
INTERNATIONAL LEGAL RAMIFICATIONS OF AFSPA IN NAGALAND: A CROSS-BORDER PERSPECTIVE

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1. ABSTRACT

The Armed Forces (Special Powers) Act (AFSPA), 1958¹, stands as an uncompromising shield for India's sovereignty, confronting insurgency and foreign-backed threats with resolute authority. Far from being a draconian imposition, AFSPA is the backbone of national defence in volatile regions like Nagaland, where domestic uprisings and extraterritorial conspiracies threaten to dismantle the fabric of India's unity. Empowered by Article 355² of the Indian Constitution, AFSPA arms the state with extraordinary powers to declare "disturbed areas" and deploy the military to enforce order, neutralize insurgencies, and crush secessionist ambitions. This paper boldly defends AFSPA's constitutionality and necessity, dismantling criticism that prioritizes idealism over national survival. Under utilitarian principles, the Act delivers unmatched efficacy, reducing insurgency-related incidents and enabling governance and development in territories once gripped by chaos. Through a Kantian lens, AFSPA emerges as a moral imperative of a duty to safeguard the greater good, even in the face of challenging ethical debates. AFSPA's critics must confront the hard truth without its decisive measures, India's borders would be vulnerable to insurgent and militant groups and their foreign patrons. While acknowledging the need for reforms, this research unapologetically underscores AFSPA's indispensable role in securing India's sovereignty and crushing the forces that dare to challenge its authority.

¹ The Armed Forces (Special Powers) Act, 1958 (Act 28 of 1958).

² The Constitution of India, 1950.

2. Introduction

AFSPA is a comprehensive law even though consisting of just six sections. It was a piece of legislation aimed at addressing the counter-insurgency activities prevalent in the northeastern states of India. The act proposes a 'disturbed area' defined under definition clause, 2(b)³ as an area which is for the time being declared by notification under s. 3⁴. S. 3⁵ of the act empowers the Governor of the state or the administrator of the Union Territory and Central Government to declare any area as a 'disturbed area'. S. 4⁶ of the act empowers the military to search, seize warrants, or kill any person who is in his opinion a suspect of the insurgent group. These powers have been criticized for granting excessive powers to the armed forces but the truth has been under a shadow, where insurgent activities in Nagaland have almost come to an end and peace has been restored in many areas. Is it excessive to empower the military in this manner? Not when one considers the alternative that is the unchecked insurgency and loss of territorial integrity. The army and civil authorities in several reports have supported the AFSPA as a strong counter-combat to insurgencies. S. 6⁷ of the act bars all persons from initiating prosecution against any armed forces indicating 'ex turpi causa non oritur actio'.

AFSPA has been protecting the North-eastern region including Nagaland from extra-territorial forces involved in supporting the insurgent activities. Nagaland covers an area of 16.58 miles square and shares a 215-kilometre border with Myanmar whereas Myanmar shares a border of 2,129 kilometres with China. Moreover, this region has also been considered as the gateway to Southeast Asia with its strategic and geographical location.⁸ Due to this reason, AFSPA was necessary. Myanmar is a small power struggling with its national security and economy and is hostile to India. Myanmar, a nation grappling with its own internal challenges, remains a host for insurgent groups like the National Socialist Council of Nagaland (NSCN-K), which supply arms and aid to factions like the United Liberation Front of Assam (ULFA). Can India afford to be complacent when faced with such provocations from armed insurgent and militant groups? The necessity of AFSPA lies in its ability to counteract these threats with precision and authority.

³ *Supra* note 1, s. 2.

⁴ *Supra* note 1, s. 3.

⁵ *Supra* note 1, s. 4.

⁶ *Supra* note 1, s. 5.

⁷ *Supra* note 1, s. 6.

⁸ G. Jayachandra Reddy and M. Sasikala, *India and China Relations, Historical, Cultural and Security Issues* (267-282) (UGC Centre for Southeast Asian and Pacific Studies Sri Venkateswara University, Tirupati, 2016).

The Naga community is the commemoration of more than 20 tribes who reside in northwest Myanmar, Nagaland, and parts of Manipur, Arunachal Pradesh, and Assam. The Nagas, during World War II, was the decedent force of Britishers used against the Japanese, following it the Britishers were successful in converting Nagas to Christianity. The earliest specific reference to the Nagas was made by Claudius Ptolemy in 150 A.D. in his *Geographia* where he referred to the Naga country as “The Realm of the Naked”⁹. The community in the 19th century was exposed to the Western concept including the education system. The community is an indigenous tribe that has a distinct culture and traditions. The Naga people hunt, and some of them also do terrace farming. Due to unanticipated events that occurred during the building of the Great Wall of China, the Naga people relocated from Yunnan, China. Yunnan borders Myanmar, and the Naga people travelled to Nagaland via the Burmese woods. The Naga people typically live next to bodies of water and on the hillsides of Nagaland and Myanmar. The Naga People’s modernization brought politics and a feeling of cohesion to the community, which aided in promoting an independent and sovereign union.

Following that, in 1929, the chief of the Naga people delivered a memorandum to the Simon Commission requesting independence and the establishment of an alternative political and administrative entity. The Naga people held the belief that they belonged in the northwest regions of Burma (now Myanmar) and Nagaland and that the British had taken their territory via coercion and illegitimate means. The Government of India Act, of 1935 designated Nagaland as an ‘excluded area’, as a result. This gave rise to the Naga National Council in 1946. The organization aimed to ensure the independence of the Naga Tribes. The Naga National Council in 1947, met Mahatma Gandhi out of fear of attack by the Indian military, for intimating that the NNC might declare its independence and sought a promise from Gandhi, that there would be no attacks. In 1947, the NNC wanted Nagaland as independent and sovereign, as a combat to the situation, the Indian army was sent to Nagaland. This was the first instance when the NNC started using arms and ammunition to counter the Indian army. The arms used by the Naga were taken from the leftovers of World War II. In 1947, a nine-point agreement was concluded between the Indian government and NNC, which gave Nagaland autonomy in terms of judicial powers, legislative powers, and other powers concerning dealing with matters of land. It is alleged that it was also promised that after 10 years, NNC and the Government of India would undergo negotiations and

⁹ Salvin Paul, Shonreiphy Longvah, Tanmoy Das *et. al.*, “Deconstructing the idea of greater Nagaland and the Ramifications of AFSPA in North East India”, 7(4) *Asian Journal of Research in Social Sciences and Humanities* 348, (2017).

if the needs and desires of the Naga people demands more autonomy, they would be accorded with it. But then a plebiscite was organised and it is reported that 99.9%¹⁰ of the population supported the plebiscite which clearly showed the resistance of Naga to join with the Indian Union leading to the formation of the government-in-exile in 1951 named the Federal Government of Nagaland, which also included the Naga army and Naga Flag.

There was a sudden rise in insurgent activities and few initiated armed rebellions towards India. Thus, the Indian government was obliged to protect the people of Nagaland from atrocities and the national territorial integrity. At the subsequent time, the Indian Union denied the nine-point agreement which the nagas alleged that that they were given a choice to retain or refrain from being part of the Indian Union and it could be exercised after 10 years. This aroused a sense of dissent towards the Indian Union in North-East India which erupted in violence and insurgencies which led to the enactment of the Armed Forces (Special Powers) Act, 1958.¹¹

As the Naga tribes began insurgencies in pursuit of independence AFSPA was enacted in 1958 to protect the nation's integrity and sovereignty. When the Naga political unit launched an internal uprising and forged cross-border ties with other nations in an attempt to support them in achieving their objective of autonomy, the situation in Nagaland deteriorated.

There has been continuing danger to law and order, for reasons that the structured and established organisations have strongholds over the people, especially having such an influence that they can manipulate people to create a feeling of dissent. AFSPA, maybe 'dura lex, sed lex', but is imposed for maintaining peace and public order, following the principle of 'vigilantibus non dormientibus jura subveniunt'. As per the data acquired from the Ministry of Home Affairs, 294 insurgent activities were recorded in Nagaland and, in recent times it came up to a double-digit number, 47 in 2021.¹² Is this not evidence of the Act's effectiveness?

Assam connects the northeast region with India and Nagaland was granted a full-fledged state in 1963. The lack of connectivity with the Union is one of the reasons why the extra-territorial forces successfully supported the insurgent activities in the northeast even after 60 years of implementation of the act. It becomes pertinent to mention that Myanmar shares borders with China, Thailand, and Bangladesh. China has been in rivalry with India for a long and China holds the key to the availability of weapons and ammunition among the terror groups in Northeast India

¹⁰ International Council of Naga Affairs, "The State of Naga Affairs: 2022 Special Survey Report" (20 December 2022).

¹¹ *Supra* note 1.

¹² Government of India, "Insurgency in North East" (Ministry of Home Affairs, (2022)).

that are actually keeping insurgency alive in this far-eastern frontier. There is an established chain of terrorist organisations operating in adjoining countries to Nagaland and Myanmar which is another threat to national integrity, security, and sovereignty.

Myanmar hosts thousands of insurgents from the National Socialist Council of Nagaland – headed by Khaplang, a group mainly involved in insurgent activities in Nagaland. The NSCN-IM emerged from the NSCN, which split into two factions, NSCN-IM and NSCN-IM headed by Isak-Muivah. NSCN-IM has been a major force fuelling insurgencies in the northeastern region of India. It plays a crucial role by supplying arms and ammunition to various terrorist organizations, including the United Liberation Front of Assam (ULFA), which is highly active in carrying out insurgent activities. Furthermore, ULFA has established alliances with international militant groups, such as the Liberation Tigers of Tamil Eelam (LTTE) and Pakistani-based militant groups, strengthening its insurgent capabilities. This poses a serious threat to India's territorial integrity.

