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A Study of The Armed Forces Special Powers Act 1958 in the Light of the 2023 Manipur Crisis: Is it A Necessary Evil?

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Martin Luther King Jr. said, "There are two types of laws: just and unjust. I strongly believe in upholding just laws. Obeying just laws is both a legal and moral responsibility. In contrast, one has a moral obligation to resist unjust laws." The Armed Forces Special Powers Act (AFSPA) was introduced to maintain public order and protect residents in conflict-prone areas. However, since its inception, there have been claims of abuse of power by military personnel, leading to human rights violations. As the socio-political landscape of the country has evolved, several states have reinforced the application of AFSPA. Initially enacted as an ordinance in 1957 under emergency provisions of the Indian Constitution to address issues in the northeastern region, the Act has facilitated violations of human rights and restricted residents' ability to exercise their constitutional rights and seek judicial redress. Despite these concerns, the judiciary has largely supported the Act and sought to reinterpret its provisions. This paper critically explores AFSPA's applicability and impact in light of the 2023 Manipur Crisis, which included widespread ethnic violence, human rights abuses, and a collapse in civil governance. The Manipur Crisis rekindled discussion about AFSPA's function, with critics accusing it of encouraging abuses and supporters defending it as an essential instrument for restoring security in conflict-prone regions. The study investigates the historical backdrop and legal framework of AFSPA, focussing on its application in Manipur and other northeastern states where it has been in place for decades. It evaluates the act's impact on human rights, the rule of law, and the balance of state security and individual liberty. The report also assesses the 2023 Manipur

Crisis, noting particular instances where AFSPA's application was challenged, and investigates the sociopolitical consequences of its implementation on local populations.

Keywords: *AFSPA, armed forces, Manipur, power.*

INTRODUCTION

India's journey after attaining independence marks a remarkable journey.¹ During these years, India achieved independence from colonialism, established self-governance, constructed infrastructure for growth and development, strengthened foreign relations, and became one of the world's largest democracies. India's variety fosters thriving cultures and intellectual processes. This introduces fresh thoughts and leads to differing perspectives. India's laws treat all citizens equally due to the diversity of opinions.² The Constitution is the binding instrument that expresses India's national identity and governs how rules are applied. If a law violates the Constitution, it is considered void. The judiciary has attempted to prioritise religious ideas, yet the country's democratic framework and ethnic variety necessitate special consideration in some instances.³

Human rights are a widely recognised and valued concept in modern society. The fight against racial discrimination, the emergence of nations from colonial rule, and the rise of democratic governance have all contributed to the understanding of human rights, emphasising human dignity and fundamental rights. The global community's experiences during the two World Wars, the devastating atomic bombings of Hiroshima and Nagasaki, the exploitation of children by the Lord's Resistance Army, and the ongoing struggles of transgender individuals for identity and recognition have highlighted the essential nature of human rights. While the roots of these principles can be traced back to the Magna Carta of 1215, they gained significant

¹ Saurabh Trivedi, 'India celebrates Independence Day with Social Distancing' *The Hindu* (New Delhi, 15 August 2020) <<https://www.thehindu.com/news/national/india-celebrates-independence-day-with-social-distancing/article32361266.ece>> accessed 01 September 2024

² Constitution of India, 1949, art 14

³ *Chintaman Rao v State of Madhya Pradesh* (1950) SCR 759

acknowledgment and validation in 1948 with the adoption of the Universal Declaration of Human Rights.⁴

Consequently, sovereign states became obligated to safeguard and uphold the human rights of every individual within their jurisdiction. Nonetheless, legal instruments such as the Armed Forces Special Powers Act have consistently conflicted with their intended purpose and have granted excessive discretionary power to employ lethal force in the name of maintaining public order, even at the cost of human life. This legislation effectively undermines its objectives, rendering individuals' lives distressing, vulnerable, and dangerous. Additionally, the statute provides immunity to military personnel from any form of criminal accountability.⁵ It has been asserted that the inclusion of such a provision in the legislation, ostensibly to maintain peace and social stability, constitutes a blatant violation of Article 21 of the Indian Constitution.⁶

The Government of India continues to utilise the AFSPA in insurgency-ridden regions. Parliamentarians have consistently justified the Armed Forces (Special Powers) Act of 1958 as an effective counter-terrorism statute in India. Despite provisions that allow security personnel to violate the 'rule of law,' this statute remains unchanged. Human rights breaches cannot be tolerated under any circumstances. Human rights protect human life and dignity, and some activities, whether by State or non-state actors, cannot be justified, even if they try to achieve noble goals.⁷ In 1942, the British used the Armed Forces Special Powers legislation to suppress the Quit India Movement, a democratic movement advocating for India's self-determination against British colonial control led by freedom fighters. The Indian government has used the AFSPA to discriminate against people in India's peripheral regions, who have distinct socio-cultural, ethnic, religious, and racial identities that differ from the mainstream hinterlands. Why is independent India committing the same mistakes as repressive foreign colonial powers?⁸

⁴ Vinod Kumar M, 'Study of Armed Forces Special Powers Act in Assam, Nagaland and Jammu & Kashmir' (2019) 6(3) JETIR <<https://www.jetir.org/papers/JETIREW06086.pdf>> accessed 01 September 2024

⁵ Tanishka Tiwari, 'All you need to know about Armed Forces Special Powers Act' (*Law Insider India*, 17 October 2023) <<https://www.lawinsider.in/columns/all-you-need-to-know-about-armed-forces-special-powers-act#post-47331-30j0zll>> accessed 01 September 2024

⁶ Constitution of India, 1950, art 21

⁷ Aditi Jaiswal, 'The Draconian AFSPA' 1958 (2021) 4(2) IJLMH <<https://ijlmh.com/paper/the-draconian-afspa-1958/>> accessed 01 September 2024

⁸ Yash Goyal, 'Armed Forces Special Powers Act (AFSPA): Necessity of Law Reformation Rather Than Absolute Retention or Repeal' (2023) SSRN <<http://dx.doi.org/10.2139/ssrn.4525313>> accessed 01 September 2024

The AFSPA was implemented to enable military forces to maintain peace and manage unrest in the northeastern regions of India. It provides the military with extensive powers to address domestic security issues, specifically in situations where conventional laws and local police are ineffective against insurgents. Under Article 355 of the Indian Constitution, the Central Government is tasked with defending states from external aggression and internal disturbance, and AFSPA helps fulfill these constitutional responsibilities.

