6.1 The AFSPA Debate

India’s decade long struggle to combat politicized violence in the country, [emphasis added] has created what one observer has termed as ‘chronic crisis of national security’ that has become part of the very ‘essence of (India’s) being’\(^1\). Experts are of the opinion that the AFSPA ‘is a crude recrudescence and revival of British colonial statute and it should not have been re-enacted in the post-colonial scenario’\(^2\). They remarked that while periodic efforts have been made to limit the use of these [security laws in India] laws, the overall trajectory since independence has been to maintain the pattern established by the British\(^3\).

AFSPA came into public debate during 1980s and this debate gained momentum when AFSPA was enforced in Jammu and Kashmir in 1990s. Amnesty International released its first report on AFSPA briefing about ‘Operation Blue Bird’ in 1993, a report on Disappearance, Summary and Extrajudicial Executions in Manipur\(^4\). Resistance against the Act was further heightened due to the 12 year hunger strike by Irom Sharmila since 2000.

As discussed earlier, the Act was challenged before the Supreme Court in 1980 on the ground of its constitutionality, legality and legitimacy. The Court held its first hearing on the petitions only in 1997, after 17 years and passed judgment within months by upholding its constitutional validity in 1997\(^5\) and incorporated an addendum in its judgment, which is a list of ‘Do’s and Don’ts’ while acting
under AFSPA. These guidelines were issued by Army headquarters from time to time. In July 2004, public protest against the Act reached an unprecedented height in Manipur when a female combatant was found dead with wound marks at her pelvic regions within a few hours of her detention by the armed forces, the 17th Assam Rifles.

As a response to the public outcry, the Government of India formed ‘Committee to Review AFSPA’ which was headed by Justice Jeevan Reddy and was assigned to review the Act and suggest recommendations. The report was not made public officially but was leaked to a newspaper, The Hindu in October 2006. The report speaks about the repeal of the Act along with a suggestion of insertion of similar provision in the Unlawful Activities Prevention Act (UAPA, hereafter) as amended in 2004. The Committee in its report observed that ‘the Act for whatever reason has become a symbol of oppression, an object of hate and an instrument of discrimination and highhandedness’.

In 2007, the 2nd Administrative Reforms Commission headed by Verappa Moilly recommended the repeal of the Act as well as making amendment in the UAPA, similar that of the previous Committee. The Act again came before the Supreme Court purview through Masooda Parveen case. In its decision, the Supreme Court undermined its earlier NPMHR ruling by accepting very weak arguments from the Central Government excusing the army’s lack of cooperation with local police forces.

Later in between 2008 and 2013, AFSPA came under scrutiny during UPR processes, country visits and reports of Special Rapporteurs 2011-2012, High Commissioner on Human Rights of UN in 2009, and recently Committee on
Amendment to Criminal Law, headed by former chief justice J.S. Verma (Verma Committee onwards) in 2013 on amendment of criminal laws related to sexual assault.

Observations of different stakeholders on section 4(a) and AFSPA are presented below to have a holistic view.

6.2 Government of India and other state body observations on AFSPA

Since 2004, government took initiative to review the AFSPA and established committees. Jeevan Reddy Committee report, Administrative Reform Commission's 5th report on 'Public order', deals with AFSPA. Reports of these bodies are discussed below.

6.2.i Jeevan Reddy Committee report, 2006

As mentioned earlier, in the wake of the civil uprising and agitation launched by 32 civil society groups in Manipur under the umbrella name 'Apunba Lup' following the death of Manorama Devi on July 11, 2004. Death took place when she was arrested and taken in the custody of the 17th Assam Rifles. The Union Home Minister visited Manipur in September 2004 and Prime Minster visited in November 2004 to review the situation of the state and promised to make the Act 'more humane'. Accordingly the Committee to Review the Armed Forces Special Powers Act (AFSPA), 1958 (Jeevan Reddy Committee) was set up the Government of India on December 8, 2004 to look into the 'legal, constitutional and moral' aspects of AFSPA. The committee was entrusted to review the provisions of the AFSPA and to advise the Govt. of India whether -(a) to amend the provisions of the Act to bring them in consonance with the obligations of the Govt. towards protection of Human Rights; or (b) to replace the
Act by a more humane Act. The report, apart from analysis of the provisions of the AFSPA, contains specific recommendations.

Though the Jeevan Reddy Committee report is into public domain now due to media leakage in 2006, the government is yet to decide whether it will accept its recommendations or not. On August 9, 2011, in a Lok Sabha report, Minister of State Home Affairs, Mullappally Ramachandran informed that no final decision has been taken on these recommendations of Justice Jeevan Reddy Committee in its report submitted on June 6, 2005 recommending repeal of the Act and the suggestion on amending the Unlawful Activities (Prevention) Act, 1967 (UAPA) by inserting a new chapter VI-A in respect of North Eastern States to provide for provisions contained in AFSPA.

The proposed amendments and recommendations of the Committee have drawbacks and lacks precision which are best reflected in Amnesty International analysis of the report. Commenting on the proposed amendment and recommendations of the Reddy Committee, Amnesty International observed that 'if adopted, this recommendation would result in many of the special powers granted to the armed forces under the AFSPA being maintained under the proposed amendment, and the strengthening of the UAPA, which itself already grants governments powers that are either inherently violative of human rights law and standards or else widely open to abuse.'

Witnessing the feeling of alienation and discrimination among the people of north east India, the committee is of the view that a major consequence of the proposed course would erase the feeling of discrimination and alienation among the people of the NES as the amended UAP Act would apply to entire India and...
hence the complaint of discrimination would then no longer be valid\textsuperscript{11}. This recommendation has dangerous consequences what Amnesty termed as ‘the Committee's recommendation to reintroduce some of the powers of the forces currently under the AFSPA in the UAPA would simply transfer draconian powers from one piece of legislation to another and will not change the way those living in regions where the AFSPA is currently implemented feel, since it is highly likely that the UAPA will still be applied more heavily in these areas, resulting in the same ‘feeling of discrimination’\textsuperscript{12}.

Brief analysis of the recommendations is presented here. The Committee recommended that ‘the Armed Forces (Special Powers) Act, 1958 should be repealed. Therefore, recommending the continuation of the present Act, with or without amendments, does not arise’. The Committee also remarked that the Act is too sketchy, too bold and quite inadequate in several particulars and hence [emphasis added] the Act, for whatever reason, has become a symbol of oppression, an object of hate and an instrument of discrimination and highhandedness. The Committee is of the view that ‘it is highly desirable and advisable to repeal this Act altogether, without, of course, losing sight of the overwhelming desire of an overwhelming majority of the region that the Army should remain (though the Act should go) and for that purpose, an appropriate legal mechanism has to be devised’. The Committee is of the opinion that legislative shape must be given to many of the riders contained in clauses 8, 9 and 14 to 21 in para 74 of its judgment (at pages 156 and 157 of the judgment in NPMHR 1997) including the lists of ‘Dos and Don'ts’ in the instructions issued by the Army Headquarters from time to time.
Though the Committee recommended for the repeal of AFSPA but the subsequent recommendations and suggestions raises certain doubts and questions. After observing the AFSPA as 'a symbol of oppression, an object of hate and an instrument of discrimination and highhandedness', the Committee continued list of recommendations and suggested insertion of appropriate provisions in the Unlawful Activities (Prevention) Act, 1967 with a special clause applicable to NES.

Another reason for such a recommendation as pointed out by the Committee is the UAPA is a comprehensive law unlike the AFPSA which deals only with the operations of the armed forces of the Union in a disturbed area. A close examination of the recommendations reveal that the Committee actually talked of transferring the provisions of AFSPA to another legislation and the recommendation of repealing AFSPA is mere symbolic which is termed by a lawyer as 'fake repeal'.

