

**“THE DARK CLOUD OF AFSPA OVER THE STATE OF MANIPUR”**

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**INTRODUCTION:**

India always have been on of the most diverse countries in the world, the amalgamation of different cultures brings about various notions of versatility in the culture for people from other nations to see from the distance, but ironically for the residents and observers from the close proximity the scenery is quite dismal especially starting from the 1950's focusing on the north east region primarily starting from the bordering areas of Nagaland and Assam resulting in clashes between various ethnic groups about Land possession and rights , the turmoil between student unions representing respective communities and later that turmoil moving primarily towards the State of Manipur .<sup>1</sup>The seven northeastern states, commonly referred to as the "seven sisters," face challenges in their relationship with the Indian polity due to their geographical distance. Additionally, they have been affected by processes of mainstreaming and integration, which have been influenced by demographic factors, as well as socio-cultural and political histories and contrasts. The unfavorable perception of AFSPA has been attributed to the occurrence of homicides, instances of torture, and forced disappearances that have taken place in the areas where the Act is implemented. Since its implementation in 1958, the Armed Forces (Special Powers) Act (AFSPA) has been perceived as exerting an arbitrary control over the populace residing in the north-eastern region, rather than adhering to the principles of democratic governance.

The Act in question was employed by the British authorities to repress the Quit India movement in 1942. The government grants the military authorization to undertake necessary measures for the preservation of peace and order, hence resulting in infringements upon human rights. The salient observation is that endeavors to achieve peace have proven ineffective, as violence has insidiously asserted its formidable influence, hence necessitating deliberations on the subject of peace during high-level meetings and conventions.

Additionally, it confers upon all military personnel the power to apprehend individuals without the need for a warrant, conduct searches without a warrant, confiscate property without a warrant, employ lethal force without apprehension of legal consequences, and demolish any structures that may serve as potential hideouts for fugitives.

Numerous instances of arbitrary detention, physical abuse, sexual assault, and unlawful appropriation have been reported as perpetrated by security forces after the implementation of the Armed Forces (Special Powers) Act (AFSPA).<sup>2</sup> Legal action against the abuse of despotic or arbitrary powers is prohibited without prior approval from the Central government. Upon the implementation of the Armed Forces (Special Powers) Act (AFSPA), the prerogative to designate an area as "disturbed" and thereafter permit military intervention was exclusively vested in the state government. Furthermore, the federal government was granted this jurisdiction through a constitutional amendment in 1972. The significance of this observation lies in the inherent difficulty of relying on residents of states where the Armed Forces Special Powers Act (AFSPA) is implemented to seek aid from the Central government. Consequently, individuals must be compelled to receive aid, even in

instances where they may not perceive a personal necessity for it. This amendment undermined the foundational structure of the Constitution. One perspective suggests that the elected state governments may be perceived as disloyal by abstaining from invoking the Armed Forces (Special Powers) Act (AFSPA), while the deployment of the military against their will might potentially transform it into an occupying force.

The Armed Forces (Special Powers) Act (AFSPA) was initially implemented in India on September 11, 1958, with the purpose of being operative during periods of emergency. The primary objective of its implementation was to address challenges arising in regions characterized by violence and to ensure the safety and well-being of the civilian population residing in those areas. The states of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, and Tripura are the regions in India's northeastern part to which the Act is applicable. The Act incorporates provisions that establish the precise definitions of "armed forces" and "disturbed area." The Act confers the power to designate regions as disturbed onto the Governor of a State, the Administrator of a Union territory, or the Central Government, at their discretion. Additionally, it bestows upon the armed forces the authority to eliminate individuals who engage in behavior that goes against the law, to apprehend and conduct searches of properties without the need for a warrant, and to demolish any construction if it is judged appropriate and essential according to their judgement.

Individuals who are apprehended under the aforementioned Act are required to be promptly transferred to the local law enforcement authorities, accompanied by a comprehensive report detailing the events leading to their detention. Furthermore, the Act provides protection to the armed forces from prosecution, litigation, or legal action when any action is carried out in accordance with the authority conferred under the provisions of the Act.

This paper presents a comprehensive analysis of the Armed Forces (Special Powers) Act (AFSPA) in the context of Manipur, focusing specifically on the issue of power abuse. The Armed Forces (Special Powers) Act (AFSPA) confers upon the military the jurisdiction to maintain law and order in situations characterized by civil unrest. According to Section 141 of the Indian Penal Code, 1860, an assembly consisting of five or more individuals within a specific geographical area is classified as an unlawful assembly. It is worth noting that the military has the authority to implement this provision. Furthermore, the military possesses the authority to employ lethal force against individuals who are engaged in unlawful activities. In the event of reasonable grounds, the military is authorized to detain an individual without a warrant, conduct site inspections without a warrant, and impose restrictions on the possession of firearms. Individuals who have been apprehended or detained have the option of being transferred to the supervising officer at the closest police station, accompanied with a comprehensive report outlining the events that precipitated the arrest. Based on these principles, the study examines the constitutionality and other shortcomings of the Act.