Initially, the Act was confined to specific areas in Assam and Manipur, addressing the unrest caused by the Naga tribe. It established a legal framework that granted the military exceptional powers to restore order in troubled regions. Over time, the Act was revised multiple times to expand its scope. In 1972, it was amended to include Arunachal Pradesh, Meghalaya, Mizoram, Tripura, and Nagaland. This revision also empowered both the Central and State Governments to declare a region as disturbed.

In 1983, the Armed Forces (Punjab and Chandigarh) Special Powers Act was enacted, extending the AFSPA to Punjab and Chandigarh, where it remained in effect for over 14 years before being repealed in 1997. The Armed Forces (Jammu and Kashmir) Special Powers Act of 1990 further broadened the Act's reach to Jammu and Kashmir, allowing military forces to address the insurgency in that region.

India is often seen as a nation that values the rights and freedoms of its citizens on a global scale. However, the situations in regions like Manipur, Jammu & Kashmir, and Nagaland raise concerns about the human rights guaranteed by the Constitution. Recent violence in Jammu & Kashmir has sparked a societal debate over the necessity of the Armed Forces Special Powers Act (AFSPA), turning it into a contentious national issue.

The AFSPA was first implemented in Arunachal Pradesh in 1958 and later extended to Assam, Manipur, Meghalaya, Mizoram, Tripura, and Nagaland, with its enforcement in Jammu and Kashmir beginning in July 1990. The legislation grants extensive powers to armed forces, which many view as draconian. Over time, advocates for human rights have campaigned for its repeal, and organisations like Amnesty International have called on the Indian judiciary to closely investigate the situation and thoroughly examine the widespread abuses of power by armed

forces and government entities, which have led to numerous documented cases of human rights violations.⁹

Many individuals draw parallels between the Armed Forces Special Powers Act of 1958 and the Rowlatt Act, which granted British colonial authorities unchecked power to detain individuals based solely on suspicion of subversive activities against British India, often for up to two years without any judicial recourse. Notably, the Indian Army, which has been publicly implicated in serious abuses over the years, has not publicly articulated its stance on this critical issue. Evidence suggests that the military is rarely subjected to scrutiny, except in cases where administrative challenges surpass the capacities of police and other officials.

HISTORICAL BACKGROUND OF AFSPA

The Armed Forces Special Powers Act was originally implemented during British colonial rule, drawing on the Lord Linlithgow Ordinance passed in 1942 in response to the Quit India Movement. In that year, four separate ordinances were enacted for Bengal, Assam, East Bengal, and the United Provinces to address escalating violence, particularly as Imperial Japanese forces advanced on India's eastern frontiers. Amid the turmoil following the declaration of the All-India Congress as illegal, Lord Linlithgow, the then Viceroy of India, declared a national emergency. He introduced the Armed Forces (Special Powers) Ordinance of 1942, granting the military similar powers to those now provided under the Armed Forces (Special Powers) Act (AFSPA). This legislative framework was later reintroduced in Nagaland in 1958, as the Naga National Council (NNC) initiated insurrections against the Indian military, leading to significant unrest and violence in the Naga Valley.¹⁰ The AFSPA, while bearing similarities, diverged considerably from its antecedent, the 1942 statute. In this instance, the Act limited its applicability to areas classified as disturbed, and the powers conferred upon the armed forces were delineated with greater precision.

Moreover, its scope was restricted to the North Eastern India (NEI) region, in contrast to the previous legislation applicable across India. While the AFSPA garnered a robust endorsement from the then Home Minister, G.B. Pant, it simultaneously encountered considerable opposition

⁹ Heba Ali, 'Armed Forces Special Powers Act, 1958: Necessity or Misuse of Power' (*iPleaders*, 27 May 2019) <<https://blog.iplayers.in/afspa-armed-forces-special-powers-act/>> accessed 01 September 2024

¹⁰ Dinesh Kotwal, 'The Naga Insurgency: The Past and the Future' (2000) 24(4) *Strategic Analysis* 751 <<http://dx.doi.org/10.1080/09700160008455245>> accessed 01 September 2024

within the parliamentary arena.¹¹ It has been contended that the arbitrary allocation of powers to the armed forces, alongside the authority to engage individuals or conduct inspections based solely on suspicion lethally, contradicts the ethos of fundamental rights enshrined within the Indian Constitution. Subsequently, in 1990, amid escalating tensions between India and Pakistan and the influx of militants and Islamist jihadists in various regions of Jammu and the Kashmir Valley, the AFSPA was also instituted in the territory of Jammu and Kashmir. This legislative action was succeeded by the classification of numerous districts in Kashmir as disturbed areas, resulting in the deployment of armed forces for parallel governance in such locales.¹²

The Armed Forces Special Powers Act (AFSPA) is incompatible with international human rights and humanitarian law and cannot be justified. It contravenes several key instruments, including the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture, the UN Code of Conduct for Law Enforcement Officials, the UN Body of Principles for the Defense of All Persons Under Any Form of Detention, and the UN Principles on Effective Prevention and Investigation of Extra-legal and Summary Executions.

India ratified the ICCPR in 1978, thereby committing to uphold the rights enshrined in the Covenant for all its citizens. The rights outlined in the ICCPR must be guaranteed by member states even during periods of public emergency. While the Covenant allows for the suspension of certain rights in such contexts, it maintains that some rights are non-derogable and must be protected at all times. The AFSPA infringes upon both derogable and non-derogable rights.

Article 1 of the ICCPR asserts that all peoples have the right to self-determination, a principle that the AFSPA undermines by suppressing the self-determination aspirations of indigenous populations in the Northeast. Article 2 further obligates states to ensure that all individuals can exercise the rights guaranteed by the Covenant.¹³ This obligation encompasses providing remedies for individuals whose rights have been transgressed.

