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## BALANCING LIBERTY AND SECURITY: A PROFOUND ANALYSIS OF UAPA AND AFSPA

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### ABSTRACT

In the pursuit to safeguard national security and unity, India has enacted laws as “The Unlawful Activities (Prevention) Act” (UAPA) and “The Armed Forces (Special Powers) Act” (AFSPA) to counter terrorism, insurgency. Created with the virtuous intention of protecting the nation, these laws have triggered serious concerns over their compatibility with democratic principles and human rights criterions.

The UAPA permits detention without formal charges for extended periods and significantly limits bail, especially under Section 43D(5). Recently, its application has expanded to include journalists, student activists, and members of civil society, often on weak or unsubstantiated grounds. This trend has significantly raised fears, law being misused to suppress dissent and silence voices that contributes healthy democracy.

AFSPA, operative in conflict-prone areas like Jammu & Kashmir and the Northeast, grants sweeping powers to armed forces, including arrest without warrant, use of lethal force based on mere suspicion. Section 6 of the Act grants security personnel virtual immunity from prosecution<sup>1</sup>, which has led to serious allegations of human rights abuses, including torture, custodial deaths, and enforced disappearances. The Supreme Court’s 2016 judgment in “*EEVFAM v. Union of India*”<sup>2</sup> acknowledged such misuse and emphasized that even in disturbed areas, armed forces are not beyond judicial scrutiny. It reinforced the “Rule of law”<sup>3</sup> and questioned the unchecked powers that often resulted in “Extra Judicial Killings”<sup>4</sup>.

This paper does not argue for the repeal of these laws but calls for immediate and meaningful reforms. It advocates introducing stronger accountability mechanisms, clearer legal provisions, and procedural safeguards to align these laws with constitutional guarantees and international human rights

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<sup>1</sup> The Armed Forces (Special Powers) Act, 1958 (Act 28 of 1958), s. 6.

<sup>2</sup> (2016) 14 SCC 536.

<sup>3</sup> A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959).

<sup>4</sup> *CBI directed to probe into the Manipur extra-judicial killings by AFSPA*, SCC Online Blog (14 July 2017), available at: <https://www.scconline.com/blog/post/2017/07/14/cbi-directed-to-probe-into-the-manipur-extra-judicial-killings-by-afspa> (last visited on June 26, 2025).

commitments, including “The International Covenant on Civil and Political Rights” (ICCPR) and “Universal Declaration of Human Rights” (UDHR). Balancing national security with fundamental freedoms is essential for a democratic nation governed by law.

**Keywords:** Extra Judicial Killings, A.21, A.22, NHRC, A.9 ICCPR.

## INTRODUCTION

The State’s foremost duty is to ensure the safety, security, and well-being of its citizens. The very foundation of the State’s existence lies in safeguarding the three fundamental “Natural Rights<sup>5</sup>” of man, which predate organized society. These rights namely the Right to life, liberty, and property are inherent to the human existence and can be traced back to what John Locke described as the “State of Nature<sup>6</sup>”

In Locke’s philosophy, the state of nature represented a primitive, pre-social condition, where power resided with the strongest, governed by the principle of “survival of the fittest.” Without structured society or a governing authority, individuals relied solely on their own strength to protect their lives and possessions. Yet, even in such conditions, there existed an innate recognition of basic rights and duties essential for human coexistence.

These inviolable rights termed as the natural and inalienable rights are not conferred by the State but rather exist independently of it. Locke asserted that the primary purpose of forming a civil society and establishing a State was not to create these rights, but rather to preserve and enforce them. The State, therefore, holds its legitimacy and moral authority only so far as it respects and protects the “Rights of Man” According to Locke, the State must act as the custodian of natural rights<sup>7</sup>, ensuring that laws and institutions are designed to uphold these inherent human freedoms, rather than curtail or violate them and if by any possibility there is a situation of curtailment of these rights it should be communicated to the individuals of the particular need and gravity of the situation for any such curtailment otherwise the individuals

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<sup>5</sup> John Locke, *Second Treatise of Government* (1690), available at: <https://www.nlncrac.org/earlymodern/locke/documents/second-treatise.html> (last accessed on 16 July 2025).

