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## India's Controversial Armed Forces (Special Powers) Act

The Army claims the AFSPA is needed to handle insurgencies. Critics cite many abuses.



By [Sudha Ramachandran](#)

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Credit: REUTERS/Stringer

Recent events in India's restive Northeast have turned the spotlight yet again on the Armed Forces (Special Powers) Act (AFSPA), a controversial piece of legislation that confers vast powers on the armed forces deployed in "disturbed areas" of the country.

On March 27, the Indian government [declared](#) as "disturbed areas" 12 districts in Arunachal Pradesh bordering Assam and imposed the AFSPA on them, only to revoke it in early May. Then in late May, the government of Tripura [revoked AFSPA](#), 18 years after it was first imposed in this state. A few days later, on June 4, militants ambushed a convoy of the Indian Army's 6 Dogra Regiment in Manipur. The attack, which left 18 soldiers dead and eleven injured, is among the [deadliest militant strikes](#) on the Army in over three decades in this troubled state.

Heated debate on AFSPA has been raging since. What has it achieved in "disturbed areas," where it is in effect? Should it remain in force, be revoked, or at least revised?

AFSPA's imposition in Arunachal was bitterly criticized as the federal government had not

consulted the state government before declaring it a “disturbed area.” It drew attention to the [lack of clarity](#) as to what constitutes a “disturbed area” and the rather arbitrary manner in which AFSPA is being imposed in the country.

AFSPA’s subsequent revocation here and in Tripura [raised hopes](#) of its withdrawal from other “disturbed areas” too. Those hopes were quickly [dashed following the ambush](#) in Manipur. As an official in India’s Ministry of Home Affairs (MHA) told *The Diplomat*, “The situation in the Northeast remains turbulent and merits AFSPA being kept in place there.”

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According to Pradip Phanjoubam, editor of Imphal Free Press and Fellow at the Indian Institute of Advanced Study, Shimla, the ambush “will feed official paranoia and prolong” AFSPA’s enforcement in the Northeast and Kashmir.

Drawing from a draconian ordinance the British colonial rulers used during the Quit India Movement of 1942, the Indian Parliament enacted AFSPA in September 1958 in the context of the nascent Naga insurgency.

AFSPA [grants](#) the army, central police forces, and state police personnel in “disturbed areas” “certain special powers,” including the right to shoot to kill, to raid houses, and destroy any property that is “likely” to be used by insurgents, and “to arrest without warrant” even on “reasonable suspicion” a person who has committed or even “about to commit a cognizable offence.”

Besides conferring extensive powers on the armed forces, AFSPA provides them [immunity from prosecution](#). “No prosecution, suit or other legal proceeding shall be instituted except with the previous sanction of the Central government against any person” who has acted under this legislation, it says.

Imposed first on the Naga Hills in 1958, AFSPA, an emergency law, was to be in force for a year. Almost six decades thereon, it remains in effect not just in these hills but in “disturbed areas” across all seven northeastern states. Since July 1990, it has been in force in the Kashmir Valley too.

### **Effectiveness**

If the aim of AFSPA was to restore normalcy in disturbed areas, it has failed, say its critics. Despite the extraordinary powers vested in their hands by AFSPA, the armed forces have not been able to quell India’s insurgencies, a human rights activist based in Imphal in Manipur told *The Diplomat*. The area over which its writ runs has expanded significantly and armed struggles and insurgent groups have proliferated in the Northeast.

This is a “facetious” argument, Lt Gen (retd) Raj Kadyan, a former vice-chief of army staff, told *The Diplomat*, pointing out that in a democracy, “solving an insurgency” is not the task of the army. What an army can do and has done in the Indian context, he said, is “to keep the insurgency down to a level where the civil administration can carry out its functions. And “for that to be achieved AFSPA is essential,” he stressed.

Drawing attention to AFSPA’s successful role in Nagaland, for instance, Kadyan, who saw the Naga insurgency through its various stages,

recalled that without the “protective umbrella of AFSPA” the ceasefire which came into effect on August 1, 1997 would not have been possible. It was only after the armed forces had “captured six rebel ‘Ministers’ that they were brought to their knees.” This paved the way for the truce, which has survived to date.

