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The Contentious Armed Forces (Special Powers) Act



Colonel (Dr.) Amitabh Hoskote is a PhD in Development & Conflict Studies, and a Visiting Fellow at Centre for Land Warfare Studies, New Delhi. His research focusses on conflict & peace studies, ethnic violence, war/military studies, democratic accommodation, and development paradigms in International Relations.

Abstract

The incident of civilian deaths in Nagaland in December 2021 has once again brought the Armed Forces Special Powers Act in sharp focus. The Act is employed in insurgency prone regions. The debate in civil society gains traction from the powers it confers on the armed forces as well as issues relating to Human Rights; it also stems from why the Act continues to be employed despite vehement opposition and why alternatives are not explored. The author examines the legality of the Act, the political culpability of relying on AFSPA rather than strengthening and implementing policy initiatives, and the contextual discussion on its continued employability today, along with suggestions on the means to a graduated withdrawal mechanism.

Key Points

- Civilian deaths in Nagaland in December 2021 have brought the AFSPA in limelight again. AFSPA is employed if a region is classified as 'Disturbed Area' by the Government.
- AFSPA is controversial due the powers it confers on the armed forces and allegations of human rights violations. The opposition to the Act, and exploring viable alternatives cannot be overlooked.
- Decline in insurgent violence must be accompanied by a review of the 'Disturbed Area' status by the Central and State Governments. Reliance on the armed forces must be kept as the option of 'last resort'.
- Suitable capacity building in police forces and utilising existing laws having similar provisions to deal with violence need to be carried out simultaneously to relieve the armed forces in areas of decreasing violence.
- System of military justice must be strengthened, speedy, and visible. This will assuage fears of misuse of AFSPA amongst civil society and legal communities.



Introduction

The Armed Forces Special Powers Act (AFSPA) was activated in regions that were prone to insurgent violence from the 1950s. Time and again however, the constitutional validity of the Act has faced scrutiny, being called ‘draconian’ due to wide powers given to the armed forces and its apparent lack of safeguards for human rights. It has attracted commentary from the most knowledgeable legal brains in addition to human rights activists, politicians, and members of the armed forces community. While most agree that some form of protection needs to be afforded the armed forces who are involved in counter insurgency operations, they also, at the same time, agree that if AFSPA continues indefinitely, then it might become a tool for covering violations related to human rights. The highest court in the country has upheld the validity of the Act, yet in the same instance, given some very relevant guidelines.¹

The incident of civilian deaths in Nagaland in December 2021 has again brought AFSPA in to limelight. The issue brief analyses the provisions of the Act, using documentary evidence to understand the interpretations of the Act. It also tries to examine as to why other policy alternatives are not explored despite extant laws to support them, the political culpability in continued (and easier) reliance on the Act, and endeavours to suggest means to a calibrated withdrawal of the contentious Act.

Defining Disturbed Areas and their relation to Armed Forces Special Powers Act

An area can be declared as ‘Disturbed Area’ if the President of India (Central Government) or the Governor of a state feels that intervention or deployment of armed forces of the Union is a necessity to provide aid to the civilian government due to disturbance in the state. Two Union Acts are responsible for conferring such powers— the Armed Forces (Special Powers) Act 1958, and the Armed Forces (Jammu and Kashmir) Special Powers Act 1990. The Indian Government has used these powers in areas prone to insurgent violence such as J&K and states in the north-east.² Accordingly, enhanced powers are authorised to some categories of armed forces personnel owing to their deployment in these areas classified as ‘disturbed’.

The British promulgated an ordinance in 1942, which was also known by the name ‘Armed Forces Special Powers Act’ to quash the Quit India Movement at the time. During the violence and rioting in the immediate aftermath of partition, the Government of India issued four ordinances to quell the communal rioting and attendant breakdown of law and order;



ordinances were issued for Delhi, East Punjab, the United Provinces, Bengal, and Assam based on the original 1942 British ordinance. AFSPA, 1947 replaced these ordinances for one year, followed by the Act of 1958 to fight the sharp deterioration in Assam due to the Naga insurgency.