#### RESEARCH QUESTIONS:

The study paper focuses on the key research concerns that have been addressed and resolved. These issues are as follows:

- Has there been any misuse of Sections 4 and 6 of the Armed Forces (Special Powers) Act (AFSPA) in the state of Manipur?

In a recent occurrence involving the implementation of the Armed Forces (Special Powers) Act (AFSPA), a civilian named Mangboilal Lhouvum, aged 29 and a father of four, residing in Chawla Village, Manipur, was fatally shot by Major Alok Sathe of the 44 Assam Rifles, an officer serving in the army. During the demonstration, automobiles were intentionally ignited. Moreover, the 2004 incident involving the rape and murder of Thangjam Manorama

by the 17 Assam Rifles stands out as one of the most flagrant examples of the inappropriate application of the Armed Forces (Special Powers) Act (AFSPA) in recorded history. For a span of 60 years, the military has effectively exerted authority through the implementation of AFSPA. The focal point of the matter would revolve on several provisions of the Act and instances of its misuse.

➤ To what extent do Sections 4 and 6 of the Armed Forces (Special Powers) Act (AFSPA) comply with the Constitutional obligations pertaining to fundamental rights?

This study will center its attention on the significant cases of the Supreme Court and examine the legitimacy of the provisions of AFSPA considering Articles 14, 19, and 21 of the Constitution of India, drawing from past research and analysis.

➤ Does the Armed Forces (Special Powers) Act (AFSPA) comply with India's international obligations under conventions or customary international law?

This study inquiry will center on examining the extent to which the terms of the AFSPA regime and the utilization of armed forces on civilians align with India's international obligations.

#### **STATEMENT OF RESEARCH PROBLEM:**

The Armed Forces Special Powers Act (AFSPA) was established by the government in 1958 with the aim of effectively managing insurgency organizations and maintaining peace and stability in regions susceptible to war. The presence of the Armed Forces (Special Powers) Act (AFSPA) in the state of Manipur has been associated with a persistent occurrence of torture, harsh treatment, homicides, fabricated confrontations, abductions, sexual assault, and other forms of violence.

The research aims to elucidate the diverse range of criminal activities and societal challenges encountered by the populace.<sup>3</sup> The research establishes a connection between these offences and the current legislation, examining their legal implications. Subsequently,

the study examines the compatibility of the Act with the Constitution of India, taking into consideration the documented facts and circumstances. Moreover, the study will also examine the extent to which the Act aligns with India's obligations under customary international law and other treaties and conventions. Also the constitutional validity question comes into the forefront addressing that bringing in this act would bring stability but the exact opposite has been happening and specific focus has not been given to the student unrest and demands and the peaceful dialogue and understanding that has not been addressed and no research has not been focused on that front, and the land possession disputes which has resulted in various neighborhood disputes even between people of the same community. The focus has not been on the land related violence and why it has been there in the first place.

#### **AFSPA'S INTRODUCTION TO HISTORY:**

The Armed Forces (Special Powers) Act of 1958 has been frequently cited in discussions pertaining to the challenges faced in the regions of Jammu & Kashmir and the Northeast. The issuance of the Armed Forces Special Powers Ordinance in 1942 by the British government was intended to quell the evacuate India movement. In response to the internal security challenges arising from the partition of Bengal, Assam, and east Bengal, the India government enacted four ordinances in 1947, which have resemblance to the present ordinance under consideration. Because of the rising Naga Insurgency, the ordinances, which subsequently underwent transformation into statutes, were repealed in 1957. However, they were subsequently reinstated in Assam and Manipur under the name of the Armed Forces (Assam and Manipur) Special Powers Act 1958. The act eventually encompassed all seven states located in the northeastern region. The Armed Forces (Punjab and Chandigarh) Special Powers Act, enacted in 1983, subsequently authorized the extension of the statute's application to the regions of Punjab and Chandigarh. The



legislation was rescinded in the year 1997. The Military Special Powers Act (Jammu and Kashmir) of 1990 was enacted in the year 1990.

The Armed Forces (Special Powers) Act (AFSPA) is a legislative enactment enacted by the Parliament of India, conferring additional powers onto the Indian armed forces during their operations in regions that have been officially designated as disturbed areas by the government, considering its assessment of the prevailing law and order situation in those regions. <sup>6</sup>Ultimately, the perpetuation of violence engenders a cycle of escalating violence. The presence of brutality undermines individuals' ideals. Numerous supplementary insurgent factions have historically emerged in response to state-sanctioned acts of terrorism and the corresponding tactics employed to control them. The role of mass media in

facilitating comprehensive discussions among stakeholders can be seen as significant, as it consistently and persistently covers many issues pertaining to the region and the legal challenges associated with state counterinsurgency operations, such as the Armed Forces Special Powers Act (AFSPA). The significance of engaging in political discourse, comprehending the ethnic identities of the populace within the region, and implementing appropriate methods of development are of utmost importance. The Armed Forces (Special Powers) Act (AFSPA) is met with opposition from a significant portion of the population in our nation. However, the primary focus lies in the potential consequences that would arise if the AFSPA were to be repealed in the regions of North East and Jammu and Kashmir.

