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AFSPA: Is Complete Removal Possible?



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Introduction

Since independence, the Armed Forces (Special Powers) Act [AFSPA], 1958, has been one of the most controversial laws dealing with India's internal security. Under AFSPA, extraordinary power has been vested into the hands of the armed forces to maintain law and order in 'disturbed areas'. The law provides the armed forces, the power to prohibit the gathering of five people and more, arrest a 'suspicious person' and enter and search premises without a warrant, ban the possession of firearms and even open fire after giving due warning. An area is declared disturbed under section 3 of the Act, which specifies that the "use of armed forces in aid of civil power is necessary".¹

Key Points

- To remove AFSPA, first, the government must push for formalising a concrete peace accord with such insurgent groups and this can be done by providing lucrative incentives, proper rehabilitation and choking foreign support.
- Although FMR is a welcome initiative and is essential for cultural exchange of people living across the border, however it needs a thorough review.
- The bottom-up approach of the governance model is a better option as this will give more power to the people at the grassroots level and will help in removing the gaps between people and the government.

The Act was first enacted to curb the insurgent movement in the Naga Hills in 1958 and later expanded to other disturbed areas of the country, including J&K. The involvement of armed forces in counterinsurgency operations has raised many questions about human rights violations.² However, it is evident that the army operations have reduced the insurgency to



manyfold, especially in northeastern states³— but there are also evidences of it being misused.

Currently, the prevailing peace and prosperity in the northeast states can be attributed to the harsh crackdown on various insurgent groups by security forces; to operate in such a fragile environment while also safeguarding national security, the armed forces was required to be vested with certain special powers that would allow them to act differently from other security forces. Therefore, enacting AFSPA was a step in the right direction— to safeguard the nation's territorial integrity, but with change in the region's dynamic, it needs a serious review. This paper will try to analyse the possible way ahead that could foster the complete removal of AFSPA from the northeastern states.

Why Such a Law is in Place? Rational and Allegations

It is a ubiquitous phenomenon and as reiterated by the Treaty of Westphalia (1648), national security is the paramount responsibility of the state. State uses all resources available to keep its territorial integrity intact. During the early years of independence, India was a fragile state with various national security challenges mushrooming in almost every part of the country, especially in J & K and northeastern states. Such a situation demanded the government to enact the AFSPA. It was framed at par with the Armed Forces Special Power Ordinance promulgated by the Britishers to suppress the Quit India Movement in 1942. Citing the importance of law, Prime Minister J L Nehru told the Parliament, "No infirm government can function anywhere. Where there is violence, it has to be dealt with by the government, whatever the reason for it may be".⁴ However, raising his voice against the law, Orissa MP Surendra Mohanty remarked, "We want a free India. But we do not want a free India with barbed wire and concentration camps, where havildars (sergeant) can shoot at sight any man".⁵

The rationality of using the armed forces, in internal armed conflict, becomes necessary in case of a complete breakdown of the state machinery. In India, handling the law-and-order situation is the responsibility of the state mentioned under the seventh schedule of the Constitution. Article 355 of the Indian Constitution lays out the Union Government's roles and responsibilities to protect the state against internal disturbances.⁶



By mid-1950s, the situation in Naga Hills, then part of Assam, deteriorated under the leadership of Angami Zapu Phizo, a Naga nationalist. He declared Nagaland an independent state on 14 August 1947, and resolved to establish a 'Sovereign Naga State'. The formation of the underground Naga Federal Government (NFG) and the Naga Federal Army (NFA), running a parallel government in the state, further aggravated the situation which then went beyond the control of the state armed police and the Assam Rifles. The union government responded to the intense violence in the Naga Hills by deploying armed forces to quell the rebellion. To provide extraordinary power to the armed forces and give a legal framework to function within the 'disturbed area', the Parliament passed AFSPA on 22 May 1958. The authority to declare any area as 'disturbed' lies either with the President of India or the Governor of the State.