On the deployment of the armed forces, the Committee recommended under its proposed addition to the UAPA, a State Government may request the Central Government to send armed forces of the Union to the state, where it is ‘of the opinion that on account of the terrorist acts or otherwise, a situation has arisen where public order cannot be maintained in the State...’ after the request having been tabled by the state Legislative Assembly for discussion. The Central Government may then deploy such forces.

However, the Central Government may also send troops to a state of its own accord, where it believes that the situation warrants such action... This will have dangerous consequences as the Central Government may deploy armed
forces ignoring the states view and the state may literally come under military rule without a time limit.

Under AFSPA, the armed forces are deployed ‘in aid to civil administration’. But the proposed addition to the UAPA overruled this provision and suggested that, armed forces shall act in aid of civil power and shall, to the extent feasible and practicable, coordinate their operations with the operations of the security forces of the State Government. However, the manner in which such forces shall conduct their operations shall be within the ‘discretion and judgment of such forces’.

This is worrying as there will be no civil administration control or accountability for the operations carried out by the armed forces. The committee also suggested that armed forces can arrest a person but no criminal codes like IPC, Cr.P.C empowered the armed forces to arrest a person. Under AFSPA, armed forces can detain and person and hand over to the nearest police station within least possible delay.

The Committee recommended for creation of a mechanism which is termed as ‘Grievances Cell’ on the ground that aggrieved people find difficulties in accessing information about the family members picked up and detained by armed forces as ‘a large number of cases where those taken away, without warrants have ‘disappeared’, or ended up dead or badly injured’. Hence the suggestion of a ‘mechanism which is transparent, quick and involves authorities from concerned agencies as well as civil society groups to provide information on the whereabouts of missing persons within 24 hours’.
The Committee proposed to set up grievances cells in each district where armed forces are deployed and the duty of these cells will be to receive complaints regarding allegations of missing persons or abuse of law by security/armed forces, make prompt enquiries and furnish information to the complainant. As proposed, the Grievances Cells will be composed of three persons, namely, a senior member of the local administration as its chair, a captain of the armed forces/security forces and a senior member of the local police.

Eminent lawyer Collin Gonsalves commenting on this, said, ‘thus it can be seen that the Grievance Cells are dominated by the Security Forces and the Police and have no power to punish at all. All that they can do is enquire into an allegation and provide information’\(^{16}\). Obviously the grievance cells will not provide independent and impartial inquiry into the complaints on human rights violation since security personnels will dominate in the composition of the cells. Collin Gonsalves again observed, ‘if this Cell is to comprise of the very forces committing the offence, one can hardly expect anything to come out of these enquiries. The promise of compensation and prosecution is therefore illusory\(^{17}\).

What can be concluded from this recommendation is that this mechanism will not address the issues of impunity that the armed forces are enjoying as the role of the cells are limited only to furnish information to the aggrieved. Amnesty International observed that the ‘grievance cell’ has no obligation to pass the complaints, or the findings of their investigation, to anybody with powers to prosecute. The section appended to the proposed chapter states that, ‘if on enquiry, it is found that the allegations are correct, the victim should be suitably
compensated and the necessary sanction for institution of prosecution and/or a suit or other proceeding should be granted under S.6 of the Central Act [AFSPA].

While deploying the forces under sub-section (3) the Central Government shall, by a notification published in the Gazette, specifying the State or the part of the State in which the forces would operate and the period (not exceeding six months) for which the forces shall operate. At the end of the period so specified, the Central Government shall review the situation in consultation with the State Government and check whether the deployment of forces should continue and if it is to continue for which period.

Thus it is clear that the Committee’s report suffers from drawbacks of great concern and cannot stop extrajudicial execution as the recommendation to repeal AFSPA is mere symbolic in the light of the recommendation for amendment of UAPA and other recommendations.

6.2.ii Second Administrative Reforms Commission report

After Jeevan Reddy Committee 2004, second Administrative Reforms Commission headed by Verappa Moily recommended for repeal of AFSPA in 2007 in its 5th report on ‘Public order’. Commission’s observations are similar to that of Jeevan Reddy Committee. The Commission recommended that the Armed Forces (Special Powers) Act, 1958 should be repealed. To provide for an enabling legislation for deployment of Armed Forces of the Union in the North-Eastern states of the country, the Unlawful Activities (Prevention) Act, 1967 should be amended by inserting a new Chapter VI A as recommended by the Committee to Review the Armed Forces (Special Powers) Act, 1958. The new Chapter VI A would apply only to the North-Eastern states.
The Commission also observed that, ‘the problem of militancy in pockets of the North East is obviously very complex’ and ‘the ethnicity, diversity, geography and history of the region demand a comprehensive nation building approach for resolving the complex issues’ to solve the problem [emphasis added]20.

6.2.iii Other observations by states/state bodies


Opinions of different State Governments on AFSPA are reflected in the presentations and submissions by various states before the Jeevan Reddy Committee. Government of Meghalaya is of the opinion that ‘the Act is not enforced in the whole of Meghalaya. However, in order to contain the destructive activities of the ULFA in the neighbouring state of Assam, the Union governments vide notification no. S.O 916 (E) dated 27-11-1990 declared 20 km wide belt in the state of Meghalaya bordering Assam as ‘disturbed area’ under section 3 of AFSPA. The above notification has been extended from time to time by the Government of India after a review of the prevailing situation. Operationally the state of Meghalaya on its own has never enforced the provisions of the AFSPA on any part of the state, not even in the areas declared as ‘disturbed’ area by the Government of India’. In 2011, government of Meghalaya carried out counter insurgency operations in certain parts of Garo Hills and AFSPA was not applied.
Government of Assam in its submission stated that 'the State Govt. feels that the AFSPA continues to be a critical requirement for augmenting counter insurgency operations under the ‘Unified Command’\textsuperscript{21}. Arunachal Pradesh, where the Act is in force in two districts of the state is of the view that ‘the Act should continue so that the Armed Forces, in exercise of powers provided under the Act, can deal with insurgency and maintain law and order’.

6.2.iv National Human Rights Commission

National Human Rights Commission has ordered investigation in several cases of human rights violation by the armed forces and after investigation the Commission recommended for compensation too. In its latest report submitted to the UN Human Right Council for India’s second Universal Periodic Review 2012, the commission observed that ‘the Armed Forces Special Powers Act remains in force in Jammu & Kashmir and the North-Eastern States, conferring an impunity that often leads to the violation of human rights. This, despite the fact that India’s 2011 report on the Optional Protocol to the CRC states that ‘India does not face either international or non-international armed conflict situations’\textsuperscript{22}.

6.2.v India’s National report to UN Human Rights Council under UPR:

India human rights obligation has been judged under UPR\textsuperscript{23} system at UN in 2008 and in 2012. During both the review several countries made interventions and made recommendations that include repeal and review of AFSPA. Enactment of law against torture, ending impunity, protection of women’s rights and child rights were other important recommendations\textsuperscript{24}.

During the second cycle of UPR of India, the national report of Government of India\textsuperscript{25} addressed the concerns regarding AFSPA. the report
responded to the concerns arguing that the constitutionality of this Act was upheld by the highest judicial body in India [in NPMHR 1997] and also has reduced the rigour of its provisions and laid down an elaborate list of ‘Do’s and Don’ts’ for army officials while working in disturbed areas. Government of India claimed that Act is considered necessary to deal with serious terrorist and insurgency/militancy situation arising in certain parts of the country and uphold the duty of the state to protect and secure its citizens by providing necessary powers, legal support and protection to the Armed Forces for carrying out proactive operation against the terrorists in a highly hostile environment and to as long as deployment of armed forces is required to maintain peace and normalcy, AFSPA powers are required. However, it is pertinent to point out that the extension of declaration of ‘disturbed areas’ is a subject matter of periodic review in consultation with the State Government and security agencies.

