

AFSPA and Human Rights in Northeast India: A Critical Appraisal

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Abstract

The Armed Forces (Special Powers) Act (AFSPA), 1958, grants extraordinary powers to the Indian armed forces in areas declared “disturbed.” Introduced to assist the state in countering armed insurgency, AFSPA has, over decades, produced a contested record in the North-East: while defenders argue it is necessary for security and order, critics contend it enables wide latitude for coercion, fosters impunity, and contributes to persistent human-rights violations. This article examines AFSPA’s legal architecture, its operational effects in North-East India, documented patterns of abuse with a focus on civilian rights, the gendered dimensions of militarisation, landmark legal and policy responses, and practical recommendations for reconciling security needs with human rights obligations.

Keywords: Human Rights, Empower, Status, Environment, Militarisation

1. Introduction

Since its enactment in 1958, AFSPA has been one of India’s most controversial statutes. Designed to empower the military to act decisively in territories declared “disturbed,” it authorises stop-and-search without warrants, arrest without warrants, use of lethal force in certain circumstances, and provides protection from prosecution for personnel acting under the Act unless prior sanction is obtained. In the North-East, an area marked by diverse insurgencies, overlapping ethnic grievances, and the fragility of civilian governance, AFSPA’s presence has been prolonged. The Act’s operational logic and legal shield have generated serious human-rights concerns and a sustained civil-society campaign for reform or repeal. Understanding how AFSPA functions on the ground is therefore central to assessing its human-rights consequences.

AFSPA: legal design and scope

AFSPA is short in text but broad in effect. Once the central government or a state empowered by central assent declares a region “disturbed,” members of the armed forces in that region acquire powers to use force or open fire after due warning, arrest individuals without warrants on reasonable suspicion, enter and search any premises without warrants, and destroy structures used by unlawful elements. Importantly, Section 6 of AFSPA grants protection to persons acting under the Act from prosecution, suit, or other legal proceedings unless the central government gives prior sanction for prosecution. That sanction requirement has been the single most contested provision because it inserts an administrative gatekeeper into criminal

accountability pathways. The law's formal breadth and the administrative protection it affords are the structural features that shape subsequent patterns of state action.

Historical context and why AFSPA is entrenched in the North-East

AFSPA's roots lie in early post-independence security responses to insurgency and cross-border instability in the region. Initially promulgated as a temporary ordinance in 1958 for Assam and Manipur, it was later expanded in scope. It stayed in place for decades as insurgent movements persisted and as state capacity to manage complex, armed politics remained uneven. Policymakers argued that ordinary policing and criminal procedures were inadequate against organised, often heavily armed groups; for many security planners, AFSPA provided legal clarity and operational latitude to mobile forces such as the Assam Rifles and other paramilitary units. The persistence of the Act became self-reinforcing: once security agencies and local administrations adapted to its presence, removing it without a robust alternative risked perceived law-and-order collapse. The political difficulty of replacing a statute viewed by many in the executive as indispensable explains its longevity

Effects on everyday life and the security environment

When AFSPA is enforced in a locality, the visible imprint on daily life is profound. Checkpoints, identity checks, house raids, and curfews become routine; public gatherings are policed intensely; and the presence of armed convoys and cantonments normalises a militarised public sphere. While such measures may produce short-term containment of violent incidents, they also heighten the risk of misuse of force where boundaries between combatants and civilians are blurred. The legal permission to detain without prior judicial oversight and to search homes without warrants, combined with the difficulty of investigating security actors, increases the possibility of wrongful detention, torture, and extrajudicial outcomes in contested operations. Over time, this dynamic erodes trust in state institutions, weakens local policing legitimacy, and creates a fertile ground for grievance. Amnesty International and other monitoring organisations have repeatedly highlighted how these daily practices form part of a pattern of rights violations in AFSPA-covered areas.