Political culpability of employing AFSPA. The British ordinance originally gave sweeping powers to its officers, with a view to enable them to deal with violence; for instance, powers to arrest a person not responding to a challenge or if found damaging property, or for the use of force including deadly force. It also gave the officers immunity from legal persecution without sanction of the government. All these provisions were vigorously debated in the Indian Parliament when the issue of bringing in the Indian version with virtually the same powers, came up for parliamentary scrutiny. After much debate the Act was finally passed.³ Since then, the Act found employability in the north-east (1950s onwards), in Punjab (1980s), and in J&K (1990s onwards).

Declaring an area 'disturbed' however, should go under review periodically, i.e., after six-month intervals. The Delhi High Court has clarified that 'disturbed area' categorisation has to be based on the location, the situation, and the circumstances of the case, i.e., it defies any set-piece definition and is dynamic in that respect.⁴ Once an area has been declared 'disturbed', it allows the government to deploy its armed forces to aid the civilian administration under the AFSPA.⁵

The important thing here is that the decision of allowing an area to continue under the 'disturbed area' category is political and the states may find it easier to avoid accountability for the law-and-order situations arising from possible political mishandling by keeping the armed forces deployed; resultantly, rarely does one find an instance of the repealing of AFSPA/ 'disturbed area' status. One such instance was in 2015 in Tripura, when the government decided to repeal AFSPA after 18 years. The state had enforced the Act in 1997 owing to militancy and the sensitive borders with Bangladesh. In May 2015, the decision to revoke AFSPA was finally taken by the government, citing the gradual decline of militancy over the last five years.⁶

Thus, the question of culpability remains, wherein governments may choose not to revoke the Act due to political reasons. Despite the huge negative publicity generated in the wake of the Nagaland civilian deaths in early December 2021, and the clamour for revocation of AFSPA, the government chose to retain it in the days following the incident.⁷



Exploring policy alternatives. Under Section IV of AFSPA, the power to fire or use force against persons causing disturbance in an area, or found in possession of arms, ammunition, and explosives, is given to commissioned officers, warrant officers, and non-commissioned officers. The same officers may use these powers to destroy fortified positions, or arms dumps, or training camps in use by armed gangs. Without the legal sanctity of a warrant, people committing cognisable offences can be arrested, or premises used for storage of arms and ammunition searched. But as per the Criminal Procedure Code (CrPC), 1973 the same powers have been conferred on police officers. The question which arises is, if the same powers are available to the police, then what was the need to formulate AFSPA separately. While the CrPc allows 'use of little force as possible and doing as little injury to person and property as may be consistent with dispersing the assembly', AFSPA allows 'fire upon or otherwise use force, even to causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area'. Such a difference in the 'approach' to the problem is justified in terms of the violence espoused in a disturbed area at the behest of militant or insurgent elements. Civil society counters this reasoning by its emphasis on transparency, accountability, human rights, and use of only as much force as required, for a problem that should be treated for its underlying causes politically, but is instead dealt with as a security issue which gives a wide berth for even excessive force in operations.⁸

Under Section V of AFSPA, any person arrested is to be handed over to the police at the earliest; a question of the arbitrary nature of the term 'least possible delay' has often been pointed out. People arrested under the Act are not to be interrogated, and moreover the arresting officer has to be convinced of the involvement of the person before the arrest.

Section VI of AFSPA provides protection to the armed forces in 'disturbed areas'; apropos, prior sanction of the Central government is needed to prosecute armed forces personnel. This sanction (or even refusal) by the government is subject to judicial review, thereby negating the immunity argument, for the armed forces. Similar provisions are available for the police under section 197 of Cr PC, as also under Jammu and Kashmir Public Safety Act, 1978 (amended in 1987 and 1990).

The necessity to implement extant laws utilising the provisions laid down in other acts and the CrPc forms part of the recommendations of the Second Administrative Reforms Commission under the chairmanship of Sh. Veerappa Moily, including a requirement to review the AFSPA.⁹ The fact that policy alternatives have not replaced AFSPA, nor has the



role of the armed forces changed in disturbed areas, speaks for itself with regard to implementation of the Commission's reports. Again, it highlights the necessity of political decisions in revoking of the Act.