The reported also claimed that the Army maintains Human Rights Cell in the Army Headquarters established in March 1993 and addresses violations of human rights in a transparent manner and exemplary punishments are meted out to those involved.

About the number of complaints and investigation of allegations of human rights violations, the report pointed out the since January, 1994 until December, 2011, out of 1,429 complaints of human rights excesses received against the personnel of Army and Central Para Military Forces, 1,412 have been investigated and 1,332 found false. In 80 cases, where the complaints were found genuine, stringent punishment has been imposed. 17 cases are under investigation.
On September 20, 2012, India responded to the 168 recommendations forwarded by different countries during the UPR session in May 2012. Out of these 168 recommendations, 67 were accepted; those recommendations dealing with AFSPA were rejected, however, India’s representative mentioned that UPR is a continuous process and ‘administrative and legislative measures had been taken to seek improvement in all aspects of human life’.

6.2.vi Verma Committee report

Committee on Amendment to Criminal Law, headed by former chief justice J.S. Verma (Verma Committee) was formed on December 23, 2012 to suggest amendment for law relating to sexual assault against women. The Committee recommended for review of the AFSPA and recommended amendment to Section 6 of the AFSPA. Committee observed that impunity for systematic or isolated sexual violence in the process of internal security duties is being legitimised by the AFSPA. Hence the recommended that no sanction under section 6 of AFSPA shall be required if the person has been accused of committing an offence under Section 354, Section 354 A, B,C, Section 376 (1), (2), (3), Section 376 A, B,C,D,E of the Indian Penal Code, 1860. Justice Verma Commission has recommended that sexual violence against women by members of the armed forces or uniformed personnel must be brought under the purview of the ordinary criminal law. Special care must be taken to ensure the safety of women, who are complainants and witnesses in cases of sexual assault by armed personnel. The report said, ‘there is an imminent need to review the continuance of AFSPA and AFSPA-like legal protocols in internal conflict areas, as soon as
possible. This is necessary for determining the propriety of resorting to this legislation in the areas concerned\textsuperscript{28}.

However, Government of India promulgated the Ordinance against Sexual Assault 2013 on February 3, 2013 rejecting the above recommendation forwarded by the Verma Commission\textsuperscript{29}.

6.2.vii Planning Commission

The Planning Commission has recommended in its 12th Five Year Plan document that the Twelfth plan will initiate review of the Armed Forces Special Powers Act (AFSPA) using a gender lens\textsuperscript{30}. Documentation of the gendered dimension of violations and needs assessment of women in disturbed areas presently under AFSPA will be done as per the 12\textsuperscript{th} plan\textsuperscript{31}.

6.3 Observations of Armed Forces and security personnel on AFSPA

Chief of Army Staff General V.K. Singh on Monday came out against any "selective withdrawal or modification" of the Armed Forces (Special Powers) Act. The Act enabled the armed forces to retain operational flexibility and disallow space to terrorists. "If the situation is stable in a particular area, the Army may restrict operations in such an area as has been the case in Srinagar district. However, it is important to retain the operational flexibility, so that islands of terrorist activities do not emerge. The removal or dilution of this 'enabling legal provision' is, therefore, not recommended," Gen. Singh informed the media\textsuperscript{32}.

According to DG, CRPF, New Delhi 'the Cr.P.C. provides limited authority to the security forces and if AFSPA was withdrawn the security forces would not be able to put up the desired resistance due to fear of personal victimization'. He express his opinion before the Reddy Committee in New Delhi.
on 21.1.2005 informing that the AFSPA had got inbuilt cautionary measures against its misuse by the security forces besides ‘Do’s & Don’t’ laid down by the Supreme Court of India.

Field examination shows that ‘Do’s and Don’ts’ guidelines remained cosmetic and never proved effective as evident from the field report presented in Chapter IV. The armed forces have opposed any change in the current AFSPA citing reason that any change would have ‘disastrous consequences’ on the fight against secessionism and insurgency. They also rejected the view that AFSPA provides unbridled powers to the soldiers.

Former IAF chief Naik is of the opinion that ‘a soldier fighting anywhere at the request of the government and not voluntarily, must have legal protection. Otherwise he would be left inefficient to complete the job in which either the central or the State Government has interest’. Ex-Assam Rifle chief Lt. Gen. Yadava said that, ‘the AFSPA is a vital shield for armed forces battling insurgents. He said, ‘it is up to the state and centre to enforce or repeal or modify the Act, but I want to make it clear that it is the state and centre which empower us with this legislation and AFSPA has been politicized to a large extent’. He also believes that the AFSPA gives the armed forces legal immunity for what they do, was an enabling law and not an arbitrary one.

Assam Rifles DG Lt Gen Rameshwar Roy is of the view that, ‘if there is a repeal or dilution in the controversial Armed Forces (Special Powers) Act (AFSPA), security forces will need some kind of powers as they don’t have any administrative backup’. He believes that ‘no arbitrary power is given to anybody by this Act and insurgents were ‘finding courage’ to operate from those places in
Imphal where the AFSPA is not applicable. He mentioned about the powers vested with Assam Rifles under the Cr.P.C. and AFSPA. He justified the retention of AFSPA as it was difficult for the Armed Forces to work without any legal protection. He felt that the words in Section 4(a) 'to the extent of causing death' could be omitted and the name of the Act may be changed to make it more acceptable and the guidelines given by the Supreme Court could also be included in the new legislation. According to the presentation made by Rajiv Agarwal, Joint Secretary/NE, M.H.A, New Delhi before the Reddy Committee he mentioned that provisions under Cr.P.C. are not sufficient to deal with the situation requiring use of armed forces in aid of civil power.

Intelligence Bureau (IB) revealed in media that extrajudicial executions took place in Assam in 2011. The former Special Director of the IB said that the AFSPA virtually dilutes the accountability of the laws of the land and the extrajudicial killings have increased. He said that according to records available, in the last three years, the killings by militants have come down but extrajudicial killings have increased. He pointed out that withdrawal of the AFSPA is vital for restoration of normalcy in the North East region and that is why the IB had opposed the extension of the Act for one more year in Assam, as he believes that the situation in the state improved considerably.

6.4 Reports of violations and civil society observations

There have been reports of violations of human rights under AFSPA and casualties are often reported in media and various government and non-government reports. Available statistics on the casualties are as follows:
Table 1: Insurgency-related gun killings in North East India, 2002–2010

<table>
<thead>
<tr>
<th>Year</th>
<th>Assam</th>
<th>Manipur</th>
<th>Tripura</th>
<th>Nagaland</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>445</td>
<td>190</td>
<td>175</td>
<td>36</td>
</tr>
<tr>
<td>2003</td>
<td>505</td>
<td>198</td>
<td>295</td>
<td>37</td>
</tr>
<tr>
<td>2004</td>
<td>354</td>
<td>218</td>
<td>167</td>
<td>58</td>
</tr>
<tr>
<td>2005</td>
<td>242</td>
<td>331</td>
<td>73</td>
<td>40</td>
</tr>
<tr>
<td>2006</td>
<td>174</td>
<td>285</td>
<td>60</td>
<td>92</td>
</tr>
<tr>
<td>2007</td>
<td>201</td>
<td>125</td>
<td>15</td>
<td>59</td>
</tr>
<tr>
<td>2008</td>
<td>370</td>
<td>485</td>
<td>28</td>
<td>145</td>
</tr>
<tr>
<td>2009</td>
<td>391</td>
<td>416</td>
<td>11</td>
<td>18</td>
</tr>
<tr>
<td>2010</td>
<td>130</td>
<td>121</td>
<td>03</td>
<td>03</td>
</tr>
<tr>
<td>TOTAL</td>
<td>2,812</td>
<td>2,369</td>
<td>827</td>
<td>488</td>
</tr>
</tbody>
</table>