The powers granted to the armed forces under the AFSPA Act can be considered justified to the extent that they aim to protect territorial integrity and sovereignty. However, the act has been facing criticism primarily for its potential to violate human rights. The issue was challenged before the Supreme Court of India in the case of *Naga People Movement of India v. Union of India*.¹³, and the constitutionality of the act was upheld by the court. The court established “Dos and Don’ts” guidelines for armed forces and administrators including a mandate for a review every six months for areas declared as “disturbed area” under S. 3. Over time, there has been a decline in human rights violations and insurgency activities in Nagaland and in the Northeastern region. Nagaland, a state rich in resources, and equipped with ample opportunities for attracting tourism, faced challenges such as low per capita income, inadequate infrastructure, lack of basic facilities, and lack of faith in political leaders. Over time, the perspective of the majority of people in Nagaland has shifted to the feeling of nationalism and unity. There has been a continuous attempt by the central government to develop infrastructure, establish strong connectivity, and promote Naga culture, fostering a sense of attachment to India. Judicial decisions and legislative actions have reformed the act to the best extent possible. How does one balance human rights with sovereignty? The answer lies in judicial oversight, periodic review, and the refinement of AFSPA, as demonstrated by its partial withdrawal from certain districts in Nagaland.

¹³ AIR 1998 SC 465.

AFSPA has granted the armed forces extensive powers, a necessity prompted by the intensity of insurgent activities that have persisted since India's independence. Jeremy Bentham, in his book, "An Introduction to the Principles of Morals and Legislation"¹⁴ propounded Utilitarian Theory which proposes law shall be analysed on the principle of 'pleasure and pain'. He proposed that there shall be maximum happiness for the maximum number of people. Jeremy Bentham also proposed a method 'Hedonic Calculus' for quantifying pleasure and pain which involves factors: Intensity, Duration, Certainty, Purity, Propinquity, Fecundity, and Extent. Here, 'intensity' refers to the capacity to endure hardship or stress, and AFSPA has played a crucial role in countering insurgency in Nagaland. 'Duration' relates to the length of time that pleasure or pain persists. Since its enactment, AFSPA has contributed to a measure of stability and improvement in the region.

'Certainty' addresses the probability of outcomes; without AFSPA, there is a high likelihood that insurgent activities would escalate, leading to increased fear and pain among the populace. 'Purity' assesses the presence of pain; the ongoing insurgency has instilled fear, reinforcing the need for AFSPA to secure peace. 'Propinquity' concerns the proximity of the means to achieve happiness; the absence of AFSPA raises significant concerns regarding the preservation of the nation's territorial integrity.

'Fecundity' evaluates the potential for further pleasure; once AFSPA accomplishes its objectives in the region, it can open avenues for various opportunities and developments, such as attracting tourism, which would contribute to economic growth. Finally, 'extent' considers the broader implications; the disturbances in a significant portion of Northeast India necessitate the restoration of peace, security, and public order, ultimately paving the way for development and opportunities across the region.

AFSPA, through a Kantian lens, can be defended as a moral necessity in extraordinary circumstances, provided its application aligns with deontological principles. Kant's formula of universal law justifies AFSPA as a legitimate state duty to maintain public order and protect citizens, emphasizing that its purpose is not arbitrary authority but the fulfillment of a government's moral obligation to national security. However, the law's enactment must uphold humanity as an end, securing the broader population's safety while avoiding violations of individual dignity. Its rational basis as a legislative framework for extraordinary security

¹⁴ Jeremy Bentham, *An Introduction to the Principle of Morals and Legislation*, Dover Publications (2007).

situations aligns with the autonomy principle, allowing the state to act in accordance with reasoned laws designed to address conflict zones.

Kant's kingdom of ends framework, however, demands that AFSPA operate transparently, with mechanisms ensuring accountability and respecting moral agency. While the act seeks to restore order in conflict zones, its justification depends on adherence to strict oversight, reform, and universal moral laws. Misuse or overreach would violate Kantian imperatives, rendering its application both immoral and legally unsustainable. Thus, AFSPA can only be morally and legally tenable when implemented under stringent conditions, ensuring it balances security with liberty and human dignity in line with Kantian ethics.

This analysis underscores the critical significance of AFSPA in fostering the betterment of the northeastern states of India.

3. The Unyielding Saga: Nagaland's Fight for Identity and Sovereignty

The groundwork for the Naga independence movement was laid as early as 1929 when representatives of various Naga tribes submitted a memorandum to the Simon Commission,¹⁵ which had been established to explore constitutional reforms in India. In their submission, the Nagas stated unequivocally that they desired a separate and autonomous political entity. This memorandum, although primarily a cautionary statement against integration, conveyed the Naga leaders' deep concern about losing their autonomy and culture within a unified Indian state. The document was an early testament to the Naga's awareness of their distinct identity and their apprehensions about inclusion in an emerging Indian nation that did not share their customs, laws, or tribal structures.

The British responded to this desire for autonomy by designating the Naga Hills as an 'excluded area' under the Government of India Act, 1935. This classification was part of a broader British strategy to manage ethnically distinct and geographically remote areas with minimal direct interference. By granting the Naga region this status, the British effectively acknowledged that traditional Indian laws and administrative practices were inapplicable to the Nagas. The 'excluded area' designation meant that the Naga Hills would not be subject to the same governance as other regions in India, reinforcing the Naga's belief in their cultural and political uniqueness. This status, however, also created a fragile boundary between the Naga and Indian

¹⁵ Garima Tiwari, Karthik Sharma *et. al.*, "Armed Forces Special Powers Act, 1958: A National Necessity or A Stain on the World's Largest Democracy" 10(2) *National Law Institute University Law Review* 1 (2023).

communities, setting the stage for post-independence tensions.

With the political landscape shifting toward Indian independence, the Naga tribes sought to solidify their position. The NNC was formed in 1946 as a unified body representing diverse Naga communities, aiming to preserve their autonomy. Under the leadership of Naga leaders such as A.Z. Phizo, the NNC presented itself as a representative body that could negotiate with the Indian leadership on behalf of the Nagas. The NNC quickly became the primary platform through which the Nagas communicated their desire for self-rule, engaging with Indian leaders to argue for a political arrangement that would maintain Naga autonomy. As the transition to independence drew closer, the NNC's role became even more pivotal, as the Nagas worried about forced inclusion in the Indian state.

In an attempt to accommodate the Naga people, the Government of India negotiated a Nine-Point Agreement with the NNC in 1947.¹⁶ This agreement acknowledged the Naga people's distinct identity and granted them significant autonomy, including control over judicial, legislative, and administrative matters. Importantly, the agreement included a clause that after ten years, the Indian government would re-evaluate the terms of autonomy based on the Naga people's desires. This clause was seen as a promise to the NNC that the Indian government would remain open to further discussions about greater self-rule if the Nagas desired it. However, the Indian government's later inability to uphold this commitment was a major source of disillusionment among the Nagas and a catalyst for subsequent conflict.

In 1951, as frustrations grew over the perceived erosion of the Nine-Point Agreement's promises, the NNC organized a plebiscite to assess popular support for Naga independence. The plebiscite reportedly saw 99.9%¹⁷ of participants voting for an independent Naga nation, underscoring the widespread desire for sovereignty and strong opposition to incorporation into India. Buoyed by this support, the NNC escalated its demands, declaring the formation of a Federal Government of Nagaland in 1951. This government-in-exile included an independent Naga army and the creation of a distinct Naga flag, signalling a new phase in the movement and a strong commitment to self-determination. For the Indian government, however, this development was seen as a direct threat to its territorial integrity, leading to escalated tensions.

As negotiations with the Indian government failed to yield the desired autonomy, the NNC turned

¹⁶ Yash Janghu, "An Analysis of the Present Situation in Nagaland", 4 *Indian Journal of Law and Legal Research* 1 (2022).

¹⁷ *Supra* note 8.

to armed resistance. Utilizing World War II-era weapons,¹⁸ many of which among them were left over from the region's involvement in the war, Naga fighters launched an insurgency against the Indian military presence. This marked the beginning of a protracted conflict in which the Nagas resisted Indian control through guerrilla warfare. The Indian state responded by deploying substantial military forces, initiating decades of conflict and creating a militarized zone within the Naga territories. This phase saw the NNC increasingly advocating for complete independence, a shift from its earlier demand for autonomy within a federal framework.

In the midst of the protracted conflict and the Naga movement for self-determination, AFSPA was enacted and in the subsequent years the Indian government sought to recognise the Nagaland as a state while addressing their unique identity and aspirations. This culminated in the formal recognition of Nagaland as the 16th state of India on December 1, 1963, following the enactment of the Nagaland State Act of 1962.¹⁹ This legal milestone represented an attempt to provide a constitutional framework for addressing Naga grievances. Under this arrangement, Nagaland was granted special constitutional protections under art. 371(A) of the Indian Constitution,²⁰ by virtue of the 13th amendment²¹ ensuring significant autonomy over cultural, religious, and legal matters, including customary laws, social practices, and ownership of natural resources. These provisions were a direct acknowledgement of the distinct identity and governance structures of the Naga people, reflecting efforts to balance their autonomy with India's territorial integrity. However, despite these accommodations, many Naga factions, particularly the NNC, viewed the creation of the Nagaland state as insufficient, arguing that it fell short of fulfilling their aspirations for complete sovereignty and self-determination. This dissatisfaction underscored the enduring tensions between the legal recognition of statehood and the broader nationalist demands of the Naga movement. The Shillong Accord of 1975 and the subsequent splintering of the NNC efforts to establish peace led to the Shillong Accord in 1975, in which a faction of the Naga underground movement agreed to surrender arms and accept the Indian Constitution. However, the Accord proved controversial and divisive, as it was perceived by many Nagas as a betrayal of the independence movement's core principles. This led to a splintering within the NNC, with dissenting factions forming the NSCN in 1980. The NSCN later split further into two primary factions, NSCN (IM) and NSCN (K), each advocating for different approaches to achieving

¹⁸ Ambika Gupta, "Constitution of India, Peace Process and Crisis Management: A Study of Naga Peace Agreement", 11 *Acclaims* 1 (2020).

¹⁹ The State of Nagaland Act, 1962 (Act no. 27 of 1962).

²⁰ *Supra* note 2, art. 371(A).

²¹ The Constitution (Thirteenth Amendment) Act, 1962.