¹¹ *The AFSPA: Lawless Law Enforcement According to the Law? : a Representation to the Committee to Review the Armed Forces Special Powers Act, 1958* (Asian Centre for Human Rights 2005)

¹² Dr. Garima Tiwari & Karthik Sharma, 'Armed Forces Special Powers Act, 1958: A National Necessity or a Stain on the World's Largest Democracy?' (2021) 10(2) NLIU Law Review <<https://nliulawreview.nliu.ac.in/wp-content/uploads/2023/10/Volume-X-Issue-II-21-46.pdf>> accessed 01 September 2024

¹³ The International Covenant on Civil and Political Rights 1954, art 2

When India submitted its second periodic report to the United Nations Human Rights Committee in March 1991, the Committee members recognised that the AFSPA contravened this right. Article 2 demands more than a mere framework for remedies—it necessitates the effective functioning of such a system. The most egregious violation associated with the AFSPA, under both Indian and international legal frameworks, pertains to the infringement of the right to life. This right is enshrined in Article 6 of the ICCPR and is categorised as non-derogable.¹⁴ Consequently, no circumstance, including states of emergency or internal disturbances, can rationalise the abrogation of this right. The defence forces operating in the North East have systematically subjected individuals they apprehended under the AFSPA to torture. Article 7 of the ICCPR explicitly prohibits torture, and this right is also classified as non-derogable.¹⁵ Article 26 of the ICCPR,¹⁶ like Article 14 of the Constitution of India, guarantees equal protection under the law for all individuals. The AFSPA contravenes this right as the residents of the Northeast are denied equitable protection before the law. They exist under a de facto yet undeclared state of emergency and receive no redress for the myriad injustices they have endured at the hands of military forces.

SALIENT FEATURES OF THE AFSPA

The Act empowers military forces with extraordinary authority to maintain law and order in volatile areas. This includes the power to arrest, conduct search and seizure operations, and dismantle assault camps or rebel training shelters. The armed forces are also permitted to use lethal force. Additionally, the Act provides legal protection to armed personnel who act or appear to act by its provisions. The Act's provisions align with the Bharatiya Nagarik Surakhsha Sanhita 2023, as its guidelines are observed during searches, seizures, and other activities carried out under the Act.

Section 1 identifies the Act's scope, which includes Assam, Manipur, Meghalaya, Nagaland, Tripura, Arunachal Pradesh, and Mizoram.¹⁷ Section 2 defines the Act.¹⁸ But leaves much undefined. Part (a) of the 1972 version described troops as *the military and air force of the Union so operating*. The definition of *military forces and, therefore, air forces operating as land*

¹⁴ The International Covenant on Civil and Political Rights 1954, art 6

¹⁵ The International Covenant on Civil and Political Rights 1954, art 7

¹⁶ The International Covenant on Civil and Political Rights 1954, art 26

¹⁷ The Armed Forces (Special Powers) Act 1958, s 1

¹⁸ The Armed Forces (Special Powers) Act 1958, s 2

forces appeared in the 1958 edition of the Act. Section 2(b) defines a ‘disturbed area’ as any place identified inherently in Section 3.¹⁹ According to Section 2(c), all terminology not specified in the AFSPA is ascribed to definitions from the Army Act 1950.²⁰

Section 3 defines the term ‘disturbed area’ and outlines the process by which regions are designated as such. It grants the Central Government and the Governor of the State the authority to classify a locality as disturbed. However, it does not specify the criteria or circumstances that would justify this declaration. Instead, the Armed Forces (Special Powers) Act (AFSPA) only requires that the authority be ‘of the opinion that whole or parts of the area are in a dangerous or disturbed condition such that the deployment of soldiers in aid of civil powers is imperative.’ This ambiguity in the definition was challenged in the case of *Indrajit Barua v State of Assam*.²¹ The judiciary determined that the lack of precision in the definition of a disturbed area did not constitute an issue, as the government and the populace of India possess an understanding of its connotation. However, since the declaration is contingent upon the satisfaction of the governmental official, the determination that a neighbourhood is disturbed is not amenable to judicial scrutiny.

Consequently, in practice, it is solely the government's interpretation that categorises the area as disturbed. There exists no mechanism for the citizenry to contest this assessment. Intriguingly, some statutes articulate the term with greater specificity. According to the Disturbed Areas (Special Courts) Act of 1976, an area may likewise be designated as disturbed when “*a government is satisfied that:*

(i) There was, or

(ii) there exists, in any area within a State, extensive disturbance of the general public peace and tranquillity due to differences or disputes between members of disparate religions, races, languages, or regional groups, castes, or communities; it may declare such area to be a disturbed area.”

The absence of specificity within the definition of a disturbed area under the AFSPA indicates that the government is disinclined to impose safeguards regarding its application of the AFSPA.

¹⁹ The Armed Forces (Special Powers) Act 1958, s2(b)

²⁰ The Armed Forces (Special Powers) Act 1958, s 2(c)

²¹ *Indrajit Barua v State of Assam* AIR 1983 Del 513

Only state governments held this authority in the original 1958 iteration of the AFSPA. The 1972 amendment reflects a shift wherein the Central Government is no longer concerned with the states' powers. Instead, the Central Government now wields the authority to override a state governor's opinion and declare an area as disturbed. The Central Government can apply the AFSPA to whichever areas it deems necessary within the Northeast.