Table 2: Security situation in North Eastern States during the period 2006 to 2010

<table>
<thead>
<tr>
<th>Year</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incidents</td>
<td>1366</td>
<td>1489</td>
<td>1561</td>
<td>1297</td>
<td>773</td>
</tr>
<tr>
<td>Extremists arrested/killed/surrendered</td>
<td>3231</td>
<td>2875</td>
<td>4318</td>
<td>3842</td>
<td>3306</td>
</tr>
<tr>
<td>SFs killed</td>
<td>76</td>
<td>79</td>
<td>46</td>
<td>42</td>
<td>20</td>
</tr>
<tr>
<td>Civilians killed</td>
<td>309</td>
<td>498</td>
<td>466</td>
<td>264</td>
<td>94</td>
</tr>
</tbody>
</table>
AFSPA has been contested by the civil society and legal experts mainly on two points that is use of power to ‘the extent of causing death’ under section 4(a) and requirement of ‘prior sanction for legal proceedings’ under section 6 of AFSPA. Civil society has reported extensively about the abuse of power and human rights violation committed by the armed forces using the AFSPA. These reports reflect systematic extrajudicial executions carried by the armed forces with full immunity.

Civil society resistance against AFSPA began since its enforcement and gained momentum 1970s when India became party to international human rights covenants like ICCPR. Naga Peoples Movement for Human Rights (NPMHR) is one such Civil Rights Movement in Nagaland which was formed in 1978 to respond to the reports of human rights violations committed by the armed forces. Similarly, in the context of the North East India, several organizations came into being like North East Coordination Committee on Human Rights (NECOHR). When Oinam incident took place in 1987, Civil Rights groups of Manipur came together and formed the Coordination Committee on Oinam Issue (COCOI). Likewise in the backdrop of heightened violence in Imphal valley in the 70s and 80s, various likeminded people from different background came together to take up human rights issues under the banner of Civil Liberties and Human Rights Organisations (CLAHRO). There was also another umbrella organisation called the Coordination Committee on Human Rights (COHR) consisting of various communities of Manipur, like Kukis, Meiteis and Nagas etc. and jointly defended the civil population of Manipur from the excessiveness of the Security forces. Human Rights Alert (HRA) and others like Apunba Lup came into being in
Manipur. Women’s groups called Meira Paibis (meaning Torch Bearers) were active in responding to human rights violations since 1980s.

People’s Committee for Human Rights and Civil Liberties was formed in Assam in 1977 in order to provide legal aid to those who were held under Preventive Detention Act. This organization became non-functional after the election in 1979 but then Citizen’s Civil Liberties Association (CCLA) came into being in the same year. In 1984, People’s Union for Civil Liberties (PUCL) Assam branch was established and together with CCLA started responding against the atrocities committed by the security forces and police. Manab Adhikar Sangram Samiti (MASS) was formed in 1990s in Assam and responded to incidents of human rights violations. On December 10, 1995, 12 human rights organizations from all over north east India formed North East Coordination Committee of Human Rights (NECCHR).

Observations by the prominent civil society organizations working on human rights are reproduced below.

South Asia Human Rights Documentation Centre (SAHRDC), a Delhi based organisation observed that Articles 32 and 226 of the Constitution [Indian constitution] empower the Supreme Court and High Courts respectively to direct compensation for fundamental rights violations committed by government officials. However, the Supreme Court has significantly restricted the ability of victims or their families to obtain compensation, and has essentially prevented individuals from suing the state or Central Governments in tort for abuses committed by police or security forces (N. Nagendra Rao vs. State of AP, 1994 AIR 2663). Criticizing the AFSPA 1958 as the license to shoot and kill and
citizen merely on suspicion, SAHRDC observes, ‘these provisions give a broad license to extrajudicially execute innocent and suspected persons under the disguise of maintaining law and order. It violates every norm of civilized society’.

Human Rights Watch (HRW) a prominent international human rights organization observed that ‘This culture of impunity, fostered both by a lack of political will and by laws shielding the perpetrators, has led to an atmosphere where security forces believe they can get away with the most serious crimes without the threat of punishment’. HRW is of the opinion that ‘the problems are systemic and require systemic changes in law, policy, and practice’.

Asian Centre for Human Rights (ACHR), in its representation before the Jeevan Reddy committee hearing stated that ‘the AFSPA unlike many other draconian laws such as the Unlawful Activities (Prevention) Act of 1967, doesn’t define any crime’. ACHR argued that AFSPA gives special powers to the armed forces to be the judge and jury and take measures which amount to awarding heavier penalty including taking away the right to life as the Cr.P.C nowhere gives the power to shoot even to the causing death but stresses on ‘as little force and as little injury to person and property’ to disperse an unlawful assembly. Also under section 143 of the IPC, ‘a member of an unlawful assembly shall be punished with imprisonment of wither description for a term which may extend to six months or with fine or with both’. ACHR is of the opinion that under section 4 (a) of AFSPA non-commissioned officers can make their own judgment about such an ‘unlawful assembly’ and take measures including to shoot even to the causing of death – a heavier penalty by any yardstick. ACHR is of the opinion
that 'the AFSPA has not been able to resolve a single insurgency problem since its adoption in 1958. When the AFSPA was imposed in Manipur in 1980, there were four armed opposition groups. Today, there are over two dozen armed opposition groups.\textsuperscript{50}

World Organisation Against Torture (OMCT) in its report on India under UPR in 2007 reported that during the parliamentary session held from July 24 to August 25, 2006, the \textit{Lok Sabha} (lower chamber of Parliament), followed by the \textit{Rajya Sabha} (Council of States), amended the 1993 Protection of Human Rights Act (PHRA) that set up the Indian National Human Rights Commission (NHRC). Unfortunately, while the National Human Rights Commission (NHRC) is now able to visit prisons without prior announcement, it is still not allowed to visit detention places used by the army and the paramilitary forces, or to investigate the existence of illegal detention places in states such as Jammu and Kashmir. In this regard, impunity of officials and members of the security forces perpetrating human rights violations remains a critical issue.\textsuperscript{51}

Amnesty International, prime international human rights watch dog, has often reported about the abuses carried out under AFSPA. Amnesty brought out an extensive documentation and report on human rights abuses in Oinam Massacre\textsuperscript{1987} and since then it has constantly urged the Government of India to repeal AFSPA. In a report published by Amnesty after the leakage of the Reddy Committee report in 2006\textsuperscript{52}, Amnesty appealed for the repeal of AFSPA and urged to take measures to protect the civilian population from violent crimes, including acts committed by armed groups, and prosecute those responsible for such attacks within the framework of criminal law and in conformity with
international human rights law and standards; to ensure that law enforcement personnel, including armed forces deployed for law enforcement purposes, respect the standards set out in the UN Code of Conduct for Law Enforcement Officials, and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials; to amend Section 19 of the Protection of Human Rights Act which prohibits the NHRC and state Human Rights Commissions from independently investigating allegations of human rights violations by members of the armed or paramilitary forces.

