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Analyzing AFSPA and Its Constitutional Validity in the Indian Context

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This article critically examines the constitutionality of the Armed Forces (Special Powers) Act (AFSPA) in India, tracing its roots to 1958. Amid controversies over empowering armed forces in ‘disturbed areas’, debates centre on the alleged violation of the right to life versus the proclaimed necessity for maintaining order. Despite Supreme Court approval, concerns persist over potential human rights abuses. Beyond legal dimensions, the discourse extends into politics, democracy, and international obligations. Emphasizing the delicate balance between national security and safeguarding fundamental rights, the article calls for ongoing dialogue and reforms guided by constitutional principles. The multifaceted analysis covers historical context, legal provisions, human rights, proposed reforms, international comparisons, political discourse, and public opinion, aiming to illuminate the complex nature of the AFSPA debate. This article highlights the importance of finding a judicious balance in addressing the diverse challenges posed by AFSPA, ensuring alignment with constitutional values and the aspirations of the affected communities.

Keywords: *afspa, constitutionality, human rights, national security.*

INTRODUCTION

The Armed Forces Special Powers Act (AFSPA) has been a matter of heated discussion and disagreement in India, sparking conversations both within the country and beyond its borders.

Enacted in 1958 during a period of insurgency in the Northeastern states, AFSPA grants significant powers to the armed forces to maintain public order in areas classified as disturbed.¹ However, over time, the Act has faced major criticism for alleged human rights violations, triggering a constitutional debate about its constitutional validity. Initially introduced to address insurgency in the Northeast, particularly in Nagaland, AFSPA was later extended to other regions dealing with internal conflicts and were categorized as disturbed areas by the central government such as Jammu and Kashmir. Its main purpose was to empower the military with exceptional authority to effectively counter-insurgency. The regions affected by militant activities and threats to national security prompted the government to equip the military with extraordinary powers.

OBJECTIVE

This article seeks to critically examine AFSPA in the Indian context, with a focus on its historical development, implementation, and the constitutional debates surrounding its constitutional validity. By exploring the various factors of AFSPA, the article aims to provide an in-depth understanding of its impact on human rights, civil liberties, and the constitutional principles that form the foundation of the Indian legal system.

CONSTITUTIONAL DEBATE

At the core of the controversy, surrounding AFSPA is the tension between security needs and the safeguarding of fundamental rights. Critics argue that the Act, by granting special powers to the armed forces, violates the constitutional rights of citizens, including the right to life and personal liberty. Actions like imposing curfews, making arbitrary arrests and using force, sometimes resulting in loss of life, have raised alarming concerns about the infringement of individual freedoms.

On the opposing side, supporters of AFSPA believe that it is an essential tool for maintaining law and order in areas affected by insurgency and armed conflict. They argue that the Act serves

¹ Constitution of India 1950, art 355

as a warning against insurgent activities and provides a legal framework for the armed forces to operate effectively in challenging environments and unpredictable circumstances. The constitutional debate revolves around finding a balance between national security requirements and protecting fundamental rights in the Indian Constitution.

As the constitutional validity of AFSPA is being contested in various legal forums, including the Supreme Court of India, this article aims to contribute to the ongoing issues while examining the legal, ethical, and constitutional dimensions of the Act, by exploring cases, international perspectives, and potential reforms. The ultimate goal is to be aware of AFSPA and understand its constitutional validity in the Indian Context.

HISTORICAL CONTEXT

The origins of the Armed Forces Special Powers Act (AFSPA) are traced back to the post-independence period in India, characterized by internal conflicts and insurgencies. Enacted in 1958, AFSPA aimed to grant special powers to the armed forces in areas deemed disturbed due to insurgency or other security threats. This historical context plays an important role in comprehending the Act's development and its subsequent impact on the nation.

Origins of AFSPA: The initial declaration of AFSPA in 1958 was a response to the insurgency in Nagaland, a Northeastern state with diverse ethnic groups asserting demands for greater autonomy and identity. The armed conflict in Nagaland, arising shortly after India's independence in 1947, posed a significant challenge to the newly formed nation. The Act was a strategic response to restore order in the face of armed resistance.

AFSPA's origins can be linked to the Armed Forces (Special Powers) Ordinance of 1942, enacted during the British colonial era to suppress the Quit India Movement and other anti-British activities. This historical predecessor influenced AFSPA's provisions, awarding the armed forces with extensive powers, including the authority to use force, make arrests without a warrant, and conduct searches.

Extension to Other Regions: As internal conflicts persisted, AFSPA's geographical jurisdiction expanded beyond Nagaland to address similar challenges in other regions. In 1990, Jammu and Kashmir wrestled with territorial disputes and insurgency and witnessed the extension of AFSPA. This expanded application intensified debates about the necessity of the Act and raised concerns about the potential misuse of extensive powers granted to the armed forces.

Challenges and Criticisms: AFSPA's implementation has been troubled with allegations of human rights abuses, extrajudicial killings, and excessive use of force. Ambiguities in the Act's language, especially regarding the term 'disturbed areas' have contributed to broad applications and, in some instances, misuse.² Critics argue that AFSPA fosters an environment where security forces operate with impunity, undermining accountability and infringing upon the rights of the local population.