Section 4 delineates the authorities conferred upon the military forces deployed in a region experiencing disturbances.²² Such authorities are granted exclusively to military or non-commissioned officers, while a jawan (private) lacks these powers. The Section permits military personnel to employ force for various justifiable reasons. The armed forces are authorised to utilise lethal force, under the provisions of section 4(a),²³ concerning the perpetration or suspicion of the perpetration of the following offences: engaging in contravention of any statute or directive currently effective within the disturbed area that prohibits the congregation of five (5) or more individuals, the possession of weapons, or the carrying of any item that may be utilised as a firearm or ammunition. To substantiate the invocation of this provision, the officer is merely required to believe that it is essential to act in this manner to preserve public order and to provide *such due warning as he may deem necessary*. Moreover, the military is empowered to demolish property under Section 4(b) if it constitutes an arms depot, a fortified location, or a shelter from which armed assaults are executed or are suspected to be executed, provided that the structure is utilised as a training facility or as a refuge by armed factions or fugitives.²⁴ The military is also authorised to apprehend individuals without a warrant under Section 4(c)²⁵ who have perpetrated, are suspected of committing, or are on the verge of perpetrating a cognisable offence and to employ any degree of force deemed *necessary to effectuate the arrest*. Under section 4(d), the military is granted the authority to enter and conduct searches without a warrant to make an arrest or recover any property, weapons, ammunition, or explosives believed to be unlawfully retained on the premises. This section further permits the application of necessary force in the execution of the search.²⁶

²² The Armed Forces (Special Powers) Act 1958, s 4

²³ The Armed Forces (Special Powers) Act 1958, s 4(a)

²⁴ The Armed Forces (Special Powers) Act 1958, s 4(b)

²⁵ The Armed Forces (Special Powers) Act 1958, s 4(c)

²⁶ The Armed Forces (Special Powers) Act 1958, s 4(d)

Section 5 states that once the military apprehends an individual under the AFSPA, the person must be transferred to the nearest police station without undue delay. However, the Act does not clearly define what constitutes an acceptable delay. Judicial precedents have suggested that a delay of four to five days is excessive. Nonetheless, since this provision is interpreted based on the circumstances of each case, there is no definitive timeframe established for determining a violation of this section. The continued detention of an individual without judicial oversight by a magistrate amounts to arbitrary detention.²⁷

Section 6 stipulates that no legal action may be initiated against any armed forces member acting under the AFSPA unless authorised by the Central Government. This provision effectively renders the victims of abuses perpetrated by armed forces devoid of any recourse to legal remedy.²⁸

CRITICAL ANALYSIS OF AFSPA

The legislation in question is inherently discriminatory; for example, it distinguishes itself from the statutes applicable in Jammu, Kashmir, and the northeastern regions by instituting disparate citizenship classifications. The first category encompasses members of the armed forces, who are afforded protections under this act; the second category includes the vulnerable populations residing in areas where this legislation is enforced; and the third category pertains to individuals who remain entirely unaffected by the act, specifically those inhabiting regions where this legislation is not applicable. AFSPA bestows authority even upon non-commissioned officers, who are not required to seek superior authorisation before executing actions such as demolition, lethal force, or detention of any individual. Furthermore, these officers are not accountable to any authority for their actions and are not obligated to justify their conduct. This situation directly contravenes constitutional provisions, particularly infringing upon fundamental rights enshrined in Article 21 of the Indian Constitution. Section 5 of the Act stipulates that any detained individual must be promptly transferred to the nearest police station without undue delay. This provision stands in stark opposition to Article 22(2),²⁹ which unequivocally asserts that any person who has been detained should be presented before a magistrate within 24 hours of arrest. The most egregious aspect of the legislation is encapsulated in Section 6, which grants

²⁷ The Armed Forces (Special Powers) Act 1958, s 5

²⁸ The Armed Forces (Special Powers) Act 1958, s 6

²⁹ The Constitution of India, 1950, art 22(2)

armed forces immunity from prosecution unless prior approval is solicited from the central government. This particular clause undermines the victim's fundamental entitlement to the *right to constitutional remedies* as articulated in Article 32 of the Indian Constitution.³⁰ The ambiguous definitions of terms employed within the act provide substantial latitude for potential misuse or abuse of the provisions therein.³¹

Human rights groups and organizations have always expressed significant opposition to the AFSPA. Article 14 of the Indian Constitution ensures equality before the law and equal legislation treatment. The Supreme Court ruled in *Ajay Hasia v Khalid Mujib Sehravadi*.³² Article 14 applies and invalidates the action if a state acts arbitrarily. The Court, through Justice Bhagwati, stated that equality is opposed to arbitrariness. Equality and arbitrariness are opposed, with one aligned with the rule of law in a republic and the other with absolute monarchy. Arbitrary acts violate Article 14 as they are unequal according to political reasoning and constitutional law. This discourse endeavours to elucidate the interrelationship between the principles of 'equality' and 'nonarbitrariness' through the lens of 'equality before the law.'³³ The entitlement to 'equality before the law' delineated in Article 14 of the Indian Constitution finds its origins in English Common Law.³⁴ British legal scholar A.V. Dicey articulated that the principle of 'legal equality' necessitates that 'every official, from the Prime Minister down to a constable or a collector of taxes, bears the same accountability for any action undertaken without legal justification as any other citizen.'³⁵ The stipulation enshrined in Section 6 of the Armed Forces (Special Powers) Act (AFSPA) undermines this fundamental principle of 'equality before the law.' This provision effectively obstructs the prosecution of security personnel unless an explicit 'sanction' to prosecute is issued by the Government of India.³⁶

³⁰ The Constitution of India 1950, art 32

³¹ Mohammad Anas & Kaif Hasan, 'A Critical Analysis of the Armed Forces Special Powers Act (AFSPA). A Need of the Time or a Delineation from the Morality of the Law?' (2023) 1(2) LAWFOYER INTERNATIONAL JOURNAL OF DOCTRINAL LEGAL RESEARCH <https://lijdlr.com/wp-content/uploads/2023/06/LIJDLR_PAPER-4-Vol-1-Issue-II.pdf> accessed 01 September 2024

³² *Ajay Hasia v Khalid Mujib Sehravadi* (1981) AIR 487

³³ Tarunabh Khaitan, 'Equality: legislative review under article 14' in Sujit Choudhry et al. (eds), *The Oxford Handbook of Indian Constitutional Law* (OUP 2016) 699-719

³⁴ *State of West Bengal v Anwar Ali Sarkar* AIR 1952 SC 75

³⁵ Albert Dicey, *Introduction to the Study of the Law of the Constitution* (9th edn., Macmillan 1939) 193

³⁶ The Armed Forces (Special Powers) Act 1958, s 7

In *General Officer Commanding v Central Bureau of Investigation and Anr*,³⁷ it has been established that the Central government's approval is requisite for initiating a trial under Section 6. In regions where the Armed Forces Special Powers Act (AFSPA) is operational, the inhabitants are deprived of the safeguards associated with the right to life and the protections afforded by criminal law. They are excluded from the conventional mechanisms of judicial redress. For illustration, the Indian Penal Code stipulates that only the crime of murder is subject to capital punishment. Nevertheless, the AFSPA authorizes the armed forces to employ lethal force against any individual, even resulting in death, should they harbour suspicions regarding that individual's possession of arms and deem such lethal action necessary for the preservation of public order and security.