While introducing the bill, the then Union Home Minister, G B Pant, remarked, "This is a very simple measure. It only seeks to protect the steps the armed forces might have to take in the disturbed areas..."⁷ Also, the expression— "in aid of civil power", implies the deployment of forces to assist civil authorities in controlling the situation.⁸

However, giving exclusive power to the armed forces to deal with internal security, especially in northeast India, comes with a cost in the form of allegations of human rights violation, torture, large scale looting, rape, extrajudicial killing, and fake encounters of innocent people.⁹ While operating in a complex environment, the aberration does happen. The army has taken necessary steps to reduce such incidents. According to the Army's Command Headquarters Report, presented to the National Human Rights Commission, since 1994, only 54 out of 1517 received allegations were found to be true.¹⁰ The army has never hesitated to take action against any soldier violating the rule and always acted swiftly and with utmost alacrity. Recently, the Indian Army was quick to set up an inquiry at the highest level after the unfortunate Mon incident that accidentally killed few civilians.¹¹

According to the Former Chief of the Army Staff— General VK Singh, "AFSPA was the functional requirement of the army". The insurgent, while colluding with foreign forces, possessed sophisticated weapons and latest communication equipment. Therefore, soldiers need legal cover to operate under such conditions with complete confidence and clarity; by alleging human rights violation, the anti-national element within and outside the country tries



to defame and put down the morale of the armed forces. Few foreign funded NGOs also organised a concerted campaign to delegitimise the Indian Army's counterinsurgency operations.¹²

Various Judicial Committees were set up to examine and review the AFSPA. While the report of Justice Jeevan Reddy Committee (2005) was never made public, however, various sources point out that the committee acknowledges the violation of human rights and also opinionated about deliberate attempt to damage the reputation and morale of the armed forces.¹³ Later, in 2013, the Justice Verma Committee examined the systematic sexual violence in conflict areas and pointed out the increased sense of alienation among people, hatred against the armed forces and anger against AFSPA.¹⁴ Among other committees, the Veerappan Moily Second Administrative Reforms Committee Report (2007) and Hamid Ansari Working Group Report (2007) recommended the revocation of AFSPA.¹⁵

Decreased Insurgency, Enhanced Connectivity and Fostering Peace: Contributing Factor for Removal of AFSPA

While addressing the rally in Assam recently, the Prime Minister of India hinted towards complete removal of AFSPA from northeastern states. However, various factors need thorough consideration before its complete removal.

Decreased Insurgency. Insurgency, in the northeastern state, is considered the most critical challenge to India's internal security and sovereignty. Also, the proximity of these states to foreign countries like Myanmar and Bangladesh has made the issue more complex and volatile. Many insurgent groups that operate in northeastern states have their base in either Myanmar or Bangladesh— they use the porous, unfenced international border to escape from the security forces. However, with the cumulative and sustained efforts of all the regional stakeholders, insurgency has reduced to a large extent (**See Figure 1**) and the signing of various peace accords, over the years, have given new hope to the country's northeastern region. States like Mizoram and Tripura have come out of insurgent violence. Also, with improvement in the security situation, insurgency related activities, in many northeastern states, have decreased; the AFSPA was removed from Tripura in 2015, Meghalaya in 2018 and also from many districts in Assam, Arunachal Pradesh and Nagaland. The Centre is also considering complete removal of AFSPA from northeastern



states.¹⁶ Therefore, an improved security situation is a substantial factor in removing AFSPA from North East India, if not the only factor.

Also, the younger generation is more in sync with the 'idea of India' but also wants to preserve their distinct identity and unique cultural ethos.¹⁷ To uphold that ethos and fulfil the desire of the northeastern states, the government has set up North East Zone Cultural Centre (NEZCC) at Dimapur and Eastern Zonal Cultural Centre (EZCC) at Kolkata (autonomous organizations under the Ministry of Culture). The idea is to protect and preserve Northeastern states' unique culture and tradition. Such steps help remove alienation from the 'mind and heart' of the people, which remains one of the impeding factors in integrating northeastern people with others.