However, it remains equally pertinent to take into account the requirement of the armed forces operating in disturbed areas, till such time that a suitable alternative is put in place. Wajahat Habibullah, former Chairperson of National Minorities Commission has enunciated it thus:

This said, it must be clearly understood that the final decision on this must rest on the advice of the armed forces. It might be said that the idea of redeployment has in fact originated from amongst army officers that have served in the State, with a high sense of purpose. If, by mutual consultation it is agreed that the law must continue, this must then be subject to review and rules carefully crafted for its enforcement, which must bring the law into the fullest conformity with the freedoms of every Indian citizen guaranteed to them by no less than the Constitution of India.¹⁰

Any decisions on changes or redeployment must be done taking due note of the armed forces requirements, as is evident from the above statement of Habibullah. Both legal minds and human rights practitioners agree that a recast of the Act needs to address the fact of similar provisions existing in other laws like the Cr PC, and the question of constitutional rights of the people.

Why AFSPA is Contentious

AFSPA faces challenges, including from the International Court of Justice (ICJ). The possibility of the use of armed forces in stifling or suppression of political activity in 'disturbed areas' cannot be justified.¹¹ However, it is not the only Act where the ICJ has commented on the 'highly discretionary tone' in certain cases. For instance, the J&K Public Safety Act 1978 has certain provisions that could be misinterpreted to suit the police. According to the Act, persons acting against the security of the state or law and order can be detained up to two years, and without charges for up to one year. The Act was further amended to exempt information about the arrest to the detainee. Similarly, the Terrorist and Disruptive Activities (Prevention) Act 1987 (TADA) has found itself being challenged due to the very definition of disruptive activities which could be against the Constitutional Right to Freedom of Speech. Thus, AFSPA finds itself challenged also due to the groundwork laid by these other Acts, their legal loopholes, and challenges to their enforcement due to human rights violations.



Additionally, it has been pointed out that certain basic principles, governing use of armed forces in conflict such as proportionate use of force and humanity get side-lined when stringent acts are enforced. The law also stands in contravention of important international human rights conventions such as International Covenant on Civil and Political Rights, the Convention Against Torture, and UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary, and Summary Executions, apart from the Universal Declaration of Human Rights.¹² These conventions are followed by major important armies operating in conflict zones around the globe. Levels of efficacy in implementing these international laws vary from one conflict to another, as well as between the armed forces in those areas. In the Indian context, some of the points of contention in the AFSPA debate have been analysed below.

Judicial Review Commissions. Over the years, AFSPA has found itself the subject of judicial scrutiny and various reviews have been carried out to bring it closer to ensuring protection of human rights. As a result, the Act has been whetted thoroughly. Also, various means have been suggested by these committees to increase levels of transparency while simultaneously not impeding the functioning of armed forces deployed in complex conflict environments.

- **Justice Reddy Committee (2005).** In July 2004, Manorama Devi died in custody in Manipur and the Justice Reddy Committee was set up in the aftermath of this event in 2005. It was mandated to amend AFSPA for human rights protection, and if required, replace it with a more humane act. The committee studied the issues extensively and analysed them in consultation with civil society members including individuals, groups, legal minds, and tribal groups. It also consulted with the army in the state as well at the central level, and submitted its report in June 2005. The report findings stated that, there is an overwhelming desire of the people for retention of the army, but with suitable changes in the legal mechanisms that is to create an environment for the operation of armed forces against militants without harming rights of the people. In doing so, the Committee opined that the existing Unlawful Activities (Prevention) Act (UAPA) [1967], with some amendments, could be utilised to give the armed forces the protection they needed. The Committee opined that the UAPA was designed to deal with terrorism; had defined activities and groups involved in terrorism; has inbuilt protection for armed forces and paramilitary, and is applicable pan India. At the same time, the accused people would be afforded



protection under section 45 of UAPA. It also suggested the setting up of grievance cells with members from the local administration, the army and the police.