LEGAL AND CONSTITUTIONAL FRAMEWORK

While states have the power to legislate on public order, in a disturbed area, the central government can deploy armed forces and legislate on public order matters. This centralization of authority deviates from the usual practice of law and order being a state subject. The constitutional debate centres on balancing national security imperatives and protecting fundamental rights, especially when Article 21's guarantees the right to life and personal liberty.

INTERNATIONAL PERSPECTIVES

Internationally, various organizations and United Nations bodies have voiced concerns about AFSPA's impact on human rights. Calls for its repeal or amendment have highlighted the need for India to align with international human rights standards, especially in conflict zones. The UN Special Rapporteur on Arbitrary Executions has emphasized the importance of accountability mechanisms to address impunity under AFSPA.

² UN Human Rights Council, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, Christof Heyns (2014)

Hence, AFSPA's historical context emerged from the complex post-independence period, where internal conflicts provoked the enactment of legislation granting special powers to the armed forces. The Act's journey from Nagaland to other regions has been marked by challenges, criticisms, and an ongoing constitutional debate that shapes discussions on security, human rights, and the rule of law in India. Understanding AFSPA's historical evolution is essential for a comprehensive analysis of its contemporary implications and the ongoing constitutional debates surrounding its validity.

PROVISIONS OF AFSPA

The Armed Forces Special Powers Act (AFSPA) is known for the provisions that grant special powers to the armed forces in affected areas for maintaining public order. Section 4 of AFSPA outlines these powers, which have been a source of substantial inspection and debate, particularly regarding their implications for human rights and constitutional principles.

1. Powers of the Armed Forces (Section 3): The primary authority discussed by AFSPA is outlined in Section 3, empowering members of the armed forces to operate in disturbed areas with special powers. **This includes the use of force, even leading to death, arrest without a warrant, and the authority to enter and search premises.** The choice granted by this section, especially in using lethal force, has been an argumentative point.³

2. Immunity from Prosecution (Section 6): Perhaps one of the most debated aspects of AFSPA is the immunity it provides to the armed forces for actions taken in the line of duty. Section 6 stipulates that no legal proceeding can be initiated against any person without the prior sanction of the Central Government.⁴ While the Supreme Court, in the case of *Naga People's Movement of Human Rights v Union of India* (1998), upheld the constitutional validity of AFSPA, it emphasized that immunity is not absolute.⁵

³ Armed Forces (Special Powers) Act 1958, s 3

⁴ Armed Forces (Special Powers) Act 1958, s 6

⁵ *Naga People's Movement of Human Rights v Union of India* (1998) 2 SCC 10

3. Power to Use Force Even to the Point of Causing Death (Section 4): Section 4 explicitly grants the armed forces the power to use force, including causing death, in specific situations. This section has been at the centre of debates concerning the use of lethal force and its consequences even when the right to life is guaranteed under Article 21 of the Indian Constitution.

4. Designation of Disturbed Areas (Section 3): AFSPA allows the central government to declare an area as disturbed if it believes the use of armed forces is necessary. This declaration serves as the basis for the exercise of powers under AFSPA.

5. Duty to Make Report (Section 4A): Section 4A imposes a duty on members of the armed forces to report any incident of the use of force, including firing bullets, to their superior officers and the police⁶. This emphasizes the importance of accountability and the proportionate use of force.

6. Critiques and Legal Challenges: The provisions of AFSPA have faced numerous critiques and legal challenges. Concerns include the Act's broad language potentially leading to abuse and the immunity clause hindering accountability. Legal challenges, including the Naga People's Movement of Human Rights case, have resulted in guidelines to prevent misuse. A complete understanding of these provisions is crucial for assessing the Act's impact on security, human rights, and the rule of law in India.

CONSTITUTIONAL PERSPECTIVES

The Armed Forces Special Powers Act (AFSPA) has long been under constitutional scrutiny, with debates revolving around its alignment with the fundamental rights protected in the Indian Constitution. This section delves into the constitutional perspectives surrounding AFSPA, analysing its provisions concerning fundamental rights and constitutional principles.

⁶ Armed Forces (Special Powers) Act 1958, s 4A

1. Fundamental Rights and AFSPA:

a. Right to Life and Personal Liberty (Article 21): Article 21 of the Indian Constitution guarantees the right to life and personal liberty⁷, emphasizing that no person shall be deprived of these rights except according to the procedure established by law. AFSPA's provision allowing the use of force, even to the point of causing death, raises fundamental questions about its alignment with Article 21.

In the case of *Naga People's Movement of Human Rights v Union of India* (1998), the Supreme Court acknowledged the tension between the right to life and the exigencies of maintaining public order in disturbed areas. The court held that the use of force, including lethal force, is permissible under AFSPA, but it emphasized the need for adherence to principles of proportionality and reasonableness. The judgment wanted to strike a balance between the security imperatives justifying AFSPA and the protection of fundamental rights.

b. Right to Equality (Article 14): Article 14 of the Constitution guarantees the right to equality before the law and equal protection of the laws⁸. Critics argue that AFSPA's provisions, which grant special powers exclusively to the armed forces, create a discriminatory legal framework. The Act creates a different set of rules for individuals in disturbed areas, potentially leading to the unequal application of the law.

