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*Research Article*

## Evolution and objective of the Armed Forces (Special Powers) Act, 1958 (AFSPA)

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### Abstract

The Armed Forces (Special Powers) Act, 1958 (AFSPA), remains one of the most debated legislations in India, balancing the imperatives of national security and the protection of fundamental rights. Enacted in response to insurgency in the North-East, the Act grants extraordinary powers to armed forces in areas declared “disturbed.” This article examines the historical evolution, legislative intent, and objectives of AFSPA while critically analysing its legal framework. It further explores judicial interpretations through landmark decisions, highlighting how courts have attempted to reconcile security needs with constitutional guarantees. The study reveals that while AFSPA was conceived as a temporary measure to restore public order, its prolonged application raises significant concerns regarding accountability, human rights, and the rule of law. The article concludes by emphasising the need for reforms that ensure both effective security measures and protection of civil liberties in a democratic framework.

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## 1. INTRODUCTION

The Armed Forces (Special Powers) Act, 1958 (AFSPA) is one of the most important but also most debated laws in India. It was made by Parliament to deal with serious internal security problems like insurgency, armed rebellion, and violent disturbances. In some parts of the country, especially where there is continuous violence or a threat to public order, normal police forces are not enough to control the situation. In such cases, the government brings in the armed forces and gives them special powers through this law.

AFSPA allows the government to declare certain areas as “disturbed areas.” A disturbed area is a place where there is ongoing violence, danger to life, or a threat to the stability of the State. Once an area is declared disturbed, the armed forces get special authority to take action to restore peace and order. This shows that the law is mainly a response to exceptional and serious security situations.

The Act was passed on 11 September 1958. At first, it was applied only to the Naga Hills area of Assam because there was a strong separatist movement there. The government felt that strict action was necessary to control the situation and protect the unity of the country. Later, as similar problems arose in other parts of the North-East, AFSPA was extended to states like Manipur, Nagaland, Assam, and others. After that, a similar law was also applied in Jammu and Kashmir in 1990 due to rising militancy.

Under AFSPA, armed forces are given wide powers. They can use force, even to the extent of causing death, if they believe it is necessary to maintain public order. They can arrest a person without a warrant if they suspect that the person has committed or is about to commit an offence. They can also enter and search any place without prior permission. These powers are given so that the armed forces can act quickly and effectively in dangerous situations where delay could lead to more violence.<sup>1</sup>

The main idea behind giving such powers is to help the armed forces control serious threats and bring normal life back to disturbed areas. The law is meant to support civil authorities, not replace them, and to ensure that peace and security are restored as soon as possible.

However, because these powers are very strong and extraordinary, many concerns have been raised over time. There have been allegations of misuse of power, such as fake encounters, unlawful killings, torture, and arbitrary arrests. Another major issue is that the law provides protection to armed forces personnel, making it difficult to take legal action against them without government approval. This has created a feeling that there is a lack of accountability.

Due to these concerns, AFSPA has been widely criticised by human rights groups, legal scholars, and civil society. At the same time, the judiciary has also examined the law in several important cases to ensure that it does not violate fundamental

rights guaranteed under the Constitution, especially the right to life and equality.

## 2. HISTORICAL EVOLUTION OF AFSPA

### 2.1 Colonial Origins

The origin of the Armed Forces (Special Powers) Act, 1958 (AFSPA), can be traced back to the British colonial period in India. During the time of the freedom struggle, especially the Quit India Movement, the British government faced strong resistance from the Indian people demanding independence. To control this movement, the British introduced a law called the Armed Forces Special Powers Ordinance, 1942.

This ordinance gave very wide and strict powers to the armed forces. They could use force, arrest people without proper legal procedures, and suppress protests to maintain control over the population. The main aim of this law was not to protect people, but to stop the freedom movement and maintain British rule in India.

