

## CASE COMMENT: NAGA PEOPLE'S MOVEMENT OF HUMAN RIGHTS V. UNION OF INDIA

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### INTRODUCTION

The landmark case of Naga People's Movement of Human Rights v. Union of India revolves around the constitutional validity of AFSPA, 1958. After gaining independence, the Indian Parliament passed four separate ordinances for different regions which were replaced by the Armed Forces (Special Powers) Act (AFSPA), 1958 to manage prolonged internal security issues in specific areas, such as Punjab, Jammu & Kashmir, and Northeastern states like Arunachal Pradesh, Assam, Nagaland, and Manipur. While the law was intended to address security issues in India's interior regions, it led to violations of several constitutional rights. One key question that emerged is whether AFSPA grants excessive authority to the military. The judgment on this matter was issued on November 27, 1997, by a Constitutional bench of five judges. The Supreme Court's decision in Naga People's Movement of Human Rights v. Union of India<sup>1</sup> highlights the delicate balance between national security and individual rights. While affirming the necessity of AFSPA in disturbed areas, the Court's guidelines act as a crucial check against potential excesses, ensuring that the rule of law prevails even in the most challenging circumstances: Legal Research and Juridical Sciences

### BACKGROUND AND FACTS

Nagaland has a rich history, being the home of different Naga tribes, each with its own unique culture and traditions. Before the British arrival, there is little recorded history of the region as the Naga tribes led a relatively isolated existence and followed animistic practices. In the early 19th century, British explorers and missionaries started to explore the area. By the mid-19th century, the British East India Company had begun to exert its influence and incorporate the region into British India. The British annexed Assam in 1826, and in 1881 the Naga Hills became part of British India.

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<sup>1</sup> Naga People's Movement of Human Rights v Union of India (1998) 2 SCC 109 (SC)

The people living in the Naga Hills, which stretch across the Indo-Burmese border, united under the Naga National Council (NNC) to achieve a common homeland and self-governance. In 1946 Naga National Council (NNC) was formed under the leadership of Angami Zapu Phizo<sup>2</sup>. When the British left the region, Naga leaders strongly opposed Indian rule over their people. According to the Hydari Agreement between the NNC and the British administration, Nagaland was given protected status for ten years, after which the Nagas would decide whether they wanted to remain with India or not. However, shortly after the British departure, independent India claimed the Naga Territory as part of the new Republic. In 1957, Nagaland was created as a separate administrative unit within Assam, and in 1963, it became the 16th state of India. The NNC declared Nagaland's independence, leading to the arrest of Naga leaders by Indian authorities. This sparked an armed conflict resulting in significant casualties on both sides. The Armed Forces Special Powers Act emerged from this tense situation. The Naga insurgency is one of the world's longest-running insurgencies, involving various groups striving for independence or increased autonomy. Over the decades, multiple peace talks and agreements have been pursued with varying degrees of success. In 1958, the Armed Forces (Special Powers) Act was enacted to empower the Indian Armed Forces to maintain public order in "disturbed areas." Nagaland was designated a "disturbed area" and brought under AFSPA due to the ongoing insurgency and violence. Alleged human rights violations by the armed forces under AFSPA over the years spurred widespread protests and calls for the Act's repeal. The constitutionality of AFSPA was challenged in a writ petition by the Naga People's Movement of Human Rights, arguing that it infringes upon several articles of the Constitution, including those concerning Article 14 [equality before the law], 19 [protection of certain rights regarding freedom of speech, protection of life and personal liberty], and 22 [protection against arrest and detention in certain cases].<sup>3</sup>

## ISSUES

The issues in the Naga People's Movement of Human Rights v. Union of India were

- Whether the Indian Parliament was competent to legislate such a statute.
- Whether AFSPA, 1958 violates the fundamental rights guaranteed under the Constitution of India.

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<sup>2</sup> Caesar Roy, 'THE DRACONIAN ARMED FORCES (SPECIAL POWERS) ACT, 1958 – URGENCY OF REVIEW', <https://www.files.ethz.ch/isn/180712/b5167a3995c057f77ff0ae3a230c2744.pdf> accessed [27 July 2024].

<sup>3</sup> Constitution of India, arts 14, 19 and 22

- Whether the declaration of "disturbed areas" under Section 3 of the AFSPA, 1958 is subject to judicial review.
- Whether the Act grants arbitrary powers to the armed forces, leading to potential abuse.

## **RULES**

In the case of *Naga People's Movement of Human Rights v. Union of India*, the Supreme Court relied on the following rules and provisions of the constitution :

### **Section 3 of the AFSPA[ 1958]**

The central or state government has the authority to designate an area as "disturbed" in response to hazardous conditions prevailing in that area. The Court noted that section 3 cannot be construed as conferring power without any time limitation. There should be a periodic review of the declaration before the expiry of six months.

### **Section 4**

Special Powers of the Armed Forces

- (a) Fire upon or otherwise use force, even to the causing of death, against any person acting in contravention of law and order.
- (b) Destroy arms dumps, fortified positions, or shelters from which armed attacks are likely to be made.
- (c) Arrest without warrant any person who has committed a cognizable offence or is suspected of doing so.
- (d) Enter and search any premises without a warrant to make arrests or recover hostages, arms, ammunition, or explosive substances.