<sup>6</sup> *Id.*

<sup>7</sup> John Locke, *On Perfect Freedom in the State of Nature* (1689), available at: <https://oll.libertyfund.org/quotes/john-locke-on-perfect-freedom-in-the-state-of-nature-1689> (last accessed on 16 July 2025).

has the right to revolt or as Locke called it “Right to Revolution<sup>8</sup>”

As Locke put it, there were Two Social Contracts one with the state to protect and promote their interests in exchange of the conformity, and the other amongst the men who agreed to the shared interests of all the people. When the individuals enter into a contract, they willingly agree to come together as a community, choosing to submit themselves to the rule of the majority opinion (State policies). By doing so, they organise themselves into a civil society. This social contract is based on the consent of all, and once formed, it carries lasting significance. However, Locke emphasizes that consent is not a one-time event tied to a past generation. Rather, each generation must give its own consent to be governed. As Locke put it:

“Every man’s children being by nature as free as himself, or any of his ancestors ever were, may, whilst they are in that freedom, choose what society they will join themselves to, what commonwealth they will put themselves under<sup>9</sup>”

According to “John Locke”, the formation of a society through this contract follows two pivotal stages. First is the creation of civil society itself where free individuals decide to leave the state of nature and come together for mutual benefit. Second comes the establishment of a government, which is essentially a tool created to serve the interests of that society. Importantly, Locke viewed the formation of government as a secondary step. For him, it was the initial act of coming together as a community that held deeper importance. Government exists merely as a fiduciary power a trust granted by the people to protect their rights and promote collective welfare.

Locke explained this progression clearly in Chapter VIII of the Second Treatise of Government, where he wrote:

“Whosoever therefore out of a state of nature unite into a community, must be understood to give up all the power, necessary to the ends for which they unite into society, to the majority of the community, unless they expressly agreed in any number greater than the majority. And this is done by barely agreeing to unite into one political society, which is all the compact that

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<sup>8</sup> John Locke, *Second Treatise of Government* (1690), Ch. XIX: of the Dissolution of Government, available at: <https://www.gutenberg.org/files/7370/7370-h/7370-h.html> (last accessed on 16 July 2025).

<sup>9</sup> John Locke, *Two Treatises of Government* (Peacock Books, New Delhi, 2017).

is, or needs be, between the individuals, that enter into, or make up a commonwealth. And thus that, which begins and actually constitutes any political society, is nothing but the consent of any number of freemen capable of a majority to unite and incorporate into such a society. And this is that, and that only, which did, or could give beginning to any lawful government in the world.<sup>10</sup>

In Locke's view, lawful government exists only through the voluntary consent of free individuals, coming together not merely to be ruled, but to safeguard their own natural rights through collective agreement of the people. Through this the UNDR<sup>11</sup>, French Declaration of freedom<sup>12</sup>, American Declaration of Independence<sup>13</sup> was reshaped heavily and still used in the formation of any laws regarding the "Rights of Man".

## OUTLINE OF THE UAPA AND AFSPA LAWS.

Unlawful Activities (Prevention) Act, 1967 (UAPA) serves as India's main law used to tackle terrorism and activities that threaten the country's unity and sovereignty. It was originally created to prevent unlawful associations but has expanded over time, especially after amendments in 2004, 2008, 2013, and 2019. The act was created with the aim to protect the sovereignty and the integrity of the State from alien threats and possible threats.

So, what is UAPA then?

At its core, UAPA is meant to protect India's sovereignty and integrity. It gives the government powers to ban organizations and declare individuals as terrorists if they are believed to support terrorism or unlawful activities.

Locke's idea of the social contract suggests citizens give up some of their freedoms to the state in exchange for safety UAPA was meant to serve that purpose.

But the vital question is does it always strike the right balance for ensuring safety?

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<sup>10</sup> *Id.* at p.no. 180.

