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LEGAL AND ETHICAL CHALLENGES OF COUNTERINSURGENCY OPERATIONS: EVALUATING AFSPA'S ROLE IN MANIPUR

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Abstract

The Armed Forces (Special Powers) Act (AFSPA) has remained a contentious legal instrument in India, particularly in insurgency-affected regions like Manipur. While the Act provides sweeping powers to the armed forces for maintaining public order, it has raised serious concerns regarding human rights violations, legal accountability, and ethical governance. This paper examines the constitutional validity, legal framework, and ethical dilemmas surrounding AFSPA in Manipur, analyzing its impact on rule of law, civilian rights, and counterinsurgency efficacy.¹ By exploring judicial interpretations, case studies, and international legal perspectives, the study highlights the complex interplay between national security imperatives and fundamental rights. The findings suggest that a balanced approach, incorporating accountability mechanisms and human rights safeguards, is necessary for effective counterinsurgency strategies without compromising democratic principles. This research critically evaluates how AFSPA's provisions create a framework that often prioritizes state security over civil liberties, leading to a culture of impunity among armed personnel. Through an analysis of contemporary case studies and legal precedents, the study highlights the tensions between constitutional protections and the extraordinary measures enacted in the name of national security. Additionally, it examines the implications of these dynamics on local communities, the judicial system, and the broader pursuit of peace and stability in the region. Ultimately, this evaluation seeks to contribute to the ongoing discourse on necessary reforms to ensure that counterinsurgency efforts respect fundamental rights while effectively addressing security challenges.

Keywords: AFSPA, Counterinsurgency, Human Rights, Legal Framework, Rule of Law, National Security.

I. INTRODUCTION

The Armed Forces (Special Powers) Act (AFSPA), enacted in 1958, has been a subject of intense debate in India, particularly in the northeastern states, including Manipur. Designed as a counterinsurgency tool, AFSPA grants the armed forces extraordinary powers to combat insurgent groups. However, the Act has been criticized for facilitating human rights violations, undermining constitutional principles, and creating an environment of impunity. This paper

aims to critically examine the legal and ethical challenges posed by AFSPA in Manipur and explore possible reforms²

Counterinsurgency operations in regions like Manipur are deeply intertwined with complex legal and ethical challenges, particularly in the context of the Armed Forces (Special Powers) Act (AFSPA). Enacted in 1958 to address insurgency issues, AFSPA has often been a source of controversy, as it grants security forces special powers to maintain order in

areas deemed "disturbed." While proponents argue that these powers are essential for effective counterinsurgency and maintaining national security, critics raise significant concerns regarding human rights violations, lack of accountability, and the potential for abuse of power. In Manipur, a state that has experienced persistent unrest and ethnic strife, the implications of AFSPA have sparked intense debates around the balance between security needs and individual rights. This examination of AFSPA's role in Manipur aims to illuminate the intricate interplay between legal frameworks, ethical considerations, and the realities of counterinsurgency, ultimately questioning whether the measures in place adequately protect both state interests and the rights of citizens.³

II. LEGAL DIMENSIONS OF AFSPA IN MANIPUR

The Armed Forces (Special Powers) Act (AFSPA) in Manipur operates within a complex legal framework that has profound implications for governance and civil liberties. Initially enacted to empower security forces in combating insurgency, the Act grants military personnel the authority to conduct searches, make arrests without warrants, and use lethal force if deemed necessary. However, its application raises serious legal questions regarding the principles of proportionality and accountability. Critics argue that AFSPA undermines the rule of law by allowing security forces to operate with impunity, often leading to human rights violations, including extrajudicial killings and arbitrary detentions. The legal validity of AFSPA has been challenged in various courts, with petitions highlighting its conflict with constitutional rights, particularly the right to life and personal liberty enshrined in Article 21. In Manipur, where the Act has been in force for decades, the ongoing tensions between state security and individual rights continue to fuel debates about the need for legal reforms that uphold justice and protect citizens from potential abuses of authority.⁴