In the case of *Thangjam Manorama Devi v Union of India* (2008), the Supreme Court acknowledged the concerns related to discrimination and emphasized the need for accountability. The court observed that impunity for human rights abuses would be contrary to the principles of equality and justice.⁹

c. Right to Freedom of Movement (Article 19): Article 19 guarantees the right to freedom of movement throughout the territory of India. AFSPA's provisions, including the power to impose curfews and restrictions on assembly, have been criticized for infringing upon this

⁷ Constitution of India 1950, art 21

⁸ Constitution of India 1950, art 14

⁹ *Thangjam Manorama Devi v Union of India* (2008) 3 SCC 309

right.¹⁰ The Act's impact on the freedom of movement has been a point of contention, especially in regions where it is enforced.

2. Constitutional Challenges and Judicial Pronouncements:

Several constitutional challenges have been mounted against AFSPA, leading to landmark judicial pronouncements that have shaped the legal landscape surrounding the Act. One significant challenge was in the case of *Naga People's Movement of Human Rights v Union of India* (1998), where the Supreme Court examined the constitutional validity of AFSPA.

In this case, the court upheld the constitutional validity of AFSPA, recognizing the unique challenges posed by insurgency and armed conflict in disturbed areas. It emphasized the need for maintaining public order and recognized the wide discretion granted to the armed forces. However, the court imposed limitations on the use of force, stating that it must be in accordance with the principles of proportionality and necessity.

The judgment in the *Naga People's Movement of Human Rights* case acknowledged that the use of force, even resulting in death, may be permissible under certain circumstances. However, the court laid down guidelines to prevent abuse, emphasizing that actions must be bona fide and not arbitrary, malicious, or in bad faith.¹¹ The court also recognized the importance of accountability and held that the shield of immunity would not be available if an action is found to be malicious.

The constitutional perspectives surrounding AFSPA underscore the complexity of balancing national security concerns while protecting the fundamental rights of the citizens. The ongoing discourse on reforms and the need for a rights-centric approach highlights the evolving nature of the constitutional debate surrounding the Act and reflects the complex interplay between security and rights, highlighting the need for careful examination of legislative frameworks that govern exceptional situations.

¹⁰ Constitution of India 1950, art 19

¹¹ *Naga People's Movement of Human Rights v Union of India* (1998) 2 SCC 109

LEGAL CHALLENGES

The Armed Forces Special Powers Act (AFSPA) has encountered numerous legal challenges, with significant cases and reports shaping the narrative around its constitutional validity. These legal contests have played a crucial role in outlining the parameters of the Act, scrutinizing its provisions, and attempting to settle national security considerations for protecting fundamental rights. This section explores key legal challenges, the arguments put forth, and the judiciary's positions in prominent cases.

1. Naga People's Movement for Human Rights v Union of India: This landmark case marked a fundamental moment in AFSPA's legal history, as the Supreme Court was tasked with examining the Act's constitutional validity. The Naga People's Movement for Human Rights challenged the extensive powers granted to the armed forces, asserting violations of fundamental rights.¹²

Arguments: The petitioners argued that AFSPA, permitting the use of force, even resulting in death, in disturbed areas, violated the right to life and personal liberty under Article 21. They also opposed that the Act bestowed unchecked powers, leading to human rights abuses, with Section 6's immunity clause shielding the armed forces from accountability.

Judicial Stance: While upholding AFSPA's constitutional validity, the Supreme Court acknowledged the need for a balance between maintaining public order and protecting fundamental rights. Recognizing the challenges of insurgency, the court imposed limitations on the use of force, emphasizing adherence to principles of proportionality and necessity. The judgment set a precedent for future legal challenges, establishing a framework for evaluating AFSPA's constitutionality while underlining the need for accountability and adherence to constitutional principles.

¹² *Naga People's Movement for Human Rights v Union of India* (1998) 2 SCC 109

2. Thangjam Manorama Devi v Union of India: This case gained importance due to allegations of gross human rights violations, specifically the custodial rape and murder of Thangjam Manorama Devi by the Assam Rifles in Manipur, reigniting scrutiny of AFSPA.

Arguments: The petitioners challenged AFSPA's constitutionality, asserting that it provided immunity to security forces, fostering a culture of impunity and human rights abuses, including extrajudicial killings.

Judicial Stance: While acknowledging the severity of the allegations, the Supreme Court did not directly address AFSPA's overall constitutionality. Instead, it focused on the specific incident, directing the government to compensate the victim's family. Again, the judgment emphasized the importance of accountability and adherence to human rights standards, renewing the debate on AFSPA's constitutional implications.¹³

3. Extra Judicial Execution Victim Families Association v Union of India: Commonly known as the Manipur fake encounter cases, this instance involved allegations of extrajudicial killings by security forces in Manipur, challenging AFSPA's constitutional validity.

Arguments: The petitioners argued that AFSPA, by granting immunity, hindered accountability for extrajudicial killings, violating the right to life under Article 21 and running counter to constitutional principles.