Patterns of human-rights violations

Independent reports, judicial inquiries, and victim testimonies converge on a set of recurring harms in AFSPA-affected zones:

1. **Extrajudicial killings and “fake encounters.”** Numerous incidents have been reported in which civilians are killed during operations, and security forces later categorise the dead as militants killed in encounters. Investigations by human-rights groups and inquiries have questioned the forensic and testimonial bases for many such claims, pointing to inconsistencies in official accounts.
2. **Arbitrary detention and enforced disappearances.** The power to detain without immediate judicial review has, in a number of reported cases, led to prolonged non-appearance of detainees in judicial forums and allegations that persons were held off record.
3. **Torture and ill-treatment in custody.** Detainees and witnesses have provided accounts of custodial violence used to extract confessions or information. Limited access to independent

medical forensics and the recourse to sanctions for prosecution compound the difficulty victims face in obtaining a remedy.

4. **Sexual and gendered violence.** Sexual violence, or the threat of sexual violence, has been deployed as a tool of intimidation in some instances. Women and girls are additionally affected by secondary harms, displacement, loss of livelihood, interrupted schooling, and the psychosocial trauma from living under constant surveillance and occasional violent incidents.
5. **Impunity and weak accountability.** AFSPA's requirement of prior government sanction for prosecuting security personnel, combined with slow or ineffective investigations, has resulted in very few convictions of service personnel for serious abuses. This systemic gap between allegations and accountability amplifies perceptions of impunity.

Gendered dimensions: why women's rights deserve special attention

Militarisation affects men and women differently. In the North-East, women experience both direct and indirect impacts of an AFSPA-enabled security environment:

Direct sexual violence and coercion: When sexual assault occurs in the context of security operations, the consequences are immediate and severe physical injury, social stigma, and psychological trauma—compounded by obstacles to reporting and prosecution.

- **Reproductive and health harms:** Interrupted access to healthcare during curfews or operations, stress-related reproductive health issues, and the burden of caring for injured or detained family members fall disproportionately on women.
- **Economic precarity:** Military operations and curfews impede market access, agricultural work, and informal sector employment, where women often predominate. Loss of livelihood increases vulnerability.

Civic exclusion and political silencing: Women who speak out, relatives of victims, activists, or community leaders may face intimidation, making collective mobilisation harder even as they bear disproportionate caregiving and survival burdens.

These gendered effects indicate that a rights analysis limited to individual incidents misses a broader pattern of structural disadvantage; addressing women's rights requires both criminal accountability and social-policy reforms. (On broader patterns in AFSPA areas, see Amnesty International and human-rights research.)

Landmark incidents and movements: illustrative cases

Several high-profile incidents and long-running protests crystallise public scrutiny of AFSPA:

- **The killing of Thangjam Manorama (Manipur, 2004):** Manorama, a 32-year-old woman, was arrested from her home by Assam Rifles personnel and killed while reportedly in custody. The case sparked massive public outrage, legal action, and drew sustained criticism from national and international advocates on impunity and the role of AFSPA in enabling unaccountable action by security forces. Human Rights Watch has documented the case as emblematic of the kinds of abuses that proliferate when accountability mechanisms fail.

- **Irom Sharmila's hunger strike:** In response to the “Malom” killings in 2000 (an incident in which civilians waiting at a bus stop were shot), Irom Sharmila began a hunger strike demanding the repeal of AFSPA. Her uninterrupted protest—over 16 years in various forms—became a powerful moral indictment of the Act, drawing international attention to civilian suffering in Manipur and beyond. Though Sharmila's protest received broad sympathy, it also highlighted the limits of public mobilization against entrenched security policy.
- **Women's collectives and local resistance:** Groups such as Meira Paibi in Manipur and Naga women's organisations have engaged in grassroots mobilisation public demonstrations, protecting communities, documenting abuses, and demanding redress. These women-led movements have framed AFSPA not merely as a legal instrument but as a social phenomenon that transforms everyday power relations. Their activism illustrates how communities have both suffered and resisted.

