, and the promotion of tourism, which further contributed to economic growth and stability in the region<sup>22</sup>.

- b. **Protection of Key Installations and Infrastructure:** The Act has proved instrumental in protecting crucial infrastructure and maintaining open transportation routes, vital for economic and logistical support in conflict-prone regions. As extremist incidents decreased by 76% from 2014 to 2022, protecting critical infrastructure became more feasible<sup>23</sup>.

## 7. Impact on Human Rights

AFSPA was introduced to address insurgency and security challenges but has been flawed by several allegations of abuse and human rights violations. Human rights groups, activists, and local communities have often criticized the act, saying that its provisions allow and protect extensive and derogatory actions by the armed forces. Some of the key allegations of the act are:

### 1. Extrajudicial Killings:

- a. **Manorama Devi Case (2004):** Manorama Devi, a 32-year-old woman from Manipur, was allegedly arrested and later raped and killed by the Indian paramilitary unit personnel, 17th Assam Rifles, on 11th July 2004 after being taken into custody under AFSPA. Her death sparked widespread protests in Manipur and across India, including the unprecedented poignant nude protest by Manipuri women with the banner "Indian Army Rape Us." Human rights organizations like Amnesty International and Human Rights Watch spotlighted this case as an awful abuse of AFSPA's provisions and called for its withdrawal. This case continues to serve as a symbol of the struggle against AFSPA and its impact on human rights, notably the rights of women in conflict zones. It highlights the need for accountability and protection of civilians in disturbed areas.
- b. **Pathribal Fake Encounter (2000):** Five men were killed in J&K by armed forces which was later revealed to be a staged/fake encounter,

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<sup>22</sup> [UNHCR Report](#)

<sup>23</sup> [Press Information Bureau](#)



initially claimed to be a counter-terrorism operation against LeT militants. The CBI proclaimed the incident a "cold-blooded murder," but no convictions followed due to the legal immunity provisions listed under AFSPA. This incident has been cited by groups like the International People's Tribunal on Human Rights and Justice in Kashmir as demonstrative of the amnesty granted to armed forces under AFSPA<sup>24</sup>.

## 2. Torture and Arbitrary Detention:

- a. Human rights organizations have documented numerous instances of torture and arbitrary detention, where individuals are detained without warrants, often leading to torture during interrogations. For e.g., in Manipur, a 14-year-old teenager was severely tortured by Indian soldiers, by being electrocuted and beaten brutally as part of an interrogation of detainees under AFSPA<sup>25</sup>.
  - b. The Pathribal Fake Encounter case involving Farooq Ahmad Dar is a dreadful testament to the impact of AFSPA. On 9th April 2017, Major Leetul Gogoi tied Dar to the bonnet of an army jeep in Kashmir's Budgam district, using him as a 'human shield' against intense 'stone pelting' during the Srinagar Lok Sabha polls. The shocking image of Dar, an innocent embroidery artisan, being paraded through nearly 28 villages sparked global outrage. Dar's case underscores the inhumane treatment of detainees, human rights violations, and the adverse impact on civilians under AFSPA. It sheds light on the need for reform of this controversial law.
3. **Disproportionate Use of Force:** In several instances, AFSPA has been used to defend the unreasonable use of force during protests and civil unrest, causing civilian casualties. In Nagaland, during the Hornbill Festival on 4th December 2021, 13 innocent civilians, who were wrongly believed as militants, were killed by the army in a botched operation in Oting village of Mon District. This incident reignited debates on the need for AFSPA's review or repeal. The Army claimed that they had suspected a vehicle to contain Naga insurgents, but it turned out to be a serious intelligence failure<sup>26</sup>. Naga People's Movement for Human Rights (NPMHR) also reported cases where peaceful protests were met with brutal force, causing casualties and injuries among civilians. As per their report, in 1987, during Operation Bluebird, the armed forces allegedly violated

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<sup>24</sup> [Economic Times](#)

<sup>25</sup> [Centre for Organisation Research and Education, Imphal, Manipur, 2000.](#)

<sup>26</sup> [NDTV](#)



the Act, by engaging in murders, assaults, rapes, and destruction of households in the Senapati district of Mizoram. NPMHR filed a PIL declaring that Section (6) of AFSPA was unconstitutional and sought damage to life and property<sup>27</sup>.

4. **Lack of Accountability and Legal Redress:** AFSPA's Section 6 (Section 7 in J&K) provides legal immunity to armed forces, that need prior approval from the Centre to prosecute personnel for actions taken under the act. This has led to near-blanket protection from prosecution for abuses, even in cases of gross human rights violations. This 'protective shield' hampers accountability since the decision to prosecute lies in the hands of the same institutions whose personnel have allegedly abused their powers. It creates a legal difficulty for the victims to seek justice. This provision has been a major point of debate, with critics arguing for AFSPA's repeal or amendment.