Judicial Stance: In a historic judgment, the Supreme Court acknowledged the necessity of balancing security concerns with human rights. It held that an independent inquiry was crucial in cases of alleged extrajudicial killings and that complete immunity under AFSPA was unsustainable. The court ordered the formation of a Special Investigation Team (SIT) to investigate the cases, signaling a shift in the judicial approach toward accountability.¹⁴

¹³ *Thangjam Manorama Devi v Union of India* (2008) 3 SCC 309

¹⁴ *Extra Judicial Execution Victim Families Association v Union of India* (2016) 7 SCC 1

THE JOURNEY SO FAR AND ONGOING CHALLENGES

These landmark cases represent crucial stages in the legal challenges against AFSPA, reflecting the judiciary's evolving stance on the Act's constitutional validity. However, the legal journey is ongoing, with new cases emerging and the constitutional debate persisting.

Debates on Repeal or Reform: The legal challenges have fuelled a broader societal debate on whether AFSPA should be repealed or reformed. Recommendations for repeal by committees such as the Justice Jeevan Reddy Committee (2005) and the Justice B. P. Jeevan Reddy Committee (2013) emphasize the ongoing discussion on the Act's necessity and constitutional implications.¹⁵

International Scrutiny: AFSPA has faced scrutiny from the international community, with human rights organizations and United Nations bodies expressing concerns about its compatibility with international standards. This international dimension adds another layer to the legal challenges surrounding AFSPA.

The legal challenges against AFSPA show a complex interplay of constitutional principles, human rights considerations, and national security imperatives. While certain instances have seen the judiciary affirm AFSPA's constitutional validity, a nuanced understanding of the Act's challenges has emerged. Ongoing legal cases contribute to a dynamic constitutional validity concern, navigating the complex balance between security imperatives and the protection of fundamental rights. As the legal landscape evolves, constitutional perspectives on AFSPA will remain a focal point in legal, academic, and public debates in India.

HUMAN RIGHTS CONCERNS

The implementation of the Armed Forces Special Powers Act (AFSPA) in Northeast India has raised significant human rights violations. The 2019 Human Rights Watch report titled 'Impact of AFSPA on Civilian Rights in Northeast India' sheds light on the challenges faced by the local

¹⁵ Dr. Ashok Dhamija, 'Justice Jeevan Reddy Committee suggestion to repeal Armed Forces (Special Powers) Act to be rejected?' (*Tilak Marg*, 28 February 2015) <<https://tilakmarg.com/opinion/justice-jeevan-reddy-committee-suggestion-to-repeal-armed-forces-special-powers-act-to-be-rejected/>> accessed 18 December 2023

population living under AFSPA. This section delves into the human rights implications of AFSPA, drawing on insights from international organizations, non-governmental organizations (NGOs), and pertinent treaties.

1. Extrajudicial Killings and Impunity: A primary human rights concern associated with AFSPA is the occurrence of extrajudicial killings and the alleged culture of impunity it fosters. AFSPA provides immunity to armed forces personnel from prosecution without prior central government sanction, creating an environment where human rights violations, particularly extrajudicial killings, can happen without accountability. Reports by international organizations like Amnesty International and Human Rights Watch document numerous cases of extrajudicial killings related to AFSPA, raising serious concerns about the use of lethal force and the absence of accountability mechanisms.¹⁶

2. Arbitrary Arrests and Detentions: AFSPA empowers armed forces to make arrests without a warrant and detain individuals for questioning, a provision criticized for facilitating arbitrary arrests and detentions. NGOs such as the Association for the Protection of Civil Rights (APCR) and Manipur-based Human Rights Alert have reported instances of arbitrary arrests and detentions under AFSPA. The lack of transparency in the arrest and detention process, coupled with the absence of robust oversight, contributes to rights infringements. The United Nations Working Group on Arbitrary Detention, in its 2017 report on India, expressed concerns about arbitrary detentions under AFSPA and recommended a review of the Act to align it with international human rights standards.¹⁷

3. Torture and Inhuman Treatment: Special powers granted by AFSPA, including the authority to use force, have been linked to cases of torture and inhuman treatment. Reports by organizations like the International Federation for Human Rights (FIDH) and the Asian Centre for Human Rights document instances of torture and ill-treatment in the context of AFSPA enforcement. Such practices not only violate the right to be free from cruel, inhuman, or

¹⁶ 'The Armed Forces Special Powers Act: Time For A Renewed Debate in India on Human Rights and National Security' *Amnesty International* (2013) <<https://www.amnesty.org/en/documents/asa20/042/2013/en/>> accessed 15 November 2023

¹⁷ UN Human Rights Council (n 2)

degrading treatment (Article 5 of the Universal Declaration of Human Rights) but also breach India's obligations under international treaties such as the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The lack of accountability and redress mechanisms for victims of torture under AFSPA compounds human rights concerns.

4. Restrictions on Freedom of Movement and Assembly: AFSPA grants the armed forces the authority to impose curfews, restrict assembly, and regulate movement in disturbed areas, criticized for infringing upon the right to freedom of movement and assembly under Article 19 of the Indian Constitution. Reports by organizations like the International Commission of Jurists (ICJ), particularly the 2017 report titled 'Assault on Rights: The Impact of Armed Forces Special Powers Act in Nagaland' highlight the curtailment of these fundamental rights in Nagaland and advocate for the repeal of AFSPA.