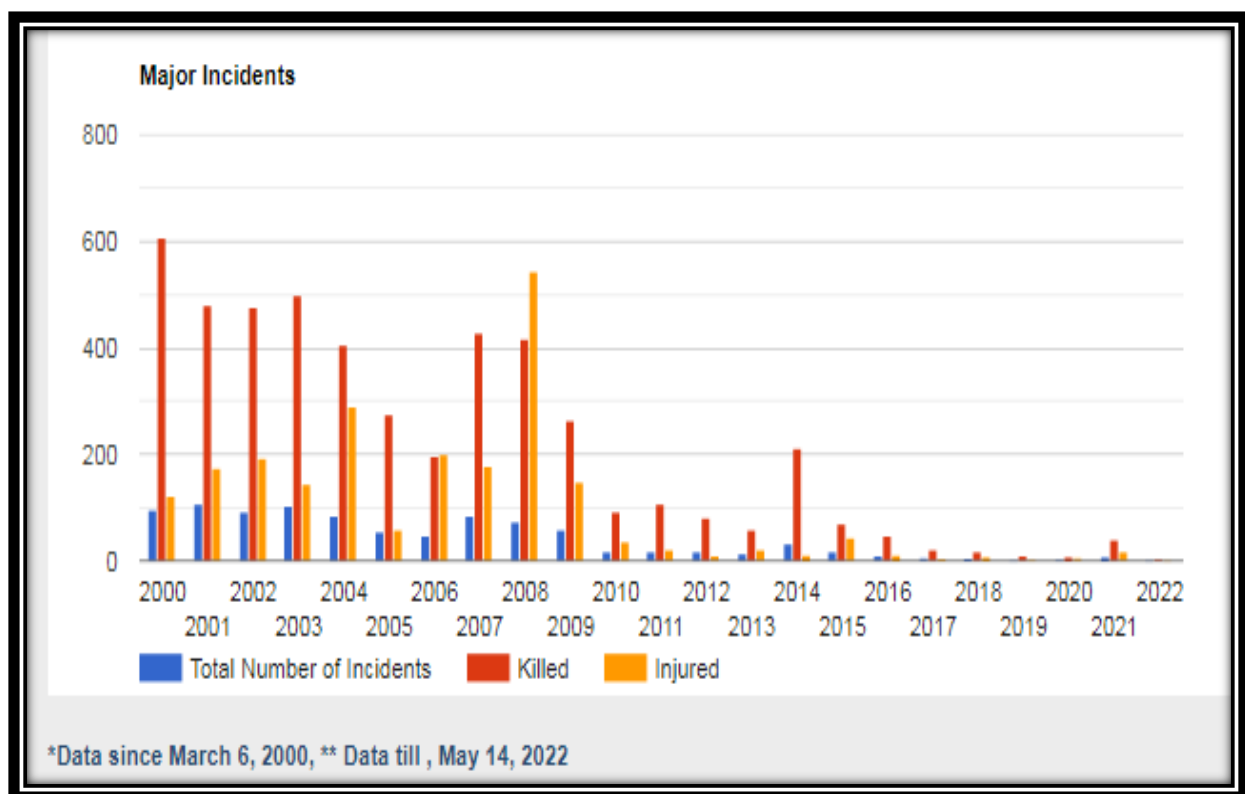
Secondly, the people of northeastern states often feel alienated because of their distinct eating habits and mongoloid features. Acceptance of their culture and tradition is the most essential and initial step in removing alienation, which is one of the most significant contributing factors in fuelling insurgency in the region. Thus, connectivity in terms of people-to-people linkage is key in harnessing the true potential of the people. Therefore, scrapping the law (AFSPA) when insurgency is declining will help build confidence among the people, which is suitable for India's ambition to reach Southeast Asian nations through its Act East Policy (AEP). The stability of India's Northeast is crucial for its AEP; hence, 'Act North East' should precede AEP.