In June 2005, Amnesty launched a campaign to repeal AFSPA stating that ‘the AFSPA’s provisions enable security forces to arrest people without warrant and to shoot to kill even in circumstances where they are not at imminent risk’. The campaign noted that ‘the AFSPA has facilitated grave human rights abuses, including extrajudicial execution, disappearance, rape and torture...Between 1992 and 2004 a reported 12,000 civilians have died in northeastern India as a result of such violence. And in Jammu and Kashmir, it is widely believed that some 40,000 people have died since the rise of militancy in 1989’.

In its submission to the Human Rights Council for second cycle of universal periodic review of India in 2012, Amnesty International repeated the same concerns that the AFSPA granted security forces, in specified areas of armed insurgency, powers to shoot to kill in situations where they were not necessarily at imminent risk.

Working Group on Human Rights in India and UN (WGHR) stated that enforced disappearances and extrajudicial killings remained entrenched in conflict areas, reinforced by extraordinary powers of arrest, detention and immunity.
available to the security forces\textsuperscript{55}. In Manipur, 789 extrajudicial executions were documented between 2007 and 2010\textsuperscript{56}.

6.5 Observation of International Treaty Bodies on AFSPA

The international treaty bodies established under different UN treaties where Government of India is a party reviewed the AFSPA and expressed their concerns over the dependence of this law for decades. These bodies are CERD Committee (May 2007) CEDAW Committee (February 2007 and February 2004), Human Rights Committee recommendations (August 1997).\textsuperscript{57}

The HR Committee, CEDAW and CERD raised particular concerns about the AFSPA at the UN in 2007. CERD and CEDAW also referred to the report of the Committee to Review the Armed Forces (Special Powers) Act (1958) or Jeevan Reddy Committee set up by the Ministry of Home Affairs, which recommended the repeal of this Act\textsuperscript{58}.

As already pointed out earlier, Human Rights Committee\textsuperscript{59}, the monitoring body under ICCPR, 1977 while reviewing Government of India’s third periodic report regretted that ‘some parts of India have remained subject to declaration as disturbed areas over many years- for example, the AFSPA has been applied throughout Manipur since 1980 and in some areas of that state for much longer and that, in these areas, the State party is in effect using emergency powers without resorting to article 4, paragraph 3, of the Covenant\textsuperscript{60}.

The HR Committee remained concerned at the continuing reliance on special powers under legislation such as the AFSPA, the Public Safety Act and the National Security Act in areas declared to be disturbed and resulted serious human rights violations, in particular with respect to articles 6, 7, 9 and 14 of the
Covenant, committed by security and armed forces acting under these laws as well as by paramilitary and insurgent groups. It emphasized that terrorism should be fought with means that are compatible with the Covenant.61

The HR Committee expressed concern about the incidence of custodial deaths, rape and torture. The Committee recommended that the application of these emergency powers be closely monitored so as to ensure its strict compliance with the provisions of the Covenant. The Committee endorsed the views of the National Human Rights Commission that the problems in areas affected by terrorism and armed insurgency are essentially political in character and that the approach for resolving such problems must also, essentially be political and terrorism should be fought with means that are compatible with the Covenant62.

When hearing India’s second report on its adherence to the ICCPR, the United Nations Human Rights Committee held that the AFSPA (and other special legislation in force in India) effectively derogated from the right to life and other rights in the Covenant. A member of the committee said, ‘these laws greatly concern me because when we give a person powers and for very subjective reasons powers to be able to deny the lives of citizens that is far too much power. I think it is excessive, particularly when that person is immune and can act with impunity because he or she will not be punished. I am convinced that these laws are contrary to Article 6 of the Covenant63.

The Committee under Convention on Elimination of Racial Discrimination 1965, in its report dated May 5, 200764, noted with concern that the State party has not implemented the recommendations of the Committee to Review the AFSPA to
repeal the Act. The Committee urged the State party to repeal the AFSPA and to replace it by a more humane Act in accordance with the recommendations contained in the 2005 report of the above Review Committee. It also requests the State party to release the report.

The Committee under Convention on Elimination of all forms of Discrimination Against Women, 1979, in its observation on the Government of India’s 2nd and third periodic report, requested the State party to provide information on the steps being taken to abolish or reform the AFSPA and to ensure that investigation and prosecution of acts of violence against women by the military in disturbed areas and during detention or arrest.

In 2004, Committee on Rights of Child (CRC) expressed concern that the situation in areas of conflict, particularly Jammu and Kashmir and the northeastern States, has seriously affected children. The Committee recommended that India ensure impartial and thorough investigations in cases of rights violations against children and the prompt prosecution of those responsible, and provide just and adequate reparation to the victims.

Towards the end of 2006, the UN Working Group on Enforced or Involuntary Disappearances noted that there were 325 outstanding cases of disappearances and that most of the cases reported occurred between 1983 and 2004, in the context of ethnic and religious disturbance in the Punjab and Kashmir regions. The disappearances allegedly relate to wide powers granted to the security forces under emergency legislation. India has signed the International Convention for the Protection of All Persons from Enforced Disappearance and yet to ratify.
It is alleged that the UN Human Rights Commission was kept in the dark on the actual situation in the NES by the Government of India, despite repeated official requests from Leandro Despouy, the then UN Special Rapporteur on States of Emergencies, who was conducting a study for the Commission. However, NGOs have filled in the information gap to some extent. Other Thematic Special Rapporteurs and the Working Groups of the Commission have, of late, started commenting on the issue.

Bacre Waly Ndiaye, former Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, reported, ‘the Special Rapporteur’s attention was particularly drawn to the reports indicating existence of a pattern of killings in the State of Manipur. Civilians, including women and children, as well as suspected members of armed opposition groups are reportedly killed by members of the armed forces, many of them allegedly deliberately and arbitrarily. The AFSPA reportedly gives them widespread powers to shoot to kill and protect them from prosecution for any acts carried out under its provisions. The situation is further aggravated by the restrictions placed on access to the region by the Government. The result of this policy is a climate in which security forces are able to use excessive force with impunity’…

European Parliament adopted a resolution on violence against women in India on January 16, 2013 and has called on the Indian Parliament to ensure that the Criminal Law (Amendment) Bill 2012 is amended to criminalise all forms of sexual assault, both penetrative and non-penetrative, ensuring that any new punishments are in accordance with international human rights law, and to amend the law so as to remove legal immunity and procedural barriers when police or
other security forces are accused of sexual assault or other human rights violations\textsuperscript{69}.

\textbf{6.6 Observation of individuals on AFSPA}

Navanethem Pillay, UN High Commissioner for Human Rights appealed Government of India to abolish AFSPA during her visit to India in March 2009\textsuperscript{70}. On March 23, 2009, she urged India to repeal the AFSPA. She termed the law as ‘dated and colonial-era law that breach contemporary international human rights standards’\textsuperscript{71}.

The UN Special Rapporteur on Extrajudicial, Arbitrary and Summary Execution, Philip Alston in his report\textsuperscript{72} to the Commission on Human Rights dated March 27, 2006 expressed concern over AFSPA on the ground that it violates non-derogable provisions of international human rights law as AFSPA empowers security forces not only to arrest and enter property without warrant but also gives them power to shoot to kill in circumstances where members of the security forces are not necessarily at imminent risk.