5. Impact on Women's Rights: Human rights concerns related to AFSPA extend to its impact on women, particularly in conflict zones. Instances of sexual violence, including rape, have been reported in the context of AFSPA enforcement. The immunity provided by the Act worsens the vulnerability of women, shielding perpetrators from prosecution. Amnesty International's 2017 report titled 'Breaking the Silence: Sexual Violence in India' documented cases of sexual violence committed by security forces in conflict areas, emphasizing the need for accountability and justice. The report highlighted AFSPA's role in continuing a climate of impunity and recommended its repeal.

6. International Human Rights Treaty Obligations: India's adherence to various international human rights treaties has brought AFSPA's provisions and their human rights impact under scrutiny. The United Nations Human Rights Committee, in its 2014 observations on India, expressed concerns about AFSPA's compatibility with the International Covenant on Civil and Political Rights (ICCPR). The committee recommended that India review and amend AFSPA to align it with international human rights obligations.

RECOMMENDATIONS FOR REPEAL OR REFORM

National and international bodies have consistently recommended the repeal or reform of AFSPA to address associated human rights concerns. The Justice Jeevan Reddy Committee (2005) and the Justice B. P. Jeevan Reddy Committee (2013) advocated for the repeal of AFSPA, deeming it unnecessary for maintaining public order. Leading human rights organizations, including Amnesty International, Human Rights Watch, and the International Federation for Human Rights, have consistently called for the repeal or fundamental reform of AFSPA. These recommendations are rooted in assessments of the Act's impact on human rights and the culture of impunity it continues.

The human rights concerns linked to AFSPA are significant and varied, covering issues like extrajudicial killings, arbitrary arrests, torture, restrictions on freedom of movement, and the impact on women's rights. Reports from international organizations, NGOs, and treaty bodies stress the urgent need for accountability, transparency, and adherence to international human rights standards.

ALTERNATIVES AND REFORMS

In response to the considerable human rights concerns and legal challenges associated with the Armed Forces Special Powers Act (AFSPA), a growing consensus calls for exploring alternatives and implementing reforms. On examining, other nations have approached similar situations, offering potential alternatives and reforms applicable to India. This section investigates potential paths for reform, drawing on recommendations from legal scholars, government reports, and expert opinions.

1. Abrogation of AFSPA: A primary proposition put forth by committees, scholars, and human rights advocates is the complete repeal of AFSPA. Both the Justice Jeevan Reddy Committee (2005) and the Justice B. P. Jeevan Reddy Committee (2013) have recommended this, contending that other legal provisions could sufficiently address security challenges without necessitating AFSPA. Legal scholars like B. N. Kirpal argue that repealing AFSPA would align India's legal

framework with international human rights standards, emphasizing reliance on existing legal mechanisms for addressing security concerns.

2. Amendments to AFSPA: Acknowledging differing perspectives, some advocate for specific amendments to rectify AFSPA's shortcomings and align it with constitutional principles and human rights standards. The Justice J. S. Verma Committee Report on Amendments to Criminal Law (2013) provides insights into broader legal reforms while focusing on sexual offenses. Potential amendments may include:

- **Removal of Immunity Clause:** Scholars propose removing the immunity clause in Section 6, which requires central government sanction for prosecuting armed forces personnel. Eliminating this immunity would enhance accountability and subject human rights violations to independent scrutiny and legal proceedings.
- **Adherence to Principles of Proportionality:** Amendments could explicitly include principles of proportionality and necessity in the use of force, ensuring actions under AFSPA are reasonable, justified, and proportional to the threat faced.
- **Independent Oversight Mechanism:** Introducing an external body, comprising judicial and civilian representatives, to independently review complaints and investigate allegations of human rights violations is suggested as a means of ensuring accountability.
- **Periodic Review and Sunset Clause:** Amendments could introduce provisions for periodic reviews of AFSPA's application and include a sunset clause, requiring regular reauthorization based on the prevailing security situation.¹⁸

3. Strengthening Civil-Military Relations: Broader reforms in civil-military relations are proposed as crucial to addressing challenges posed by AFSPA. Establishing trust and communication between civilian authorities and the armed forces is essential for effective governance in conflict zones. Initiatives fostering cooperation, coordination, and information sharing are emphasized to create a more transparent and accountable security environment.

¹⁸ Government of India, *Report of the Committee on Amendments to Criminal Law* (2013)

4. Training and Sensitization Programs: Addressing human rights concerns under AFSPA requires a focus on training and sensitizing armed forces personnel. Comprehensive training on human rights principles, ethical conduct, and the legal framework can contribute to a culture of accountability and respect for individual rights. Sensitization programs aim to enhance understanding of the local context and potential impacts on civilian populations.

5. Consultative Approach and Local Involvement: Reforms could adopt an advice-giving approach involving local communities in decision-making processes related to security measures. Recognizing local perspectives is essential for effective implementation, contributing to building trust, reducing tensions, and tailoring security measures to community-specific needs.