A. Constitutional Framework

The constitutional framework governing counterinsurgency operations in India, particularly in regions like Manipur, is defined by a complex interplay of emergency provisions, human rights protections, and the balance of power among various institutions. The Indian Constitution guarantees fundamental rights to all citizens, including the right to life and personal liberty under Article 21, which is crucial in the context of armed conflicts. However, laws such as the Armed Forces (Special Powers) Act (AFSPA) create exceptions, allowing the state to impose extraordinary measures that can override these rights in the name of national security. Articles 356 and 360 of the Constitution also enable the central government to impose President's Rule and financial emergency in conflict-prone areas, further complicating the legal landscape. The Supreme Court has occasionally intervened, asserting the need to uphold constitutional rights even amid security concerns, but its judgments often reflect a cautious approach due to the political and security complexities involved. This dynamic results in ongoing debates about the constitutionality of AFSPA and similar laws, emphasizing the need for a robust dialogue around legal reforms that reinforce constitutional values while addressing legitimate security challenges. Ultimately, ensuring that the framework remains aligned with fundamental human rights and democratic principles is essential for fostering a just and peaceful society in regions affected by insurgency.⁵

AFSPA operates under Article 355 of the Indian Constitution, which obligates the central government to protect states from internal disturbances. However, its provisions conflict with fundamental rights guaranteed under Articles 14, 19, 21, and 22. The paper discusses key judicial interpretations, including the Supreme Court's ruling in **Naga People's Movement of Human Rights v. Union of India (1997)**, which upheld the constitutionality of AFSPA while emphasizing safeguards.

B. Legal Immunity and Judicial Scrutiny

Legal immunity and judicial scrutiny are pivotal issues surrounding the implementation of the Armed Forces (Special Powers) Act (AFSPA) in Manipur, significantly impacting the accountability of security forces during counterinsurgency operations. The Act provides a framework that grants extensive powers to military personnel, often affording them a level of legal immunity that can shield them from prosecution for actions taken in the line of duty. This immunity has led to a culture of impunity, where allegations of human rights violations, such as extrajudicial killings and torture, frequently go investigated or unpunished. Judicial scrutiny of AFSPA has been limited, with courts often deferring to the state's need for security over individual rights, resulting in a lack of effective remedies for victims of abuse. The few cases that have been brought before the judiciary highlight the struggle for legal recourse, with many petitions being dismissed or inadequately addressed. Strengthening judicial oversight and ensuring that security personnel are held accountable for their actions is crucial for restoring faith in the legal system and protecting the rights of citizens. Ultimately, meaningful legal reforms must be instituted to balance the need for effective counterinsurgency measures with the imperative of upholding accountability and justice in the enforcement of laws like AFSPA.⁶

AFSPA provides immunity to armed forces personnel from prosecution without prior government sanction. This has led to concerns over accountability and justice for victims of alleged human rights violations, as seen in cases such as **Extra Judicial Execution Victim Families Association (EEVFAM) v. Union of India (2016)**. The role of the judiciary in addressing these concerns and ensuring legal redress is analysed.

III. ETHICAL CHALLENGES IN COUNTERINSURGENCY OPERATIONS

Counterinsurgency operations inherently present significant ethical challenges, particularly regarding the justification of military

actions and the treatment of civilians. In the pursuit of national security and stability, security forces often face dilemmas that test the limits of moral conduct, such as balancing the necessity of force with the imperative to protect human rights. The use of strategies that involve the targeting of not only insurgents but also their perceived supporters can lead to collateral damage and suffering among innocent civilians, raising questions about the ethical implications of such actions. Furthermore, the implementation of laws like the Armed Forces (Special Powers) Act (AFSPA) can create a climate of fear and mistrust, eroding the moral authority of security forces and fostering resentment within the local population. Ethical principles, such as proportionality and discrimination, which dictate that military force should be proportionate to the threat and should spare civilians, are often compromised during counterinsurgency operations. As a result, the challenge lies not only in effectively combating insurgency but also in ensuring that these operations adhere to ethical standards that respect human dignity and promote long-term peace and reconciliation.⁷

A. Human Rights Violations

Human rights violations are a significant and deeply troubling aspect of counterinsurgency operations, especially in conflict-affected regions like Manipur. The implementation of the Armed Forces (Special Powers) Act (AFSPA) has been linked to a range of abuses, including extrajudicial killings, enforced disappearances, torture, and arbitrary detentions. Security personnel operating under AFSPA are often perceived as having a legal shield that allows them to bypass standard judicial processes, leading to a pervasive culture of impunity. Reports from human rights organizations highlight instances where innocent civilians have been caught in the crossfire, subjected to violence, or wrongfully accused of insurgent activities. Such violations not only inflict immediate harm on individuals and communities but also have long-lasting repercussions, contributing to cycles of distrust,

resentment, and further violence. Additionally, the psychological impact on affected populations can be profound, instilling fear and trauma that hinder social cohesion and the prospects for peace.⁸