## 8. Socio-Political and Economic Impact

AFSPA substantially affects the routine lives of people in disturbed regions, especially in areas facing armed rebellion or insurgency. Apart from the immediate security implications, the Act has extremely affected the social, economic, and psychological landscape of communities in affected areas, such as J&K, Nagaland, Manipur, and Assam. Thus, the act has a multifaceted impact on the daily lives of the common populace.

### Social Impacts

#### 1. Fear and Mistrust:

- a. *Constant Fear:* Residents living in disturbed areas are under constant threat due to the presence of armed personnel and the chances of sudden searches, detentions, harassment, and violence. This fear hampers normal life and creates an environment of insecurity.
- b. *Mental Health Issues:* The daily exposure to violence and the arbitrary nature of military coups have contributed to widespread mental health issues. Cases of depression, anxiety, and post-traumatic stress disorder (PTSD) are common in these regions.

#### 2. Disruption of Community Life:

- a. *Social Fragmentation:* The implementation of AFSPA leads to distrust and fragmentations within communities. The presence of military forces, curfews, and violent circumstances exacerbate existing social

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<sup>27</sup> [Casemine](#)

tensions which lead to a breakdown in community solidarity and instill a fear of encounters.

- b. *Cultural Suppression*: Traditional and cultural activities are often disrupted by security operations. Community gatherings, festivals, and even daily social interactions are conducted in the presence of potential security threats.

### **3. Impact on Education:**

- a. *Interrupted Schooling*: Military operations and curfews prevent students from accessing education. Schools and colleges in disturbed regions often face closures, reduced attendance, and high dropout rates, due to safety concerns.
- b. *Psychological Impact on Students*: The highly scrutinized climate impacts students' concentration and performance. The constant exposure to dispute and violence often stunts educational and personal development and impacts the emotional well-being of children, especially those who witness violence, or the loss of a loved one, causing life-long trauma.

### **4. Gender-specific Impacts:**

- a. *Sexual Violence*: Women in conflict areas are significantly vulnerable to sexual violence and harassment by military forces. This aggravates the already critical challenges women face in these regions.
- b. *Restricted Movement*: Women's freedom of movement is often cramped due to safety reasons, affecting their ability to contribute to economic activities, access education, and participate in social life.

## **Economic Impacts**

### **1. Disruption of Economic Activities:**

- a. *Curfews and Restrictions*: Frequent curfews and curtailed movements disrupt daily economic activities, affecting trade, agriculture, markets, daily wage labour and livelihoods. Local economies struggle to sustain normal operations under such conditions. Lack of economic development, leads to rise in poverty and unemployment rates.
- b. *Destruction and Loss*: Military operations lead to the destruction of private property, businesses, and agricultural lands. This not only results in immediate financial loss but also long-term economic difficulty for individuals and communities. Moreover, infrastructure projects are abandoned as a result of heightened insecurity.

### **2. Employment Challenges:**

- a. *Limited Opportunities*: The unstable security conditions and the attached economic disruption curtail employment opportunities. Also, the notion of insecurity and high risks deter investors from making investments in such regions. Moreover, in conflict-ridden regions, government jobs become the primary source of employment, leading to a surge in dependency on government, which affects economic diversification and the growth of the private sector.
- b. *Migration*: Due to limited economic prospects and ongoing insecurity, the majority of the people migrate to other parts of the country or abroad in search of better opportunities, causing a ‘brain drain’ and loss of skilled workforce<sup>28</sup>.

### **Psychological and Emotional Impact**

The continuous instances of alleged human rights violence and the lack of accountability for armed forces crumble public trust in governmental and military institutions. The local population feels alienated from the rest of the country, fostering discontent and resistance against the state. While the security needs are prioritized under AFSPA, the long-term social and economic costs recommend a dire need for a review of its implementation and effectiveness. Addressing these impacts requires a multidimensional approach that ensures safety while upholding basic human rights and fostering socio-economic development.

### **Political Implications**

AFSPA has a multifaceted impact on state-central relations. Although it empowers the Central government with special powers, the State governments are deprived of such privilege, thus raising questions about state accountability and autonomy.

1. **Violation of State’s Autonomy**: Section (3) of the act grants the central government the power to declare any region as a ‘Disturbed Area’ without requiring the consent of the concerned state. This provision sabotages the sovereignty of the states and can lead to the abuse of power by the centre. State governments often feel subdued when the central government imposes AFSPA without their deliberation.
2. **Tensions and Disputes**: The implementation of AFSPA can create rifts between state governments and the centre. CMs may perceive it as a contravention of their authority and a dismissal of their ability to maintain order within their

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<sup>28</sup> [Living with Armed Forces Special Powers Act \(AFSPA\) as everyday life | GeoJournal](#)

jurisdiction. Conflicts over the importance and duration of AFSPA can strain intergovernmental relations.