Judicial, parliamentary, and policy responses

India's judiciary and executive have confronted AFSPA in several ways:

- **Judicial engagement:** Courts have heard petitions challenging AFSPA's application and interpretation. In some instances (e.g., litigation arising from Nagaland), higher courts upheld the constitutional validity of the Act while prescribing safeguards on how “disturbed area” notifications should be made and applied. Judiciary interventions have sometimes clarified procedural rights but stopped short of ordering repeal.
- **Review committees and policy recommendations:** The Justice Jeevan Reddy Committee (2004–05), appointed to review AFSPA, concluded that parts of the Act were “symbolic of oppression” and recommended repeal or major revision. The Reddy Committee's 2005 report recommended a time-bound, more narrowly defined legal framework and enhanced oversight mechanisms. Despite these recommendations, political and security considerations slowed substantial reform.
- **International scrutiny:** UN human-rights bodies and international NGOs have repeatedly urged India to bring its practice into line with international human-rights standards, calling for independent investigations, access to remedy for victims, and removing legal barriers to prosecuting alleged abuses. Such recommendations have added moral and legal pressure but have not produced wholesale statutory change.

Why accountability remains elusive

Several interacting factors explain the persistent accountability gap:

1. **Sanction requirement:** The need for prior government sanction to prosecute personnel acts as a de facto immunity in many instances because approvals are rare, slow, or non-transparent.
2. **Investigative weaknesses:** Local policing and investigative institutions in many affected districts lack the technical, forensic, and procedural capacity to collect and preserve evidence against trained security personnel.

3. **Political and institutional reluctance:** Prosecuting security forces entails political costs and institutional resistance; governments are often unwilling to authorize prosecutions that may be framed as undermining morale or operational effectiveness.
4. **Victim barriers:** Stigma, fear of retaliation, economic dependency, and poor access to legal aid deter victims and witnesses from coming forward.

Together, these forces create a durable practical impunity that undermines both rights and long-term stability.

Recommendations: toward a rights-respecting security framework

Reforming the balance between security and rights does not mean abandoning legitimate security needs. The following steps are pragmatic and evidence-based:

1. **Narrow and time-bound disturbed-area declarations.** Declarations should be geographically and temporally limited, publicly justified, and subject to judicial or parliamentary review.
2. **Independent investigatory body for serious allegations.** Create a statutory, independent mechanism with forensic capabilities to investigate killings, torture, sexual violence, and disappearances involving security forces.
3. **Reform the sanction regime.** Make the sanction process time-bound, transparent, and reviewable by an independent panel to prevent blanket immunity.
4. **Strengthen civilian policing and community policing.** Invest in police capacity, forensics, and accountability so that routine law enforcement does not default to the military.
5. **Gender-sensitive reparations and services.** Provide women and families with legal aid, psychosocial support, reproductive and maternal-health services, and livelihood restoration after operations.
6. **Parliamentary oversight and reporting.** Regular, public reporting on AFSPA notifications and on allegations and outcomes will build public confidence.
7. **Community reconciliation and truth-seeking.** Complement prosecutions with truth-telling, memorialisation, and local reconciliation programmes to mend the social fabric.

Implementation of these measures requires political resolve, inter-agency coordination, and resources, but they are feasible and compatible with legitimate security imperatives.

Conclusion

AFSPA was designed for extraordinary circumstances; however, its extended and sometimes indiscriminate application in parts of North-East India has magnified human-rights costs, produced gendered harms, and eroded trust between communities and the state. The core challenge is not whether the state may use force, but how the law structures the use of force and whether victims have credible pathways to remedy. Meaningful reform must combine operational clarity for security forces with independent oversight, timely accountability, and gender-sensitive reparations. Only by aligning security

practices with constitutional and international human-rights obligations can the state hope to secure both safety and the dignity of the people it serves.

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