The current surge of unrest in the region of Jammu and Kashmir after the demise of Burhan Wani undoubtedly serves to strengthen the military's conviction that the situation cannot be effectively managed without the implementation of the Armed Forces Special Powers Act (AFSPA). Another aspect that is curiously disregarded is to the provision outlined in Article 355 of the constitution, which

mandates the Union Government to legally safeguard the sovereignty and integrity of the nation.

It is imperative for the union to safeguard each state against external incursions and internal disturbances, while ensuring that the governance of each state adheres to the provisions outlined in this constitution. The prevailing conditions in Jammu & Kashmir and the Northeast have shown improvement, as evidenced by several indices and the absence of violent incidents in the preceding year. Although it is indeed accurate that in recent years, the situation has exhibited a discernible inclination towards improvement, there persist latent forces that could potentially counteract these trends and precipitate a substantial alteration.

The available historical information indicates a limited number of reported instances of human rights violations in recent times.

Considering the purported misuse of authority by the military forces, it is imperative to undertake a comprehensive examination of the Armed Forces (Special Powers) Act (AFSPA) and gain a nuanced understanding of its intricate dynamics within the framework of our democratic society. Certain authors argue that individuals who support the continuation of the act maintain that it remains a matter of choice due to the absence of viable alternatives. They posit that if the circumstances that necessitated the implementation of this stringent statute diminish, the AFSPA would naturally cease to exist. The execution of the Armed Forces (Special Powers) Act (AFSPA) can be attributed to the prevailing circumstances in Jammu & Kashmir and the North East region. <sup>7</sup>The emergence of insurgency in the regions of North East and Jammu and Kashmir can be attributed to a range of socio-political factors. However, the problem is further intensified by the inefficiency of their local government. The implementation of the Armed Forces (Special Powers) Act (AFSPA) is justified by the need for specific legislation to address exceptional

situations. Certain individuals argued that the proposed solution was merely a short-term remedy, and hence advocated for the implementation of certain limitations on the imposition of such extreme measures. To enable individuals to lead their lives inside a conventional environment, it is imperative to eliminate it. The inquiry at hand presents a challenge in terms of providing a definitive response, as it is acknowledged that instances of cross-border terrorism have engendered social and political instability in certain regions of the country. To effectively administer these regions, it is imperative to implement stringent laws of this nature. The continued application of the Armed Forces (Special Powers) Act (AFSPA) in the north east region, even after five decades, raises intriguing questions regarding its ongoing necessity. Indeed, it is accurate to acknowledge that certain events may have incited the sentiments of the general people and catalyzed a movement aimed at revoking the Armed Forces Special Powers Act (AFSPA).

However, it is imperative to contemplate the subsequent course of action.

In an idealized society characterized by prevailing peace, the desirability of eliminating the Armed Forces Special Powers Act (AFSPA) without a suitable alternative may be favored. Nevertheless, in situations where persistent acts of violence against the state occur, a state that lacks a comprehensive legal framework defining justified violence might pose significant risks. Given the absence of legal frameworks, it is reasonable to anticipate that the state will initially resort to issuing decrees and ordinances as a means of addressing the prevailing lawlessness. As the situation becomes increasingly dire, it is likely that the state will employ tactics such as fabricated confrontations, clandestine assassinations, and acts of intimidation. This phenomenon can be attributed to the fundamental concept of survival, which posits that necessity transcends legal constraints.

The main objective of the legislation is to enable

military troops to be bestowed with enhanced powers in conflict-ridden regions encompassing the states of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, and Tripura. As stipulated in Section 3 of the Act, it is imperative for the Governor to formally designate a certain region as a disturbed area prior to the implementation of the Armed Forces (Special Powers) Act (AFSPA) within said area. The Supreme Court of India, in its ruling, determined that section 3 cannot be interpreted as conferring the power to issue a declaration at any given point in time. The declaration should undergo periodic assessment prior to the expiration of the six-month term.