Although India became independent in 1947, the influence of such colonial laws did not completely disappear. The idea that armed forces could be given special powers to deal with serious disturbances continued even after independence. This colonial legacy played an important role in shaping later laws like AFSPA, which were also designed to handle situations where normal law and order machinery was not enough.<sup>2</sup>

### 2.2 Post-Independence Context

After independence, India faced many internal security challenges. One of the most serious problems arose in the North-Eastern region, particularly in the Naga Hills area. There was an armed insurgency led by groups demanding independence from India. This created a situation of violence, instability, and a threat to the unity and integrity of the country. The local police and civil authorities found it difficult to control the situation. As a result, the Government of India decided to deploy the armed forces to restore order. However, the armed forces needed legal authority to act effectively in such disturbed conditions.

To address this issue, the President of India introduced the Armed Forces (Assam and Manipur) Special Powers Ordinance in 1958. This ordinance gave special powers to the armed forces to operate in disturbed areas. Later, this ordinance was replaced by the Armed Forces (Special Powers) Act, 1958 (AFSPA), which formally became a law passed by Parliament.

The legal basis for enacting such a law can be linked to Article 355 of the Constitution of India. According to this Article, the Union Government has a duty to protect every state against external aggression and internal disturbance. This means that when a state is unable to handle serious law and order problems on its own, the central government can step in and take necessary action, including deploying armed forces.

<sup>1</sup>Drishti IAS, “Armed Forces (Special Powers) Act, 1958 (AFSPA)”, *Daily News Analysis*, 6 April 2024, available at: <https://www.drishtias.com/daily-updates/daily-news-analysis/armed-forces-special-powers-act-1958-afspa> (last visited on 24-03-2026).

<sup>2</sup>Himanshu&FalakyarAskari, “The Armed Forces (Special Powers) Act, 1958: A Critical Analysis”, *ILI Law Review*, Vol. II, Winter Issue 2017, available at: <https://ili.ac.in/pdf/himanshu.pdf> (last visited on 25-03-2026).

Therefore, AFSPA was introduced as a measure to fulfil this constitutional duty. It was meant to help restore peace and stability in regions affected by insurgency and violence. However, although it was initially intended as a temporary solution, its continued use over many years has led to ongoing debates about its necessity and impact.<sup>3</sup>

### 2.3 Expansion and Amendments

After the Armed Forces (Special Powers) Act, 1958 (AFSPA) was first introduced in 1958, it was not limited only to the Naga Hills area. Over time, the law was extended to other parts of India where similar problems of insurgency and violence arose. This shows that AFSPA gradually became an important tool for dealing with internal security issues in different regions.

#### Expansion in the North-East

Initially, AFSPA was applied to Assam and the Naga Hills. However, as insurgency spread to nearby regions, the Act was extended to other North-Eastern states such as:

- Manipur
- Nagaland
- Tripura
- Arunachal Pradesh (in certain areas)
- Mizoram (during earlier periods of unrest)

In these areas, armed groups were involved in activities like demanding independence, attacking government forces, and disturbing public order. The government believed that strong action was required to control such situations, and therefore, AFSPA was applied.<sup>4</sup>

#### Extension to Punjab

During the 1980s, Punjab faced a serious law and order crisis due to the Khalistan movement, which demanded a separate Sikh state. To deal with increasing violence and terrorism, AFSPA was extended to Punjab in 1983.

However, this was a temporary phase. As the situation improved and normalcy was restored, AFSPA was later withdrawn from Punjab. This shows that the Act can be removed once peace returns.

#### Application in Jammu & Kashmir

In 1990, due to rising militancy and cross-border terrorism, a separate but similar law called the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990, was enacted. This law gives similar powers to the armed forces in Jammu and Kashmir as AFSPA does in the North-East.

The situation in Jammu and Kashmir required strong security measures because of continuous violence, terrorist activities, and threats to national security.

### Gradual Withdrawal in Some Areas

In recent years, the government has started reducing the areas under AFSPA, especially in the North-East. In states like Tripura and parts of Assam, the Act has been completely or partially removed due to improvement in security conditions.

This shows that AFSPA is not meant to be permanent. It is intended to be used only when necessary and should be withdrawn when peace and stability are restored.

### Overall Understanding

The expansion of AFSPA over time reflects the changing security needs of the country. Whenever there has been a serious threat to public order or national integrity, the government has relied on AFSPA to give special powers to the armed forces.

