

INTERNATIONAL JOURNAL OF LEGAL STUDIES AND SOCIAL SCIENCES [IJLSSS]

ISSN: 2584-1513 (Online)

Volume 3 | Issue 2 [2025] | Page 737 - 742

© 2025 International Journal of Legal Studies and Social Sciences

Follow this and additional works at: <https://www.ijlsss.com/>

In case of any queries or suggestions, kindly contact editor@ijlsss.com

THE POWERS GRANTED UNDER AFSPA: SECURITY, AUTHORITY, AND CONTROVERSY

-Akshat Pundir¹

INTRODUCTION

“The weight of a nation's security should never crush the spirit of its people.” – Anonymous.

Upon gaining independence on 15th August 1947, India adopted its Constitution on 26th January 1950, declaring itself a sovereign, socialist, secular, and democratic republic, committed to securing justice, liberty, equality, and fraternity for its citizens. However, the constitutional endeavors to protect the fundamental rights (Articles 12-35) are consistently tested by the imperative of maintaining national security. The *Maneka Gandhi v. Union of India* [1978] 2 S.C.R. 621 case reinforces that fundamental rights are interlinked, enlarging the scope of personal liberty, and that these rights cannot be arbitrarily curtailed.

In 1956, the lawmakers deemed it necessary to introduce extraordinary legal measures, most notably through the Armed Forces (Special Powers) Act (AFSPA), in response to rising insurgencies, particularly in Nagaland as discussed below.

Decades later, the legislation continues to have its own set of backlashes and controversies linked to it due to concerns raised about the failure to find a balance between security and civil liberties. This article delves into examining the powers granted to various security forces, specifically the Army under AFSPA and their broader socio-constitutional implications.

LEGISLATIVE INTENT AND SCOPE OF AFSPA

Originally passed and enacted in 1958 with the intention of handling separatist agitation in the state of Nagaland, specifically after the rise of Naga National Council in March, 1956, AFSPA was later extended to areas designated as "disturbed," including Jammu & Kashmir, Manipur, and Assam, so giving the armed forces, state police, and central paramilitary forces broad authority. Article 355, which directs the Union to guard states from internal strife, gives the Act constitutional support. The legislators believe that declaring affected areas as "disturbed areas," AFSPA enables

¹ 2nd-year B.A. LLB student, MNLU, Mumbai.

security personnel to act with more power, so guaranteeing quick response against insurgent threats and generating questions about long-term effects.

POWERS GRANTED TO FORCES UNDER AFSPA

Under this act, extensive authority is conferred upon security forces operating in regions declared "disturbed areas" under section 3 of this act. The powers granted extend not to the Indian Army, but to an extent also to the state police forces, and central paramilitary forces such as the CRPF, CAPF. etc, pushing them to take strategic and decisive actions to maintain stability, law and order, and restore peace in the land. The Act, designed as an emergency and a deterrent measure to curb threats to a sovereign Indian Republic, grants security personnel legal immunity and wide-ranging operational capabilities, raising both tactical and ethical considerations. The Supreme Court, in *Naga People's Movement v. Union of India* (1997), upheld the constitutionality of AFSPA but laid down guidelines to prevent its misuse, reinforcing that armed forces must exercise these powers within the boundaries of necessity and proportionality.

1. POWER OF THE ARMED FORCES

Section 4(a) of this act outlines the powers granted to the armed forces by this act, which includes:

- **Use of Force Including Lethal Force:** This provision, due to its possible repercussions and broad scope, is a contentious provision of this act as it authorizes the armed forces to use force, which controversially also includes lethal force, if deemed necessary to maintain public order. Under Section 4(a) of the Act, security personnel can fire upon individuals who violate prohibitory orders, such as unlawful assemblies or curfews, without prior warning if they believe it is essential to restoring order. The legitimacy of blanket power to use force was questioned in the *Manipur Encounters Case* (Extra Judicial Execution Victim Families Association v. Union of India, 2016), emphasizing that the act does not provide any scope for excessive force without judicial scrutiny.
- **Arrest Without Warrants:** Section 4(c) grants the armed forces the power to arrest individuals without a warrant if they are suspected of involvement in activities posing a threat to public order. The legislators believe that this allows for swift counter-action against the insurgents so as to maintain peace and halt any public threats, however, the power to arrest without warrant also leads to increased risk of torture or extrajudicial execution as the only protection provided under the AFSPA is that any person arrested has to be handed over "to the officer-in-charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest. The case

of *Luithukla v. Rishang Keishing* (1988) highlighted concerns over arbitrary arrests, reinforcing the need for procedural safeguards.

- **Search & Seizure Without Judicial Oversight:** The act in contention also authorizes the armed forces to enter premises and conduct searches without a prior warrant if they believe and suspect that explosives, weapons, insurgents, or any other object which is a threat to public safety is being harbored in such premises. Seizure of any property that is deemed to be necessary to prevent insurgent activities by the security forces is also allowed by Section 4(d) of this act. Despite there being no specific provisions for safeguards under this section, occasional interventions by the Courts have ensured that such powers are exercised responsibly, ensuring that the Army requires adequate safeguards against spurious and motivated accusations of excesses leveled and legal proceedings commenced against its personnel.
- **Legal Immunity to Armed Forces Personnel:** Perhaps the most argued upon provision of the aforementioned act is Section 6, which provides protection to persons acting under this act, including the armed forces, providing them complete immunity from any form of legal persecution, unless any sanctions have been granted prior hand by the Central government. This provision, allegedly necessary to protect officials from harassment, has been a point of contention, with critics arguing that it fosters a culture of impunity, displaying a lack of faith in the judiciary, which has the authority and capacity to decide whether charges are vexatious, abusive, or frivolous. The Supreme Court in *People's Union for Civil Liberties v. Union of India* (1997) observed that legal immunity should not translate to unchecked human rights violations and called for stricter oversight mechanisms in such legislations.

2. POWERS OF STATE POLICE FORCES

While it is imperative that AFSPA primarily grants powers to the armed forces, but the state police forces also play a vital role in maintaining peace and order in "disturbed areas" discussed above. Although the Act does not explicitly mention or grant them the same authority as the military, as this act is primarily concerned with the powers of the armed forces, their responsibilities arise from statutory interpretation, administrative practices, and judicial clarifications. State police work closely with the army and paramilitary forces in intelligence gathering, enforcing security, and aiding counter-insurgency efforts. In this

section, we will attempt to briefly understand and explore how their role and powers under AFSPA are interpreted.

- **Detentions and Interrogations:** It is clear that the Armed Forces are primarily responsible for the enforcement of the provisions provided under AFSPA, the state police forces retain the authority and enforcement ability to detain suspects for preliminary investigations before handing them over to military custody, if required. This has been evident in states like J&K, where the Jammu and Kashmir state police still plays a key role in conducting search operations and detaining key suspects, enabling local law enforcement to act based on the specialized, localized geographical and strategic knowledge, and maintaining operational efficiency while working in tandem with the military directives.
- **Enforcement of Curfews and Movement Restrictions:** In case of a scenario with rising insurgency and separatism, public safety and order are quintessential, hence, under section 148 of BNSS (earlier section 144 of IPC), the state police forces were allowed them to impose and observe curfews, roadblocks, and notified restricted zones in AFSPA-covered areas. They assist in managing public unrest and ensuring compliance with security measures.
- **Coordination with the Armed Forces:** Under AFSPA, the state police forces play a complementary coordinative role, assisting the military in intelligence gathering, surveillance, and enforcing movement restrictions. They work in tandem with the army to conduct joint operations in regions which have AFSPA in force.