The Justice Reddy Committee found itself at the end of criticism and was called regressive in nature; although it had recommended repealing the AFSPA, but it had also recommended special powers using the UAPA. It would mean human rights violations, albeit using another law. The report contained the guidelines of the Supreme Court which were an improvement on the Dos and Don'ts issued by the army for insurgency operations.¹³

- **Justice Hegde Commission (2013).** The Supreme Court appointed the Justice Hegde Commission to investigate extrajudicial deaths in Manipur from 1978 to 2010, with a mandate to evaluate the role of the security forces in the state. Accordingly, members of civil society were consulted publicly, and documentary evidence collected, along with testimony of various members of the security forces. The Commission found that the investigations by the security forces were inadequate and their use of force was excessive. Thereafter, the Commission called for strengthening of the police forces which were found ill trained to deal with insurgency in the state, and the subsequent removal of the armed forces. It also pointed out towards the disproportionate use of ammunition while not attempting to apprehend the accused.¹⁴ However, the Justice Hegde Commission has been termed 'unrealistic' in the context of insurgency operations— one major flaw being the expectation from personnel functioning in dangerous and life-threatening environments to be able to use non-lethal force.
- **Justice Verma Committee (2013).** Although, this committee did not directly pertain to AFSPA, it is being mentioned here owing to its commentary on the Act. Justice Verma Committee was appointed by the government for the review of laws pertaining to sexual assault, in the aftermath of the Nirbhaya gangrape incident in December 2012.¹⁵ The report included comments on sexual offences committed in conflict zones, alluding to legitimising sexual offences by means of the AFSPA. The committee recommended for the trial of armed forces personnel under ordinary criminal law, and for the re-orientation of training and monitoring of personnel to deal with the issue of sexual offences.¹⁶



The Justice Verma Committee Report has faced criticisms for misrepresentation of facts and not taking cognisance of existing rules and regulations in the armed forces which take any form of sexual assault offences with utmost seriousness and initiation of strictest disciplinary action against the offender. Similarly, incorrect factual knowledge of military deployment in insurgency operations, insufficient and factually incorrect knowledge of speedy legal process in the army has been criticised.¹⁷

In addition to the judicial review cited here, constitutional validity of the AFSPA has been upheld by the Supreme Court. As per the top court, the powers given to armed forces are not 'arbitrary' or 'unreasonable'.¹⁸ The senior hierarchy of the army has also categorically reiterated the same view.¹⁹

Contradictions with the Constitution. Many provisions in AFSPA are thought to directly contradict the Constitutional Rights of the citizens. Detractors point out that by diluting the Constitutional Rights, AFSPA and its provisions are in violation of the same rights, thus producing a counter-productive approach to security challenges. The following issues are pertinent to this discussion.

Arbitrariness of Arrest. Parts of AFSPA particularly those dealing with arrest and detention have been criticised as they tend to overlook due processes of law including medical examinations for the accused. While this criticism may be true, but arrests are considered a bonus in the context of the violence vented by militants or terrorists. Arrests by the operating forces are a stroke of good fortune, rather than to be fired upon, or lose their men under hostile fire. In order to counter arbitrariness, the Act rules that the arrested persons should be handed over to the police; no interrogation is allowed after the arrest. The operating forces have to be convinced that their act of arresting someone is valid; that the person being arrested is highly probable to have committed the offence he is being arrested for. These safeguards are meant to avoid arbitrariness in arrest or detention. Indeed, AFSPA finds itself upheld by the Supreme Court due a realistic look at the ground situation during such operations.²⁰

- **Disproportionate Use of Force.** One of the most hotly debated points is the use of force disproportionate to the offence. Critics argue that, use of force has been laid down in international law as a means of self-defence, or as a means of last resort.²¹ However, anyone who has served in insurgency operations will realise that the question of self-defence is in itself the answer as to why use of force as per AFSPA



is required. Functioning in an environment where it is sometimes difficult to distinguish between a normal citizen and an insurgent who will open fire, and with the intent of killing as many people as possible, requires such use of force. If this power is reduced, troops would not be safe to step out on patrolling duties or for cordon & search operations. In effect, AFSPA provides the legal and constitutional empowerment to troops operating in disturbed areas.²²