‘Greater Nagaland’ or ‘Nagalim’²² a concept encompassing Naga, inhabited areas across northeast India and Myanmar. These divisions reflect the complexity of the Naga movement, where internal disagreements about the path to independence continue to shape its trajectory. The legacy of the NNC is significant, as it laid the foundation for a broader Naga nationalist movement that persists to this day. In recent years, the Indian government has made efforts to negotiate a settlement with the NSCN (IM), which represents one of the largest Naga factions. These discussions reflect a mutual desire to end hostilities but also underscore the challenge of reconciling the Naga aspiration for sovereignty with India’s commitment to territorial integrity.

3.1 The evolution of the Naga Peace Accord: Challenges and the Renewed Threat of Violence by NSCN-IM

The journey of the Naga peace process has been filled with a series of agreements between the NNC and both factions of NSCN which have proved to have no guarantee of restoring peace to the state of Nagaland. The reason behind this is the influential control of these armed insurgent organisations.

3.1.1 The Naga-Akbar Hydari Accord, 1947

Also known as the Nine-Point Agreement of 1947,²³ signed between the Naga National Council (NNC) and the Governor of Assam, Sir Akbar Hydari, represents an early attempt to address the aspirations of the Naga people within the Indian Union. The agreement recognized the Naga’s right to develop according to their traditions and provided for judicial autonomy by empowering Naga Courts to resolve disputes among Nagas based on customary laws, with the provision for appeals to the Governor in cases of severe punishments. For disputes involving non-Nagas in key towns like Kohima and Mokokchung, it ensured that non-Naga judges would be assisted by Naga assessors, thus fostering inclusivity in the judicial process. This recognition of customary law prefigured its later entrenchment under art. 371(A) of the Indian Constitution.

In the executive sphere, the agreement introduced a model of decentralization, allowing the Naga Council to control administrative activities for which they bore financial responsibility. While the Governor retained discretion in appointing District Officers, local Subdivisions were managed by Subdivisional Councils led by a full-time executive president accountable to both the Governor and the Naga Council. This arrangement was a precursor to the broader debates on

²² Gurpreet Singh, Rajinder Singh Sandhu *et. al.*, “Naga Separatism in India and Role of External Powers” 75(2) *The Indian Journal of Political Science* 381 (2014).

²³ Sir Akhbar Hydari, “Naga, Akbar Hydari Accord (Nine Point Agreement)” *The South Asia Terrorism Portal* (June 26, 1957), available at: [in470628naga_akbar20hydari20accord.pdf](https://www.southasiaterrorismportal.org/in470628naga_akbar20hydari20accord.pdf) (last visited on Nov. 12, 2024).

administrative autonomy for tribal regions in India. The legislative provisions further bolstered autonomy by stipulating that no provincial or central laws affecting the terms of the agreement or religious practices of the Nagas would apply in the Naga Hills without the Council's consent. In disputes regarding such laws, the Governor was empowered to suspend their operation pending a decision by the Central Government.

The agreement also safeguarded Naga land and resources, prohibiting their alienation from non-Nagas without the Council's consent. Fiscal autonomy was also granted to the Naga Council, which was made responsible for imposing, collecting, and utilizing taxes such as land revenue and house tax, emphasizing the principle of financial self, and reliance. Moreover, the agreement sought to address the unification of Naga, inhabited areas under a single administrative unit, an aspiration that remains politically sensitive even today with the continued demand for a 'Greater Nagalim'.

Cultural sensitivities were also acknowledged through provisions such as the regulation of arms, where decisions under the Arms Act required the advice of the Naga Council. The agreement incorporated a ten-year review mechanism, reflecting an understanding of the dynamic nature of governance and the evolving aspirations of the Naga people. However, despite its progressive provisions, the agreement failed to prevent the declaration of Naga independence in August 1947, highlighting its limitations in addressing deeper political discontent.

The Nine-Point Agreement holds immense historical and legal significance, as it laid the groundwork for the subsequent constitutional recognition of Nagaland's unique status under art. 371(A).

3.1.2 Sixteen-Point Agreement

The 16-Point Agreement of 1960 was a landmark accord between the Naga People's Convention (NPC) and the Government of India, providing the framework for the establishment of Nagaland as a full-fledged state within the Indian Union. It recognized the unique cultural, administrative, and political identity of the Naga people while integrating them into the broader Indian polity. The agreement laid out specific provisions for governance, legal safeguards, and socio-economic development, balancing autonomy with national unity.

Under the agreement, Nagaland was brought under the Ministry of External Affairs, emphasizing its distinct status within India. The governance framework included the appointment of a Governor by the President of India, supported by a Council of Ministers led by a Chief Minister. This ensured democratic representation for the Nagas while maintaining a constitutional link to

the central government. Nagaland was also guaranteed representation in the Parliament of India, with two elected members in both the Lok Sabha and the Rajya Sabha, thereby securing a voice for the state in national decision-making.²⁴

A critical feature of the agreement was the protection of customary laws, religious practices, and social traditions of the Naga people. It explicitly prohibited any legislative action affecting these aspects without the majority approval of the Nagaland Legislative Assembly. This provision was later enshrined in Art. 371(A) of the Indian Constitution, ensuring that the unique cultural and legal practices of the Nagas remain safeguarded. Additionally, the agreement proposed the establishment of a Naga regiment within the Indian Armed Forces, recognizing the martial traditions of the community and their potential contributions to national security.

On the economic front, the agreement committed the Government of India to provide financial assistance for the upliftment of Nagaland. This support aimed to facilitate the development of infrastructure and services, recognizing the need for economic growth to stabilize the region. Moreover, the agreement emphasized local self, and governance, encouraging the formation of tribal councils to address disputes and manage matters specific to Naga communities. This provision respected the traditional governance structures of the Nagas, fostering participation and preserving their indigenous decision, making processes.

The 16-Point Agreement was a milestone in the integration of Nagaland into India, providing a constitutional and administrative framework that acknowledged the distinct identity and aspirations of the Naga people. Its provisions laid the foundation for Nagaland's statehood and continue to influence the governance and legal protections afforded to the region.

3.1.3 1964 Cease-Fire Agreement²⁵

The Ceasefire Agreement of September 6, 1964, was a significant step in addressing the long, standing conflict between the Government of India and Naga underground factions. It marked the first formal cessation of hostilities in Nagaland, laying the groundwork for peace talks aimed at resolving the insurgency. The agreement outlined specific commitments from both sides, designed to foster mutual trust, reduce tensions, and create an atmosphere conducive to

²⁴ EMN, "The Formation of Naga Peoples' Convention and The Signing of 16 – Point Agreement" *Eastern Mirror* (Apr. 11, 2022), available at: https://easternmirrornagaland.com/the_formation_of_naga_peoples_convention_and_the_signing_of_16_point_agreement_in_1960/ (last visited on Nov 12, 2024).

²⁵ The Cease-fire Agreement, September 6, 1964, South Asia Terrorism Portal, available at: https://www.satp.org/satporgtp/countries/india/states/nagaland/documents/papers/nagaland_ceasefire1964.htm (last visited on Nov. 13, 2024).

meaningful dialogue.

The Government of India agreed to suspend a range of military operations against the underground factions. This included halting jungle offensives, raids on underground camps, searches in villages, patrolling beyond a one, thousand, yard radius from security posts, aerial action, arrests, and punitive labour impositions. These measures were intended to de-escalate the conflict and provide a foundation for peaceful negotiations. However, the cessation of these operations was conditional on reciprocal commitments from the Naga underground to refrain from provocative activities.

The underground factions were bound by the agreement to abstain from acts of aggression, including sniping, ambushing, imposing fines, kidnapping, forced recruitment, sabotage, and armed raids on security posts, administrative centres, or towns. Movement with arms or in uniform was restricted in villages, towns, and areas within a one, thousand, yard radius of security posts, except under special arrangements in areas where the risk of encounter was high. This provision sought to prevent accidental confrontations and maintain the ceasefire's integrity.

A crucial element of the agreement was the mutual understanding that any unexpected encounters between the two sides would be governed by the principle of "no firing unless first fired upon." This clause demonstrated a commitment to minimizing violence and ensuring that isolated incidents did not escalate into broader conflicts.

The agreement also addressed broader security concerns, particularly along the international border. Security forces were permitted to maintain patrolling to a depth of three miles from the frontier, with provisions for revising the patrol zone to meet practical considerations. The agreement explicitly prohibited the importation of arms by the underground factions during the ceasefire period, aiming to prevent any external escalation of the conflict.

Logistical arrangements under the agreement included continued protection for military convoys, with restrictions on road patrolling. Underground factions were allowed freedom of movement on roads when convoys were absent, ensuring minimal disruption to civilian life and underground activities while maintaining operational security.

The 1964 Ceasefire Agreement represented a significant step toward conflict de-escalation and peacebuilding in Nagaland. While it did not address the broader political aspirations of the Naga people, it established a framework for dialogue and demonstrated a willingness on both sides to pursue non-violent solutions.

3.1.4 The 1975 Shillong Accord: Negative Impact on the Strength of Naga Underground Movements and NSCN

The Shillong Accord of 1975, signed on November 11 in Shillong, was a landmark agreement between the Government of India and representatives of the Naga underground organizations. It sought to end the prolonged insurgency in Nagaland by integrating the insurgents into the Indian constitutional framework. The accord marked a significant shift, as the representatives of the underground organizations, of their own volition, agreed to accept the Constitution of India unconditionally. This acceptance was a pivotal development, reflecting a willingness to transition from armed rebellion to engagement within the democratic and legal processes of the Indian state.

A critical provision of the accord was the agreement that the arms held by the underground factions would be brought out and deposited at designated locations. This process was to be supervised by representatives of the Government, security forces, and members of the Liaison Committee. The act of disarming was not merely symbolic but a practical step toward ending hostilities and fostering trust between the conflicting parties. It underscored a commitment to peace and a departure from decades of violent insurgency.

Another key element of the accord was the assurance that the representatives of the underground organizations would be given reasonable time to formulate other issues for discussion aimed at achieving a final settlement. This provision indicated that the accord was not the end of the dialogue but rather a step toward broader negotiations to address unresolved political, social, and economic concerns of the Nagas. The inclusion of this clause highlighted the Government's recognition of the need for a gradual and inclusive approach to resolving the conflict.