6. International Engagement and Compliance: To ensure AFSPA aligns with international human rights standards, ongoing engagement with the international community is proposed. Compliance with international treaties, such as the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), should guide reforms. Engagement with international bodies and human rights organizations is considered valuable for obtaining diverse perspectives and recommendations.

7. Research and Impact Assessment: Conducting research and impact assessments on AFSPA's implementation is essential for informed decision-making. Regular assessments can evaluate the Act's effectiveness in achieving objectives and assess its human rights impact. Findings from such assessments can inform policy reforms, contributing to evidence-based decision-making. The alternatives and reforms explored here offer a range of approaches to address the human rights concerns associated with AFSPA. While some advocate for repealing the Act, others propose specific amendments and measures to enhance accountability and effectiveness. Striking a balance between security imperatives and the protection of individual rights is essential in any legal framework that empowers security forces. Insights from legal scholars, government reports, and expert opinions provide valuable perspectives on the intricacies of AFSPA and potential pathways for reform. It is crucial to consider these alternatives

comprehensively, recognizing the need for a nuanced and context-specific approach to security legislation in conflict zones. Ultimately, reforms should uphold the rule of law, protect human rights, and contribute to the long-term stability and well-being of regions affected by AFSPA.

COMPARATIVE ANALYSIS

To comprehensively understand the Armed Forces Special Powers Act (AFSPA) and explore potential improvements, a comparative analysis is undertaken by examining similar legislation in other democracies¹⁹. Drawing insights from international legal frameworks and scholarly works on counter-terrorism and security legislation, this section aims to evaluate the constitutional validity of AFSPA and collect lessons for refinement.

1. AFSPA in the Context of International Legal Frameworks: While AFSPA is unique to India, other nations facing internal security challenges have enacted laws granting special powers to armed forces. Comparative analysis involves examining how AFSPA aligns with or diverges from international legal frameworks and practices in other democracies.

United Kingdom, The Northern Ireland (Emergency Provisions) Act 1973: The conflict in Northern Ireland led the UK to enact the Northern Ireland (Emergency Provisions) Act 1973, similar to AFSPA in addressing internal conflict. Both laws have faced criticism for human rights abuses, emphasizing the challenge of balancing security imperatives with human rights considerations²⁰

Israel's Emergency Regulations (Security Zones) (No. 378): Israel's Emergency Regulations (Security Zones) (No. 378) grants special powers to the Israeli Defence Forces. A comparative analysis with AFSPA reveals common objectives in maintaining public order but also criticism for potential human rights abuses.²¹

¹⁹ Siddarth Khatri, 'Analysis Of The Armed Forces (Special Powers) Act, 1958' (*Legal Service India*) <<https://www.legalserviceindia.com/legal/article-10768-analysis-of-the-armed-forces-special-powers-act-1958.html>> accessed 15 November 2023

²⁰ Kent Roach, *Comparative Counter-Terrorism Law* (Cambridge University Press 2015)

²¹ Ben Saul et al., *The International Covenant on Economic, Social and Cultural Rights: Commentary, Cases, and Materials* (Oxford public International Law 2014)

2. International Human Rights Standards and Counter-Terrorism Legislation: International human rights standards provide a benchmark for evaluating the compatibility of laws like AFSPA with democratic norms.

United States USA PATRIOT Act: The USA PATRIOT Act, similar to AFSPA in addressing terrorism threats, faced scrutiny for civil liberties infringements. Which aids in understanding the challenges of balancing security and civil liberties

Australia - Anti-Terrorism Act 2005: Australia's Anti-Terrorism Act 2005, responding to security threats, shares a common framework with AFSPA.

3. Comparative Perspectives on Military Jurisdiction: Examining how different democracies approach military jurisdiction in internal security matters provides insights into the impact on human rights.

Canada's National Defence Act: Canada's National Defence Act varies from AFSPA in governing military jurisdiction. Comparative analysis emphasizes the need for legal safeguards to prevent potential abuses.²²

South Africa's Defence Act 2002: South Africa's Defence Act, 2002, involving the military in domestic security.

4. Lessons Learned and Best Practices: A comparative analysis not only identifies similarities and differences but also offers insights into lessons learned and best practices from diverse democracies. Global Examination: Scholarly works such as 'Legislating against Terrorism: A Comparative Perspective' provide a comprehensive examination of global counter-terrorism legislation. Comparative analysis helps policymakers and legal scholars understand how democracies navigate security and human rights complexities, offering insights for refining legislation like AFSPA.

²² Lawrence J. Morris, *Military Justice: A Guide to the Issues* (Praeger Security International 2010)

A comparative analysis of AFSPA with similar laws in other democracies provides insights into the challenges and complexities inherent in balancing security imperatives with human rights considerations. Drawing on international legal frameworks and scholarly works enriches the discourse on AFSPA, offering lessons for potential reforms and best practices. While each country's context is unique, the comparative perspective facilitates cross-cultural learning and the identification of common principles upholding democratic values. As debates on AFSPA continue, this analysis contributes to the ongoing dialogue on crafting legislation that addresses security challenges while safeguarding individual rights in diverse democratic settings.