<sup>11</sup> United Nations, *Universal Declaration of Human Rights* (1948), available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last accessed on 16 July 2025).

<sup>12</sup> France, *Declaration of the Rights of Man and of the Citizen* (1789), available at: [https://avalon.law.yale.edu/18th\\_century/rightsof.asp](https://avalon.law.yale.edu/18th_century/rightsof.asp) (last accessed on 16 July 2025).

<sup>13</sup> United States of America, *The Declaration of Independence* (1776), available at: <https://www.archives.gov/founding-docs/declaration-transcript> (last accessed on 16 July 2025).

### ➤ The Key Features of UAPA

1. Declaring Organizations and Individuals as Terrorists<sup>14</sup>, Under UAPA, the government can officially list both groups and individuals as terrorists<sup>15</sup>. This was further expanded in the 2019 amendment. The list of the declared organizations are elaborated in the First Schedule of the Act.
2. Stricter Bail Conditions, Once someone is charged under UAPA, getting bail is extremely difficult. Courts are allowed to deny bail based on initial investigation reports alone even if no formal charges have been filed yet.
3. Prolonged Detentions, Authorities can keep an accused in custody for equal to 180 days before filing charge sheet, much longer than the under ordinary criminal law.
4. Property Seizure, The government can seize properties believed to be connected to terrorism-related activities.

### ➤ Why UAPA Is Controversial

While UAPA was created to protect national security, it has drawn serious criticism both within India and internationally:

1. Peril to the Fundamental Rights of Individuals<sup>16</sup>: It potentially undermines the right to personal liberty and freedom of speech which is guaranteed under the constitution of India is a paradox in itself.
2. Presumption of the Guilt<sup>17</sup>: Under normal law, a person is presumed innocent until proven guilty. Under UAPA, this is often reversed, making it much harder for the accused to defend themselves.
3. Broad and Ambiguous provisions: The law uses terms like “unlawful activity<sup>18</sup>” and

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<sup>14</sup> The Unlawful Activities (Prevention) Act, 1967 (Act No. 37 of 1967), Ministry of Home Affairs, Government of India, available at: [https://www.mha.gov.in/sites/default/files/A1967-37\\_0.pdf](https://www.mha.gov.in/sites/default/files/A1967-37_0.pdf) (last accessed on 17 July 2025).

<sup>15</sup> The Unlawful Activities (Prevention) Act, 1967 (Act 37 of 1967), s. 3.

<sup>16</sup> The Constitution of India, art. 12,13,19,21.

<sup>17</sup> The Unlawful Activities (Prevention) Act, 1967 (Act 37 of 1967), s. 43E.

<sup>18</sup> The Unlawful Activities (Prevention) Act, 1967 (Act 37 of 1967), ss. 2(i)o.

“terrorist act<sup>19</sup>” that can be interpreted too broadly, opening doors for misuse.

4. Targeting of Revolutionists<sup>20</sup>: Activists, journalists, and student leaders have been charged under UAPA simply for criticizing the government, raising concerns that the law is being used to suppress dissent rather than protect public safety<sup>21</sup> under the guise of “Public Order” and “Morality”<sup>22</sup>.
5. Global Agonies<sup>23</sup>: Organizations throughout the global criterions like the United Nations organization and Amnesty International<sup>24</sup> have expressed concern about the UAPA provisions for the disguised violation of the international human rights obligations. Numerous cases has uphold that the legislation of the UAPA is beyond the capacity of the state. There has been suits challenging the constitutionality<sup>25</sup> of the same.

#### ➤ Real-Life Prospects

1. Zahoor Ahmad Shah Watali Case <sup>26</sup>(2019): The Apex Court upheld strict bail conditions of the UAPA, showing how hard it is to get relief under this law.
2. Gautam Navlakha Case<sup>27</sup> (2020): A well-known journalist and activist got arrested under UAPA. His case highlighted how intellectuals and activists could be targeted for unscrupulous gains under the guise of protection.
3. Safoora Zargar Case<sup>28</sup> (2020): A pregnant student activist charged under UAPA and denied bail for a long time, sparking public debate and concern without warrant using

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<sup>19</sup> The Unlawful Activities (Prevention) Act, 1967 (Act 37 of 1967), ss. 2(i)k.