The accord also provided guarantees of amnesty and rehabilitation for members of the underground factions who renounced violence. It aimed to reintegrate these individuals into normal civic life, ensuring their safety and encouraging participation in developmental activities. However, despite these assurances, the Shillong Accord faced severe criticism from sections of the Naga population and leadership. Many viewed the unconditional acceptance of the Indian Constitution as a betrayal of the Naga demand for sovereignty and self-determination. This discontent eventually led to the fragmentation of the Naga movement and the formation of the National Socialist Council of Nagaland (NSCN) in 1980, which rejected the accord and reignited

the insurgency.²⁶

The Shillong Accord remains a complex and contentious chapter in the history of the Naga political struggle. While it succeeded in bringing a temporary cessation of violence and integrating some factions into the Indian polity, it also exposed the deep divisions within the Naga movement and the limitations of negotiated settlements that fail to address core political aspirations.

3.1.5 1997 Cease-Fire Agreement

The Ceasefire Agreement of 1997 between the Government of India and the National Socialist Council of Nagaland-Isak Muivah (NSCN-IM) was a landmark development in the ongoing Naga peace process. Signed on August 1, 1997, this agreement established a framework of ground rules to de-escalate violence, foster trust, and facilitate further dialogue aimed at resolving the long-standing Naga insurgency. The rules governing the ceasefire were meticulously designed to maintain peace while addressing mutual concerns and ensuring that neither party engaged in activities that could destabilize the peace process.

Under the agreement, it was explicitly stated that the Indian Army, paramilitary forces, and the police would refrain from offensive operations such as ambushes, raids, and attacks that could result in death, injury, or property damage against the NSCN. Simultaneously, the NSCN was required to cease offensive actions, including ambushes, sniping, and raids. This mutual restraint formed the cornerstone of the ceasefire and underscored the commitment of both sides to reduce hostilities. However, the agreement allowed Indian security forces to continue patrolling activities to prevent the infiltration of militants and arms into the region, as well as to safeguard essential infrastructure and convoys.

A significant feature of the agreement was the stipulation that Indian security forces, including the police, refrain from covering their faces with masks during operations. This measure was symbolic of transparency and trust, building, aimed at reducing fear and fostering a sense of normalcy among civilians in the conflict-affected areas.

The agreement also imposed restrictions on the NSCN to avoid actions that could disrupt public life or economic activities. For instance, NSCN cadres were prohibited from parading in uniforms or carrying arms in public, and road blockades, disruptions to developmental projects, and

²⁶ Liong M. Phom, "Extremism in Nagaland: A case study of NSCN (National Socialist Council of Nagaland)" 5(3) *International Journal of Applied Social Science* 292 (2018).

interruptions of essential services were explicitly banned. These rules emphasized the importance of minimizing disruptions to civilian life and maintaining an atmosphere conducive to development and dialogue.

Concerns regarding the financial and recruitment practices of the NSCN were also addressed. The Government of India raised issues of forced recruitment into armed cadres and extortion activities, particularly the forcible collection of money and intimidation of individuals, including government officials. In response, NSCN representatives clarified that, as a people's organization, they did not engage in such practices and reiterated their commitment to peace and cooperation under the ceasefire framework.²⁷

The monitoring and enforcement of the ceasefire rules were entrusted to a specially constituted group comprising representatives from the NSCN, NGOs, and nominees from the Government of India. This inclusive mechanism was designed to ensure impartiality and effectiveness in addressing potential violations and to promote accountability from both parties.

The 1997 ceasefire was a significant step in the ongoing peace negotiations between the Government of India and the NSCN. It demonstrated a willingness from both sides to prioritize dialogue over conflict and laid the groundwork for future agreements, including discussions on political autonomy and the unique identity of the Naga people. While challenges persisted in the implementation of these ground rules, the ceasefire served as an essential milestone in the broader pursuit of a durable and peaceful resolution to the Naga issue.

3.1.6 The 2015 Framework Agreement: Key Milestones, Implications, and the Renewed Threat to Peace

The Framework Agreement of 2015 between the Government of India and the National Socialist Council of Nagaland, Isaac-Muivah (NSCN-IM) was hailed as a significant step toward resolving the long-standing Naga issue and fostering peace in Nagaland. Signed in the presence of Prime Minister Narendra Modi, it was perceived as an agreement aimed at acknowledging the unique history, culture, and aspirations of the Naga people. While the agreement has sparked hope for a brighter future and greater autonomy for Nagaland, its actual substance remains opaque, as the details of the agreement are not in the public domain. This secrecy has led to conflicting interpretations and growing discontent, particularly among various Naga factions, civil society

²⁷ Ambika Gupta, "Constitution of India, Peace Process and Crisis Management: A Study of Naga Peace Agreement", 11 *Acclaims* 1 (2020).

groups, and neighbouring states.

The NSCN-IM has strategically positioned itself as the chief representative of the Naga people and has garnered significant support from Naga social bodies such as the Naga Hoho and the Naga Students Federation.²⁸ However, its increasing militarization and territorial ambitions, particularly its claims over Naga, inhabited areas in neighbouring states like Manipur, Assam, and Arunachal Pradesh pose significant challenges to the integrity of India's national borders. This territorial claim is encapsulated in the organization's vision of "Greater Nagalim," which seeks to integrate all contiguous Naga areas into one administrative entity. The NSCN-IM's approach of asserting "shared sovereignty" further complicates the negotiations, as it undermines India's sovereignty by promoting a model that suggests a shared form of authority over Naga-inhabited regions, contrary to India's federal structure.

The Framework Agreement had initially appeared promising, with Prime Minister Modi framing it as a path to a new future for Nagaland, with promises of economic prosperity, political dignity, and enhanced security. However, the demands for a separate Naga flag and a distinct constitution, which have been central to NSCN-IM's position, have brought the negotiations to a deadlock. In its most recent statement issued in November 2024,²⁹ the NSCN-IM has threatened to resume armed resistance unless these demands are met, and has further called for the intervention of a third-party mediator to resolve the issue. The ultimatum issued by NSCN-IM underscores the deepening divide between the Government of India and the insurgent group, with the latter accusing the government of violating the spirit of the Framework Agreement and acting in bad faith. This new threat to return to violence highlights a critical issue which is the growing militarization of the Naga peace process, which has involved both political and armed factions. Despite efforts by the Indian government to engage with other factions such as the NSCN-Khaplang the situation remains fraught with tensions. The military presence in the region, including the use of fighter jets and increased surveillance, exacerbates fears among the Naga people, who are sensitive to any perceived escalation. There are concerns that these military actions might reignite the kind of violence witnessed during the insurgency years, as many in the

²⁸ Sushanta Talukdar, "Naga peace process faces impasse as NSCN(I-M) threatens to resume 'armed resistance against India'" *The Hindu*, (Nov. 15, 2024), available at: <https://frontline.thehindu.com/news/naga-peace-process-goi-accords-nscnim-nagaland-rebels-thuingaleng-muivah-nnp/art.68872294.ece> (last visited on Nov. 13, 2024)

²⁹ Prabin Kalita, "Will take up arms if Centre rejects third party talks mediator: Muviah" *Times of India* (Nov. 9, 2024), available at: <https://timesofindia.indiatimes.com/city/guwahati/nscn-im-threatens-to-resume-armed-conflict-if-third-party-mediation-is-ignored-by-india/art.show/115098875.cms> (last visited on Nov 15, 2024).

Naga community view such showings of force as an attempt to suppress their struggle for autonomy.

Moreover, the Framework Agreement has failed to address the aspirations of many Naga groups outside the NSCN-IM's fold, particularly those from the tribes of Eastern Nagaland and the Naga-inhabited areas in Manipur and Assam. These groups, who feel excluded from the peace process, have voiced their dissent, highlighting the need for a more inclusive agreement that considers the diverse needs of all Naga communities. The absence of a consensus among Naga factions has led to fragmentation, with some groups rejecting the agreement outright, further complicating the peace process.

The NSCN-IM's continuing push for greater autonomy, symbolized by the demands for a separate flag and constitution, has raised alarm over the potential threat to India's national integrity. These demands, when placed alongside the group's historical vision of an independent Naga state or "Nagalim," signal a departure from the goal of peaceful integration within India's democratic framework. Instead, they point to a separatist agenda that could destabilize the region and have far-reaching implications for India's territorial sovereignty. The government's handling of this delicate issue will require careful balancing to ensure that it addresses both the legitimate grievances of the Naga people and the broader imperatives of national security and territorial integrity.

Ultimately, while the Framework Agreement of 2015 initially presented a beacon of hope for resolving the Naga issue, it now stands at a critical juncture. The recent threats by NSCN-IM to resume armed conflict and their demands for third-party mediation underscore the complex and unresolved nature of the peace process and thereby posing threat to national integrity and sovereignty. For any lasting solution to be reached, the Government of India must navigate the competing interests of various Naga factions, address the territorial disputes with neighbouring states, and ensure that any agreement does not undermine India's sovereignty. The road to peace remains fraught with challenges, and without a comprehensive and inclusive resolution, the Naga issue may continue to pose a significant challenge to India's unity and territorial integrity.

4. AFSPA: Constitutional Conundrum or Imperative for National Security?

The Armed Forces (Special Powers) Act, 1958,³⁰ is not merely a law, it is the backbone of India's defence against insurgency and internal disturbances that threaten its very sovereignty. For too

³⁰ *Supra* note 1.

long, critics have demonized AFSPA as a draconian tool of oppression, dismissing its necessity in conflict zones where the rule of law is virtually non-existent. Yet, the truth is simple and irrefutable: AFSPA is an instrument that allows India to protect its people, its territorial integrity, and its national unity from the scourge of violent extremism and secessionist movements. In the face of threats from insurgent groups like the National Socialist Council of Nagaland, United Liberation Front of Assam (ULFA), and various militant factions, AFSPA provides the armed forces with the crucial powers to restore order, neutralize threats, and secure the nation's future.