3. POWERS OF CENTRAL PARAMILITARY FORCES

The Central Armed Police Forces, consist of of seven armed police organizations under the Ministry of Home Affairs (MHA), Government of India and are categorized under the "other armed forces" in the Union List of the Constitution of India and function in accordance with Article 355, which mandates the Union to protect states against "external aggression" and "internal disturbances". In this section, we shall briefly cover the powers granted to them in regions under AFSPA.

- **Operational powers to search and seize:** Much like the armed forces, the Central Armed Police Forces (CAPFs) have the authority to carry out search and seizure operations in

areas experiencing disturbances. This power allows them to raid suspected hideouts, seize illegal weapons, and dismantle networks involved in insurgency.

- **Counter-Insurgency and Internal Security Operations:** Under AFSPA, forces including the Central Reserve Police Force (CRPF), Border Security Force (BSF), Assam Rifles, and Indo-Tibetan Border Police (ITBP) are seen widely deployed to support military operations due to their ability and expertise in handling such circumstances. Under such operations, they safeguard labile border areas, launch counter-insurgent operations, and go on raids.
- **Control Over Checkpoints and Border Security:** In regions where AFSPA is in force, and are proximate to an internal border, the BSF specifically plays a substantial role in securing disturbed bordering areas, by controlling movement in-and-out of the border, preventing the infiltration of militants, and controlling smuggling operations. This involves using techniques such as managing roadblocks, security and interrogation checkpoints to counter illegal activities and extrinsic insurgent threats.

CONCLUSION

The Indian Constitution is built upon the ideals of power-sharing, a system of checks and balances, and the protection of fundamental rights, ensuring that no authority operates beyond scrutiny. It aims to safeguard the masses from any tyranny or unjustified dominance based on any ideas, however, legislations like the AFSPA have sparked debates since times immemorial over the extent to which the state can act beyond its authority and exercise powers in the name of national security and protecting sovereignty. The Act, which was introduced with the intent of countering insurgency, persists to raise flak regarding its scope, implementation, and alignment with fundamental constitutional safeguards such as the protection of the fundamental rights like the Right to Life and detention rights under Article 21 and 22 of the Constitution respectively.

In recent times, the apex court's verdicts on cases such as Naga People's Movement v. Union of India, 1997 and Extra Judicial Execution Victim Families Association v. Union of India, 2016, highlight grievous concerns regarding the abuse of power under the provisions of this act as reports submitted to the Supreme Court suggest that fake encounters have been committed in nearly 1,528 cases since 1979 in the state of Manipur. While AFSPA was enacted as a security measure, reports have documented patterns of extrajudicial killings, arbitrary detentions, and human rights violations under its broad mandate, highlighting the persistent concerns over unchecked state power. Viewing this, the Supreme Court has called for stern measures and a due process, calling on authorities to act against human rights violations in the affected regions and

urging the armed forces to balance the objective of maintaining stability with the protection of civic rights.

This study highlights the distribution of power under AFSPA, attempting to understand how authority is exercised by the Army, State Police, and Central Paramilitary Forces. By analyzing these provisions, one gains a deeper understanding of the Act's operational impact and its role in India's internal security framework. As discussions on AFSPA's reform or repeal, such as with the Jeevan Reddy Committee report and the recent withdrawal of AFSPA from multiple states of the Northeast, striking a balance between national security and constitutional rights remains an urgent policy and legal challenge especially with contemporary hurdles such as the 2023 Manipur violence on the way.

REFERENCES

1. https://www.mha.gov.in/sites/default/files/armed_forces_special_powers_act1958.pdf
2. <https://www.amnesty.org/fr/wp-content/uploads/2021/06/asa200422013en.pdf>
3. https://www.hrw.org/reports/2008/india0908/5.htm#_ftnref187
4. <https://www.gatewayhouse.in/afspa-national-necessity-or-human-rights-violation/>
5. <https://www.thehindu.com/opinion/lead/an-abomination-called-afspa/article4404804.ece>