

National Security Laws in India

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*Abstract- National security legislation often creates a delicate balance between governmental authority and personal freedoms. In India, this tension is particularly evident through a combination of colonial-era and post-independence laws that regulate armed conflicts and insurgencies. This study focuses on the Armed Forces (Special Powers) Act, 1958 (AFSPA), exploring its roots in colonial rule, key operational clauses, and the important constitutional and human rights issues it presents.¹ It reviews the development of court rulings—from the relatively lenient approach in *Naga People's Movement of Human Rights v. Union of India (1998)* to the stronger emphasis on accountability in *EEVFAM v. Union of India (2016)*—as a dynamic body of legal thought.² The analysis suggests that necessary changes are required by constitutional principles and can be implemented effectively while maintaining essential security goals.*

I. INTRODUCTION

1.1 Background and Significance

In a constitutional democracy, security and individual liberty support rather than oppose each other. Without effective protection of citizens, rights cannot be fully realized; however, excessive restrictions on freedoms in pursuit of safety can erode the democratic foundations the state aims to protect.³ India's national security laws, including UAPA and AFSPA, significantly deviate from standard criminal justice principles such as the presumption of innocence, accessible bail options, and prompt judicial supervision. This has led to ongoing debates involving the judiciary, human rights groups, and broader society.

1.2 Historical Evolution of National Security Laws

a) Colonial Foundations

The Rowlatt Act of 1919, which permitted detention without trial and proceedings without juries, exemplified the colonial view of security as a tool for control. The tragic Jallianwala Bagh incident in April 1919 highlighted the severe consequences of unchecked authority.⁴ Many provisions from the

Indian Penal Code of 1860, especially those related to sedition and threats to

b) Post-Independence Era

After gaining freedom, India retained many colonial legal structures and approaches to security. The Preventive Detention Act of 1950 allowed detention without trial under Article 22,⁵ establishing a pattern where executive needs could bypass normal judicial processes. The Emergency era (1975–1977) revealed the risks, as the Maintenance of Internal Security Act (MISA) was used extensively against political rivals, illustrating how such powers can expand unchecked.

c) Modern Counter-Terrorism Framework

Laws like TADA (1985) and POTA (2002) followed a common trajectory: introduced during crises, criticized for widespread misuse, and eventually repealed or allowed to expire.⁶ The Unlawful Activities (Prevention) Act, 1967 (UAPA) has endured through multiple amendments, notably in 2019, which allowed the designation of individuals (not just groups) as terrorists.⁷ This recurring pattern indicates a deeper issue: temporary special powers often evolve into standard governance tools.

1.3 Research Objectives and Methodology

This paper seeks to achieve the following objectives:

1. Trace the historical trajectory of national security legislation in India.
2. Conduct a detailed provision-wise analysis of AFSPA 1958.
3. Evaluate the Supreme Court's jurisprudence on the Act.
4. Assess compliance with constitutional provisions and international human rights standards.
5. Recommend balanced reforms that enhance accountability while preserving operational effectiveness.

II. OVERVIEW OF NATIONAL SECURITY LAWS IN INDIA

India has developed a comprehensive but fragmented legal framework to address diverse security challenges including terrorism, insurgency, cyber threats, money laundering linked to terrorism, and organised crime.

2.1 Unlawful Activities (Prevention) Act, 1967

UAPA serves as the central anti-terrorism law today. The 2019 changes permitting individual terrorist designations faced criticism for allowing punitive measures before court verdicts.⁸ Bail restrictions under Section 43D (5)⁹ shift the presumption of innocence, a position courts have accepted due to the serious nature of the crimes. In *Romila Thapar v. Union of India* (2018), the Supreme Court stressed the need for concrete evidence over vague claims.¹⁰ The *K.A. Najeeb* case (2021) clarified that constitutional courts can grant bail despite statutory limits when Article 21 rights are involved.

2.2 National Security Act, 1980 and Other Statutes

The NSA allows preventive detention for up to one year following Advisory Board approval.¹¹ Like AFSPA, it operates outside typical criminal procedures. The PMLA, 2002 tackles financial aspects of security threats, with its powers upheld but subject to proportionality checks.¹² Following *Shreya Singhal* (2015), cyber provisions under the IT Act must meet standards against vagueness and overbreadth.