At the same time, the gradual removal of AFSPA from some regions also shows that the government recognises the importance of returning to normal legal systems once conditions improve.<sup>5</sup>

### 3. OBJECTIVES OF AFSPA

The main purpose of the **Armed Forces (Special Powers) Act, 1958 (AFSPA)** is to deal with serious internal security problems like insurgency, terrorism, and violent disturbances. The law was made to ensure that peace and order can be restored in areas where normal law enforcement is not enough.

#### 3.1 Maintenance of Public Order

One of the primary objectives of AFSPA is to maintain public order in areas affected by violence. In some regions, especially those facing insurgency, the situation becomes so serious that the police alone cannot control it.

In such cases, AFSPA allows the armed forces to step in and take necessary action to control violence, prevent unlawful activities, and protect civilians. The aim is to bring the situation back to normal as quickly as possible.

#### 3.2 Empowerment of Armed Forces

Another important objective of AFSPA is to give special powers to the armed forces so that they can act effectively in dangerous situations.

Under this law, armed forces can:

- Use force if required to maintain law and order
- Arrest a person without a warrant
- Enter and search any place without prior permission

<sup>3</sup>Rituparna Bhattacharyya, "Living with Armed Forces Special Powers Act (AFSPA) as Everyday Life", *GeoJournal*, Vol. 83, No. 1 (2018), pp. 31–48, available at: <http://www.jstor.org/stable/45117478> (last visited on 26-03-2026).

<sup>4</sup>Mohd. Aqib Aslam, "Armed Forces (Special Powers) Act, 1958: A Critical Study", *International Journal of Multidisciplinary Educational Research (IJMER)*, Vol. 10, Issue 2(3) (2021), available at: [http://s3-ap-southeast-1.amazonaws.com/ijmer/pdf/volume10/volume10-issue2\(3\)/24.pdf](http://s3-ap-southeast-1.amazonaws.com/ijmer/pdf/volume10/volume10-issue2(3)/24.pdf) (last visited on 28-03-2026).

<sup>5</sup>Rajiv Tewari, "Locating Armed Forces (Special Powers) Act, 1958 in the Federal Structure: An Analysis of Its Application in Manipur and Tripura", *Working Paper No. 400*, Institute for Social and Economic Change (ISEC), Bengaluru, 2017, available at: <http://www.isec.ac.in/WP%20400%20-%20Rajiv%20Tewari%20-%20Final.pdf> (last visited on 27-03-2026).

These powers help the armed forces act quickly without delays, which is very important in situations where there is a risk to life and security.<sup>6</sup>

### 3.3 Supports to Civil Administration

AFSPA is not meant to replace the civil government or police. Instead, its objective is to support civil authorities when they are unable to manage the situation on their own.

The armed forces work in aid of civil power. Their role is temporary and focused on restoring peace so that normal administration can function again.

### 3.4 Protection of National Security and Integrity

AFSPA is also aimed at protecting the unity and integrity of India. In areas where there are separatist movements or threats to national security, strong action is necessary.

The law helps the government control such threats and ensure that the country remains stable and united.

### 3.5 Quick and Effective Response

In disturbed areas, situations can change very quickly. Delays in taking action can lead to more violence and loss of life.

AFSPA allows the armed forces to take immediate decisions without waiting for long legal procedures. This helps in responding quickly to threats and preventing further damage.

### 3.6 Creation of Deterrence

Another objective of AFSPA is to create fear among those involved in unlawful or violent activities. When strict powers are given to the armed forces, it acts as a deterrent and discourages people from engaging in illegal acts.

### 3.7 Restoration of Normalcy

The ultimate goal of AFSPA is not to continue military control but to restore normal conditions. Once peace is achieved, the law is expected to be withdrawn, and normal legal systems should take over.<sup>7</sup>

## 4. KEY PROVISIONS OF AFSPA

The Armed Forces (Special Powers) Act, 1958 (AFSPA), contains some important sections that give special powers to the armed forces in disturbed areas. The most important provisions are Sections 3, 4, and 6.