The court noted that Section 4 does not violate Article 14[right to equality], 19[Right to freedom of speech and expression], 21[right to life and personal liberty]. While arresting a person the armed and paramilitary forces must use "minimal force".

### **Section 5**

Any person arrested under the Act is handed over to the nearest police station "with the least possible delay". The Court interpreted "least possible delay" to mean that the arrested person must be handed over to the police as soon as possible, ensuring compliance with the procedural

safeguards laid down under the Constitution and ensuring that the person is produced before a magistrate within 24 hours, as mandated by Article 22(2) of the Constitution.

## Section 6

The section provides legal immunity to armed forces personnel from prosecution, suit, or other legal proceedings for actions taken under the act without the prior sanction of the Central Government. The court upheld the constitutionality of AFSPA but also laid down several guidelines and safeguards to prevent misuse of the powers granted under the act<sup>4</sup>.

## JUDGMENT

On November 27, 1997, the Supreme Court ruled in *Naga People's Movement of Human Rights v. Union of India*. The Court ruled that Parliament had the power to pass such a law and that the Act was legitimate. According to Article 355<sup>5</sup>, the Union owes a duty to protect the States from internal disturbance. Given that the deployment of armed forces in aid of civil power in a State is the responsibility of the Central Government as part of this constitutional duty, granting the power to issue a declaration to the Central Government does not violate the federal structure envisioned by the Constitution.

The Court has affirmed the constitutionality of AFSPA, stating that the Act does not violate the fundamental rights outlined in the Constitution. The Court acknowledged the importance of AFSPA in addressing insurgency and upholding public order in troubled areas. In a virulent insurgency, security forces cannot operate without the cover of the AFSPA. Without it, there would be hesitation which would work to the advantage of insurgents. Army officials also cite the need to protect the morale and integrity of the army as a reason not to scrutinise allegations against army personnel. The powers conferred under sections 4 and 5 of the Act are not arbitrary and unreasonable and therefore not in violation of the provisions of the Constitution. When arresting an individual under Section 4, the armed forces are required to use "minimal force," the individual must be brought before a magistrate within 24 hours of the arrest, with adherence to the provisions outlined in the code of criminal procedure. To prevent misuse of

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<sup>4</sup> Mujib Khan MA, 'The Unconstitutional Nature of AFSPA: A Critical Analysis' (Legal Service India, 25 July 2024) <https://www.legalserviceindia.com/legal/article-9480-the-unconstitutional-nature-of-afspa-a-critical-analysis.html> accessed 27 July 2024.

<sup>5</sup> Constitution of India, art 355

power under AFSPA, the Court has laid down specific safeguards and guidelines<sup>6</sup>. These included:

- Act only in the area declared 'Disturbed Area' under section 3 of the Act.
- Arrest individuals solely on the grounds of having committed a cognizable offence, being in the process of committing such an offence, or on the existence of reasonable grounds indicating their involvement in, or imminent commitment of, a cognizable offence.
- Ensure that the troops under command refrain from harassing innocent civilians, damaging public property, or unnecessarily entering the homes of individuals not involved in any illegal activities.
- Ensure that women are not searched or arrested without female police officers. Searches of women should only be conducted by female officers.

The Honorable Supreme Court stated that section 3 cannot confer power without time limitation. Periodic review of the declaration is required before six months elapse.

## ANALYSIS

The ruling in *Naga People's Movement of Human Rights v. Union of India* showed the necessity to address extraordinary situations in disturbed areas. The court acknowledged that AFSPA is essential for maintaining public order and addressing threats to national security, aligning with the mandate of Article 355 of the Constitution, which obligates the Union to protect states against internal disturbances. The court's initiative to subject the executive's decision to declare an area as disturbed to judicial scrutiny prevents arbitrary use of power, thereby promoting a system of checks and balances and enhancing the rule of law. The court acknowledged the importance of balancing national security concerns with the protection of human rights

Despite the safeguards mentioned, the judgment should have addressed the misuse and violation of fundamental rights attributed to the extensive powers granted to the armed forces. The court acknowledged the judiciary's role in reviewing the declaration of disturbed areas, but the scope of such review is limited. The court has stressed the importance of using objective

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<sup>6</sup> Pleaders, 'Critical Analysis of Armed Forces Special Powers Act, 1958' (iPleaders, 27 July 2022) <https://blog.iplayers.in/afspa-act-1958/> accessed 27 July 2024.

criteria and material evidence. However, assessing the complex security considerations underlying these declarations can be challenging for the judiciary. Judgment proposed the establishment of grievance redressal mechanisms and oversight bodies but did not prescribe specific accountability measures for human rights violations under AFSPA. The absence of clear steps to ensure accountability may diminish the efficacy of these recommendations.

## CONCLUSION

The Supreme Court's decision in the Naga People's Movement of Human Rights vs. Union of India case is a landmark judgment that balances national security with judicial oversight and human rights considerations. However, the ruling has significant strengths and weaknesses. While it provides a legal justification for AFSPA and promotes judicial review and periodic assessments, it falls short in addressing the potential for human rights abuses and the limited scope of judicial review. The decision underscores the need for robust safeguards and accountability mechanisms to protect individual freedoms while addressing security concerns.