In March 2012, UN Special Rapporteur on Extrajudicial, Arbitrary and Summary Execution, Christof Heyns, on invitation by Government of India visited India on a fact finding mission on the situation of extrajudicial executions in India and observed,\textsuperscript{73} ‘the challenges with respect to the protection of the right to life in the country are still considerable’. He further observed that the evidence gathered [during his visit] confirmed the use of so-called ‘fake encounters’ in certain parts of the country. Where this happens, a scene of a shoot-out is created, in which people who have been targeted are projected as the aggressors who shot at the police and were then killed in self-defense.
He added, 'moreover, in the north-eastern states, and Jammu and Kashmir, the armed forces have wide powers to employ lethal force'. He called for the establishment of a commission of inquiry, consisting of respected lawyers and other community leaders, to further investigate all aspects of extrajudicial executions, as a first step to addressing concerns. He also recommended the immediate repeal of the laws providing for immunity from prosecution of the police and the armed forces, as well as the ratification of a number of international treaties, including those related to torture and enforced disappearance. The full report of his visit will be submitted to the UN Human Rights Council in 2013.

R.S Mushahary, the governor of Meghalaya and former chief of NSG and BSF is of the opinion that AFSPA is irrelevant, ineffective and must be repealed. He believes that 'the prolonged use of the Act has made it ineffective. There have been abuses of the Act and it will continue. If it is removed, I think the situation would not worsen, in fact it will improve'. He suggested that the citizens must not be alienated and their involvement is required for solving insurgency more effectively and police needs to be strengthened and reliance on the armed forces must be reduced for greater cooperation with the citizens in fighting insurgency.

Prof. Naorem Sanajaoba, a human rights defender was of the opinion that, 'the problems of northeast have been misconceived as 'law and order’ problems when in fact they are a consequence of unresolved political questions. And like addicts dependent on a drug, the state and security forces have become so conditioned by their dependency on this unproclaimed emergency law that they feel deeply vulnerable without it.'
Sanjib Baruah, Professor of political science and writer on issues pertaining to north east India, wrote in his essay, 'AFSPA: legacy of colonial constitutionalism' observed, 'While our political class has made its peace with this legacy, those who have lived under the AFSPA have put up a formidable challenge. In many parts of Northeast India, as the Jeevan Reddy Committee discovered, the AFSPA has become 'a symbol of oppression, an object of hate and an instrument of discrimination and highhandedness.' These attitudes towards a law that is a remnant of 'the nastier aspects of late British imperialism' among those who have had the misfortune of living under it would not have surprised our freedom fighters'. In his opinion, 'the AFSPA permits a localized form of indefinite emergency rule; but since it is not called that it is not subjected to the limits that democratic constitutionalism seeks to impose on emergencies. The AFSPA has a legacy of the 'routinised use of constitutional, emergency-like executive authority'.'

Sanjoy Hazarika, a member of the Jeevan Reddy committee, made a personal note along with the report of the Reddy Committee report. According to him the gains of the law are extremely moot; its negative impacts have been overwhelming. He believes that many of the security problems of the region can be tackled by local police and commando forces, with the assistance of the armed forces where essential, but the dependence of the states on the army must be reduced to the minimum and armed forces should be deployed only as a last resort.

He also observed from the numerous representations from the public as well as from the army, paramilitary and police have informed the Committee that...
political problems must be addressed politically and not militarily and these must include the processes of development of participative planning, involving local traditional groups in the role of self-governance, instead of sheltering behind the army and other forces. On the issues of immunity of armed forces, Sanjoy Hazarika, said that no one is above the law, and hence everyone should be treated as per the law of the land. Though Supreme Court upheld it validity in 1997, it’s an unjust law and hence unacceptable even if it is constitutionally valid as per the 1997 judgment.81

Prasant N Choudhury, the then Advocate/Additional Central Govt. Standing Counsel, Guwahati High Court, made a presentation before the Committee recommending dilution in the Act such as (i) it should not conflict with constitutional provisions and special laws in force, (ii) Armed Forces be given pre-induction training, (Hi) the local strengthening of intelligence net-work and (iv) the power of arrest should vest with the officer of the rank of the Captain of the Army or Dy. Commandant of the Central Police Organisation. Absolute immunity provided under Section 6 should be diluted and sanction should be granted by the Joint Secretary of Home. Ministry/Finance Ministry as is done in Northern Ireland in terms of Northern Ireland (Emergency Provisions) Act, 1996.

Anil Kamboj, a commentator from Institute for Defence Studies and Analysis (IDSA), is of the view that special powers [under AFSPA] are essential as every country dealing with insurgency or with terrorism has its own laws and legislations to tackle the menace. Likewise, India has laws to fight insurgency and terrorism, and has given legal powers to armed forces operating in ‘disturbed’ areas under AFSPA 1958. He is of the opinion that while exercising powers under
Section 4(a), the armed forces should use minimum force required for effective action. This force is to be used against armed militants and since overall, the situation in Manipur is alarming and to counter this, the armed forces operating in the state require special powers to support them. He concluded that ‘You cannot tie both hands of the security forces and then ask them to fight armed militants’ and ‘the law is not defective, but it is its implementation that has to be managed properly’.

Siddarth Vadrajan, an eminent journalist and editor in chief of the newspaper The Hindu observed, ‘a civilized society expects that the use of deadly force by the Army must at all times be lawful, necessary and proportionate. Here, the Act suffers from two infirmities: the requirement of prior sanction for prosecution contained in Section 6 often comes in the way when questions arise about the lawfulness of particular actions. Second, AFSPA does not distinguish between a peaceful gathering of five or more persons (even if held in contravention of Section 144 of the Criminal Procedure Code and a violent mob. Firing upon the latter may sometimes be justified by necessity; shooting into a peaceful assembly would surely fail any test of reasonableness’. He, however, also noted that ‘the shooting of an unarmed individual, and the killing of a person in custody, are not acts that are permissible under AFSPA. Force is allowed in order to arrest a suspect but the fact that the Act authorises the use of ‘necessary’ rather than ‘deadly’ force in such a circumstance means the tests of necessity and proportionality must be met.’

Colonel (retd) Anil Bhat is of the opinion that ‘the proposed amendments to the AFSPA will greatly reduce the effectiveness in counter-insurgency and
counter-terrorism operations. If battalion, company and platoon commanders of units engaged, who have been fearlessly leading from the front in such operations, start becoming apprehensive about being legally proceeded against for killing terrorists—mostly externally instigated supported, then we will lose the valuable cutting edge.\textsuperscript{166} He believes that the various powers available to the police under the provisions of the CrPC vis-a-vis those available to Armed Forces under AFSPA would reveal that the police still enjoy more encompassing and wider powers relating to arrest, search, seizure, summoning of witnesses, preventive detention etc than the Armed Forces. According to him adequate checks and safeguards are built in the AFSPA to prevent the Armed Forces from assuming sweeping powers as violations of its provisions are liable for legal action/prosecution and 'Do's and Don'ts' issued by the Army, duly approved by the Supreme Court are binding on all ranks.

Rajat Rana, of IPCS, pointed out the issue of 'indifference' towards AFSPA as the Judiciary in NPMHR 1997 failed to take note of the documentary evidence. He wrote, 'the 'indifference' further resonates in the judgment of the Apex Court in 1997- Naga People's Movement, of Human Rights v. Union of India in which the constitutionality of the AFSPA was challenged. During hearing, the court did not entertain any documentary evidence of individual cases for illustration of the true picture.\textsuperscript{187} The North East accounts for a major share of the complaints against army and para-military forces, 17.5 percent in 2003 and 22.5 percent in 2004 (National Human Rights Commission Report). Further, while complaints against army and para military forces constitute a negligibly small fraction, less than 0.5% of the total number of complaints in the country as a
whole, they are sizeable in the Northeastern states. Unfortunately, the court did not look at any documentary evidence, and was completely oblivious towards India's obligations under international law. While the court has actively endorsed customary international law and went ahead with trend-setting judicial legislation in a sexual harassment case, it did not discuss international law anywhere in its judgment, which was in disregard of India's obligation under the international law.