III. THE ARMED FORCES (SPECIAL POWERS) ACT, 1958

3.1 Historical Background and Evolution

AFSPA traces directly to colonial legislation, notably the Armed Forces (Special Powers) Ordinance of 1942 used against the Quit India Movement.¹³ Its adoption post-independence shows continuity in relying on military authority when civilian systems seem insufficient. Enacted initially for Naga areas in 1958, it has applied to major conflict regions including the Northeast, Punjab, and Jammu & Kashmir (via a 1990 version).

The Justice Jeevan Reddy Committee (2005) observed, based on ground-level studies, that AFSPA had shifted from a temporary tool to a regular

administrative feature in disturbed regions.¹⁴ Withdrawals in places like Tripura (2015) and Meghalaya (2018) show reductions are feasible, though infrequent review highlights ongoing challenges.

3.2 Operational Necessity and Criticisms

Supporters maintain that AFSPA is vital where standard policing fails against insurgency, offering necessary legal safeguards for troops. The 1986 Mizo Accord is often referenced as proof that such operations can pave the way for peace agreements.¹⁵ While valid in limited scenarios, this does not fully justify the lack of time-bound application, clear triggers, or robust oversight.

IV. PROVISION-WISE CRITICAL ANALYSIS OF AFSPA

4.1 Section 2: Definitions

AFSPA's definitions create a circular structure: a "disturbed area" depends entirely on a declaration under Section 3, providing no independent criteria.¹⁶ This leaves the activation of special powers solely to executive discretion. Although Naga People's Movement allowed review for bad faith,¹⁷ such scrutiny remains limited in practice. An Act relying on purely subjective triggers falls short of strong rule-of-law standards.

4.2 Section 3: Declaration of Disturbed Area

This section grants declaration authority to the Governor, Union Territory Administrator, or Central Government without mandatory consultation with state legislatures or any maximum duration. Parts of Manipur have seen continuous application for over 60 years. This represents a permanent exception rather than a true emergency provision, raising democratic concerns.

4.3 Section 4: Special Powers of Armed Forces

Section 4 grants broad authority to use deadly force against lawbreakers, conduct warrantless arrests, and perform searches/seizures.^{18 19} While similar powers exist elsewhere, their unrestricted combination creates a unique environment. Incidents like the 2000 Malom Massacre illustrate potential risks when internal controls falter.²⁰

The Supreme Court in *Naga People's Movement* validated these powers but imposed guidelines on proportionality and record-keeping, which lack statutory enforcement.²¹ Persistent reports of gaps between directives and field practices underscore enforcement weaknesses.

4.4 Section 5: Procedure for Arrested Persons

The vague “least possible delay” requirement²² contrasts sharply with CrPC Section 57’s 24-hour magistrate production rule.²³ This deliberate difference exempts AFSPA cases from standard timelines. While D.K. Basu guidelines set a constitutional minimum,²⁴ Section 5 as written allows longer detentions inconsistent with Article 22(2).

4.5 Section 6: Protection of Persons acting under the Act

Section 6 prohibits proceedings against forces personnel without Central Government approval,²⁵ with broad “purported to be done” language. This creates a conflict where the same executive overseeing the military also controls prosecutions. In *EEVFAM* (2016), the Court mandated investigations into alleged fake encounters regardless of AFSPA application, separating investigation from sanction for prosecution.²⁶ This improved accountability but left the sanction process itself unchanged.

V. JUDICIAL SCRUTINY AND LANDMARK JUDGMENTS

AFSPA case law reflects an ongoing conversation between courts and the executive on balancing security with constitutional limits.

5.1 *Maneka Gandhi Case and Expansion of Article 21*
Maneka Gandhi v. Union of India (1978) expanded Article 21 protections, requiring any deprivation of life or liberty to follow fair, just, and reasonable procedures.²⁷ This subjects AFSPA’s mechanisms (warrantless actions, delayed handovers, immunity) to ongoing proportionality review.

5.2 *Naga People’s Movement Case* (1998)

The Constitution Bench upheld the Act but with important qualifications on reviewability, proportionality, guideline adherence, and limited immunity.²⁸ It functions more as supervised

5.3 *EEVFAM Judgment* (2016)

This ruling emphasized that all deaths, including alleged encounters, require proper investigation under ordinary law, irrespective of disturbed area status.²⁹ It marked a shift toward greater judicial willingness to examine systemic issues.