Those who argue against AFSPA have presumably ignored the brutal reality of a nation under siege by forces bent on tearing it apart. In regions like Nagaland and Manipur, where insurgencies run rampant, where the state apparatus has been undermined, and where civilian lives are at risk, AFSPA is not a choice, it is an imperative. Those who speak of human rights violations must ask themselves whether we can allow the state to be held hostage by lawlessness? Can we afford to let the nation's security be compromised in the name of misplaced idealism? AFSPA is not just an act, it is a shield that protects the Indian state and its citizens from forces that seek to divide and destroy. It is a necessary, albeit harsh-reality in a world where national security must always take precedence over misplaced liberal concerns.

Art. 355³¹ of the Indian Constitution obligates the Union to protect its states against external aggression and internal disturbances. During the Constituent Assembly debates, Dr. B.R. Ambedkar³² emphasized the need for provisions ensuring such protection, acknowledging India's federal structure while underscoring the necessity of empowering the Union to safeguard law and order. He asserted that, without such provisions, questions would arise regarding the balance of power between the Centre and the states and their ability to maintain public order.

AFSPA has often been criticized as draconian and anti-human rights, but its application remains essential in conflict-ridden and insurgency-prone regions. S. 3³³ of AFSPA empowers the Governor, the central government, or any state/Union Territory administrator to declare an area "disturbed," bringing the Act's provisions into effect. There have been significant arguments that the power to recognise any area as 'disturbed' should lie solely with the state governments, as "public order" falls under the State List in the Seventh Schedule of the Constitution.

However, art. 257³⁴ of the Constitution allows the central government to deploy Union armed

³¹ *Supra* note 2, art. 355.

³² Ali Ahmed, "Reconciling AFSPA with the Legal Spheres", 5(2) Journal of Defence Studies 109 (2011).

³³ *Supra* note 1, s. 3.

³⁴ *Supra* note 2, art. 257.

forces to manage severe law and order situations, limiting the control of state authorities over the armed forces' operations. This central oversight is particularly relevant in states like Nagaland, where insurgent organizations wield significant influence over civil society, potentially biasing state governments towards these groups. Vesting such powers solely in state governments could undermine the objectives of art. 355 and other constitutional mandates, compromising the Centre's responsibility to protect its units.

The declaration of "disturbed areas" is now subject to review every six months,³⁵ a reform catalysed by judicial contributions aimed at ensuring the Act's alignment with constitutional principles. For example, in Nagaland, AFSPA has been partially curtailed, currently applicable in only 15 police stations across seven districts.³⁶ This evolution reflects a more proactive and balanced approach, addressing both security concerns and constitutional safeguards.

S. 4 of AFSPA³⁷ grants wide, ranging powers to the armed forces in "disturbed areas," including using lethal force, conducting searches, and making arrests without a warrant. While controversial, its necessity is evident in regions like Nagaland and Manipur, where persistent insurgency, ethnic conflicts, and cross-border militancy threaten national integrity. For instance, during Operation Bluebird³⁸ in 1987 in Nagaland, the Indian Army successfully curbed insurgent activities of the National Socialist Council of Nagaland (NSCN), which aimed to establish a separate sovereign state.

Further, the Act aligns with art. 355 of the Indian Constitution, which mandates the Union to protect states against internal disturbances. It also responds to cross-border infiltration challenges where swift military responses were crucial to safeguarding territorial sovereignty. However, these powers are coupled with safeguards, including periodic reviews of the "disturbed area" status and requiring state or central government concurrence.

S. 5³⁹ of AFSPA, 1958, mandates that any person arrested under the Act be handed over to the officer in charge of the nearest police station "with the least possible delay", thereby aligning with the constitutional safeguard under art. 22(1) of the Indian Constitution, which requires that an arrested individual be produced before a magistrate within 24 hours. This provision reflects

³⁵ *Naga National People Movement v. Union of India* AIR 1988 SCC 465.

³⁶ Roshini Yadav, "Knowledge nugget of the day: AFSPA" *The Indian Express* (Nov. 18, 2024), available at: <https://indianexpress.com/art/upsc-current-affairs/upsc-essentials/knowledge-nugget-afspa-manipur-ethnic-clash-upsc-9673404/> (last visited on Nov. 10, 2024).

³⁷ *Supra* note 1, s. 4.

³⁸ Rijumani Baruah, "Naga National Movement: History and Emergence" 9(1) *International Journal of Multidisciplinary Education Research* 125 (2020).

³⁹ *Supra* note 1, s. 5.

an attempt to harmonize the extraordinary powers granted to the armed forces with procedural due process. The rationale behind such power is to enable the armed forces to act swiftly in preventing cognizable offences, akin to the preventive powers conferred upon police officers under s. 170 of the Bhartiya Nyaya Suraksha Sanhita, 2023.⁴⁰

However, the phrase “least possible delay,” as noted by the Jeevan Reddy Committee,⁴¹ is vague and subject to interpretation, potentially leading to misuse. The Committee emphasized that while AFSPA grants arrest powers to the armed forces to maintain public order in disturbed areas, the Constitution enshrines the arrested person’s right to be presented before a magistrate within 24 hours, excluding transit time. This safeguard prevents arbitrary detention and ensures judicial oversight over the use of such extraordinary powers. Thus, s. 5 serves as a balancing provision, providing operational flexibility to armed forces in volatile regions while seeking to uphold fundamental rights.

S. 6⁴² of the AFSPA, 1958, is a vital legal safeguard that upholds the operational integrity of armed forces in “disturbed areas” like Nagaland. It requires prior sanction from the central government before initiating any prosecution against armed forces personnel for actions performed during duty under the Act. This provision ensures that soldiers, operating in complex and hostile environments, are protected from undue harassment through legal proceedings, thereby maintaining their morale and operational efficiency.

The necessity of this provision becomes apparent in regions like Nagaland, which faces persistent insurgent threats, cross-border militancy, and fragile law and order. S. 6 allows the armed forces to take decisive action without fear of retrospective legal challenges while still maintaining accountability through central oversight. For instance, the denial of prosecution sanctions in sensitive cases, such as the Mon district incident in 2021,⁴³ highlights the central government’s meticulous approach to balancing security imperatives with judicial oversight.

This provision aligns with the objectives of sovereignty and integrity and reflects the need for the Union government to oversee and manage the sensitive relationship between military operations and civilian jurisdiction. The process of granting prosecutorial sanctions ensures that

⁴⁰ The Bhartiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023).

⁴¹ Government of India Ministry of Home Affairs, “Report of the Committee to Review the Armed Forces (Special Powers) Act, 1958” (2005).

⁴² *Supra* note 1, s. 6.

⁴³ Dinakar Peri, Rahul Karmakar, “Army Operation in Nagaland goes awry, 15 civilians dead” *The Hindu* (Dec. 12, 2021), available at: <https://www.thehindu.com/news/national/other-states/16-dead-after-armys-nagaland-ambush/art.37849057.ece> (last visited on Nov. 11, 2024).

frivolous or politically motivated allegations do not hinder the armed force's ability to operate effectively while allowing serious allegations to be reviewed comprehensively. This structured accountability preserves the integrity of both the armed forces and the justice system.

Art. 4 s. 4 of the US Constitution⁴⁴ states that the US shall guarantee to every state in the union a republican form of government and shall protect each of them against invasion and on application of the legislature or the executive when the legislature cannot be convened, against domestic violence and also s. 199 of the Australian constitution⁴⁵ states that the commonwealth shall protect every state against domestic violence. The use of the word domestic violence is as similar to internal disturbance in the Indian constitution as confirmed by the Jeevan Reddy committee. AFSPA's constitutionality was upheld by the Supreme Court in *Naga People's Movement of Human Rights v. Union of India*,⁴⁶ where the Court provided a detailed interpretation of its provisions, balancing security concerns with constitutional safeguards.

The petitioners in this case challenged the Act, asserting that it violated fundamental rights, particularly art. 14, 19, and 21 of the Constitution. However, the Supreme Court upheld the Act's constitutionality, emphasizing its necessity under art. 355, which mandates the Union to protect states against internal disturbances and external aggression. The Court interpreted AFSPA as an extension of the state's sovereign function to ensure stability in regions like Nagaland, where insurgency directly threatens national unity.

The Court introduced crucial safeguards to mitigate potential misuse of the Act. It stressed that the declaration of "disturbed areas" must be periodically reviewed every six months and that excessive use of force must be subjected to judicial scrutiny. While recognizing the armed forces' need to operate with autonomy in volatile regions, the judgment insisted on proportionality in the use of force and adherence to procedures under s. 4 and 5 of the Act. It mandated that arrested persons be handed over to local police at the earliest, ensuring compliance with art. 22 of the Constitution.

In regions like Nagaland, AFSPA has enabled the military to counter entrenched insurgent groups, such as the National Socialist Council of Nagaland. However, this operational necessity must align with constitutional values. The Supreme Court, in its wisdom, upheld AFSPA as

⁴⁴ The Constitution of United States, 1787, art. 4 s.4.

⁴⁵ The Commonwealth of Australia Constitution Act, 1900, s. 199.

⁴⁶ B Zubenthung Ezung, Dr. Tariq Ahmed *et.al.*, "AFSPA and Insurgency in Nagaland", 6 *Journal of Emerging Technologies and Innovative Research*, 657 (2019).

constitutionally valid but emphasized accountability through judicial oversight, periodic reviews, and respect for fundamental rights. The ruling in the *Naga People's Movement* case is a critical balance between national security imperatives and the protection of individual liberties, reaffirming the supremacy of constitutional governance in maintaining the rule of law.

AFSPA is frequently defended under rational choice theory,⁴⁷ which prioritizes national security and territorial integrity as foundational goals of the state, particularly in regions plagued by insurgency and secessionist threats. The rational basis for AFSPA arises from its objective to empower the armed forces to address threats that challenge the sovereignty of India, ensuring swift and decisive responses in areas declared “disturbed” due to armed rebellion, such as Nagaland and other northeastern states.