The UN Human Rights Commission made a specific request to examine the compatibility of the provisions of the AFSPA with the ICCPR, when the Supreme Court of India examined the constitutionality of the AFSPA. This was brought to the notice of the court, but this did not find any mention in the judgment.

Capt (Retd) spoke of FASPA syndrome. He said that AFSPA couldn’t simply be removed without addressing the related, causal issue of FASPA—‘Freedom to Assume Special Powers with Arms’ [which is used by the outfits]. This freedom is now being extensively exercised in the North East and Manipur. The result of such freedom is that the 60-armed outfits are now operating in the North East and Manipur claims the highest share of 30 of such organizations. In consequence we experience groups assuming special powers of taxation arrest/kidnap/ransom awarding and executing death sentence. These twin issues, he says, need to be addressed simultaneously. Failure to address these issues while insisting on immediate/unconditional removal of AFSPA will mean failure in fulfilling citizen and government responsibility. He also has reported that there is an average of one suicide per week in Assam rifle alone because of the stress and strain of the duties of the armed forces.
Former Defence Minister Pranab Mukherjee has rejected the withdrawal or significant dilution of AFSPA on the ground that ‘it is not possible for the armed forces to function’ in the absence of its enabling provisions. The presence or absence of AFSPA has little to do with human rights abuses. The National Human Rights Commission data for 2001-2002 custodial deaths occurred in Uttar Pradesh (186), Maharashtra (1460), Bihar (144) and Andhra Pradesh (95), none of which were under the AFSPA. Manipur saw no custodial deaths in 2001-2002.

Absent the AFSPA or a comparable legislation, which confers necessary powers of search, seizure, arrest and engages the Army cannot carry out counter-insurgency operations under law. It is also further argued that the Supreme Court has upheld constitutionality of AFSPA and its various provisions in 1997 and most of the misconceptions relating to the AFSPA would be cleared on a reading of the judgment. The Supreme Court notes that this power is not very different from the power, which has been conferred on a police officer under section 41 Cr.P.C. Moreover, section 5 of the AFSPA puts a rider to this power, requiring that any person arrested ‘be made over to the officer in charge of the nearest police station with the least possibility’.

A researcher observed that ‘in the Indrajit Barua case, the Delhi High Court found that the state has the duty to assure the protection of rights under Article 21 to the largest number of people. Couched in the rhetoric of the need to protect the "greater good", it is clear that the Court did not feel that Article 21 is a fundamental right for the people of Assam’. He further interpreted that the Court stated, "If to save hundred lives one life is put in peril or if a law ensures and protects the greater social interest then such law will be a wholesome and
beneficial law although it may infringe the liberty of some individuals." This directly contradicts Article 14 of the Indian Constitution which guarantees equality before the law. This article guarantees that 'the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.' The AFSPA is in place in limited parts of India. Since the people residing in areas declared 'disturbed' are denied the protection of the right to life, denied the protections of the Criminal Procedure Code and prohibited from seeking judicial redress, they are also denied equality before the law.

Wajahat Habibullah, Chairperson of National Commission on Minorities, said the Armed Forces (Special Powers) Act was 'against democracy and Constitution' and its 'loopholes' should be removed after discussions with the Army if the law cannot be withdrawn from troubled areas.

6.7 To Sum up

While Supreme Court upheld the validity of the Act in 1997, the subsequent reviews by various authorized bodies like Jeevan Reddy Committee and Administrative Reform Commission run contrary. These bodies recommended repeal of AFSPA. While armed forces are of the view that their capacity to deal with insurgency will be handicapped if their legal protective shield [read AFSPA] is withdrawn. Civil society and organizations working on the human rights issues in north east India is constantly are reporting of human rights violations by the armed forces in the name of countering insurgency.

The process of investigation and prosecution for extrajudicial executions and other violations under AFSPA remained rare, slow and delayed due to various reasons including lack of political will and technicalities under section 6 of the
Act. This delay resulted into immunity for human rights violations and thus denied justice to the citizens. The situation proved favourable for the armed opposition groups as the ‘AFSPA has become an instrument for the insurgent outfits to derive legitimacy and sympathy for their very existence and ironically AFSPA serves the interests of the secessionist outfits of the perpetuation of the current protest movement only enhances their survival.\textsuperscript{98}

Several UN bodies criticized the deployment of armed forces under AFSPA and termed the Act as a species of emergency law without resorting to the state party’s obligation under article 4 of ICCPR. Enforcement of AFSPA is continuous for last 54 years while the intention of the legislators while passing the Act was for the application of the Act for a year only. Prolonged imposition resulted into alienation and a feeling of discrimination among the people of north east India as observed by the Jeevan Reddy committee. The universal periodic review carried out under the UN Human Rights Council since 2007 depicts India’s poor commitment towards its human rights obligations.\textsuperscript{99} As discussed most of the UN human rights bodies and special rapporteurs recommended the repeal of AFSPA on the ground of its compatibility with the international human rights standards set out by treaties like ICCPR.

In 1997 when the United Nations Human Rights Committee questioned the Attorney General of India to explain the constitutionality and validity of the AFSPA in terms of Indian constitutional law and international human rights law like ICCPR, he defended it on the sole ground that it was necessary in order to prevent the secession of the northeastern states. The Indian government, he
argued, had a duty to protect the states from internal disturbances as per article 355 and that there was no duty under international law to allow secession.\textsuperscript{100}

As discussed earlier, Human Rights Forum filed a writ petition before the Supreme Court on 10 October, 1980, challenging the constitutional validity of the AFSPA and the Supreme Court clearly held its first hearing in 1997, after 17 years of filing the petition. This prolonged delay in holding the hearing process in the Supreme Court created a feeling of denial of justice. Moreover Supreme Court relied on international convention like CEDAW in delivering its judgment in Vishakha vs. State of Rajasthan\textsuperscript{101} where Supreme Court has issued detailed guidelines to combat sexual harassment at workplace in 1997. On the other hand, in the same year the Supreme Court didn't refer to section 4 of ICCPR while delivering the judgment of NPMHR 1997 in the same year.

Another general public opinion on AFSPA is that it has become counter-productive and that the problem of insurgency cannot be solved through military means alone. General observation is that there were only seven active armed opposition groups in 1958 while in 2011, the number is grown to seventy groups in North East India and it signifies the failure of AFSPA\textsuperscript{102}. That's why scholars criticize AFSPA citing that 'behind the continued enforcement of the AFSPA is nothing else but to systematically execute the policy of genocide in Manipur and other North Eastern states for achieving complete extermination of the indigenous people from the land of their birth.'\textsuperscript{103}

Considering the wide spectrum of views on AFSPA, it can be rightly concluded stake holders like state reviews committees and other similar working groups, international human rights bodies, national human rights commission,
human rights organizations and several eminent individuals are in the favour of repeal of the Act in a sharp contrast to the perceptions of armed forces and security personnels. India is a democracy where people's rule is the supreme and is exercised through parliamentary democracy. As discussed earlier, Indian constitution ruled out army rule in the country. Hence, opinion expressed by armed forces has little relevance and hence deserve to be ignored.
Notes and References

1 Kalhan, Anil, et.al, Colonial Continuities, supra

2 Sanajaoba, Naorem, Revisiting Reddy Committee report, supra

3 Colonial Continuities, op.cit

4 Amnesty International, Operation Bluebird: A Case Study of Torture and Extrajudicial Executions in Manipur (AI INDEX: ASA 20/17/90), 1993

5 See NPMHR, 1997

6 Masooda Parveen vs. Union of India & Others, AIR 2007 SC 1840

7 SAHRDC, Masooda Parveen: Judicial Review of India's Special Security Laws Goes from Bad to Worse, 2007, supra

8 Leaked to media in 2006 and is available at www.thehindu.com, supra


10 Amnesty International, India briefing, supra

11 Jeevan Reddy Committee report, supra

12 India Briefing, op.cit

13 This legislation was amended in 2009 after terrorist attack in Mumbai 2008.

Draft Ch. VI, sec. 40 A(1)(a), sec. 40 A(2), sec. 40 A(3) annexed to the Reddy Committee report.