5.4 *Puttaswamy Privacy Judgment and its Implications*
Puttaswamy (2017) recognized privacy as fundamental and introduced a legality-necessity-proportionality test applicable to security measures.³⁰

5.5 Key Principles Emerging from the Jurisprudence

- Proportionality in force and rights restrictions.
- Judicial Review of executive decisions for abuse.
- No absolute immunity for criminal acts.
- Irreducible constitutional safeguards (Articles 21/22, D.K. Basu).
- Privacy constraints on security actions.

VI. CONSTITUTIONAL AND INTERNATIONAL HUMAN RIGHTS CONCERNS

6.1 Constitutional Morality versus Constitutional Validity

While legally valid, AFSPA raises questions about alignment with deeper constitutional values like dignity and rule of law. Combined provisions challenge Articles 14, 19, 21, and 22 under *Maneka Gandhi* standards.

6.2 International Human Rights Obligations

India’s ICCPR commitments demand proportionate measures. UN bodies and NGOs have highlighted issues with Section 6 and patterns of violations.

6.3 Committee Recommendations

Expert panels including the Jeevan Reddy Committee (repeal and replacement suggested), Second ARC, and NHRC have urged reforms.

VII. RECOMMENDATIONS FOR LEGISLATIVE REFORM

The following comprehensive reforms are proposed based on Supreme Court directives, recommendations of high-level committees, and best practices in balancing national security with constitutional

safeguards. These suggestions aim to strengthen accountability and rule of law without compromising the operational effectiveness of the armed forces in genuine insurgency situations.

7.1 Section 2 — Introduce Objective Criteria for Disturbed Area Declarations

The current circular definition of “disturbed area” must be replaced with clear, measurable, and objective parameters. These could include quantifiable thresholds such as the frequency and intensity of violent incidents, the extent of breakdown of civilian administration, intelligence reports verified by multiple agencies, and the inability of state police to handle the situation independently. Such criteria would prevent arbitrary declarations and ensure that AFSPA is invoked only when truly necessary. Judicial review of these declarations should be made more meaningful by requiring the government to place relevant material before the court in sealed cover if needed.

7.2 Section 3 — Sunset Clauses and Judicial Review

Declarations under Section 3 should not exceed six months and must undergo mandatory renewal with fresh justification and data. A statutory obligation to consult the concerned State Government before issuance or extension of the notification should be introduced to uphold the spirit of cooperative federalism. Additionally, any person or organisation should have the right to challenge the declaration before the High Court within a specified period. This would introduce much-needed democratic and temporal checks on what has become a near-permanent measure in several regions.

7.3 Section 4 — Codify Proportionality and Mandatory Logging

The principle of proportionality laid down in Naga People’s Movement should be incorporated directly into the Act. Every operation involving use of force resulting in death, injury, or property damage must be mandatorily reported to the District Magistrate and a senior police officer within 24 hours. An independent magisterial inquiry or judicial commission should be triggered automatically in all cases of death. Proper maintenance of records, including video/graphical evidence where feasible, should be made compulsory

to ensure transparency and facilitate subsequent accountability.

7.4 Section 5 — 24-Hour Handover and Express D.K. Basu Applicability

The vague phrase “with the least possible delay” should be substituted with a strict 24-hour deadline for handing over arrested persons to the nearest police station, in line with Article 22(2) of the Constitution. The Act should explicitly state that all guidelines issued in *D.K. Basu v. State of West Bengal* — including informing the arrestee of grounds of arrest, right to inform a friend/relative, medical examination, etc. — are mandatorily applicable to AFSPA operations. This would minimise the risk of enforced disappearances and custodial abuse.

7.5 Section 6 — Independent Sanctioning Authority and Conditional Immunity

The most critical reform required is the removal of executive monopoly over sanction for prosecution. The power to grant or deny sanction under Section 6 should be transferred to an independent body comprising a retired High Court Judge, a senior police officer, and a representative from the National Human Rights Commission. A time-bound decision (maximum 90 days) with provision for deemed sanction in case of delay would prevent indefinite protection. Immunity should be available only for bona fide actions taken in strict compliance with the Act; serious offences such as rape, torture, or fake encounters must be completely excluded from the protection of Section 6.