AFSPA operates on the premise that extraordinary circumstances necessitate extraordinary measures. In regions like Nagaland, the Act's provisions such as arrest without warrant, use of lethal force, and search operations are aimed at neutralizing insurgent activities that disrupt governance and public order. For instance, during peak insurgency periods, groups like the NSCN carried out extensive violence, threatening both civilians and state structures. Rational choice theory justifies the empowerment of security forces under AFSPA as a utility, maximizing strategy, focusing on minimizing insurgent threats while preserving national unity. This perspective highlights that the state's survival takes precedence over individual liberties in conflict zones.

The Supreme Court in *Naga People's Movement for Human Rights v. Union of India*⁴⁸ upheld the constitutionality of AFSPA, aligning it with art. 355 of the Indian Constitution, which obligates the Union to safeguard states against internal disturbances and external aggression. By doing so, the Court rationalized AFSPA as a necessary legal tool for restoring order. While the Court imposed safeguards like periodic review of “disturbed area” declarations and mandated proportionality in the use of force, the Act's operational framework remains rooted in ensuring that procedural delays do not impede national security objectives.

Historically, AFSPA's rationalization also draws from the precedent of institutionalized emergency laws during colonial times, as referenced in debates during its enactment. The central

⁴⁷ Yash Goyal, *Armed Forces Special Powers Act (AFSPA): Necessity of Law Reformation Rather Than Absolute Retention or Repeal* (2022) (Unpublished Policy Analysis Project, Flame University).

⁴⁸ Wasbir Hussain, “Insurgency in India's Northeast Cross-border Links and Strategic Alliances”, 17 *South Asia Terrorism Portal* 105 (2019).

government, viewing secessionist movements as existential threats, saw the Act as essential to prevent a repetition of partition-like scenarios. Rational choice theory, therefore, justifies the state's decision to centralize authority under AFSPA, emphasizing security over participatory governance in affected regions. This pragmatic approach addresses the immediate concerns of rebellion but at the cost of human rights, as highlighted by reports of extrajudicial killings and civilian casualties. Data further supports this justification; between 2003 and 2020, militant deaths in Nagaland outnumbered security personnel casualties by a stark ratio of 1:29.76,⁴⁹ demonstrating the intensity of insurgent threats the Act seeks to mitigate. Despite criticisms of misuse, proponents argue that such outcomes underscore AFSPA's role in neutralizing threats in high-conflict zones. While AFSPA is critiqued for its impact on human rights, rational choice theory validates its enactment as a policy prioritizing state security amidst severe internal disturbances. The Act's legal and operational framework reflects a strategic compromise, emphasizing territorial sovereignty and public order as critical imperatives, particularly in regions like Nagaland, where insurgent threats persist. However, continual judicial oversight and policy reforms are vital to ensuring its alignment with constitutional values and minimizing potential abuses.

5. The Cross-Border Nexus: How Myanmar, China and Other Extra-Territorial Forces Fan the Flames of Rebellion

Extraterritorial support has been critical to the operations of insurgent groups such as the NSCN-IM, and NSCN-K, allowing them to persist in their demands for autonomy or independence from India. This backing comprising political, material, and operational support has been sustained primarily by HOSTILE COUNTRIES Pakistan, China, and Myanmar,⁵⁰ who provide sanctuaries and resources, thereby challenging India's security efforts in the northeastern region.

The NSCN-K, led by S. S. Khaplang, operates predominantly from northwestern Myanmar, which has become a stronghold due to the group's strategic alliances with regional militant outfits and backing from neighbouring states. The faction is considered one of the most radical among northeastern insurgent groups and has cultivated extensive links across South Asia, capitalizing on Myanmar's difficult terrain and weak border controls to elude Indian forces. Despite claims by Myanmar, Bangladesh, and Bhutan that they cooperate with Indian security forces to curb insurgent movement across borders, the NSCN-K continues to use Myanmar as a base for

⁴⁹ Gurpreet Singh, Rajinder Singh Sandhu *et. al.*, "Naga Separatism in India and Role of External Powers" 75(2) *The Indian Journal of Political Science* 381 (2014).

⁵⁰ *Supra* note 46.

training and planning cross, border operations, which keeps the demand for an independent Nagaland alive.

China has played a pivotal role in advancing the NSCN-K and NSCN-IM's operational strength by providing arms, financial support, and strategic training over several decades. This enduring alliance has allowed these groups to not only prolong their insurgency but also to enhance their tactical sophistication, ultimately becoming a substantial security threat within northeastern India. Evidence of this support stretches back to the period following World War II, when the NSCN sought international backing, including from Chinese officials, urging them to recognize the Naga claim over Nagalim, a proposed independent homeland covering parts of northeast India. By appealing to China's interests, the NSCN aimed to gain powerful support for its separatist objectives, knowing that China's adversarial relationship with India could work in its favour.

In the 1960s, China's influence on NSCN activities reportedly first emerged on the global stage. During the October 1968 United Nations General Assembly, China was alleged to have endorsed the NSCN's movement. The 1972 Sino-Indian War further emboldened the NSCN-IM to press for its demand for Greater Nagalim, leveraging the regional conflict as justification for its separatist goals.⁵¹ In 1976, NSCN-IM leader Thuingaleng Muivah, accompanied by 400 other insurgent leaders, journeyed to China for military and technological training in guerrilla warfare. This training involved advanced weaponry, tactical operations, and clandestine communication, knowledge that Muivah and others later deployed within India. Upon completing their training, they navigated their way back to India through Myanmar's dense jungles, a known transit corridor for insurgent groups.

China's financial support for the NSCN-IM became publicly evident by 2000, when intelligence sources exposed a half-million-dollar transaction involving a Beijing, based Chinese firm. The funds were reportedly used by the NSCN-IM to procure a range of arms and other resources. This transactional relationship continued to flourish in the 1990s when, between 1994 and 1996, the NSCN entered a \$5 million arms deal with Chinese manufacturers like NORINCO and TCL.⁵² This agreement included the delivery of high, powered weapons, including 1,800 rounds of ammunition, pistols, machine guns, and M16 rifles⁵³ effectively enabling the NSCN to build

⁵¹ *Supra* note 49.

⁵² *Ibid.*

⁵³ *Ibid.*

an arsenal equipped for prolonged insurgency operations.

With growing external support, the NSCN-IM's capability expanded to the point of setting up arms, manufacturing cartels within Indian territory. According to an anonymous Indian Army official who served in Nagaland, the insurgents' network has become increasingly self, sufficient, producing weapons domestically while continuing to draw on foreign resources.

In 2010, Anthony Shimmer, an NSCN-IM leader, was arrested by Indian intelligence after attempting to smuggle Chinese arms into India to further the insurgent group's cause. Shimmer's arrest exposed an extensive supply chain facilitating Chinese arms into the region, arms that NSCN-IM also distributed to insurgent groups in Manipur. These arms fuelled violent uprisings, contributing to prolonged riots and unrest that destabilized the area.

In 2023, another major incident underscored China's indirect influence on regional unrest. Ngathingpam Shimrah, a high, ranking NSCN-IM official, and a Nagaland police inspector attempted to traffic 2,400 rounds of stolen ammunition, which were under the inspector's control.⁵⁴ The Border Security Force officer who had been stationed in Manipur that year and is now posted in New Delhi noted the alarming spread of organized cartels that have stoked unrest in Manipur, describing the scale of arms and resources available to insurgents as unprecedented.

Most recently, in January 2024, six NSCN-IM operatives were apprehended by the military. Their interrogation led to the recovery of hidden weapons caches, revealing a stockpile of Chinese-made arms. These caches underscore the deeply entrenched support networks that continue to arm the NSCN-IM and NSCN-K factions. The steady influx of foreign, manufactured weapons underscores China's enduring role in sustaining these insurgent groups, presenting significant security challenges that stretch beyond Nagaland into Manipur and other northeastern regions of India.

Additionally, Adinno Phizo,⁵⁵ daughter of A.Z. Phizo continues to uphold the secessionist movement for an independent Nagaland, posing a significant challenge to India's national integrity and sovereignty. Her influence stems from a legacy of international advocacy initiated by her father, who first internationalized the Naga issue by travelling from Nagaland to East

⁵⁴ Prabin Kalita, "Key NSCN(IM) man held for ammo supply to Manipur group" *Times of India* (Jul. 29, 2023), available at: <https://timesofindia.indiatimes.com/city/guwahati/nscn-im-admits-leaders-role-in-smuggling-arms-to-manipur/art.show/102220598.cms> (last visited on Nov. 15, 2024).

⁵⁵ Shantanu Nandan Sharma, "We have never seen peace & a normal life: Adinno Phizo, daughter of the father of Nagas" *The Economic Times*, (Aug. 30, 2015) available at: <https://economictimes.indiatimes.com/opinion/interviews/we-have-never-seen-peace-a-normal-life-adinno-phizo-daughter-of-the-father-of-the-nagas/art.show/48725756.cms> (last visited on Nov. 15, 2024).

Pakistan, Switzerland, and eventually London. These efforts garnered global attention for the separatist cause, framing Nagas as a distinct entity deserving of sovereign status.

From her base in London during the 1960s, Adinno played a pivotal role in amplifying the secessionist narrative on international platforms. Her advocacy strengthened the Naga movement's visibility, leveraging global sympathy for indigenous self-determination. By consistently invoking the 1951 plebiscite a vote claimed to have decisively affirmed Nagaland's independence, she perpetuates the narrative that India's governance over Nagaland is illegitimate. This rhetoric undermines peace negotiations and sustains separatist sentiment domestically.

After returning to India in 2013, Adinno has worked to consolidate the Naga cause within the region. Her recent commemoration of the plebiscite's 73rd anniversary in May 2024 further reinforced the demand for independence. She dismissed solutions within the Indian constitutional framework, urging Nagas to unify against what she terms as Indian occupation. Such statements not only perpetuate separatism but also embolden insurgent activities and resistance to Indian authority.

Adinno Phizo's actions highlight the enduring impact of a secessionist movement that combines historical mandates, international lobbying, and local mobilization. Her leadership poses a persistent threat to India's sovereignty, demanding a careful mix of political negotiation, security measures, and international diplomacy to counter her influence.