### 4.1 Declaration of Disturbed Areas (Section 3)

Section 3 of AFSPA gives power to the Central Government or the State Government to declare any area as a “disturbed area.”

An area can be declared disturbed when:

- There is continuous violence or insurgency
- There is danger to public order
- The situation is not under the control of normal law enforcement

Once an area is declared disturbed, AFSPA becomes applicable there, and the armed forces get special powers.

Important Point: This declaration is very important because without it, AFSPA cannot be applied.

Issue: Sometimes, areas remain declared as disturbed for a very long time, which raises questions about misuse and lack of review.

### 4.2 Special Powers of Armed Forces (Section 4)

Section 4 is the most important and controversial part of AFSPA. It gives wide powers to the armed forces. Under this section, armed forces can:

#### (a) Use of Force

They can use force, even to the extent of causing death, if they believe it is necessary to maintain public order.

Condition: They must give a warning before using force (as far as possible).

#### (b) Arrest Without Warrant

Armed forces can arrest any person without a warrant if they suspect that the person has committed or is about to commit an offence.

#### (c) Search Without Warrant

They can enter and search any place without a warrant to find:

- Suspects
- Weapons
- Explosives

#### (d) Seizure of Property

They can seize weapons or any suspicious items.

Simple Understanding: Section 4 gives the armed forces the power to act quickly without waiting for legal procedures, which is necessary in dangerous situations.

Concern: These wide powers can sometimes lead to misuse, which is why this section is highly debated.

### 4.3 Protection to Armed Forces (Section 6)

Section 6 provides legal protection (immunity) to armed forces personnel.

It states that: No legal action can be taken against armed forces personnel without prior permission (sanction) from the Central Government.

#### Purpose of this Protection

- To allow armed forces to perform their duties without fear
- To prevent unnecessary harassment through false cases

#### Major Issue

This section is the most controversial because:

- It makes prosecution difficult

<sup>6</sup>SailajanandaSaikia, “9/11 of India: A Critical Review on Armed Forces Special Power Act (AFSPA) and Human Rights Violation in North East India”, *Journal of Social Welfare and Human Rights*, Vol. 2, No. 1 (March 2014), pp. 265–279, available at:

[http://jswhr.com/journals/jswhr/Vol\\_2\\_No\\_1\\_March\\_2014/15.pdf](http://jswhr.com/journals/jswhr/Vol_2_No_1_March_2014/15.pdf) (last visited on 25-03-2026).

<sup>7</sup>Pushpita Das (ed.), *Armed Forces Special Powers Act: The Debate*, Institute for Defence Studies and Analyses (IDSA), New Delhi, 2012, available at:

<https://idsa.in/system/files/Monograph7.pdf> (last visited on 27-03-2026).



- Sanction is often delayed or denied
  - Victims may not get justice easily
- This creates a feeling of a lack of accountability.

## 5. JUDICIAL INTERPRETATION AND LANDMARK JUDGMENTS

### 1. Naga People's Movement of Human Rights v. Union of India

This is the most important case related to the Armed Forces (Special Powers) Act, 1958 (AFSPA). In this case, the constitutional validity of AFSPA was challenged before the Supreme Court on the ground that it violates fundamental rights such as equality and the right to life. The Court upheld the validity of the Act and held that AFSPA is not arbitrary or unconstitutional. It was observed that the armed forces are deployed in aid of civil power and not to replace civilian authority. However, the Court also laid down important safeguards, such as the requirement of using minimum force, the necessity of proportionality, and periodic review of disturbed areas. This judgment is significant because it both validates AFSPA and imposes limitations to prevent misuse.<sup>8</sup>

### 2. Extra Judicial Execution Victim Families Association v. Union of India

In this case, the Supreme Court dealt with allegations of fake encounters in Manipur involving security forces. The Court held that the protection given under AFSPA does not grant absolute immunity to armed forces personnel. It clearly stated that every use of force must be subject to investigation and that even in disturbed areas, the rule of law must prevail. The Court emphasised that excessive or retaliatory force is not permitted and that each encounter must be examined carefully. This judgment marked a shift towards greater accountability and reinforced the importance of protecting human rights even during security operations.<sup>9</sup>