<sup>20</sup> UN Human Rights Office Urges Review of India’s UAPA,” *The New Indian Express* (29 June 2024), available at: <https://www.newindianexpress.com/nation/2024/Jun/29/un-human-rights-office-urges-review-of-indias-uapa> (last accessed on 17 July 2025).

<sup>21</sup> *Id.*

<sup>22</sup> The Constitution of India, art. 19(2).

<sup>23</sup> *Id.*

<sup>24</sup> Amnesty International, *India, “Government Weaponizing Terrorism-Financing Watchdog Recommendations Against Civil Society”* (5 Sept. 2023), available at: <https://www.amnesty.org/en/latest/news/2023/09/india-government-weaponizing-terrorism-financing-watchdog-recommendations-against-civil-society/> (last accessed on 17 July 2025).

<sup>25</sup> *Sajal Awasthi v. Union of India*, WP(C) No. 1076/2019.

<sup>26</sup> *National Investigation Agency v. Zahoor Ahmad Shah Watali*, AIR 2019 SC 1734.

<sup>27</sup> *Gautam Navlakha v. National Investigation Agency*, AIR ONLINE 2021 SC 246.

<sup>28</sup> *Safoora Zargar v. State*, Bail Appln. 1318/2020.

the tyrannical provisions of UAPA.<sup>29</sup>

4. Father Stan Swamy Case<sup>30</sup> (2020–2021): An 84-year-old tribal rights activist who died in custody after being charged under UAPA, despite having serious health issues. His case became a symbol of how harsh the laws can be<sup>31</sup>.

The “Armed Forces (Special Powers) Act”, 1958 (AFSPA) is one of India’s most debated laws. It lends special powers to the armed forces to act in regions officially declared as "Disturbed areas"<sup>32</sup>. That usually means places where there is insurgency, violence, or serious internal unrest like parts of Jammu & Kashmir, Manipur and the other Northeast regions of the state it is to be officially notified by a notification by the administrator<sup>33</sup>. The Armed Forces Special Powers Ordinance 1942 from which AFSPA was derived was first promulgated by British colonial rulers on August 15, 1942 to suppress Quit India Movement.<sup>34</sup> The Roots of the act are much grounded from the British tyrannical Rule which is quite prominent from the provisions itself. The law was introduced with the aim of protecting national security and maintaining order. But over the years, it has also been seen as a symbol of state overreach and human rights violation and violation of A.21 and A.22 of the C.O.I.

#### ➤ What AFSPA Allows for?

1. When AFSPA is in force, it gives the military powers that wouldn’t normally be available under the ordinary law of the country.<sup>35</sup>
2. Use of Force: Soldiers can open fire, even if it leads to death, to control unlawful activity or restore public order.
3. Arrests without Warrants: Security forces can arrest anyone they suspect of a crime,

<sup>29</sup> The Constitution of India, art. 21., The Unlawful Activities (Prevention) Act, 1967 (Act 37 of 1967), s. 45.

<sup>30</sup> Father Stan Swamy v. The State of Maharashtra, CrI. App. 444 of 2021.

<sup>31</sup> Dhamini Ratnam, Kay Abbas & Divya Chandrababu, “The Life and Death of Father Stan Swamy,” *Hindustan Times* (4 July 2021), available at: <https://www.hindustantimes.com/india-news/the-life-and-death-of-father-stan-swamy-101626061660105.html> (last accessed on 17 July 2025).

<sup>32</sup> The Armed Forces (Special Powers) Act, 1958 (Act 28 of 1958), ss. 2(b).

<sup>33</sup> The Armed Forces (Special Powers) Act, 1958 (Act 28 of 1958), s. 3.