While the authority bestowed upon the armed forces by the AFSPA is extensive, a notable deficiency exists for most of the legislative framework. Numerous fundamental components of the Act remain undefined by the lawmakers, thus engendering an ambiguity that may be susceptible to exploitation. For instance, the phrase 'carrying on of weapons' is not delineated within the text of the Act. The legislation neglects to specify the term 'weapons' or to furnish an inventory of items classified as hazardous to the extent that the armed forces may invoke their lethal authority. In this context, a weapon could encompass a broad range of objects, such as a knife or a firearm, resulting in a variable risk in each circumstance. However, the absence of a precise definition for 'weapon' facilitates the potential for the armed forces to improperly exercise their lethal powers based solely on the possession of a knife.³⁸

Article 20 of the Constitution guarantees certain rights to both convicted and accused individuals and elaborates on the protections concerning convictions for criminal offenses.³⁹ Amnesty International has documented instances of individuals in custody enduring torture, with reports indicating that during interrogations, firearms are aimed at the heads or within the mouths of the accused. This situation suggests an infringement of the right against self-incrimination, as enshrined in Article 20 of the Constitution. Consequently, the only legal proceedings a prospective convict encounters are arbitrary trials conducted by military officials, who lack the

³⁷ *General Officer Commanding v Central Bureau of Investigation* AIR 2012 SC 1890

³⁸ Prasenjit Borkakoti, 'A Critical Analysis of the Prospects of AFSPA with Reference to Insurgency Problem in North East India' (2016) 7 *Indian Journal of Law and Justice* 29

³⁹ The Constitution of India 1950, art 20

requisite authority to adjudicate such matters. The case of *Luithukla v Rishang Keishing*⁴⁰ Addressed the fate of an individual apprehended by the armed forces who subsequently vanished for five years. Although the armed forces had detained the individual, the court determined that they had erroneously interpreted their mandate of aiding civil power.

Consequently, the court ruled that military operations should be executed in collaboration with local administrative authorities. Furthermore, everyone charged is deemed innocent unless proven guilty. An accused person is also entitled to all reasonable legal safeguards, including, but not limited to, legal representation as considered essential.⁴¹ AFSPA allows individuals to be executed solely on suspicion or apprehension. Armed forces often behave based on subjective intentions, making it challenging to criticize their actions solely on this basis. The AFSPA violates the accused's right to liberty and security by denying them a trial in a court with sufficient jurisdiction.

The implementation of the Armed Forces (Special Powers) Act (AFSPA) in regions characterized by unrest has rendered it exceedingly challenging for civilians even to contemplate the prospect of leading a life imbued with dignity, let alone achieving such a state. Furthermore, the Constitution enshrines the right to legal counsel and mandates a hearing before a magistrate within a 24-hour for any arrested individual. Additionally, no custody prolongation shall occur without a magistrate's explicit authorization. Under the guise of preventive detention, the Act contravenes the rights accorded to those apprehended. The legal challenge presented in the case of *Civil Liberties Organization v. P. L. Kukrety*,⁴² Where individuals were detained for five days before their arraignment before a magistrate, underscored the blatant infringement of Article 22. Laws governing preventive detention permit the confinement of an arrested individual for a maximum period of three months. Any custodial measure extending beyond three months necessitates a review by an Advisory Board. However, under section 4(c) of the AFSPA, military personnel are empowered to apprehend an individual without a warrant based solely on a suspicion that the individual is poised to perpetrate an offense.

Moreover, the Act imposes no obligation on the apprehending officer to inform the arrested individual of the rationale behind such detention. Although the Act stipulates the officer's

⁴⁰ *Luithukla v Rishang Keishing* (1988) 2 GLR 159

⁴¹ *Noor Aga Khan v State of Punjab* (2008) 16 SCC 417

⁴² *Civil Liberties Organization v P. L. Kukrety* (1988) 2 GLR 137

transfer of the detained individual to the nearest police station ‘with the least possible delay,’ the phrase ‘with the least possible delay’ lacks a concrete definition within the Act. Furthermore, no specific timeframe is delineated that would constitute an adequate measure of the least possible delay, rendering the terminology exceedingly ambiguous.⁴³ This ambiguity could result in the detained individual remaining in the custody of the apprehending officer for an indeterminate duration, thereby violating the civil and constitutional rights of the arrestee.

The issue regarding the constitutional validity of the AFSPA was presented to the Supreme Court of India in the case of *Naga People’s Movement of Human Rights v Union of India* (*Naga People’s Movement judgment*).⁴⁴ The statute was principally contested because of its ‘arbitrary and unreasonable’ delegation of authority and oversight over a specified territory to the military. The petitioner contended that the army should not operate autonomously, asserting that ultimate authority and strategic direction ought to be retained by civil authorities. Nevertheless, the court dismissed the assertions made by the petitioner, emphasizing that the Armed Forces would support civil authority and that civil governance would persist within the State. Consequently, the court reached a unanimous decision affirming the constitutionality of the AFSPA. It is pertinent to highlight that in its evaluation of the AFSPA's constitutionality, the court refrained from addressing the fundamental issues of life and liberty that are enshrined in the Indian Constitution.⁴⁵ Moreover, apprehensions exist regarding the law's implications for the dynamics between the central and state governments. Section 6 of the AFSPA creates a dichotomy between the security forces of the central and state governments. Essentially, while the state and central forces operate within the same geographical area, the state forces are not afforded the immunity provided under AFSPA. This scenario engenders significant dissatisfaction among the civil forces of the state and exacerbates tensions between the central and state authorities. Additionally, the National Human Rights Commission of India has repeatedly advocated for the criminalization of torture as stipulated under the AFSPA.