Section 4 of the act, which delineates some authorities for the military forces, has engendered considerable discussion. In accordance with Section 4, individuals holding the rank of commissioned officer, warrant officer, non-commissioned officer, or any other military personnel of comparable status are authorized to operate within a region experiencing unrest. This clause confers jurisdiction to any officer, irrespective of their level. The Armed Forces Special Powers Ordinance, enacted in 1942 to suppress the Quit India Movement, conferred powers upon commanders holding a minimum rank of captain. What the impetus of the act was to confer ultimate powers to the military because of the inefficiency of the local law enforcement to react and act on to something of a heinous crime and be reactive and systematic about it. A reactive measure to counteract instances of armed political engagement within these areas.<sup>8</sup> The original length of validity for the Act was established at one year.<sup>9</sup> Disputes arose subsequent to the attainment of independence, as the Naga community asserted their entitlement to determine their own destiny. The origins of the AFSPA can be traced back to the mid-nineteenth century and the legislative framework established during the British colonial era. Specifically, the legislation was fashioned after the British colonial law known

as the Armed Forces (Special Powers) Ordinance, which was

implemented in 1942 as a response to the Quit India Movement, a significant episode of the Indian independence movement. The Armed Forces (Assam and Manipur) Special Powers Ordinance, 1958, also referred to as AFSPA, was initially sanctioned by the parliament in September 1958. Its implementation commenced in May of the same year. The amendment made to the Armed Forces (Special Powers) Act (AFSPA) in 1972 granted the Union administration, particularly the Governor who is selected by the President and acts as the Union's representative in the states, the authority to classify a specific area as being in a condition of disturbance. The authority to exercise this function was formerly vested in the government at the state level. Furthermore, the Armed Forces (Special Powers) Act (AFSPA) saw an expansion to encompass additional states located in the Northeast region. In December 1990, a comparable ordinance was implemented in Jammu and Kashmir, resulting in the designation of six districts in the Kashmir Division and two districts in the Jammu Division as disturbed regions. The armed forces consist of many units, including the Border Security Force (BSF), Assam Rifles, Rastriya Rifles, Sikh Regiment, National Security Guards (NSG), and other armed and paramilitary organizations that are deployed in regions facing security challenges.

According to state and military authorities, the Act is deemed crucial for safeguarding against perceived internal disruptions, upholding national unity, countering terrorism and insurgency, and securing vulnerable border regions. On January 3, 2005, Lieutenant General Arvind Sharma, the General Officer Commanding-in-Chief of the Eastern Region, expressed the view that the Armed Forces Special Powers Act (AFSPA) is a crucial requirement in addressing insurgency within the country. The absence of the Armed Forces (Special Powers) Act (AFSPA) will impede the operational capabilities of the Army in

counterinsurgency scenarios. Army officials further contend that the preservation of the service's dignity and reputation does not necessitate the investigation of charges against troops.

For a considerable period, women's organizations and human rights organizations in the Northeast region have consistently expressed their opposition towards the Armed Forces (Special Powers) Act (AFSPA) and the various human rights violations occurring inside the region. In the late 1990s, a statewide campaign emerged in India with the objective of opposing the Act and garnering widespread support for its repeal. In July 2004, there was a resurgence of agitation calling for the repeal of the Act in response to the purported sexual assault and murder of Thangam Manorama while in custody in Imphal, Manipur, India. The Apuna Lup alliance was formed by 32 civil society organizations rooted in Manipur, with the objective of challenging the abuses associated with the Armed Forces (Special Powers) Act (AFSPA) and advocating for its repeal. After the demise of Thangam Manorama, the members of Apuna Lup were involved in a series of public demonstrations that lasted for several months. Opposition to the Armed Forces Special Powers Act (AFSPA) has been expressed by individuals from the Northeast by various forms of protest, including as self-immolation, hunger strikes resulting in death, and public demonstrations involving nudity. The revocation of the Act in the Greater Municipal District of Imphal was prompted by the events that took place in Manipur. Scholars and human rights proponents across India have likewise called for the entire abolition of the AFSPA, citing apprehension that the legislation contravenes international human rights and humanitarian norms, as well as fundamental rights. The assertion is made that there was a dearth of parliamentary deliberation surrounding the Act during its initial presentation, and that compelling evidence exists about significant transgressions of human rights.



The process of judicial review under the Act was found to be burdensome. The Supreme Court, in November 1997, confirmed the constitutionality of the subject matter following a series of petitions that were brought in 1980, 1982, 1984, 1985, and 1991. The court's determination concluded that the authority bestowed upon the army did not violate the contested provisions of the Indian Constitution, as it was found to lack arbitrariness or unreasonableness. Furthermore, it was determined that the classification of a territory as disturbed should undergo reassessment on a biannual basis.

The Court expressed its viewpoint that the order issued by the Central Government, whether granting or refusing sanction, is open to judicial review. Consequently, the Court mandated that the Central Government must provide a reasoned order pertaining to the prosecution, lawsuit, or any other legal proceeding involving army personnel that requires sanction, which refers to the permission granted by the government. The court additionally concluded that a compilation of guidelines outlining the appropriate actions and restrictions for security officers is constitutionally mandated preventive measures. The judgement was subject to criticism from many human rights organizations, journalists, and campaigners, who regarded it as a remarkable development.