### 3. Sebastian M. Hongray v. Union of India

This case involved the disappearance of two individuals who were allegedly taken into custody by army personnel. The Supreme Court took a serious view of the matter and held the authorities accountable. It recognised enforced disappearance as a grave violation of human rights and directed appropriate action. The judgment made it clear that even in areas where AFSPA is applicable, the armed forces cannot act beyond the law. This case is important because it highlights that legal accountability exists even in disturbed areas.<sup>10</sup>

### 4. People's Union for Civil Liberties v. Union of India

Although not directly challenging AFSPA, this case is important for understanding the protection of human rights in situations involving state power. The Supreme Court

emphasised the importance of procedural safeguards and accountability in cases involving the use of force by authorities. The principles laid down in this case have been applied in AFSPA-related matters as well, particularly in ensuring that state action does not violate fundamental rights.<sup>11</sup>

## 6. CRITICAL ANALYSIS OF AFSPA

### 6.1 Justification for AFSPA

The Armed Forces (Special Powers) Act, 1958 (AFSPA) has often been criticised, but at the same time, many people believe that it is necessary in certain situations. The justification for AFSPA is mainly based on the need to protect the country and maintain peace in areas affected by serious violence and insurgency.

#### (a) Necessary for Tackling Insurgency

In some parts of India, especially in the North-East and earlier in Jammu and Kashmir, there have been long-standing problems of insurgency. Insurgency means armed rebellion against the government, where groups use violence, weapons, and illegal activities to challenge the authority of the State.

In such situations, normal police forces may not be strong enough to deal with heavily armed groups. The police are trained mainly for maintaining law and order, but insurgency often involves organised and violent attacks, which require stronger action.

AFSPA allows the armed forces, who are better trained and equipped, to take control of such situations. It helps them act quickly and effectively to reduce violence and bring stability. Without such a law, it would be very difficult to control insurgency in highly disturbed areas.

#### (b) Provides Legal Backing for Military Operations

Another important reason for AFSPA is that it provides a legal framework for the armed forces to operate within the country. Normally, the army is used for external defence, not for internal law and order. However, in serious internal disturbances, the army is called to assist civil authorities. In such cases, soldiers need clear legal authority to:

- Use force when required
- Arrest suspects
- Conduct search operations

AFSPA gives this legal backing. Without it, any action taken by armed forces could be questioned as illegal. This law protects them from unnecessary legal problems while they are performing their duties in dangerous situations.

It also ensures that military operations are not random but are carried out under a legal structure approved by Parliament.

#### (c) Helps Maintain National Integrity

One of the most important justifications for AFSPA is the protection of India's unity and integrity. In some regions, there have been movements demanding separation from India. These movements sometimes turn violent and threaten the sovereignty

<sup>8</sup>*Naga People's Movement of Human Rights v. Union of India*, (1998) 2 SCC 109.

<sup>9</sup>*Extra Judicial Execution Victim Families Association v. Union of India*, (2016) 14 SCC 536.

<sup>10</sup>*Sebastian M. Hongray v. Union of India*, (1984) 1 SCC 339.

<sup>11</sup>*People's Union for Civil Liberties v. Union of India*, (1997) 3 SCC 433.

of the country. If such activities are not controlled, they can weaken the nation and create instability.

AFSPA helps the government take strong action against such threats. By giving special powers to the armed forces, the law ensures that anti-national activities can be controlled effectively. In this way, AFSPA plays a role in safeguarding the country from internal threats and maintaining its territorial integrity.

## 6.2 Criticism and Human Rights Concerns

The **Armed Forces (Special Powers) Act, 1958 (AFSPA)** has been widely criticised over the years, mainly because of its strong and extraordinary powers. While the law was made to deal with serious security problems, many people believe that these powers have sometimes been misused, leading to violations of human rights.

### (a) Alleged Misuse of Power

One of the biggest criticisms of AFSPA is that it gives very wide powers to the armed forces, which can sometimes be misused. Since the law allows the use of force, arrest without warrant, and search without permission, there have been complaints that these powers are not always used carefully.