AFSPA became problematic in the history of the Jammu and Kashmir wars because prior Acts laid the framework for challenging their implementation owing to legal flaws and human rights

⁴³ *Nungshitombi Devi v Rishang Keishang* (1982) 2 Gauhati LR 137

⁴⁴ *Naga People’s Movement of Human Rights v Union of India* AIR 1998 SC 431

⁴⁵ Khagesh Gautam, ‘Martial Law in India: The Deployment of Military under the Armed Forces Special Powers Act, 1958’ (2018) 24 *Southwestern Journal of International Law* <<https://pure.jgu.edu.in/id/eprint/2542/>> accessed 01 September 2024

violations. Specific provisions of the J&K Public Safety Act 1978 may be read to favor the police. Persons who violate the state's safety or law and order are routinely imprisoned for up to two years and jailed without trial for at least one year under the Act. The Act was also amended to exempt information about the arrest from being provided to the detainee. Similarly, the Terrorist and Disruptive (Prevention) Act 1987 (TADA) has been challenged because its description of disruptive conduct may infringe on the constitutional right to free expression. The ICJ has made the same remark concerning AFSPA: the alleged use of soldiers in 'disturbed areas' to suppress political activity cannot be justified. The disputed topics surrounding the AFSPA discussion are being evaluated in light of the more significant conflict in Kashmir. AFSPA has been subjected to court scrutiny and reviews throughout its history, bringing it closer to protecting human rights. As a result, the Act has been thoroughly whetted. These committees have also offered strategies to improve transparency while ensuring troops' capacity to operate in complex conflict situations is not jeopardized.

The Justice Reddy Committee was established following the custodial death of Manorama Devi in Manipur in July 2004. The committee was tasked with proposing amendments to the Armed Forces (Special Powers) Act (AFSPA) to safeguard human rights and to consider substituting this legislation with a more humanitarian framework. The committee disseminated its conclusions in June 2005, after extensive research and examination of the issue, engaging in dialogues with various stakeholders from civil society, including individuals, organisations, the legal community, tribal collectives, as well as military representatives at both the state and central levels. It was asserted that there existed a predominant inclination among the populace to maintain a military presence, albeit with requisite reforms within the legal frameworks, specifically to cultivate an operational environment that would enable military engagement against extremist factions without infringing upon the rights of citizens.

In this context, the committee determined that the existing Unlawful Activities (Prevention) Act (UAPA) of 1967, with certain amendments, could furnish the military with essential protections. The committee articulated that the UAPA was designed to address terrorism, delineate acts and organisations engaged in terrorist activities, incorporate protective measures for military personnel and paramilitary forces, and is enforceable throughout India. Furthermore, it recommended the establishment of grievance redressal mechanisms composed of local government officials, military personnel, and police representatives. The Justice Reddy

committee faced criticism for its perceived regressive stance; while advocating for repealing AFSPA, it proposed retaining special powers under the UAPA. This might constitute a transgression of human rights yet again, albeit under the guise of an alternative legislative framework.

The Supreme Court constituted the Justice Hegde Commission in response to a request for enquiries into extrajudicial executions in Manipur from 1978 to 2010. It was tasked with reviewing the role of security forces inside the state; as a result, the committee openly questioned members of civil society and acquired written evidence, including testimony from various security officials. It claimed that the safety forces' investigations were insufficient and that the use of force was necessary. It also advocated for the bolstering of police forces, which were found to be undertrained to cope with insurgency within the state, to eliminate the military. It also acknowledged using excessive shots while failing to apprehend the suspects. In the backdrop of rebel activity, the Justice Hegde Commission was judged impracticable. Top military officers widely share such opinions. The core issue is expecting personnel in dangerous and life-threatening situations to be willing to use nonlethal force.

Justice Verma Committee is being treated separately since it has not directly affected AFSPA but has remarked on it. Following the gang rape and murder of a lady in Delhi in December 2012, the government established the Justice Verma Committee to look into sexual assault legislation. The study contained comments regarding sexual offences committed in crisis zones. According to it, the AFSPA legalised sexual assaults. It was urged that military services be punished under ordinary legal standards and that staff training and supervision be refocused to combat sexual breaches. The Justice Verma Committee report has been chastised for misstating facts and failing to consider existing rules and regulations within the army, which treat any type of sexual abuse offence with the utmost seriousness and thus initiate the harshest disciplinary action against the perpetrator. Similarly, an incorrect factual knowledge of military deployment in insurgency operations has been challenged, as has an insufficient and factually incorrect awareness of fast judicial procedures inside the army. Aside from the abovementioned examination, the Supreme Court has upheld the AFSPA's constitutional legality, determining that the powers provided to troops are not arbitrary or improper.

In the case of *Extra-Judicial Executions v Union of India*,⁴⁶ nearly ten years after the Jeevan Reddy Commission's findings, over 1,500 instances of extrajudicial killings were submitted for deliberation before the Supreme Court. Consequently, a commission was constituted by the Supreme Court in 2013, which determined that among the six randomly selected cases assigned for examination, none yielded credible conclusions, and the deceased individuals possessed no documented criminal histories. Thus, the Central Bureau of Investigation (CBI) was mandated to initiate inquiries into various cases. In the interim, the Supreme Court elucidated that in instances where members of the armed forces perpetrate an offence, the principle of absolute immunity does not apply. The Court further articulated that *should members of our armed forces be deployed to eliminate citizens of our nation based solely on mere allegations or suspicions of being an 'enemy,' not only would the rule of law be compromised, but the very foundations of our democracy would also be at significant risk*. However, the investigations mandated by the CBI in 2013 have yet to fruition. In response to this situation, the Court imposed a deadline of 31 December 2017 for completing investigations into 89 cases. Yet, by the extended deadline, the CBI succeeded in registering merely 12 instances. The United Nations remarked that it is *intolerable that the CBI is failing to adhere to these deadlines, thereby suggesting a lack of good faith*. In 2018, the Special Rapporteur concluded its examination of extrajudicial killings by asserting that *the government of India bears the responsibility to guarantee prompt, effective, and comprehensive investigations into all allegations of potentially unlawful killings, and a failure to fulfil this obligation constitutes a breach of its international responsibilities. Justice delayed is justice denied*.