Pakistan and China have utilized northeastern insurgent groups as tools in their broader strategy to counterbalance India's regional influence. Pakistan's Inter-Services Intelligence (ISI) has been actively involved in aiding the Naga insurgency by portraying it as a legitimate struggle for self-determination.⁵⁶ This ideological support is often supplemented by ISI's media and diplomatic channels, which amplify the narrative of insurgents as freedom fighters, undermining India's claims of sovereignty. Such support emboldens insurgent leaders, enabling them to gather international sympathy and pursue their agenda more assertively.

China's support has a similar strategic underpinning. By indirectly backing Naga insurgents, China aligns itself with the rhetoric of supporting ethnic self-determination, using this narrative to disrupt India's influence in Northeast India.⁵⁷ Reports indicate that China has persistently

⁵⁶ Jaideep Mazumdar, "Offers of Help From Pakistan, Bangla Islamists Led To Naga Rebel Chief's Imprudent But Hollow Threat To Resume Insurgency" (Nov. 11, 2024), *available at*: <https://swarajyamag.com/north-east/offers-of-help-from-pakistan-bangla-islamists-led-to-naga-rebel-chiefs-imprudent-but-hollow-threat-to-resume-insurgency> (last visited on Nov. 15, 2024).

⁵⁷ *Supra* note 48.

framed these movements as legitimate ethnic struggles, which both isolates India diplomatically and strengthen the operational momentum of insurgent groups in the region.

Material support has been a cornerstone of the extraterritorial aid provided to the Naga insurgents, with a consistent supply of arms, funds, and military training keeping the groups operationally robust. Between 1962 and 1968, Pakistan became a primary source of arms and logistical assistance to Naga insurgents. Leaders like Kaito Sema leveraged this support, travelling to Pakistan for training and returning with weaponry and financial resources, including 30,000 Indian rupees and assorted military hardware, to reinforce their campaign against Indian forces.

China's material support for the NSCN factions, particularly the NSCN-IM, dates back to the 1970s. In 1968, Chinese authorities pledged to aid Naga insurgents by establishing a liberation front, providing training, and arming them with automatic rifles. In 2009, Chinese agents reportedly offered the NSCN-IM access to advanced weaponry, including surface, to, air missiles, although the group was unable to fund the full purchase. In 2010, Chinese arms companies agreed to supply NSCN-IM with weaponry worth \$1 million, with the intended route through Myanmar, showcasing the strategic depth of China's support.⁵⁸

The mountainous, porous borders of India's Northeast make it feasible for insurgent groups to establish sanctuaries across borders, with Myanmar and Bangladesh emerging as key strongholds.⁵⁹ Myanmar's Kachin region has become an essential base for NSCN-K, providing the group with a sanctuary for training and reorganization. The faction's alliance with Myanmar's Kachin Independence Army (KIA) has fostered a mutually beneficial arrangement, where NSCN-K offers training to Kachin fighters while benefiting from the KIA's logistical and operational support.

Bangladesh has historically provided refuge for Naga and other northeastern insurgent groups, although the government officially denies this. Intelligence from the early 2000s identified approximately 194 insurgent camps within Bangladesh, most operated by Indian insurgent groups.⁶⁰ Sporadic raids on these camps have been reported in recent years, yet the continued presence of insurgent groups in Bangladeshi territory attests to the enduring cross, border threat.

⁵⁸ *Supra* note 49.

⁵⁹ Prabin Kalita, "Porous int'l borders, socio-economic factors led to fragile security situation in NE: MHA report" *Times of India* (Nov. 10, 2022), available at: <https://timesofindia.indiatimes.com/city/guwahati/porous-intl-borders-socio-economic-factors-led-to-fragile-security-situation-in-ne-Minis-report/art.show/95415422.cms> (last visited on Nov. 15, 2024).

⁶⁰ *Supra* note 48.

Many factions regroup and plan their next moves from these camps before crossing back into India, sustaining their insurgency despite India's countermeasures.

Naga insurgents have forged alliances with other militant groups operating in South Asia, which has enabled them to pool resources, intelligence, and expertise. For example, the NSCN factions have a longstanding collaboration with the ULFA and the Kachin Independence Army. ULFA sent its fighters for advanced training with the KIA in the 1980s, and the groups have maintained tactical and operational ties ever since. This alliance enables the groups to coordinate attacks and share resources, enhancing their impact and facilitating long-term insurgent activities. These partnerships also connect insurgent groups to cross-border drug and arms trafficking networks, through which they finance operations and ensure a steady supply of weaponry. The alliances with networks tied to the Golden Triangle's narcotics trade further expand the resources available to insurgent groups, amplifying their influence and operational reach.

The extraterritorial support provided by Pakistan, China, and Myanmar is reflective of a larger geopolitical contest in South Asia, where these countries aim to counter India's influence. Pakistan's ISI views northeastern insurgent groups as assets in a broader "proxy war" strategy, destabilizing India's northeastern frontier. In 1991, Pakistani intelligence allegedly arranged arms supplies for NSCN-K, providing weapons sourced from Thailand to further bolster the group's operational capabilities following Cambodia's Khmer Rouge collapse.

China's support has also remained steady, with Chinese officials coordinating arms deals with insurgent groups and facilitating training in the Kachin region. This sustained support amplifies the insurgents' influence and destabilizes India's Northeast, complicating Indian security efforts and undermining regional stability.

In response, India has implemented a multifaceted strategy combining diplomatic outreach, domestic legislation, and enhanced counterinsurgency operations. India has sought cooperation from Myanmar and Bangladesh to restrict insurgent movement across borders, though results have varied due to complex regional interests. India has also bolstered domestic laws, to prosecute insurgent networks with foreign ties more effectively. Additionally, intelligence-sharing with regional allies has targeted arms and finance channels supporting insurgent groups. Despite these efforts, the persistence of extraterritorial support remains a challenge, emphasizing the need for a comprehensive regional security framework to stabilize India's northeastern region.

6. Philosophy in the Trenches: AFSPA Between Utilitarian and Kantianism

6.1 Utilitarianism⁶¹ Justification

AFSPA enacted to combat insurgency in states like Nagaland, has been a pivotal yet controversial law in the context of national security and territorial integrity. A utilitarian analysis of AFSPA, grounded in Jeremy Bentham's theory of "pleasure and pain", provides a nuanced understanding of its necessity and implications. Bentham's utilitarianism advocates for actions that maximize the greatest happiness for the greatest number, and his hedonic calculus serves as a framework to evaluate AFSPA's relevance in safeguarding the Northeast while ensuring peace and stability for the majority.

The principle of Intensity under Bentham's calculus examines the law's capacity to mitigate hardship. In insurgency, prone regions like Nagaland, AFSPA grants armed forces extraordinary powers to address threats, including the authority to search, arrest, or use force against individuals engaged in anti-state activities. The endurance of hardship through AFSPA is evident in its ability to stabilize areas plagued by violent uprisings, where governance had previously collapsed under insurgent control. Even data shows, there are reduction in insurgent activities yet the blunt turn of disagreement regarding 2015 agreement and an issuance of statement threatening to resort to armed violence. Furthermore, the duration of AFSPA's application reflects its sustained role in providing a semblance of stability, allowing developmental activities to resume and governance to strengthen, even as insurgent activities persist. The long-term deployment of AFSPA has played a role in reducing violent incidents, as evidenced by government data indicating a decline in insurgency-related deaths in Nagaland, from over 500 annually in the early 2000s to fewer than 50 in recent years.⁶²

The utility of AFSPA is evident when analysing its certainty in countering Insurgency. Without this legal framework, the probability of escalated violence and fear among the populace is significantly higher. Insurgent groups, such as the NSCN factions, have historically engaged in extortion, attacks on civilians, and threats to national sovereignty. The enactment of AFSPA has provided a deterrent, enabling security forces to act decisively against such groups. A comparative analysis with states where AFSPA has been repealed, such as Tripura, shows that while localized stability may allow for withdrawal, active insurgency in states like Nagaland

⁶¹ Aytar Singh and Harpreet Kaur, *Introduction to Jurisprudence* (Lexis Nexis Butterworths, New Delhi, 5th edn., 2020).

⁶² *Supra* note 12.

underscores the necessity of the law. The certainty of reduced insurgent strength in active regions justifies its continued implementation.

Purity, in Bentham's theory, relates to minimizing pain while achieving pleasure. Though AFSPA's extraordinary powers can lead to human rights abuses, its primary aim is the restoration of peace and public order in areas besieged by violence. The fear and insecurity felt by citizens during unchecked insurgency far outweighs the discomfort caused by the presence of armed forces. Reports indicate that regions under AFSPA experience a significant reduction in extortion, kidnappings, and civilian casualties.

The proximity of AFSPA to achieving peace is evident in its role as an immediate tool for preserving territorial integrity and suppressing armed rebellion. Insurgent groups cross, border connections, particularly with Myanmar, complicate conventional law enforcement approaches. AFSPA enables swift military responses, reducing delays that could exacerbate instability. The proximity principle is particularly significant in the context of securing Nagaland, a strategic area bordering sensitive international frontiers. Without AFSPA, the region risks becoming a hub for anti-national activities, jeopardizing both local and national security.

Once the objectives of AFSPA are achieved, the law facilitates long-term development opportunities in previously insurgency, hit areas. The improved security environment allows for investment in infrastructure, healthcare, and education, which were earlier hampered by violence. For instance, Nagaland's potential as a tourism hotspot, with its rich culture and biodiversity, remains untapped due to security concerns. The successful reduction of violence under AFSPA could open avenues for economic growth, creating jobs and improving living standards.

The disturbances in Nagaland and other northeastern states affect not only local populations but also the broader stability of India. The insurgency's ripple effects extend to other regions, straining resources and governance. AFSPA's role in restoring public order has implications for the larger population, ensuring a secure environment for the majority while containing insurgent activities.