- **Immunity Afforded against Prosecution.** According to the critics of AFSPA, since prosecution is not possible without prior central government sanction, hence no prosecution takes place. The armed forces responded that the provisions relate to frivolous charges which are natural in conflict areas, tying up the armed forces from doing their actual tasks. Also, the existing mechanism for prosecuting offenders under the Army Act makes prosecution much faster and efficient. At the same time, it is also true that such cases are kept low profile with no undue publicity.²³ Court Martial proceedings are based on the rule of law, with the army itself keen that offenders get punished to maintain the discipline required of a fighting force. Yet the detractors of AFSPA continue to lament the lack of remedy, with either the sanction not coming through or just being used as an excuse to overlook excess on the part of the armed forces.²⁴

Issues raised by various interest groups about excessive powers given under the provisions of AFSPA may be correct in legal, constitutional and rights-based arguments; however, the pertinence of armed forces working under adverse circumstances and needing the protection cannot be denied. This has a direct bearing on troops' functioning and morale. In the absence of such safeguards, troops would suffer unnecessary casualties; it is akin to 'fighting with one arm tied behind the back'. It is also in the interest of the armed forces that any cases of excessive or undue force, or of criminal offences such as sexual assault or rape be dealt with promptly under the law. Education of troops about the law and employing a humane approach is a continuous process.

Emergency vs Human Rights. According to critics of AFSPA, even in violent conflict, rights to life and liberty remain paramount in international law. Some safeguards are required in such emergency laws with a view to ensuring that they do not end up being despotic or dictatorial in nature. Legal minds question AFSPA for the way it transcends rights enshrined in the Constitution of India. For instance, A G Noorani questions how AFSPA disregards the constitutional right to life recognised by Article 21 of the Constitution, and in fact even



highlights that, in upholding the validity of AFSPA, the Supreme Court has ignored the citizens' right to life.²⁵ The counter to this argument is the military necessity of deployment of forces dictating the protections afforded in laws like AFSPA.²⁶

Arguably, human rights get side-lined in armed conflicts, and peace is not easy to comprehend in the dictionary of violence and strife, where the non-state actors disregard the law. The Government is forced to declare an Emergency to bring rule of law back. While the international law recognises the rights to life and liberty, it does not acknowledge the absence of organised legal structures for the non-state actors. For instance, in the case of J&K, the non-state actors work as proxies for Pakistan, but neither they nor their host stand accountable in law.

The onus of repealing laws, if indeed they create conditions for violation of constitutional rights and human rights, lies with the government.²⁷ AFSPA is only applicable if the government first declares an area 'disturbed', as brought out earlier. Revoking such a law and transfer of responsibility to the civilian administration and police forces has to be a political decision. Further, the law recognises why AFSPA is required in disturbed areas; this is evident from the judicial reviews. However, arguments disfavouring the continued applicability of AFSPA gives impetus to various reflections on erosion of civil liberties, and their negative contribution to peace processes.

The Armed Forces' View Point. It has been accepted that the views of the armed forces must be given due consideration in deciding the future of AFSPA, and they must form part of any consultative mechanism,²⁸ Time and again, the armed forces have emphasised upon prerequisites for inherent safeguards of AFSPA while deployed in insurgency or internal security. Simultaneously, the fact that restoring the rule of law in conflict is incumbent on the government cannot be ignored, just as garnering confidence among the people cannot. Acute internal security situations compel the resort to deployment of armed forces; why then can protection not be afforded to the forces deployed? In its defence, the army reiterates that it accords the highest priority to upholding human rights, avoiding collateral damage and maintaining high moral standards.²⁹

Statistics however bear out this contention of the army: from 1994, 1517 cases of violations have been reported with only 54 found to be true, while 38 Officers, 12 Junior Commissioned Officers and 79 soldiers have been punished, with punishments ranging from life imprisonment to dismissal from service. The reasoning given by the armed forces finds echo



in any balanced analysis, including by members of civil society, in understanding the necessity for a law to protect the armed forces who are the nation's last resort and have been tasked to operate in disturbed areas due to the failure of other mechanisms adopted by the State.³⁰