IS AFSPA NEED OF THE HOUR: CASE STUDY OF 2023 MANIPUR CRISIS?

The justification provided by the government for this legislation is predicated on the imperative of safeguarding the security of regions experiencing disturbance and addressing the militancy threat posed to the state. Furthermore, the government asserts that the negative perception surrounding this act is attributable solely to its misrepresentation, emphasising that its absence would hinder the effective management of specific circumstances. While it is undeniable that the AFSPA confers substantial authoritative powers, it is essential to recognise that challenging situations necessitate implementing extraordinary measures. Critics of the AFSPA may overlook

⁴⁶ *Extra-Judicial Executions v Union of India* (2016) 14 SCC 536

the fact that insurgents have undergone significant training and preparation. Insurgent or rebel combatants frequently receive logistical support and armaments from external entities to foment a secessionist movement within India. These highly trained fighters possess advanced firearms and explosives that surpass the capabilities of local law enforcement, which they subsequently employ to launch severe assaults on military personnel. Militants, both as individuals and organised groups, engage in training with weapons and munitions, driven by the singular goal of undermining the authority of the state. In numerous respects, this contentious legislation empowers armed forces to manage scenarios in which guerrilla fighters and armed insurgents actively try to eliminate state authorities, including the Central Armed Police Forces (CAPFs), who safeguard the nation-state against secessionist threats.

CASE STUDY: THE SITUATION IN MANIPUR

The ongoing conflict has engulfed the northeastern Indian state of Manipur for an extended duration. The pervasive violence, resultant displacement, and the tragic loss of life, livelihoods, and property have rendered any semblance of normalcy obsolete since the onset of May. To the north, Manipur shares its borders with Nagaland, while Mizoram lies to the south and Assam to the west. Furthermore, it is adjacent to two tumultuous regions of Myanmar: the Sagaing Region, predominantly inhabited by the Bamar (Burmans), who primarily reside in the arid zones and along the Ayeyarwady River to the east, and the Chin State to the south. The term 'Chin' was originally ascribed by the Burmese in Myanmar to denote all hill tribes along Myanmar's western frontier. However, within Manipur, the hill tribes are categorised into two distinct groups: the Chin-Kuki and the Naga.⁴⁷

A faction within the Meitei community has championed the cause for their inclusion in India's Scheduled Tribe Lists, articulating the advantages conferred by specific land rights and protections, economic packages, employment opportunities, and additional benefits. As they persist in their pursuit of Scheduled Tribe designation, the Ministry of Tribal Affairs of the Government of India disseminated a correspondence on 29 May 2013, directed to the Government of Manipur, soliciting a 'specific recommendation accompanied by the most recent

⁴⁷ Lt.Gen Shokin Chouhan (Retd.), 'The Crisis in Manipur: An Assessment' (*Chanakya Forum*, 05 June 2023) <<https://chanakyaforum.com/the-crisis-in-manipur-an-assessment/>> accessed 03 September 2024

socio-economic survey and ethnographic report.’ In light of the Manipur government’s failure to respond, a writ petition was subsequently filed before the High Court of Manipur.

In a 27 March 2023 ruling, the High Court of Manipur mandated that the Manipur government submit a proposal to the Ministry of Tribal Affairs regarding the Meitei claim for inclusion in the Scheduled Tribes List. The All-Tribal Students’ Union, Manipur (ATSUM), an organisation representing Kuki ethnicity, expressed dissent towards the High Court's ruling and organised a protest march, inviting various tribal organisations to participate. ATSUM orchestrated a Tribal Solidarity March across all hill districts of Manipur on May 3, 2023, under the slogan ‘Come now, let us reason together’. This initiative received backing from the Indigenous Tribal Leaders’ Forum (ITLF) and the Joint Coordination Committee on Tribal Rights Manipur (JCCOTR-M).

The ATSUM march provoked considerable ire among numerous Meitei individuals advocating for the Scheduled Tribe designation, who perceived it as the singular pathway to economic advancement, safeguarding land from immigrants/foreigners, and preserving the integrity of Manipur. Consequently, proponents of Scheduled Tribe status within the Meitei community organised a ‘counter-protest’ in the border districts of Churachandpur and Bishnupur. The protest march orchestrated by ATSUM was particularly impactful in Kuki-dominated regions of Manipur, notably within the town of Churachandpur.⁴⁸ Nevertheless, Churachandpur had yet to rescind the restriction order imposed by the district administration on 27 April under Section 144 of the CrPC as of 3 May.

The occurrences in Manipur after 3 May and the ensuing weeks have raised significant apprehensions. A multitude of Kuki-Zomi and Meitei settlements have been incinerated, alongside numerous alleged interactions between the Manipuri State Police commandos and Kuki-Zomi insurgent factions being documented. According to the Chief Minister, 40 militants were neutralised, with several others apprehended during operations and confrontations across the foothills of the Imphal Valley, where the Kuki-Zomi and Meitei groups converge. The military has refrained from validating these confrontations, asserting that the prevailing insurgency was not the catalyst for the violence, which they contend is a law and order dilemma that necessitates a political resolution.

⁴⁸ *Ibid*

Insurgent entities encompassed by the Suspension of Operations (SoO) accord with the Government of India and the state administration have repudiated any engagement in the violence, whether through assaults on civilians or skirmishes with Manipur police forces. Nevertheless, they have indicated that 'village volunteers' who have endeavoured to shield their communities and territories from aggression or assaults 'have been impacted' and may have played a role. This persistent bloodshed establishes a dangerous precedent, obstructing peace dialogues and settlement negotiations for protracted periods. The Kuki National Organisations (KNO), an umbrella organisation for various Kuki insurgent groups in the region, have articulated their aspiration to persist in peace negotiations with the central government. However, the nature and substance of these discussions may exhibit considerable variability.⁴⁹

The purported involvement of these insurgent organisations in any form of violence, as asserted by the Manipur administration under the leadership of Biren Singh, will inevitably influence these groups' positions at the negotiation table. In return for a cessation of the insurgency, the SoO agreement affords protection to rebel groups from actions taken by Indian or state security forces. The Biren Singh administration rescinded the contract in March 2023, a decision that has not been acknowledged by the central government or the military, both of whom are also signatories to this accord.⁵⁰

The Meitei political establishment attributes the violence entirely to particular factions within the Kuki community, alleging their complicity in unlawful poppy cultivation and their provision of asylum and protection to illegal Myanmarese Kuki refugees who have migrated into the Churachandpur district in pursuit of an expanded Kuki homeland within the state of Manipur. In contrast, Kuki leaders assert that the recent conflict was instigated by the relentless assaults by the Manipur government on the Kuki-Zomi populace, aimed at the relinquishment of protected tribal territories.