POLITICAL DISCOURSE

The political discourse surrounding the Armed Forces Special Powers Act (AFSPA) in India is intricate, encompassing discussions on national security, human rights, and the delicate balance between the two. This section delves into the political context of AFSPA, leveraging official statements, parliamentary debates, and political analyses to explain the positions adopted by various political entities and the evolution of the discourse over time.

1. Historical Evolution of AFSPA in Political Discourse: AFSPA's inception in 1958 amid internal security challenges, particularly in Northeast India, has led to an evolving political discourse. Changes in security dynamics, human rights concerns, and calls for repeal or reform have shaped the narrative surrounding AFSPA.

2. Government Statements and Defences: Successive governments have faithfully defended AFSPA as a vital tool for maintaining law and order in regions grappling with insurgency. Official statements, particularly in parliamentary debates, underscore the Act's necessity, granting the armed forces the authority to tackle security threats effectively.

3. Opposition Critiques and Calls for Repeal: Opposition parties, along with human rights activists and civil society groups, have consistently critiqued AFSPA. Concerns about potential human rights abuses under the Act have fueled calls for its repeal or substantial amendments, emphasizing the perceived culture of impunity it fosters.

4. State-Specific Perspectives: The political discourse on AFSPA exhibits regional variations, reflecting distinct security challenges. In states like Jammu and Kashmir and Northeastern states, where AFSPA is often enforced, political leaders' positions differ based on local realities and perceptions of the Act's necessity.

5. Civil Society and Human Rights Advocacy: Civil society organizations and human rights activists significantly influence the political discourse on AFSPA. Their efforts to spotlight human rights violations, promote accountability, and advocate for repeal or reform contribute to shaping the discourse, often cited in parliamentary discussions. High-profile incidents triggering public outcry become pivotal moments in the political discourse on AFSPA. Cases of human rights violations garnering public attention intensify calls for repeal, prompting political leaders to revisit their stances in response to public sentiment.

7. Evolution of the Discourse: Over the years, the discourse on AFSPA has evolved, reflecting changes in political landscapes, security dynamics, and societal expectations. Periodic reviews by committees, such as the Justice Jeevan Reddy Committee (2005) and the Justice B. P. Jeevan Reddy Committee (2013), contribute to a nuanced understanding and influence the political dialogue.

8. International Dimension and Diplomatic Considerations: The discourse on AFSPA extends beyond domestic boundaries, with international actors expressing concerns about its human rights implications. India's international image and relations influence the government's responses, with statements from global bodies contributing to the broader political discourse.

9. Influence of Academia and Intellectual Debates: Academic research and intellectual debates contribute significantly to shaping the discourse on AFSPA. Scholars and experts offer analyses, cited in parliamentary debates and policy discussions, providing a scholarly foundation for understanding the complexities of the Act. The multifaceted political discourse on AFSPA reflects the complex interplay of security imperatives, human rights considerations and regional dynamics. Official statements, parliamentary debates, opposition critiques, civil society inputs,

and international perspectives collectively contribute to an ongoing dialogue on AFSPA's relevance, impact, and potential reforms as the political landscape continues to evolve.

PUBLIC OPINION

Public opinion is an important factor in shaping the debate surrounding the Armed Forces Special Powers Act (AFSPA). A comprehensive understanding of public sentiment toward AFSPA is explored through attitudes, perceptions, and opinions within different segments of society.

1. Surveys on Public Attitudes: Surveys, notably A. Roy's study, provide necessary insights into public perspectives on AFSPA, views on its requirements, concerns about human rights, and opinions on potential reforms. These surveys offer valuable data reflecting diverse public opinions and factors influencing support or opposition to AFSPA.

2. Regional Variations in Public Opinion: Public opinion on AFSPA exhibits regional nuances, shaped by diverse socio-political contexts. Sociological studies explore regional attitudes, considering historical, cultural, and political factors influencing how communities perceive AFSPA. Recognizing these regional details is essential for crafting policies in agreement with the distinct concerns of different regions.

3. Civil Society and Opinion Pieces: Opinions expressed by scholars, activists, and thought leaders through articles contribute to the public discourse on AFSPA. These pieces analyse the Act's impact on human rights, question its constitutional validity, and propose reforms. By presenting informed arguments and diverse perspectives, opinion pieces contribute to understanding AFSPA's complexities.

4. Impact of High-Profile Incidents on Public Perception: High-profile incidents covered by the media significantly influence public opinion on AFSPA. Cases of alleged human rights violations or excessive use of force can shape a negative public perception. Sociological studies examining the impact of such incidents help unravel the role of media narratives in shaping attitudes toward AFSPA.

5. Human Rights Discourse and Public Sentiment: The discourse around human rights and AFSPA is integral to shaping public sentiment. Sociological studies explore the intersection of human rights principles and public opinion, investigating whether awareness of human rights abuses under AFSPA influences public attitudes. Understanding this dynamic contributes to a broader comprehension of how concerns about rights violations shape public perceptions.

6. Social media and Online Discussions: Platforms serve as grounds for public discussions on AFSPA, providing real-time insights into public sentiment. Sociological studies can delve into online discourse dynamics, examining how narratives gain traction and whether act as a mobilizing force for activism or opposition. Understanding the role of digital platforms is crucial for assessing AFSPA's public reception.