Forging the Way Ahead: Propositions

In the ensuing debate, it is clear that there is an urgent and pressing need for review of employment of AFSPA as well as its replacement by suitable extant laws which can deal with the situation in areas prone to violence. It is equally pertinent that the responsibility of the decision to employ such a law (or not) lies with the political dispensation at both the State and Central levels. To that extent, a two-pronged approach must be taken, and the Governments at the State and Central level must move with alacrity to find political solutions to the problems, and not merely rely on the armed forces of the Union. In the interim, a graduated withdrawal of the armed forces must be undertaken based on the decline in insurgent violence. The void resulting from withdrawal of armed forces must be taken up by the police forces of the state; here, the need for strengthening the mechanism of Cr PC has been highlighted in the national discourse on the subject.³¹ Decline in insurgent violence must be accompanied by a simultaneous reduction in the deployment of armed forces; capacity building in the state police forces along with an enhanced CrPC should be adequate to tackle disturbances. Periodic reviews of violence will tell whether the change has been successful or not; in the eventuality of increase in violence in future, the option for deployment of armed forces will always be open. In the same instance, a strong and visible system of military justice must continue. This will not only keep the incidents of misuse of provisions low, it shall also serve to allay misgivings and apprehensions among the legal and civil society communities.

Conclusion

Allegations of constitutional rights to life and liberty and human rights being violated have been expressed by civil society including heinous crimes which can be categorised as war crimes. The allegations point at AFSPA as being responsible for such disregard of the law of the land. Deployment of armed forces without protective safeguards is akin to 'fighting with one arm tied behind the back'; hence the desideratum of AFSPA is not in doubt. The legal sanctity and constitutional validity of the Act has been upheld by the Supreme Court. However, keeping the armed forces deployed for inordinately long periods of time, even with



decline in violence levels is not justified, and exploring alternatives must be the priority for the government. In the same instance, efforts must be made to strengthen military justice along with strict adherence to rules of engagement for the troops functioning in such environments; speedy and visible system of justice will go a long way in assuaging fears in society. Concurrently, the state and central governments must assume responsibility for finding political solutions to address the underlying causes of violence. Equally pertinent is the requirement to build capacity in the police forces, and provide an enhanced and strengthened CrPC for the police forces to tackle violence in the states. Decline in insurgent violence must be accompanied with reducing the role and deployment of armed forces of the Union, and a graduated mechanism for their withdrawal from such areas. Periodic reviews of violence levels will indicate the success of the transition.

End Notes

¹ "The text of the Armed Forces Special Powers Act (AFSPA)". Accessible at https://www.indiacode.nic.in/handle/123456789/1527?sam_handle=123456789/1362; and

"The guidelines of the Supreme Court of India". Accessible at: https://www.upr-info.org/IMG/pdf%20COHR_IND_UPR_S1_%202008anx_Annex_XXII_AI_Breifing_on_AFSPA_in_Manipur.pdf. Accessed on 21 January 2022.

² UC Jha, *Armed Forces Special Powers Act: A Draconian Law?*, Delhi: Vij Books Pvt Ltd, 2015. P.22.

³ Pushpita Das, "The History of Armed Forces Special Powers Act" in Vivek Chadha's (ed.) *Armed Forces Special Powers Act: The Debate.*, IDSA Monograph Series No 7, New Delhi: Lancer Books with Institute for Defence Studies and Analyses (IDSA), 2012.

⁴ The court ruling referred to here, was given in the case of Indrajit Barua vs State of Assam, 1983.

⁵ N.2.