By expressing their critique of the judgement, they have raised apprehensions on the suspension of individuals' rights, the displacement of local authority, and the inadequate limitations on the abuse of power during the enforcement of the law. Following the 1997 ruling, the National Human Rights Commission (NHRC) put forth a recommendation for the relevant Ministries to disseminate meticulously formulated guidelines to all members of the armed forces and paramilitary formations. The research requests made by the entity in question have not been met with a response about access to do research in India. Additionally, the Restrictive Areas Permit Act imposes limitations on entry to specific regions in the Northeast, including for

Indian citizens. The instances of abuse documented in this study are confined to those for which there exists sufficient documentation evidence or credible accounts from local sources. It is important to note that the availability of information was constrained in this environment.

The Jammu and Kashmir Public Safety Act of 1978 and the Terrorist and Disruptive Activities (Prevention) Act of 1987 (TADA) have faced criticism due to perceived legal ambiguities and alleged infringements of human rights. The Armed Forces (Special Powers) Act (AFSPA) has undergone judicial examination and assessments have been carried out to enhance its efficacy in safeguarding human rights. The Commissions for Judicial Scrutiny have also put forth strategies to enhance openness, while concurrently safeguarding the operational efficacy of soldiers in intricate warfare settings. The Armed Forces (Special Powers) Act (AFSPA) has undergone judicial examination and assessments have been carried out to enhance its effectiveness in safeguarding human rights. Following the demise of Manorama Devi while in police custody in Manipur during July 2004, the Justice Reddy Committee was constituted in 2005.

The committee was assigned the responsibility of modifying the Armed Forces (Special Powers) Act (AFSPA) to protect and uphold human rights, or alternatively, to substitute it with a more compassionate legislation if deemed appropriate. The committee released its report in June 2005 following a thorough investigation and comprehensive analysis.

According to the survey, there existed a prevalent inclination among the populace to maintain the military institution, but with requisite adjustments to the legislative frameworks. The committee held the viewpoint that by making certain amendments, the existing Unlawful Activities (Prevention) Act (UAPA) of 1967 may be utilized to offer the soldiers with the requisite safeguard. Additionally, it suggested the formation of grievance units

consisting of individuals from the local administration, military, and law enforcement agencies.

The committee faced criticism due to its regressive nature, as it supported the repeal of the AFSPA while simultaneously endorsing the extraordinary powers granted by the UAPA. The Justice Hegde Commission and the Justice Verma Committee have faced criticism for their alleged misrepresentation of facts and perceived failure to consider the existing norms and regulations applicable to military personnel. The establishment of the Justice Hegde Commission was prompted by a formal plea made to the Supreme Court, seeking an inquiry into instances of extrajudicial murders that occurred in Manipur from 1978 to 2010. The report issued by the Justice Verma Committee faced criticism due to its alleged misrepresentation of facts, disregard for established laws and regulations pertaining to soldiers, and purported lack of accurate empirical understanding on military deployment in insurgent operations. The validity of the Armed Forces (Special Powers) Act (AFSPA) has been affirmed by the Supreme Court, which has determined that the powers bestowed upon the military under this legislation are neither arbitrary nor unjustified.

#### **CONSTITUTIONAL VALIDITY OF AFSPA:**

In 1988, the Naga People's Movement for Human Rights (NPMHR) initiated a legal action by filing a writ petition with the Supreme Court. This case, commonly referred to as Naga People's Movement for Human Rights v. UOI, involved a challenge to the legality of the Armed Forces (Special Powers) Act (AFSPA). Despite the Supreme Court's dismissal of all arguments supporting the legitimacy of the legislation, there persists a state of doubt over its validity. A significant point of contention in this case pertained to the issue of whether the amalgamation of Entry 2A (after the 42nd amendment) in List I, Article 248, and Entry 97 of List I conferred upon the Parliament the jurisdiction to promulgate the significant Act or AFSPA. The primary objective of the Armed

Forces (Special Powers) Act (AFSPA) is to maintain and preserve public order. However, there is a contention that the state should have the authority to enact legislation on this issue, since it pertains to List II, Entry I. In the present case, the court proceeded to affirm that the Union possesses higher powers as specified in Entry 2A of List I. As a result, the court determined that the implementation of AFSPA is legally justified and falls within the constitutional purview of the Union. Although the Supreme Court's acknowledgment of the authority of judicial review in this specific case is praiseworthy, it is unfortunate that this recognition has predominantly remained in the realm of theory and has not been adequately put into practice. Granting unrestricted powers to the military solely through the assertion of judicial review authority, without concurrently declaring the laws unlawful, results in negligible consequences. Therefore, the constitutional infringement stems from the safeguard granted to the armed forces under Section 6 of the AFSPA, which was implemented without being driven by an exigent circumstance. The military forces have been consistently accused of committing egregious violations of human rights. Based on the research conducted by Venkatesh Naik, a renowned campaigner for human rights, it has been reported that a cumulative number of 186 grievances have been formally registered against the armed forces. The grievances raised encompass a broad spectrum of purported transgressions, which include, but are not restricted to, reported instances of simulated confrontations (with a total of 21 complaints) as well as documented occurrences of gang rape and kidnapping (with a recorded count of 10 incidences). This observation implies that there exists a notable violation of human rights. The statements were gathered and presented as evidence in the legal case of Extra Judicial Execution Victim Families Association v. UOI. In this instance, the Supreme Court expressed its viewpoint that the extensive immunity granted to the armed services conflicts with the democratic



framework and fundamental foundations of the nation.