In some cases, it has been alleged that force was used even when it was not necessary. This raises concerns about whether proper checks and safeguards are being followed.

### (b) Extra-Judicial Killings

Another serious concern is the issue of extra-judicial killings, also known as fake encounters. These are situations where a person is killed by security forces without proper legal procedure or trial.

There have been allegations in some AFSPA-affected areas that people were killed in the name of maintaining law and order, even when it was not justified. Such actions violate the basic principle of law that every person has the right to a fair trial and protection of life.

### (c) Arbitrary Arrests and Detentions

AFSPA allows armed forces to arrest individuals without a warrant. While this power is useful in urgent situations, it has also been criticised for leading to arbitrary arrests.

Sometimes, people are detained based on suspicion without sufficient evidence. This can affect innocent individuals and create fear among local people. It also raises concerns about the violation of personal liberty.

### (d) Issue of Immunity (Section 6)

One of the most controversial aspects of AFSPA is its immunity clause under Section 6.

According to this provision, no legal action can be taken against armed forces personnel without prior approval from the Central Government.

### Problems with Immunity

- It delays the process of justice
- Permission for prosecution is often not granted easily

- Victims may find it difficult to get justice

Because of this, many people feel that armed forces personnel are protected even when wrongdoing occurs. This creates a perception of impunity, meaning that people believe that the law allows them to act without being held accountable.

## 7. CONTEMPORARY RELEVANCE

The **Armed Forces (Special Powers) Act, 1958 (AFSPA)** continues to remain relevant in present times due to ongoing internal security challenges in certain parts of India. Although the situation has improved in many regions, some areas, particularly in the North-East, still experience issues related to insurgency, violence, and threats to public order. In such circumstances, the government considers it necessary to retain AFSPA to ensure peace and stability. The nature of security threats has also evolved, including concerns such as cross-border terrorism and organised armed activities, which require quick and effective response mechanisms. Therefore, AFSPA provides the armed forces with the legal authority to act promptly in such situations. At the same time, the government periodically reviews the application of the Act to assess whether it is still required in specific areas. In recent years, AFSPA has been partially or fully withdrawn from certain regions where conditions have improved, indicating that the law is not intended to be permanent but situation-based. However, AFSPA continues to be a subject of debate, with supporters emphasising its importance for national security, while critics highlight concerns related to human rights and misuse of power. Thus, AFSPA remains significant in contemporary India as it reflects the ongoing need to balance security requirements with the protection of individual rights.

## 8. NEED FOR REFORMS

The **Armed Forces (Special Powers) Act, 1958 (AFSPA)** has been in force for several decades, and over time, many experts and committees have suggested that reforms are necessary to make the law more balanced and fairer. One of the most important recommendations came from the Jeevan Reddy Committee, which examined the working of AFSPA and highlighted several concerns. The Committee suggested that the Act should either be repealed or significantly amended because its continued use in the same form may not be suitable in a democratic society. One major area of reform is the need for greater accountability. Since AFSPA gives wide powers to the armed forces, it is important to ensure that these powers are not misused. There should be proper mechanisms to investigate complaints and take action against any wrongdoing. Another important reform is strengthening civilian oversight. This means that civil authorities, such as local administration and independent bodies, should have a greater role in monitoring the actions of armed forces in disturbed areas. Such oversight can help build trust among the public and ensure transparency. Overall, the need for reforms arises from the necessity to strike a better balance between national security and protection of human rights, so that the law remains effective while also respecting constitutional values.

## 9. CONCLUSION

The Armed Forces (Special Powers) Act, 1958, represents a complex intersection of national security and constitutional governance. While its objective is to restore order in disturbed areas, its prolonged implementation has raised significant concerns regarding human rights and accountability. Judicial interventions have played a crucial role in limiting the scope of AFSPA and ensuring adherence to the rule of law. Landmark judgments have clarified that the Act does not grant absolute immunity and that armed forces remain subject to legal scrutiny. Ultimately, the future of AFSPA lies in achieving a balance between security imperatives and democratic values. Reforms aimed at enhancing transparency, accountability, and human rights protection are essential to align the Act with constitutional principles.

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