Reports from national and international organizations, including Amnesty International and Human Rights Watch, highlight instances of enforced disappearances, torture, and extrajudicial killings under AFSPA. The ethical implications of these violations in the context of military necessity versus human rights protection are examined.¹⁵

B. The Ethics of State Security vs. Civil Liberties

The tension between state security and civil liberties is a critical ethical dilemma, particularly in the context of counterinsurgency operations. Governments often justify the curtailment of civil liberties—such as freedom of speech, assembly, and due process—in the name of national security, arguing that extraordinary measures are necessary to combat threats effectively. However, such justifications can lead to widespread abuses and the erosion of fundamental rights, sparking debates about the moral implications of sacrificing individual freedoms for collective safety. This ethical tension becomes particularly pronounced in regions like Manipur, where the enforcement of laws like the Armed Forces (Special Powers) Act (AFSPA) raises questions about the legitimacy of state actions against a backdrop of violence and unrest. While the state has a duty to protect its citizens, it must also uphold constitutional obligations to ensure that the rights of individuals are respected and safeguarded. Striking a balance between these competing interests requires careful consideration of ethical principles, highlighting the need for transparency, accountability, and a commitment to human rights that can prevent the normalization of violence and injustice in the name of security.

Balancing national security with individual freedoms is a fundamental ethical dilemma. While the government justifies AFSPA as

essential for maintaining order, its disproportionate impact on civilians raises moral questions. The paper discusses ethical frameworks, such as just war theory, and their relevance in counterinsurgency operations.

IV. POLICY RECOMMENDATIONS AND THE WAY FORWARD

Addressing the complex challenges posed by counterinsurgency operations in Manipur necessitates comprehensive policy recommendations that prioritize both security and human rights. First and foremost, the repeal or significant reform of the Armed Forces (Special Powers) Act (AFSPA) should be considered, as its current framework enables abuses and undermines civil liberties. Establishing a clearer legal framework that emphasizes accountability is essential; this could include independent oversight bodies to investigate allegations of human rights violations and ensure that security forces operate within the bounds of the law. Furthermore, enhancing community engagement and dialogue is crucial to rebuilding trust between security forces and local populations, which can help mitigate tensions and reduce the likelihood of conflict. Investing in socio-economic development, education, and mental health services can address some of the root causes of insurgency, fostering a more resilient society. Additionally, training for security personnel on human rights standards and ethical conduct in counterinsurgency operations is vital to ensure that they operate with respect for the dignity of all individuals. By implementing these policy recommendations, the path forward can facilitate a more balanced approach to security and civil liberties, fostering a sustainable peace that honours both the rule of law and the rights of citizens.⁹

Given the legal and ethical concerns surrounding AFSPA, various stakeholders, including the Supreme Court, human rights commissions, and civil society groups, have

proposed reforms. Possible recommendations include:

1. Periodic review and sunset clauses for AFSPA in affected areas.
2. Strengthening judicial oversight and independent investigation mechanisms.
3. Enhancing transparency and accountability of security forces.¹⁰
4. Implementing alternative counterinsurgency strategies that prioritize community engagement and development.

V. CONCLUSION

AFSPA remains a significant but controversial tool in India's counterinsurgency framework. While it provides operational advantages to security forces, its legal immunity provisions and ethical consequences necessitate urgent reforms. A balanced approach, integrating legal safeguards with effective counterinsurgency measures, is essential to uphold democratic values while ensuring national security.¹¹

In conclusion, the interplay between counterinsurgency operations, legal frameworks like the Armed Forces (Special Powers) Act (AFSPA), and the protection of human rights in Manipur highlights the profound ethical and practical challenges faced by the state.¹² While the imperative of ensuring national security is undeniable, it must not come at the expense of civil liberties and fundamental human rights.¹³ The history of AFSPA and its implications demonstrate the urgent need for reform to prevent abuses and restore public trust in security forces. By prioritizing accountability, fostering community engagement, and addressing the root causes of conflict, policymakers can create a more just and equitable framework for counterinsurgency.¹⁴ Ultimately, a balanced approach that respects individual rights while ensuring security is essential for achieving lasting peace and stability in Manipur and similar conflict-affected areas. As we move

forward, it is imperative to remain vigilant in upholding human rights and promoting ethical standards in governance, ensuring that the pursuit of security enhances rather than undermines the dignity and rights of citizens.

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