Nevertheless, there has been a lack of substantial initiatives aimed at addressing the predicament.

In a judicial ruling rendered in 2016 by Justices J. Madan Lokur and UU Lalit, the Supreme Court determined that the provision of broad immunity is in violation of the law and the constitution. The court further asserted that the license granted to the army to employ lethal force, even in situations when there exists a valid concern for the state's security, contravenes both the constitutional provisions and the fundamental tenets of the rule of law. The perpetual experience of residing under the influence of a firearm is unsettling and in violation of constitutional principles, thereby necessitating the elimination of such a provision. The application of the Armed Forces Special Powers Act (AFSPA) in certain regions of our nation engenders a detrimental influence on the democratic framework, as it instills a persistent sense of apprehension and anxiety among civilians who reside in these areas, due to the potential threat of military-inflicted fatalities. The Court has received numerous complaints concerning the unrestrained exercise of the military forces' power in relation to arbitrary apprehension and incarceration, encompassing the capacity to employ lethal force and cause fatalities without delay. Nevertheless, there has been limited effort to effectively mitigate the occurrence of these extrajudicial killings perpetrated by the military. Due to the state's consistent defense of the military forces, the investigations carried out exhibit a significant degree of skepticism and lack clarity. In actuality, the state, even in the absence of direct involvement in human rights breaches, contributes to the creation of an atmosphere of fear and intimidation in specific areas.

The decision made in 2016 is regarded as favorable; however, it is observed that extrajudicial killings by the armed forces persist.

Furthermore, despite the International Court of Justice's call for the Indian government to carry out a comprehensive inquiry into accusations of human rights abuses in those regions, the investigation remains unfinished. This analysis illustrates that, apart from contravening the Indian Constitution, the phrase also signifies India's non-compliance with its obligations under international law, as it neglects to pursue legal action against perpetrators and carry out comprehensive inquiries in similar instances.

The concept of the rule of law is widely acknowledged and can be effectively elucidated by examining the theoretical framework proposed by Lon Luvois Fuller, a prominent American legal scholar. The legislation encompasses various facets, which can be categorized as follows:

The universality of law is imperative. All individuals, including government personnel, are required to adhere to the legislation, which necessitates its public dissemination.

It is imperative that the legal system adopts a forward-looking approach. The legal framework should strive to provide clear and unambiguous guidelines, while ensuring equitable enforcement. The legal system must avoid internal contradictions and refrain from issuing impracticable mandates. The longevity of laws is crucial for their institutionalization, yet they should also allow for timely modifications in response to evolving social and political contexts.

The AFSPA is a highly problematic legislative measure due to its infringement upon the fundamental tenets of the rule of law. The AFSPA's lack of clarity on its applicability and its exclusion of government officials contravenes the foundational principle of the rule of law. The armed forces, being an integral part of the state, are not bound by the same limitations as the governor or central government. These authorities possess the power to designate a region as a troubled area and enforce stringent measures upon the population, thereby curtailing their civil and political liberties.

Furthermore, the laws pertaining to publicity within the statute remain vague. The inhabitants residing in the region where the Armed Forces Special Powers Act (AFSPA) is enforced experience persistent fear of firearms and perceive the military as a representation of oppression and animosity. Additionally, the concept of publicizing the law should incorporate a type of legal education that is not commonly observed in practical implementation. Due to the region's significant neglect, isolation, and perceived insignificance within the context of India, the general populace of India remains mostly unaware of the dire conditions and human rights infringements prevalent in the area.

#### AFSPA: HUMAN RIGHTS CHALLENGES AND ISSUES WITH REFERENCE TO THE STATE OF MANIPUR:

The territorial area known as Manipur, located on the border between India and Myanmar, underwent a process of assimilation into the Indian state after a momentous accord reached between King Bhalchandra of Manipur and the Government of India on September 21, 1949. According to the claims put up by armed liberation resistance forces, the agreement might be described as an act of annexation. The Armed Forces (Special Powers) Act of 1958 (AFSPA) may be traced back to the Armed Forces (Special Powers) Ordinance of 1942, which was initially utilized by the British colonial administration with the aim of suppressing India's nationalist movement. Consequently, the Indian government has employed this act to mobilize significant armed forces to the region. Within the territory of Manipur, there is a prevalent and widespread feeling of apprehension among the local population in relation to the audible occurrence of jeeps or vans moving through residential areas during the nighttime. Upon arrival at their intended locations, these vehicles are often linked to the unsettling phenomenon of individuals forcefully entering dwellings through the manipulation of doors and windows. These invasions ultimately result in the kidnapping of male relatives or partners, which is

subsequently followed by the distressing finding of deceased individuals displaying gunshot wounds the following morning. The authorities then assert that the deceased individual's demise occurred due to an accidental occurrence. These incidents possess the capacity to manifest themselves in a conspicuous and observable manner in the presence of individuals who are observing. The mistreatment described above leads to the emergence of psychiatric diseases within the general population. Regardless of the specific day, a preliminary analysis of the headlines featured in the local media consistently presents recurring storylines.