3. **Public Perception and Accountability:** State governments are responsible for maintaining order and safety. When AFSPA is implemented, state leaders must balance security concerns with the public perception of extensive force and human rights violations. The central government's decision to revoke the act can impact the state government's credibility.
4. **Political Posturing and Demands for Repeal:** State governments, especially in conflict-ridden regions, face pressure from civil society organizations, human rights activists, and local communities to withdraw AFSPA. CMs and state assemblies have occasionally passed resolutions demanding its repeal. The central government's response to such demands becomes a political issue with implications for electoral dynamics.
5. **Political Campaigns:** AFSPA often becomes a central matter of concern in local and national elections, with political parties and candidates taking clear stances either for or against its enactment. This can polarize voters and influence electoral outcomes.

## 9. Reform and Recommendations:

- a. **Three-Tier Operational Framework:** Adopt a response framework within AFSPA that is divided into a three-tiered approach to counter-terrorism, drawing inspiration from the UK's Terrorism Act, 2000 which classifies different levels of threats and their responses. This mechanism will categorize regions into varied degrees of disturbances, by clearly laying down different powers and protocols for the armed forces deployed in those conflict-affected regions. To accomplish this, a multi-agency committee should be constituted, comprising state and central leaders to evaluate and classify regions based on threat levels periodically.
  - i. **Low-Level Disturbance:** Majorly civilian-led with limited military support, directing towards preventive measures and intelligence gathering.
  - ii. **Medium-Level Disturbance:** Joint civilian-military operations with specific powers granted to the military, but with more oversight and coordination with local authorities.
  - iii. **High-Level Disturbance:** Full military engagement with robust powers under AFSPA, but with mandated review intervals and civilian oversight to prevent misuse.
- b. **Community Trust Building Initiatives:** Similar to the 'Community Policing' model adopted by the US and Australia, India can introduce such a mechanism

under the provisions of AFSPA, wherein, the armed forces were to build close ties with local communities for enhanced engagement, trust and cooperation. The government should instruct the setting up of Community Liaison Units (CLUs) within military deployments in AFSPA-enforced areas, aimed to interact with the local populace to address grievances, build trust, and gather intelligence. Security personnel would be trained in cultural sensitivity and conflict management, focussing on non-military solutions and community support as part of their standard operating procedures. Regular interaction programs, such as town hall meetings, public forums, and community outreach activities, would be organized by CLUs to improve transparency and accountability. There would be periodic assessments and feedback from the locals to assess the impact of these initiatives and make required changes.

- c. **Establish a Joint Review Board:** Looking at the oversight mechanism in Canada (National Security and Intelligence Review Agency), AFSPA can be amended to add a provision that mandates a joint (state and centre) independent review and oversight of security operations. For this purpose, a Joint Review Board must be established, comprising equal representation of state and central leaders, alongside independent political analysts, to gauge the enforcement of AFSPA. The board would be given the authority to review and approve AFSPA implementation, address grievances, and recommend changes to operational protocols. The board would be empowered to temporarily suspend or modify AFSPA powers in certain regions based on their analysis and deliberation with local bodies.
- d. **Inclusion of a Sunset Clause:** A sunset clause mandates that a law or its specific provisions are reviewed periodically. It prohibits prolonged imposition by necessitating explicit resumption. The motive is to subject the law to regular scrutiny and assessment. When AFSPA includes a sunset clause, it means that the Act will automatically expire after a fixed tenure (e.g., seven years) unless the government explicitly revives it. Regular assessment augments transparency and allows citizens to hold the government accountable. Moreover, some laws may be needed during emergencies but can be a problem if they remain in force indefinitely. A sunset clause would prevent this.
- e. **Repeal of the Act:** Repealing AFSPA to introduce a new legislative framework that mingles military operations with a focus on human rights and development, would stress civilian leadership in managing internal disturbances, with the military playing a subordinate role. The rationale behind this is replacing the act with a comprehensive mechanism that addresses the criticisms of broad security power, and human rights violations and works towards incorporating a more

balanced strategy for ensuring safety. One of the provisions that can be laid in a new act, would be the selective deployment of military in conflicted regions facing active violence or insurgency, and not in the entire state. This would ensure that the Act is not imposed indiscriminately.

## 10. Conclusion

In conclusion, the analysis of AFSPA discloses a complicated interaction between national security requirements and the principles of human rights and democratic governance. The introduction and overview sections layout the Act's origins and the legal framework that grants substantial powers to the security personnel in designated "disturbed areas." This study assesses the historical and political background that demanded AFSPA's enactment, underscoring the ongoing internal security issues faced by India. Examining the efficiency of AFSPA, the paper recognizes its role in mitigating insurgencies but also highlights the notable human rights allegations of abuse and violation reported by various organizations. The socio-political and economic impacts of AFSPA, especially on the day-to-day lives of affected communities, demonstrate the deep-seated repercussions that go beyond immediate security outcomes. The recommendations for reform indicating the need for a balanced approach, upholding for a calibrated operational framework, inclusion of a sunset clause, enhanced oversight mechanism, and integration of community trust building initiatives to address root causes of unrest. Ultimately, the findings of this research highlight the urgent necessity for legislative and policy reforms to ensure that India's security measures are both fruitful and courteous of the fundamental rights of its citizens, fostering a more just and secure society.

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