Colin Gonsalves, *The Fake Repeal of AFSPA*, *supra*

*ibid*

Amnesty International, *India Briefing*, *supra*

5th report of Administration Reform Commission, *supra*

*ibid, Page 15 of the report*

Commissioner & Secretary to the Govt. of Assam (Home and Political Department).


The Universal Periodic Review (UPR) is a unique process which involves a review of the human rights records of all UN Member States. The UPR is a State-driven process, under the auspices of the Human Rights Council, which provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfill their human rights obligations. More information available at http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx as on January 25, 2013

The review of India was held at the 8th meeting on 24 May 2012. The delegation of India was headed by Goolam E. Vahanvati, Attorney General of India. At its 13th meeting, held on 30 May 2012, the Working Group adopted the


26 India Rejects UN Bodies call to review the draconian Act, available at http://www.pakistankakhudahafiz.com/2012/12/11/india-rejects-un-bodys-call-for-review-on-draconian-military-law%E2%80%8F/#.UQ89BOSyA1p, as on January 20, 2013.


29 Times of India, Pranab Mukherjee signs ordinance on sexual assault, changed law comes into force, available at

30 Kalyan Barooah, Justice Verma puts focus back on AFSPA repeal, The Assam Tribune, January 25, 2013

31 ibid


35 CNN-IBN news, Forces need power if AFSPA repealed or diluted: Assam Rifles, available at http://ibnlive.in.com/generalnewsfeed/news/forces-need-power-if-afspa-repealed-or-diluted-assam-rifles/666792.html as on September 6, 2011.

36 ibid

37 Source Jeevan Reddy Committee report, supra

38 R Dutta Choudhury, IB opposed extension of AFSPA in State, The Assam Tribune, July 12, 2012
Source: South Asia Terrorism Portal and author's analysis as reflected in Binalakshmi Nepram, Gender-Based Violence In Conflict Zones Case Study of Impact of Ongoing Armed Conflict, Small Arms Proliferation And Women's Response In India's Northeast, available at http://cequinindia.org/pdf/Special_Reports/GENDER-BASED%20VIOLENCE%20IN%20CONFLICT%20ZONES%20by%20Binalaks hmi_Nepram.pdf as on October 14, 2011

ibid

Ordinance 2001: Government Decides to Play Judge and Jury, November 2001;
Committee on Human Rights (COHR), Right to Life in Manipur. A Report,
Manipur, 13 February 1997; Human Rights Features (Voice of the Asia-Pacific
Human Rights Network, HRF, 12 October 2004, available at
http://www.hrdc.net/sahrdc/hrfeatures/HRF106.htm; U.S. Department of State,
India Country Report on Human Rights Practices for 1997, released by the
Bureau of Democracy, Human Rights, and Labor, January 30, 1998; Human
Rights Alert Newsletters, The AFSPA: Lawless Law Enforcement According to
Law?, Asian Centre for Human Rights, January 21, 2005; Why the AFSPA Must
Go: A Fact Finding Report, Committee for the Repeal of the Armed Forces
(Special) Powers Act, February 2005; Combat Law, License to Kill Armed Forces
(Special Powers) Act. Vol. 2 Issue I. April – May 2003; People’s Tribunal on the
Armed Forces (Special Powers) Act, 1958, Human Rights Law Network, Tribunal
Secretariat. Publication forthcoming; National Human Rights Commission,
Annual Reports; Public statement - India: Amnesty International campaigns
against rape and sexual abuse by members of the security forces in Assam and
Manipur, Amnesty International .ASA 20/28/98, 12 November 1998; Amnesty
International, Manipur: The silencing of youth.
http://www.hrw.org/legacy/backgrounder/2008/india0808/ as on October 7, 2011;
HRW report ‘These Fellows Must Be Eliminated’ on Relentless Violence and
Impunity in Manipur, 2008’, available at
http://www.hrw.org/reports/2008/09/15/these-fellows-must-be-eliminated-0 as on
October 7, 2011; ‘The Armed Forces (Special Powers) Act, 1958 in Manipur and
other States of the Northeast of India’, Redress, AHRC and HRA publication
August 2011, available on
http://www.redress.org/downloads/AFSPA_final_180811.pdf as on October 7,
2011 and many more.

42 Krome, Neingulo, ‘Misguided or Deliberate Policy: Armed Rebellion and
Political Conflict’, November 17, 2010. This paper was presented in a conference
titled ‘Towards a life with dignity: Confronting the Armed Forces (Special
Powers) Act’, held on November 3-4, 2010 at Hotel Classic, Imphal, Manipur.

43 Das, Samir Kumar, ‘Truth and Rights: A study of the violations of rights on the
margins of India’, published in Man and Society: a Journal of North East Studies,
Volume VII, Summer 2010, pg 43

44 ibid

45 SAHRDC, ‘Impunity for Torture: More of the Same’ available at
http://www.hrdc.net/sahrdc/hrfeatures/HRF206.htm as on June 28, 2011

46 SARDC, A Study in National Security Tyranny, supra

47 HRW, ‘These fellows must be eliminated’, 2009, supra

48 ibid

49 ACHR, ‘Lawless Law Enforcement according to Law’, 2005, supra

Contribution from the World Organisation Against Torture (OMCT) to the Universal Periodic Review (UPR) Process India, The Philippines, Tunisia, available at


Amnesty International, *India Briefing*, supra

Amnesty Protests AFSPA, June 24, 2005, available at


WGHR, Human Rights in India: An Overview, available at


ibid

See the Concluding Comments of these bodies available at www.ohchr.org, www.wcd.nic.in etc


Article 4 paragraph (3) of ICCPR: Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

CCPR/C/79/Add.81, para. 18


297
Observation on India was issued on May 5, 2007.

Thirty-seventh session January 15- February 2, 2007. The Committee considered the combined second and third periodic reports of India (CEDAW/C/IND/2-3) at its 761st and 762nd meetings, on January 18, 2007 (see CEDAW/C/SR.761 and 762). The Committee's list of issues and questions is contained in CEDAW/C/IND/Q/3 and India's responses are contained in CEDAW/C/IND/Q/3/Add.1.


ibid


ibid

Seminar (New Delhi), No.615 , (November, 2010), Issue on ‘We the People: A Symposium on the constitution of India after 60 Years, 1950-2010’ available at http://www.india-seminar.com/semftame.html as on January 26, 2013

ibid

Annexure XIV of the report
Source: Personal interaction


ibid

ibid


Y. Tipnis, Capt (Retd) Ashok - *Remove AFSPA but also retain FASPA*, IFP, August 28, 2004

ibid

ibid

ibid

Sahni, Ajai, *By the Law, For Law and Order*, Tehelka, June 24, 2006

ibid

ibid

96 ibid


98 K, Sanatomba, *Beyond AFSPA and the Politics Behind*, IFP, October 23, 2004

99 Universal Periodic Review –India, *supra*

100 See Sanajaoba, Naorem’s various articles, Sanjib Baruah’s Durable Disorder, SAHRDC’s -A Study in National Security Tyranny etc *supra*

101 1997 SC 3011

102 Home Ministry Annual report, 2011

103 See end note 30