The security personnel seize and neutralise those who are suspected of being extremists.

Insurgents partake in acts of aggression towards competing organisations, utilise ambush tactics against armed personnel, or enforce punitive measures against those who have violated societal norms.

Protesters employ either violent or non-violent modes of expression in response to the government's failure to effectively address their persistent legitimate complaints.

Based on estimations, the approximate ratio of security force personnel to the population of Manipur is 1:20. The state of Manipur accommodates a populace of over 2.5 million individuals, with a significant proportion involved in small-scale agricultural practices. The present-day Manipuri society demonstrates a distinct propensity for engaging in acts of violence. Upon conducting a more thorough analysis of the underlying factors, it becomes apparent that significant discrepancies emerge. One viewpoint posits that it may be necessary to employ coercive tactics towards the Manipuri populace based on their perceived inclination towards violence, anti-national attitudes, and perceived unreliability. Another constraint that should be considered is the Restricted Area Permit requirement, which mandates anyone entering India with regular visas to go through a separate application procedure to the Home

Ministry to obtain permission to visit Manipur. While acknowledging the potential oversimplification of this perspective, it has garnered considerable recognition among powerful figures and has noticeably influenced the policy formulation of the federal government concerning the Manipuri community.

However, this specific strategy has not only continued a repetitive cycle of aggressiveness but also demonstrates a clear disrespect for values of equality and fairness. outlined by international human rights standards. Hence, it is necessary to provide a more rational and coherent explanation. The conflict theory of human needs, as advocated by prominent scholars such as John Burton and Gene Sharp, posits that overt acts of violence are merely superficial expressions of a deeper, systemic violence that permeates the economic, political, and social frameworks of a society. Human beings possess an inherent inclination to employ all available means in order to address situations where individuals or collectives are persistently deprived of their essential demands due to systemic violence. According to the perspective put forth by James Gilligan, a psychologist affiliated with Harvard University, it is posited that all acts of violence can be understood as attempts to either achieve justice or rectify perceived injustices. In order to have a comprehensive understanding of the prevailing daily violence in Manipur, it becomes imperative to discern the underlying structural violence that is deeply ingrained into the economic, political, and social frameworks of the society. After the conclusion of the Anglo-Manipur War in 1891, the British successfully brought the hitherto autonomous kingdom of Manipur under their control. Following the withdrawal of the British from Manipur in 1947, a constitutional monarchy was instituted in adherence to the Manipur Constitution Act of 1947. Upon the Maharaja of Manipur's compelled endorsement of the controversial Merger Agreement in Shillong on September 21, 1949, subsequently enforced on October 15, 1949, it is noteworthy that a democratically elected

legislative body and an accountable council of ministers were already established. The appointment of a Chief Commissioner (subsequently designated as Lieutenant Governor) by the central government in New Delhi was made to administer the region of Manipur. Following the merger, the widely supported ministry and legislature were dismantled, then replaced by a corrupt bureaucracy that became accountable to the central authority.

The condition remained until Manipur was granted statehood in 1972, in accordance with continuous and persistent public demand. Nevertheless, the establishment of a national emergency during the period of 1975-77, along with the subsequent enforcement of the Armed Forces (Special Powers) Act (AFSPA) throughout the region in 1980, resulted in the eradication of the nascent democratic sphere that had been provided by the attainment of statehood. The persistent denial of democratic space to the Manipuri people constitutes a form of structural violence that is deeply rooted in the political landscape of Manipur. The persistent denial of democratic space to the Manipuri people represents a form of structural violence that is deeply ingrained in the political landscape of Manipur.

The economy of Manipur was predominantly agrarian, characterized by a surplus production of rice and other essential commodities at the time of its integration into India in 1949. The presence of a corrupt local bureaucracy, alongside a system of centralized planning under remote supervision, has resulted in missed opportunities to establish an economy characterized by a robust productive foundation. The economy of Manipur has experienced the emergence of structural distortions due to limited opportunities for indigenous innovation. The majority of the state's economic resources are concentrated outside of the hill regions, which constitute around 90% of the total land area. According to Priyoranjan Singh, there exists a political economy that demonstrates a vested interest in sustaining an



economy characterized by a predominance of tertiary sector activities, coupled with a fundamentally feeble productive foundation, which relies on government subsidies for survival. The decline of household industries by 45% can be attributed to the increasing integration of Manipur's economy into the broader Indian economy in the post-merger era. From 1961 to 1991, there was a notable decline in the proportion of individuals employed in the secondary sector, resulting in a reduction to 50%. Conversely, over the same period, there was a significant gain of 100% in the proportion of those engaged in the tertiary sector. According to the same source, these indicators suggest a shift towards a more service-oriented economy and a decline in industrial activity within the state. In a metropolitan area including a population of