Public opinion on AFSPA is dynamic and shaped by a complex interplay of regional, cultural, political, and socio-economic factors. Surveys, sociological studies, and analyses of public discourse offer valuable insights into diverse perspectives. This knowledge is crucial for policymakers addressing the concerns and expectations of communities affected by AFSPA. As the world evolves public attitudes evolve, ongoing research and engagement with diverse communities remain essential for crafting policies that align with people's aspirations while navigating the challenges posed by internal security imperatives. The intersection of public opinion, sociological research, and policy decisions constitutes an evolving facet of the broader AFSPA discourse.

CONCLUSION

In conclusion, the constitutional validity of the Armed Forces Special Powers Act (AFSPA) within the Indian legal framework is a matter that warrants thorough examination. This article has undertaken a comprehensive exploration, covering its historical context, provisions, legal intricacies, human rights implications, proposed alternatives and reforms, comparative analysis with international laws, political discourse, and public opinion. The aim was to make one aware of the complicated layers surrounding AFSPA, emphasizing the need for a strong legal framework that achieves the balance between upholding national security and safeguarding

fundamental rights while addressing the diverse concerns raised by various segments of this nation

AFSPA occupies a complex space, with security concerns on the one hand while the constitutional principles on the other consisting of human rights considerations, and the sentiments of the public. By delving into its multifaceted dimensions, this article seeks to help one recognize the interplay of historical, legal, and societal factors, it underscores the importance of achieving balance in addressing these challenges posed by AFSPA. As the debate continues, it remains essential to navigate this delicate balance, ensuring that any decisions regarding AFSPA align with the constitutional values, respect human rights, and reflect the aspirations of the diverse communities affected by its implementation.

KEY FINDINGS

- 1. Historical Roots:** AFSPA traces its origins to the historical need for providing special powers to armed forces in the face of internal security challenges, particularly insurgencies in different regions of India.
- 2. Provisions and Legal Challenges:** Examining the specific provisions of AFSPA reveals the extensive powers granted to the armed forces, while legal challenges have questioned its compatibility with fundamental rights and constitutional principles.
- 3. Human Rights Concerns:** The Act has been a subject of significant human rights concerns, including extrajudicial killings, arbitrary arrests, torture, and restrictions on freedom of movement, as documented by international organizations and reports.
- 4. Alternatives and Reforms:** Calls for the repeal or reform of AFSPA have been echoed by various committees, scholars, and international organizations. Proposed alternatives include amendments to remove immunity clauses, strict adherence to principles of proportionality, and the establishment of independent oversight mechanisms.

5. Comparative Analysis: A comparative analysis with similar laws in other democracies highlights the global challenges of balancing security and human rights, providing valuable insights into potential reforms and best practices.

6. Political Discourse: The political discourse surrounding AFSPA reflects an interplay of government defences, opposition critiques, regional perspectives, civil society activism, and international considerations.

7. Public Opinion: Public perceptions of AFSPA vary and are shaped by regional contexts, high-profile incidents, media narratives, and online discussions. Surveys and sociological studies provide valuable data on the diverse attitudes held by different segments of society.

FORWARD-LOOKING PERSPECTIVE

The future of AFSPA remains a complicated and a matter of concern that demands careful consideration and further examination. While there is recognition of the security challenges that made the enactment of AFSPA the need of an hour, there is also an equally urgent need to address the human rights concerns associated with its implementation. Encouraging further research, debate, and public engagement on AFSPA is essential for several reasons:

1. Holistic Reforms: Policymakers and legal scholars can build on existing recommendations and explore innovative approaches to strike a balance between security concerns and human rights considerations. A strategic legal framework that empowers security forces while ensuring accountability and transparency is crucial.

2. Regional Specificities: Recognizing the regional variations in the impact and perception of AFSPA is vital. Adapting solutions that address the specific needs and concerns of different regions ensures that any reforms are constitutionally relevant and sensitive to local dynamics.

3. International Engagement: Engaging with the international community, human rights organizations, and diplomatic channels can provide valuable insights and contribute to a global exchange of ideas on security legislation and human rights.

4. Public Participation: Inclusive public address and community involvement are crucial for fostering a sense of ownership and understanding. Public awareness campaigns, town hall meetings, and platforms for dialogue can facilitate a more informed and participatory approach to decision-making.

5. Monitoring and Evaluation: Establishing mechanisms for continuous monitoring and evaluation of the impact of AFSPA is essential. Regular assessments can advise policy adjustments, measure the effectiveness of reforms, and ensure that the Act aligns with growing constitutional and human rights standards.

The journey of AFSPA is marked by complexity, controversy, and the imperative of balancing national security with fundamental rights. As the discourse on AFSPA continues, it is overbearing to consider the perspectives of all stakeholders—security forces, policymakers, legal experts, human rights activists, and, most importantly, the communities directly affected by its enforcement. In navigating the future of AFSPA, a commitment to constitutional values, human rights, and the rule of law should guide the way forward. The ongoing dialogue, research, and debate are essential for crafting solutions that address the legitimate security concerns of the state while upholding the dignity, liberty, and rights of every individual. The evolution of AFSPA reflects not only the legal and political complexities but also the moral and ethical dimensions.