VIII. CONCLUSION

The Armed Forces (Special Powers) Act, 1958 occupies a deeply paradoxical position in India’s constitutional framework. While it has been upheld as constitutionally valid, its prolonged and widespread application has raised serious concerns regarding its compatibility with the core values of dignity, equality, rule of law, and accountability that underpin the Indian Constitution. Over the decades, AFSPA has transformed from an emergency legislation into an almost permanent feature of governance in several parts of the country, particularly in the North-Eastern states and Jammu & Kashmir.

Judicial intervention has played a vital role in mitigating some of the Act's harshest features. The landmark rulings in *Maneka Gandhi*, *Naga People's Movement*, *EEVFAM*, and *Puttaswamy* have collectively established important constitutional guardrails — proportionality, judicial reviewability, minimum procedural safeguards, and the right to privacy. However, these judicial principles remain largely directive in nature and require statutory backing to become truly effective on the ground.

The reforms suggested in this paper — introduction of objective criteria, time-bound declarations, mandatory reporting, strict timelines for arrest handover, and creation of an independent sanctioning mechanism — represent a balanced and constitutionally sound approach. They seek to preserve the operational efficiency of the armed forces in counter-insurgency operations while ensuring that extraordinary powers are not exercised arbitrarily or with impunity.

Ultimately, legal reform alone cannot resolve the deeper challenges of internal security. AFSPA's relevance is directly linked to the persistence of alienation, underdevelopment, and political discontent in affected regions. A sustainable long-term solution demands a multi-pronged strategy that combines refined legal frameworks with genuine political dialogue, inclusive development, protection of human rights, and efforts toward winning the trust and confidence of local communities. The goal should not merely be to make AFSPA more humane and accountable, but to create conditions where its continued use becomes progressively unnecessary. Only then can India truly reconcile its security imperatives with its constitutional commitment to justice, liberty, and human dignity.

FOOTNOTES

- [1] *Armed Forces (Special Powers) Act*, 1958 (AFSPA) — extends to Assam and Manipur; subsequently applied to other North-Eastern states and, via a separate statute, to Jammu and Kashmir through the AFSPA (J&K), 1990.
- [2] *Extra Judicial Execution Victim Families Association (EEVFAM) v. Union of India*, (2016) 14 SCC 536; *Naga People's Movement of*

Human Rights v. Union of India, AIR 1998 SC 431.

- [3] *Constitution of India*, 1950, Articles 14, 19, 21, and 22 collectively frame the constitutional balance between liberty and security.
- [4] *Rowlatt Act* (Indian Criminal Law (Emergency Powers) Act), 1919; *Hunter Commission Report* (Report of the Disorders Inquiry Committee), 1920 — official inquiry into the Jallianwala Bagh massacre of 13 April 1919.
- [5] *Preventive Detention Act*, 1950 — enacted under Article 22 of the Constitution; remained in force until 1969.
- [6] *Terrorist and Disruptive Activities (Prevention) Act* (TADA), 1985 — permitted to lapse in 1995 due to documented misuse; *Prevention of Terrorism Act* (POTA), 2002 — enacted after the Parliament attack of 13 December 2001; repealed in 2004.
- [7] *Unlawful Activities (Prevention) Amendment Act*, 2019 — inserted Section 35 enabling designation of individuals (not merely organisations) as terrorists.
- [8] *UAPA Amendment Act*, 2019, Section 35 — the Ministry of Home Affairs is empowered to designate an individual as a terrorist upon being satisfied of criteria under the section.
- [9] *Unlawful Activities (Prevention) Act*, 1967, Section 43D(5) — bail shall not ordinarily be granted where the court finds reasonable grounds to believe the accusation is prima facie true.
- [10] *Romila Thapar v. Union of India*, (2018) 10 SCC 753 — the Supreme Court examined the arrest of activists under UAPA and re-emphasised the requirement of credible, specific evidence before the state invokes special anti-terrorism legislation.
- [11] *National Security Act*, 1980 (NSA), Section 3(2) — detention extendable to 12 months on Advisory Board recommendation; Section 8 — grounds of detention need not be disclosed if against public interest.
- [12] *Prevention of Money Laundering Act*, 2002 (PMLA) — *Vijay Madanlal Choudhary v. Union of India*, (2022) SCC OnLine SC 929 —