AFSPA’s critics view the legislation differently and hold it responsible for the spiraling violence in areas it is in force. The “sweeping powers” it vests in the hands of the armed forces and especially the protection it gives them from prosecution “encourages soldiers to kill, raid and rape,” the Manipuri activist argued, drawing attention to “grave human rights violations” that AFSPA has “enabled.”

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In an insurgency situation it is difficult for soldiers to differentiate between sympathizer and insurgent. Hence, “aberrations do occur,” Kadyan said. But 98 per cent of the allegations are false, he maintained, adding that if soldiers are to face the civilian courts for every allegation, they will be preoccupied with running to the courts rather than fighting insurgents.

While admitting that some instances of civilian deaths at the hands of the security forces are the result of “genuine mistakes” by soldiers “in the heat of an operation,” the Manipuri activist pointed out that this does not apply to rapes. “How can rapes fall under the category of acts done in the line of duty, requiring legal protection of the state?” she asked.

Dismissing criticism that AFSPA protects offenders, the MHA official pointed out that

legal proceedings are possible if the central government sanctions it.

But such sanction has never come. Of the 38 requests to [sanction a prosecution](#) under AFSPA that the Ministry of Defense received between 1991 and 2015, permission was denied in 30 cases and the decision is pending in eight, Defense Minister Manohar Parrikar informed Parliament recently.

### **Naked Protest**

Over the years, demands for justice in extra-judicial killings and rapes – such as the torture, rape, and murder in 2004 of 34-year-old Thangjam Manorama by soldiers of the Assam Rifles – have triggered dramatic protests and snowballed into mass campaigns. Irom Sharmila, for instance, has been on a hunger strike since 2000 to press for AFSPA's repeal. On July 14, 2004 a dozen naked [women protested](#) in front of the Assam Rifles headquarters at Kangla Fort, Imphal, daring the soldiers to come out and rape them.

The wave of protests in 2004 forced the then United Progressive Alliance government to set up the Justice Jeevan Reddy Committee in 2005 to review AFSPA and make recommendations. Describing AFSPA as “[a symbol of oppression](#), an object of hate and an instrument of discrimination and high-handedness,” the Reddy Committee suggested it be repealed.

However, no steps were taken to repeal or reform AFSPA.

The military is [opposed to AFSPA's withdrawal](#). Explaining its position, Kadyan pointed out that the Army gets called in to support the civil administration “only when the situation is not normal” and “in such abnormal circumstances,

abnormal provisions have to be made.”

“Soldiers need legal cover [that AFSPA provides] to operate in these circumstances,” he argued.

While the army has been vocal in its opposition to [AFSPA's lifting in the Northeast and Kashmir](#), sections of the political establishment too are keen to keep it in place and blame the armed forces for opposing AFSPA's repeal. With AFSPA in force, state governments can [avoid taking responsibility](#) for their own administrative failures. Besides, “disturbed areas” are eligible for more funds from the central government.

While activists want AFSPA to be repealed in toto, there is a section of informed opinion that is calling for revising it at least, especially the clause that extends immunity to the armed forces. Phanjoubam, for instance, says that “AFSPA can be clubbed with the Unlawful Activities Prevention Act (UAPA), a civil law, so that the Army can function but without the AFSPA's impunity clause,” a suggestion made by the Jeevan Reddy Committee.

Political commentator Siddharth Varadarajan writes that instead of criminal proceedings against soldiers requiring official permission, [blocking of prosecution](#) could be made possible only on official action. He suggests that Section 6 of AFSPA could be amended to read: “No prosecution ... shall be instituted against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act where the Central government provides reasons in writing and the competent court upholds the legal validity of these reasons.” “Such a provision” he argues, “would prevent good officers from being prosecuted for killings which result from acts of good faith while allowing the bad apples to be prosecuted for

their crimes. The government would still have the right to intervene on behalf of a soldier who has committed an illegal act. But this would require a Minister to take personal responsibility for a decision....

The possibility of AFSPA being even reformed seems bleak at the moment. The present Bharatiya Janata Party-led government is [stridently opposed to any dilution](#) in the law.

As Sanjoy Hazarika, a member of the Justice Jeevan Reddy Committee, wrote: “[how many more deaths](#), how many more naked protests, how many more hunger strikes, how many more committees, how many more editorials and articles and broadcasts before AFSPA goes?”

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