⁶ The decision to revoke AFSPA in the border state of Tripura was taken in May 2015. The Act was in force for 18 years, since 1997. The continued enforcement of AFSPA and the deployment of the armed forces had found opposition from parties representing the tribal population in the state, claiming that the Act was aimed at suppressing tribals, comprising 33% of the state's population. The move to revoke AFSPA was chronicled in mainstream media. Reports of the move can be found at: <https://www.thehindu.com/news/national/other-states/tripura-withdraws-afspa-says-insurgency-on-the-wane/article7252919.ece> and <https://www.firstpost.com/india/afspa-removed-in-tripura-after-18-years-heres-why-it-was-enforced-and-why-its-gone-now-2266770.html>

⁷ In the wake of civilian deaths in Mon, Nagaland, in early December 2021, the negative sentiment against AFSPA found reflection in statements by the polity and civil society members. The debate also spread to the enforcement of AFSPA in J&K. The government however, chose to continue the contentious act in force, making its position clear by extending the 'disturbed area' status for a further six months with effect from 30 December



2021. For instance, the report on the question of AFSPA in J&K can be found at: <https://timesofindia.indiatimes.com/india/no-need-for-panel-to-review-afspa-in-jk-lg-sinha/articleshow/88533014.cms>.

For the government's decision on status of AFSPA in Nagaland, see: <https://timesofindia.indiatimes.com/india/centre-extends-afspa-in-nagaland-for-6-more-months-terms-state-disturbed-area/articleshow/88579815.cms>.

⁸ Vappala Balachandran, "The Way It's Applied Is Sometimes Wrong But India's Armed Forces Need AFSPA", *The Wire*, 18 July 2016. Accessible at: <https://thewire.in/politics/way-applied-sometimes-wrong-indias-armed-forces-need-afspa>. Accessed on 21 January 2022.

⁹ The Second Administrative Reforms Commission headed by Shri Veerappa Moily and set up in August 2005, submitted 15 reports pertaining to administrative reforms. It has commented extensively on the need for police reforms as well as the need for replacing the provisions of stringent acts such as AFSPA by utilising those already existing within other laws. Important aspects of these recommendations can be found in three reports, namely Combating Terrorism, Public Order, and Capacity Building for Conflict Resolution. The complete text of these reports can be respectively accessed at the following: https://darp.gov.in/sites/default/files/combating_terrorism8.pdf.

https://darp.gov.in/sites/default/files/public_order5.pdf.

https://darp.gov.in/sites/default/files/capacity_building7.pdf.

¹⁰ Wajahat Habibullah, "Armed Forces Special Powers Act, Jammu and Kashmir" in Vivek Chadha's (ed.) *Armed Forces Special Powers Act: The Debate*, IDSA Monograph Series No 7, New Delhi: Lancer Books with Institute for Defence Studies and Analyses (IDSA), 2012.

¹¹ Victoria Schoefield, *Kashmir in Conflict: India, Pakistan and the Unending War*, New York: IB Tauris & Co Ltd., 2003, ISBN No 1848851057.

¹² Full texts of International Covenant on Civil and Political Rights, Convention Against Torture, UN Principles on Extra-legal and Summary Executions, and the Universal Declaration of Human Rights can be accessed respectively at:

<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

<https://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>.

https://tavaana.org/sites/default/files/UN_Manual_on_the_Effective_Prevention_and_Investigation%5B1%5D.pdf.

<https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

¹³ Colin Gonsalves, "The Fake Repeal of AFSPA", *E-Pao*, 10 October 2006. Accessible at: http://www.epao.net/epSubPageExtractor.asp?src=news_section.opinions.Opinion_on_Killing_of_Manorama.The_Fake_Repeal_Of_AFSPA. Accessed on 25 January 2022.

¹⁴ Justice Santosh Hegde, "Hegde Commission Report on AFSPA", *The Hindu*, 2013. Accessible at: http://www.thehindu.com/migration_catalog/article11984420.ece/BINARY/Hegde%20Committee%20Report%20on%20AFSPA. Accessed on 25 January 2022.

¹⁵ The gang-rape and brutal attempt to murder a girl in Delhi on 16 December 2012 is known as the Nirbhaya Case. The girl died subsequently due to extensive injuries sustained during the rape and violent physical assault by the rapists. All the rapists have been given the death penalty, and the same has been upheld by the Supreme



Court. Though the Justice Verma Committee was not mandated as such, it has commented on the issue of sexual offences in conflict zones.