2.5 million individuals, the quantity of individuals currently experiencing unemployment has exceeded 0.5 million. In the region of Manipur, the presence of structural violence has given rise to various manifestations of secondary violence. The armed resistance formations in Manipur emerged and became operationally engaged towards the conclusion of the 1970s. The Unlawful Activities (Prevention) Act enacted in 1967 renders the entire organization illegal and designates it as a terrorist outfit. A significant deployment of over 55,000 security forces from India has been implemented in the region of Manipur with the objective of effectively managing and restraining insurgent activities. The Armed Forces (Special Powers) Act (AFSPA) provide a legal basis for the discretionary application of force, including in situations involving unarmed individuals. The incidence of torture, rape, extrajudicial executions, and enforced disappearances is on the rise. Under the pretext of counterinsurgency or civic action initiatives, the military has deployed its soldiers and erected encampments in strategically significant locations within civilian domains, such as the Manipur University Campus. Consequently, there has been a growing intrusion by the armed

forces into community matters.

#### CONCLUSIONS AND SUGGESTIONS

To conclude there are various aspects that have been considered regarding the validity of AFSPA, whether it adheres to the international human rights standards or not, whether the freedom of speech and expression and freedom of movement was considered or not before implementing this dictatorial act, whether they got a green card from UN and or was it overlooked and most unfortunately, the media neglecting and not covering the various remorse's and shortcomings between the different ethnic populations and non-reporting of the stories and the history and the problems associated with it, non- involvement of the UNSC of setting up of review committees and sending people over to meet up with the grieved parties and putting up an arbitration forward regarding the SC/ST status and land rights and possession and addressing of the root of the various ethnic groups clashes and

discrimination along with that the non-reporting of the various rape cases and sexual violence committed by the troops of the BSF and the Army along with the CRPF troops that were given power of attorney to handle the scene of the state but instead misused and abused it in a completely different way. During the process of combating counter-insurgency in regions characterized by disturbance, it is imperative to ensure that armed soldiers are afforded legal protection. However, it is crucial to note that such protection does not confer absolute immunity upon them. The government largely remains oblivious to the distressing reports of human rights violations as well as the 16-year-long protests led by Irom Sharmila and the Meira Paibi. The implications of the Supreme Court's ruling on July 9, 2016, to

eliminate the perceived immunity of armed soldiers in practice are still to be fully understood. Despite potential arguments from the Army in favor of maintaining a state of sovereignty based on their perspective and assessment, the repeal of AFSPA remains a

prerogative. This study thus advocates for the repeal of AFSPA and the implementation of a new legislation that aligns with the criteria set by the United Nations Human Rights Council (UNHRC) and effectively outlaws sexual assault in situations of armed conflict.

To further suggest, despite the theories to the contrary, I as a researcher duly believe that the only way to end human rights abuses in the north east especially in Manipur is to end this draconian and dictatorial militant rule and restore peace and stability onto the region and into civilians' life. Secondly, given India's current military climate, most of the military forces are focusing more on domestic internal disputes raising serious power abomination to civil authorities. Thirdly, this military rule would have never been vaguely imposed in the first place if there would have been a strong and systematic law enforcement agency, the police force should be made more stronger in terms of manpower, more vocation and technical training and create more awareness amongst them about various crimes and make the recruits aware about the laws and sections specially making them competent regarding IPC (Indian Penal Code). The National Human Rights Commission (NHRC), however, assumes a rather limited role. As a result, it is possible that the Supreme Court may not view favorably the notion that the NHRC may assume a role in declaring AFSPA as illegal, hence potentially leading to a reconsideration of its ongoing cases. The clarity of this matter was evident when the NHRC tried to voice its concerns at the hearing pertaining to the Terrorist and Disruptive Activities (Prevention) Act (TADA).

Furthermore, if the Armed Forces Special Powers Act (AFSPA) is not revoked, it is imperative that it conforms to both Indian and international legal norms. This suggests that the inclusion of clause 4(a) necessitates the unequivocal elimination of the entitlement to employ deadly force. The use of force should be strictly prohibited in search and seizure operations, and the issuance of warrants should be a

prerequisite for making arrests.

Furthermore, it is imperative that Section 5 explicitly stipulates that individuals detained in accordance with the legislation must be transferred to the law enforcement authorities within a period of 24 hours. To facilitate legal recourse for victims of abuse perpetrated by members of the safety forces, it is imperative to advocate for the complete removal of Section

6. It is imperative that soldiers be prohibited from effectuating arrests or conducting operations purely based on suspicion. For all of their operations to be subject to court review, it is imperative that they possess a reasonable foundation.

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