Historically, the Meiteis have been compelled to relocate by the Kuki-Zomi populace to the peripheries of the Imphal Valley. Concurrently, the Kuki-Zomis have also faced displacement at the hands of the Meiteis within Imphal. Meiteis residing in villages adjacent to Kuki-Zomi

⁴⁹ Dr. Joshua Thomas, 'Manipur Imbroglia' (*Centre for Public Policy Research*, 21 June 2023) <<https://www.cppr.in/articles/manipur-imbroglio>> accessed 01 September 2024

⁵⁰ Krishn Kaushik & YP Rajesh, 'Manipur: ethnic violence in the Indian state explained' *The Reuters* (New Delhi, 21 July 2023) <<https://www.reuters.com/world/india/why-is-indias-manipur-state-grip-ethnic-violence-2023-07-21/>> accessed 01 September 2024

territory have sought refuge in the Imphal Valley. At the same time, the departure was reciprocated by the Kuki-Zomi tribes, who vacated the Valley in favour of the Kuki-dominated Churachandpur district.

To regulate the situation, the military promptly deployed numerous units, approximately 200 columns, from the adjacent state of Arunachal Pradesh, where they had been stationed along the Indo-China Line of Actual Control (LAC). At the same time, the Manipur government swiftly enacted a curfew under Section 144 of the Criminal Procedure Code (CrPC) in various districts. It suspended mobile data services for five days in the late afternoon. Nonetheless, video footage, photographs, and messages/information/rumours concerning acts of killing, injuring, sexual assault, looting, abduction, arson, or destruction of communities had already proliferated on social media platforms. This dissemination exacerbated the pre-existing communal hatred directed towards one of the demographic groups, which had been intensifying over the preceding years. The Manipur government has curtailed internet broadband services and permitted civil authorities to exercise lethal force against individuals who violate the law.

On a semi-annual basis, the Manipur government has prolonged the enforcement of the Armed Forces (Special Powers) Act (AFSPA) across the entire state, except for 19 police stations in seven Imphal Valley districts. As a result of a 'notable enhancement' in the security landscape, the application of AFSPA has been methodically diminished across the valley districts predominantly inhabited by the Meitei community since 2022. The announcement made by the State government to maintain the 'status quo' is set to take effect on October 1. This decision occurs despite the military's advocacy for the reinstatement of AFSPA in the valley regions, asserting that its absence has hindered operations against insurgent factions. During the ongoing escalation of ethnic violence, these groups are purported to have established a presence within the state following an extended period of tranquillity.

CONCLUSION

The AFSPA has a colonial history and has suppressed demands for secession and autonomy. It has also undermined the principles of a strong democracy, including the rule of law, civil liberties, freedom of movement, and constitutional remedies. To ensure human rights, individual security, institutional (armed forces), and national security, state accountability, conformity to the constitutional democratic rule of law, and fine-tuned wording of the AFSPA

are necessary. This is a win-win proposition for all stakeholders in ensuring human security and reviving the democratic state apparatus. The AFSPA has played an essential role in maintaining internal peace and security in the northeastern states. However, the directions provided by the Court must be rigorously followed and integrated into the act itself. There is also a need to give improved training to state police officers to increase their efficiency. This will allow state police to deal with dissident organisations, reducing the need to use the AFSPA Act.

The state possesses an unequivocal mandate to address insurgency, safeguard its populace, and uphold tranquillity and cohesiveness within its national boundaries. Nevertheless, such endeavours must not be pursued at the expense of human life; the draconian legislation has precipitated more detriment than advantage. It should not be enacted under the influence of demagoguery, which inflicts greater malevolence than benevolence, mainly when it manipulates the moral sensibilities of individuals uninvolved by the law and those adversely affected by it. Upon examining the situation from a practical perspective, the law fails to uphold its purported commitment to maximising happiness for the most significant number; instead, it stands in stark opposition to this principle. Despite all arguments advocating for the legislation, it cannot outweigh the fatalities and egregious violations of human rights that have ensued as a consequence. Statistically, analytically, jurisprudentially, and, most importantly, ethically, one can ascertain that AFSPA has deviated from the moral tenets of the law. The natural law and positivism doctrines elucidate that AFSPA lacks a foundation for its legitimacy in moral, ethical, or authoritative terms that warrant compliance. The law has, long since, forfeited the public's endorsement in its favour.

Nonetheless, public support from individuals not subjected to the law remains a matter of little relevance. The state should reevaluate the act, if not repeal it, at least to amend it more humanely. There exists, however, no possibility for restitution, as the loss of life can never be genuinely compensated, even in monetary terms. Nevertheless, the state can still offer compensation by delivering justice to those who have suffered the loss of loved ones through the accountability of culpable military personnel. Denying them justice constitutes a violation of their fundamental rights. Numerous measures can be instituted; for example, installing cameras on soldiers, akin to practices in various developed nations, would facilitate accountability, mitigate negligent actions, and allow for critical assessment of whether the application of

reasonable force was justifiable. Safe passages and corridors must be established for the evacuation of women, children, and older people in conflict-prone areas.

Furthermore, mass awareness initiatives should be promoted to foster confidence in the military. The availability of female soldiers in every unit or battalion should be ensured to address situations requiring searches of residences and suspected female militants. However, these suggestions represent merely a fraction of an extensive list, and the responsibility to implement and enforce such measures lies solely with the governmental policy-making apparatus, which must rectify the grave errors that have incurred significant costs.