¹⁶ Shivam Vij, "The Justice JS Verma Committee Report, *Kafila*, 2013. Accessible at: <https://kafila.online/2013/01/27/the-justice-js-verma-committee-report/>. Accessed on 26 January 2022.

¹⁷ Raj Kadyan, "The Armed Forces Special Powers Act- Need for Review?" *Journal of the United Service Institution of India*, Vol. CXLII, No. 591, January-March 2013. Accessible at <https://usiindia.org/publication/usijournal/the-armed-forces-special-powers-act-need-for-review/>. Accessed on 26 January 2022.

¹⁸ N.2.

¹⁹ For instance, General VK Singh, Former Chief of Army Staff, Indian Army, and currently Member of Parliament, in an interview with Frank Pereira on 'To The Point', talk show on Rajya Sabha Television, 15 January 2015.

²⁰ Naga People's Movement of Human Rights vs Union of India challenged the constitutional validity of AFSPA in 1997. The Supreme Court ruled that the powers given to the army are not 'arbitrary' or 'unreasonable', or violative of the provisions of Articles 14, 19, and 21 of the Indian Constitution, thus upholding the AFSPA. Arrests pertaining to women need to follow the same procedure as laid down in the Criminal Procedure Code, Sections 47(2), 51(2), 100(3), and 160(1). On the issue of declaring an area disturbed, the Court ruled for a review every six months. If the Government of India does not give sanction for prosecution in any particular case, it has to justify the refusal of sanction. The same is subject to judicial scrutiny.

²¹ Devyani Srivastava, 'Rights-Based Critique of AFSPA' in Vivek Chadha's (ed.) *Armed Forces Special Powers Act: The Debate*. New Delhi: Lancer Books with Institute for Defence Studies and Analyses (IDSA), 2012.

²² Lt Gen Rakesh Sharma, *Repeal AFSPA But Not by Putting the Cart Before the Horse*, News18 Website, 2022. Can be accessed at: <https://www.news18.com/news/opinion/repeal-afspa-but-not-by-putting-the-cart-before-the-horse-4643108.html>

²³ Lt Gen Raj Kadyan, *The Armed Forces Special Powers Act- Need for Review?* New Delhi: United Service Institution of India, *Journal of the United Service Institution of India*, Vol. CXLII, No. 591, January-March 2013.

²⁴ Devyani Srivastava, 'Rights-Based Critique of AFSPA' in Vivek Chadha's (ed.) *Armed Forces Special Powers Act: The Debate*, IDSA Monograph Series No 7, New Delhi: Lancer Books with Institute for Defence Studies and Analyses (IDSA), 2012.

²⁵ A G Noorani, "Armed Forces (Special Powers) Act: Urgency of Review", *Economic and Political Weekly*, Vol. 44, No. 34, 2009, pp. 8–11. Accessible at <http://www.jstor.org/stable/25663461>. Accessed on 26 January 2022.

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²⁷ Prakash Katoch, "Repealing AFSPA", *Raksha Anirveda*, 2021. Accessible at <https://www.raksha-anirveda.com/repealing-afspa/>. Accessed on 28 January 2022.

²⁸ N.10.

²⁹ N.2.

³⁰ N.8.



³¹ The issue of strengthening the Cr PC with a view to providing an alternative to AFSPA has been part of the discourse on the subject. For instance see: <https://www.firstpost.com/fwire/afspa-must-replaced-with-amended-crpc-mooshahary-603565.html>. Also see <https://www.thehindu.com/opinion/columns/siddharth-varadarajan/A-modest-proposal-on-AFSPA/article15905357.ece>.

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CENTRE FOR LAND WARFARE STUDIES (CLAWS)

RPSO Complex, Parade Road, Delhi Cantt, New Delhi 110010

Tel.: +91-11-25691308, Fax: +91-11-25692347, CLAWS Army No. 33098; Email: landwarfare@gmail.com

Website: www.claws.in