Utilitarianism, as a consequentialist theory, posits that the morality of an action is determined by its outcomes, specifically the maximization of happiness and minimization of suffering for the greatest number. In the context of insurgency in Nagaland, the imposition of AFSPA aligns with the principle of prioritizing collective peace and security over localized disruptions caused by armed insurgent groups. The insurgency, fuelled by demands for a sovereign Greater Nagalim poses a significant threat to India's territorial integrity. Many of these groups have established

international connections with hostile foreign entities, further intensifying their anti-national activities. This necessitates stringent measures like AFSPA to maintain stability and protect national sovereignty.

A Border Security Force (BSF) official, while in an interview with the author regarding the challenges in Nagaland, remarked that the insurgency's persistence can partly be attributed to community-level support for these groups, rooted in historical grievances and cultural affiliations. The official compared this situation to Kashmir, where AFSPA was successfully lifted, noting that the sociopolitical landscape in Nagaland presents unique challenges. He recalled the alleged results of the 1951 plebiscite, where 99.9% reportedly voted in favour of a separate state, suggesting that sentiments for independence have deep historical roots. However, he emphasized that the majority of Nagaland's urban population, particularly in cities like Kohima, now seeks development and peace, indicating a shift in priorities among the populace. The imposition of AFSPA, therefore, emerges as a pragmatic response to these complexities, balancing the need to curb insurgency with the aspirations of civil society for progress.

The utilitarian perspective underscores the importance of assessing the outcomes of AFSPA in fostering greater security and stability in the region. Data from the Ministry of Home Affairs (MHA) corroborates the Act's effectiveness. In the 1990s, insurgency-related incidents in the Northeast exceeded 500 annually. Today, the figures have plummeted to under 250, marking a significant reduction in violence.⁶³ This decline reflects the success of counterinsurgency operations facilitated by AFSPA in dismantling militant networks and restoring order. The Act's focus on broader societal welfare justifies its implementation despite opposition from some quarters, as it ensures the security of millions of citizens across the Northeast.

Jeremy Bentham's utilitarianism also prioritizes the happiness of the majority over the discomfort of the minority. While insurgent groups and their sympathizers may view AFSPA as oppressive, the larger population benefits from the peace and development it facilitates. In Nagaland, where insurgency has historically impeded progress, AFSPA has enabled the state to embark on a trajectory of growth by curtailing violence and fostering a conducive environment for governance and economic initiatives. Moreover, Bentham's emphasis on measurable outcomes aligns with the pragmatic application of AFSPA, which has demonstrably reduced insurgent activities and bolstered national security.

⁶³ *Supra* note 12.

The imposition of AFSPA in Nagaland serves the utilitarian goal of maximizing societal well-being. By addressing the insurgency's threat to India's sovereignty and enabling developmental progress, the Act ensures that the collective interests of the nation and its citizens are safeguarded. While criticisms of AFSPA's implementation persist, its proven effectiveness in reducing violence and restoring order justifies its continued enforcement as a tool for achieving long-term stability in the region.

6.2 Kantianism⁶⁴ Justification

AFSPA has often been debated from moral and legal standpoints, particularly for its implications on human rights and governance. A Kantian analysis rooted in the categorical imperative provides a unique perspective to justify its application under stringent conditions. Kant's deontological ethics prioritizes duty, reason, and universalizability, creating a framework where the morality of an action is judged by its adherence to duty rather than its consequences. Here, AFSPA can be evaluated as a means of upholding broader societal duties like national security and governance, aligning with Kantian principles when contextualized within the imperatives of justice and reason.

According to Kant's formula of universal law, an action is moral if it can be universally applied without contradiction. AFSPA, as a legislative framework, is designed to address extraordinary security situations. Its core purpose to maintain public order and protect citizens can be universalized as a legitimate state responsibility. A government, bound by a social contract, has the duty to ensure the safety of its citizens. In situations of armed insurgency or widespread violence, laws like AFSPA fulfil this obligation. From this perspective, the act's provisions are not intended to serve arbitrary authority but to enable the state to meet its moral and constitutional duty toward public safety, a concept consistent with Kantian deontology.

Kant's principle that humans should always be treated as ends, not merely as means, critiques any policy violating intrinsic human dignity. AFSPA potentially undermines this principle due to allegations of human rights violations. However, AFSPA can be defended as a necessary mechanism where treating humanity as an end involves securing the collective well-being of the majority. The act seeks to restore order in conflict zones, ensuring that the lives of the broader population are not jeopardized by unchecked violence. This collective security serves the

⁶⁴ Ronald Osei Mensah, Edward Agyemang, "A Comparative Philosophical Analysis of the Kantian Principle of Moral Theory and the Utilitarian Theory: Applications and Critiques" 3(3) *Journal of Human Social Sciences* 127 (2020).

intrinsic value of human life, provided the law's enforcement is governed by strict accountability measures.

The formula of autonomy in Kantian ethics underscores the importance of self, legislating rational agents adhering to moral laws they impose on themselves. AFSPA's enactment, therefore, represents the rational autonomy of the state acting in accordance with its duty to legislate for extraordinary circumstances. The provisions within AFSPA, such as the authority to use force or make arrests, align with rationally derived laws designed to address specific security exigencies, making its application a reasoned necessity rather than an arbitrary imposition.

Kant's concept of the kingdom of ends envisions a community governed by moral laws universally respected by rational agents. Within this framework, AFSPA can only be justified if it is implemented transparently, with robust mechanisms ensuring accountability and redress. This ensures that its application respects the moral agency and dignity of all individuals, including those in conflict zones. The kingdom of ends framework necessitates continuous evaluation and reform of AFSPA to ensure its adherence to both moral and legal norms.

While AFSPA's controversial nature highlights tensions between security and liberty, a Kantian defence underscores its role as a moral necessity in exceptional situations. However, such a defence is conditional upon its adherence to Kantian imperatives: it must be universalizable, respect humanity as an end, operate through rational autonomy, and align with the ideals of a kingdom of ends. Misuse or overreach under AFSPA would violate these principles, rendering its application immoral and legally untenable. Therefore, continuous oversight and reform are essential to align AFSPA's implementation with Kantian ethics and the broader legal framework.

7. Conclusion

AFSPA remains one of the most debated legislative instruments in India. It is designed to counter insurgencies in disturbed areas, AFSPA's role in Nagaland is multifaceted, aiming to preserve territorial integrity and neutralize extraterritorial threats.

7.1 AFSPA's Role in Territorial Integrity and Stability

AFSPA was introduced to address insurgent movements that threaten India's sovereignty, particularly in the Northeast, where the demand for an independent of Greater Nagalim persists. By granting the armed forces extraordinary powers, the Act seeks to maintain public order in regions where conventional policing mechanisms fail. In Nagaland, AFSPA has been instrumental in curbing large-scale insurgencies orchestrated by groups like the NSCN factions.

There has been a significant reduction in insurgency-related incidents since the implementation of AFSPA, suggesting its deterrent impact.

However, this stability has come at a cost of human right violations. The Act has been criticized for enabling excessive use of force, arbitrary arrests, and alleged human rights violations. These criticisms, while valid, must be contextualized within the operational challenges posed by insurgencies and the necessity of protecting national sovereignty.

7.2 Extraterritorial Forces and Their Role in Insurgency

The insurgency in Nagaland cannot be viewed in isolation; it is deeply intertwined with extraterritorial influences. Neighbouring countries, including Myanmar, China, and Pakistan, have provided sanctuary, logistical support, and weaponry to insurgent groups. For instance, the NSCN-K operates from Myanmar, leveraging its alliance with the Kachin Independence Army (KIA) to strengthen its operational capabilities. Similarly, China's support, both material and ideological, has been critical in sustaining the insurgency. Historical accounts of Chinese military training provided to Naga insurgents in the 1970s and subsequent arms deals underscore the enduring threat posed by external actors.

Pakistan's Inter-Services Intelligence (ISI) has also played a destabilizing role, providing ideological and logistical support to groups like ULFA and NSCN factions. Such support undermines India's efforts to integrate the Northeast and perpetuates a cycle of violence and mistrust.

7.3 How Extraterritorial Support Fuels Insurgency

The role of external forces is pivotal in sustaining insurgent activities in Nagaland. Sanctuaries in Myanmar provide insurgent groups with a base for regrouping and launching attacks. The porous borders with Myanmar and Bangladesh allow unhindered movement of arms, funds, and personnel, complicating India's counterinsurgency efforts. Moreover, the strategic alignment of insurgent groups with international actors like China and Pakistan exacerbates the challenge. These alliances are not merely logistical; they symbolize a broader geopolitical contest where India's adversaries exploit regional discontent to weaken its territorial integrity.

The flow of arms and funds from international networks ensures that insurgent groups remain operational despite domestic crackdowns. For instance, Chinese-manufactured weapons, procured through illicit channels, have been used extensively in attacks on Indian forces. These

external supports highlight the limitations of AFSPA in addressing the root causes of insurgency, which are often transnational in nature.

7.4 Balancing Security with Rights: AFSPA's Effectiveness

AFSPA's efficacy in Nagaland is evident in the decline of insurgent activities and the restoration of relative peace in many areas. However, its implementation raises critical concerns about proportionality and accountability. The Supreme Court's directives in *Naga People's Movement for Human Rights v. Union of India* introduced safeguards to ensure periodic review of "disturbed area" status and prevent misuse of power by armed forces. These measures, while necessary, highlight the tension between security imperatives and civil liberties.

The utilitarian justification for AFSPA is grounded in its role in maximizing security and stability for the majority, even at the cost of certain liberties. However, this justification must evolve with changing realities. The current insurgency landscape, influenced heavily by external actors, demands a more nuanced approach that combines military action with diplomatic and developmental strategies.

AFSPA's role in safeguarding India's territorial integrity is undeniable, particularly in conflict zones like Nagaland. However, its limitations in addressing the extraterritorial dimensions of insurgency necessitate a broader strategy. The Act, while essential, is not a standalone solution. Addressing the root causes of insurgency requires a comprehensive approach that combines military, diplomatic, and developmental efforts. By recalibrating its strategies, India can ensure both the security of its borders and the integration of its northeastern states into the national mainstream. This balance is essential not only for Nagaland's future but also for the broader stability and unity of the Indian state.

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