However, before doing so, some critical parameters need thorough assessment and attention. *Firstly*, understanding the nature of peace prevailing in the northeastern region, a reduction in insurgency related incidents only, does not guarantee peace and prosperity in the region. The current status of peace in the northeastern states can be termed as negative peace¹⁸ wherein peace is prevailing because of the existing ceasefire between the government and the insurgent groups. These 'dormant' insurgent groups can become active anytime, provided they find a flourishing environment. The sudden complete removal of AFSPA can easily facilitate such environment. Many insurgent groups in NER, especially in Nagaland and Manipur, are still active and regained their strength following the Myanmar coup. The attack on the Assam Rifles convoy in Churachandpur district in Manipur, is testimony to the said concept of 'negative peace' and a sign of the emerging footprints of the

insurgent groups in the region. Hence, AFSPA in this region needs to be removed in a phased manner and over a gradual period of time.

Secondly, instability in Myanmar, due to the coup, has diverted the Tatmadaw's attention to its internal security situation. There is a dip in the military junta's action against insurgent groups camping across the border and few reports claim that Tatmadaw has normalised its ties with the insurgent groups.¹⁹ This may jeopardize India's hard-earned peace in the region, hence, India must support Tatmadaw against supporting the democratic force in the country. The support of Tatmadaw is crucial not only for a peaceful northeast but also for robust India's Act East Policy.

Figure 1: Insurgency Incident (Major) in Northeast India from 2000-2022



Source: <https://www.satp.org/datasheet-terrorist-attack/major-incidents/india-insurgencynortheast>

Enhanced Connectivity and Signing of the Peace Accord. Connectivity in the northeastern region has always been a matter of great concern for policymakers because of



the national security parameters prevailing in the region and its complex geography. The region is connected with the rest of India by a narrow passage of land called the 'Siliguri Corridor' or Chicken's Neck. This narrow land passage is always vulnerable to traditional and non-traditional security challenges. Also, the terrain of the northeastern states is very complex and prone to natural disasters throughout the year. In such complex topography, construction of infrastructure is a challenging task.

The region also faces many ethnic clashes, land boundary disputes and alienation. These impediments have led to poor connectivity within the northeastern state. Also, the maintenance cost of roads in northeastern states is more than the national average due to terrain, soil type, long duration of monsoon and high rainfall.²⁰ Therefore, northeastern states need different roads which can sustain extended monsoons and heavy rainfall. In last few decades, the northeastern states have seen tremendous improvement in all connectivity aspects. More significant infrastructure development and connectivity will lead to people-to-people connectivity and increase the reach of the government at the grassroots level. Penetration of road, rail, air, water and internet connectivity will also help the people from feeling alienated. Thus, improvement in connectivity will directly impact the security scenario of India's Northeast and in the long run, will contribute to the complete removal of AFSPA.

However, despite all efforts, the rate of infrastructure development is not at the same scale as desired due to the practice of extortion especially in Nagaland and Manipur. In Nagaland, illegal groups are running an almost parallel government and collecting taxes from ordinary people at a fixed rate.²¹ These militant groups, especially NSCN-IM and NSCN-K, see connectivity projects as detrimental to their practice of illegal trafficking and extortion.²²

Many insurgent groups involved in extortion and illegal trafficking, misuses the ceasefire agreement as a shield. However, many recently signed peace agreements are positive steps in dousing insurgency from the northeastern states, but a lot needs to be done to channel the insurgent into the mainstream. Currently, almost all the insurgent groups have a ceasefire agreement or Suspension of Operation (SoO) agreement with the union and state government, except the Meitei insurgent group in Manipur.²³ Others have finalised the peace deal with the union government and disbanded their armed groups.²⁴

However, the Naga Peace Agreement, which was supposed to be finalised by 2020, is yet to make any concrete progress. The issue of the Naga Peace Accord could be seen as one of the biggest hindrances in complete removal of AFSPA from Nagaland, Manipur and Arunachal Pradesh, reason being the presence of Naga insurgent groups in these states. Thus, it becomes a dilemma for security forces as insurgent groups are in a ceasefire agreement but, at the same time, are armed and involved in illegal activities. Security forces are deployed to maintain peace but are unable to operate effectively amid fear of human rights violation. Therefore, the illegal sanctity under AFSPA is critical for armed forces to operate in such areas till a peace accord is signed and complete peace is established in the region.