- Supreme Court upheld key PMLA provisions subject to proportionality review.
- [13] *Armed Forces (Special Powers) Ordinance, 1942* — colonial-era ordinance enacted to suppress the Quit India Movement; the acknowledged legislative precursor to the AFSPA, 1958.
- [14] *Report of the Committee to Review the Armed Forces (Special Powers) Act, 1958* (Justice B.P. Jeevan Reddy Committee), Ministry of Home Affairs, Government of India (2005).
- [15] *Mizo Accord, 1986* — peace agreement between the Government of India and the Mizo National Front (MNF); widely cited as evidence that AFSPA-enabled operations can create conditions for political settlement.
- [16] AFSPA, 1958, Section 3 — a “disturbed area” means an area declared as such under this section, making the definition entirely dependent on executive notification with no objective criteria.
- [17] *Naga People’s Movement of Human Rights v. Union of India*, AIR 1998 SC 431 — the Supreme Court held that the power to declare a disturbed area is administrative in nature and subject to judicial review for mala fide exercise or non-application of mind.
- [18] AFSPA, 1958, Section 4(a) — power to use force, including causing death, against a person acting in contravention of any law or order in force in the disturbed area.
- [19] AFSPA, 1958, Section 4(c) — power to arrest without warrant; Section 4(d) — power to enter and search premises without warrant.
- [20] *Malom Massacre, Manipur, 2 November 2000* — ten civilians reportedly killed by personnel of the Assam Rifles; the incident prompted Irom Sharmila’s prolonged fast-unto-death protest against AFSPA.
- [21] *Naga People’s Movement of Human Rights v. Union of India*, AIR 1998 SC 431 — the Court directed that the Army’s operational “dos and don’ts” must be scrupulously followed and that records of all Section 4 operations must be maintained.
- [22] AFSPA, 1958, Section 5 — every person arrested and taken into custody under this Act shall be made over to the officer in charge of the nearest police station “with the least possible delay,” together with a report of the circumstances occasioning the arrest.
- [23] *Code of Criminal Procedure, 1973* (CrPC), Section 57 — a person arrested without warrant shall not be detained for more than 24 hours without being produced before a magistrate.
- [24] *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610 — the Supreme Court laid down comprehensive guidelines on arrest and detention procedures, including informing the arrested person of grounds of arrest and permitting access to legal counsel.
- [25] AFSPA, 1958, Section 6 — “No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.”
- [26] *Extra Judicial Execution Victim Families Association (EEVFAM) v. Union of India*, (2016) 14 SCC 536 — the Supreme Court held that every complaint of an alleged fake encounter must be investigated under ordinary criminal law, and that sanction under Section 6 is required only for prosecution, not investigation.
- [27] *Maneka Gandhi v. Union of India*, AIR 1978 SC 597 — the Supreme Court held that the procedure under Article 21 must be fair, just, and reasonable, and that Articles 14, 19, and 21 are interrelated.
- [28] *Naga People’s Movement of Human Rights v. Union of India*, AIR 1998 SC 431 — Constitution Bench upheld AFSPA as constitutionally valid legislation within Parliament’s competence under Entries 1 and 2 of the Union List.
- [29] *Extra Judicial Execution Victim Families Association (EEVFAM) v. Union of India*, (2016) 14 SCC 536 — over 1,500 alleged encounter deaths in Manipur were examined; the Court held that no victim is beyond the protection of ordinary criminal law.

[30] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 — nine-judge bench held that the right to privacy is a fundamental right under Article 21, subject to legality, necessity, and proportionality.

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- [5] National Security Act, 1980.
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- [8] Official Secrets Act, 1923.
- [9] National Investigation Agency Act, 2008.
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- [18] *Inderjit Barua v. State of Assam*, AIR 1983 Gau 55.
- [19] *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569.
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- [21] *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610.
- [22] *Naga People's Movement of Human Rights v. Union of India*, AIR 1998 SC 431.
- [23] *Shreya Singhal v. Union of India*, (2015) 5 SCC 1.

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- [25] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.
- [26] *Romila Thapar v. Union of India*, (2018) 10 SCC 753.
- [27] *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713.
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