Way Forward

As India aspires to be a five trillion economy by 2025, the role and contribution of northeastern states to national GDP cannot be undermined. The Prime Minister, Shri Narendra Modi, has articulated that the northeastern region is the country's new growth engine,²⁵ and this growth engine cannot function to its full potential if the region remains in turmoil and disturbed. Hence, a holistic approach for understanding the issues of northeastern states and issues of AFSPA, is required. However, the current strategy of removal of AFSPA in a phased manner has led to current prevailing peace. To achieve the desired contribution of the northeastern state to national GDP, an extra mile is needed to be covered. The following steps must be taken to remove AFSPA from the northeastern state altogether.

- **Conversion of Ceasefire Agreements into Peace Accord.** As mentioned earlier, many northeastern insurgent groups have a ceasefire agreement with the Centre or State Government. Besides having a ceasefire agreement, these insurgent groups have found ways to run a parallel government and carry out extortion and illegal activities, undermining the purpose of the ceasefire agreement. Therefore, the government must push for formalising a concrete peace accord with such insurgent groups and this can be done by providing lucrative incentives, proper rehabilitation and choking foreign support. Also, good governance will play an important role in

gaining the confidence of the people. The government agencies must reach every corner of the northeastern states by providing quality education, health and sports facilities.

- ***Reviewing Foreign Movement (FMR) Regime along Myanmar border.*** The policy of FMR is often blamed for the prevailing situation of insurgency in the northeast as FMR provides a scope of unrestrained movement of people and goods across the border. The Indo-Myanmar Border (IMB) is very porous, making it practically impossible for security forces to regulate and check cross movement throughout its length. However, the FMR is a policy initiative that improves people-to-people connections across borders and supports India's AEP ambition. Therefore, FMR is a welcome initiative and is essential for cultural exchange of people living across the border, but it needs a thorough review. First, a unique trackable identity card must be issued to the border villages covered under FMR. Second, consider selective fencing along IMB. Selective fencing provides scope for security forces to check illegal migrants, drug trafficking and other illegal activities.
- ***Strengthening the state police force of the northeastern state.*** The law and order situation is a state subject and is handled by the state police force. However, it is unfortunate that the state police force of the northeast is fragile and ill-equipped. One advantage of the state police force is that, they are mainly locals, hence they understand the state's dynamics very well. Therefore, the government must start speeding up the process of modernising the police forces of the northeastern states. Assam Rifles, known as the 'Sentinel of Northeast India', must focus on the border along Myanmar. This will strengthen India's vigilance along the Myanmar border. It will also help in having a reasonable administrative control, within a state, with a strong police force managing internal affairs.
- ***Changing the governance model in northeastern states.*** Governance in northeastern states always remained a challenging task because of various internal and external factors. It does not deny the fact that, although the northeastern region has gained momentum on various developmental factors but the governance model still remains under the old framework. Corruption, illegal trafficking, extortion and gain for easy money remains normal business as usual. Ethnic and tribal rivalry still holds importance over national identity. The bottom-up approach of the governance model

is a better option as this will give more power to the people at grassroot level and help in removing the gap between people and the government.

Under present circumstances, complete removal of AFSPA from the northeastern states seems possible and an achievable task. However, providing proper governance to the northeastern states is equally important. To ensure good governance in the state, it must ensure that the state police force is robust and well-equipped to handle any situation. Failure to raise a strong police force, reviewing FMR policy and providing quality health and education facilities will undoubtedly demand the intervention of a central armed police force to bring normalcy and their deployment cannot be done without the protection of AFSPA.

End Notes

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¹⁷ Author’s interaction with young student leaders, during his field visit to Northeastern states.

¹⁸ Johan Galtung, the Father of Peace Studies, defines negative peace as absence of violence. The peace that is in place due to signing of peace agreements.

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