<sup>34</sup> UAPA Arrests, AFSPA and Improved Law & Order," *The Sangai Express* (E-Pao.net, editorial, 4 Dec. 2021), available at: [https://e-pao.net/epSubPageExtractor.asp?src=news\\_section.editorial.editorial\\_2021.UAPA\\_arrests\\_AFSPA\\_and\\_improved\\_law\\_order\\_TSE\\_20211204](https://e-pao.net/epSubPageExtractor.asp?src=news_section.editorial.editorial_2021.UAPA_arrests_AFSPA_and_improved_law_order_TSE_20211204) (last accessed on 17 July 2025).

<sup>35</sup> The Armed Forces (Special Powers) Act, 1958 (Act 28 of 1958), ss. 4(a).

without needing a court order provided there must be Reasonable Suspicion.<sup>36</sup>

4. Search and Seizure: They can search homes, vehicles, or buildings without prior permission from a magistrate.<sup>37</sup>
5. Immunity from Prosecution: If something goes wrong, like a civilian getting hurt or killed, security personnel cannot be prosecuted unless the central government agrees to it.<sup>38</sup>

Why “AFSPA” Is Controversial in its application, because of the following reasons.

1. Human Rights Violations- There have been reports of fake encounters<sup>39</sup>, custodial deaths<sup>40</sup>, torture, and enforced disappearances<sup>41</sup> in AFSPA protected areas.
2. Lack of Accountability: Because of the immunity clause<sup>42</sup>, cases against army personnel rarely move forward. Many families seeking justice feel helpless unless and until the central legislature acts in place there is no amicable relief.<sup>43</sup>
3. Impact on Everyday Life: In places where AFSPA applies, people often live under constant fear of raids or military action.<sup>44</sup>
4. Alienation of Citizens: Instead of bringing peace, in many areas, AFSPA has deepened

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<sup>36</sup> The Armed Forces (Special Powers) Act, 1958 (Act 28 of 1958), ss. 4(c).

<sup>37</sup> The Armed Forces (Special Powers) Act, 1958 (Act 28 of 1958), ss. 4(d).

<sup>38</sup> The Armed Forces (Special Powers) Act, 1958 (Act 28 of 1958), s. 6.

<sup>39</sup> Dipa Dutta, “Manipur, Indian Army, AFSPA & Supreme Court Fake Encounter Explained”, *Indian Express* (1 July 2016), available at: <https://indianexpress.com/article/explained/manipur-indian-army-afspa-supreme-court-fake-encounter-2905690/> (last accessed on 17 July 2025).

<sup>40</sup> Human Rights Watch, *India: Repeal Armed Forces Special Powers Act* (18 Aug. 2008), available at: <https://www.hrw.org/legacy/backgrounder/2008/india0808/india0808.htm> (last accessed on 17 July 2025).

<sup>41</sup> Submission by CSO–Justice for All to the Office of the United Nations High Commissioner for Human Rights, *Working Group on Enforced or Involuntary Disappearances – Submissions from Civil Society Organizations* (undated), available at: <https://www.ohchr.org/sites/default/files/documents/issues/disappearances/cfi/ucj/subm-research-wg-cso-justice-all-en.pdf> (last accessed on 17 July 2025).

<sup>42</sup> The Armed Forces (Special Powers) Act, 1958 (Act 28 of 1958), s. 6.

<sup>43</sup> Human Rights Watch, *India: “When I Go There, I Am Dead” – Torture and Extrajudicial Killings in “Disturbed Areas”* (Sept. 1993), available at: <https://www.hrw.org/sites/default/files/reports/INDIA935.PDF> (last accessed on 17 July 2025).

<sup>44</sup> Dr. Aveivey D, “Everyday Lived Experiences with Armed Forces Special Powers Act (AFSPA)”, *International Journal of Humanities and Social Science Invention* [online] [ISSN 2319-7722], available at [https://www.ijhssi.org/papers/vol14\(5\)/14053137.pdf](https://www.ijhssi.org/papers/vol14(5)/14053137.pdf) (last accessed 17 July 2025).

mistrust between local communities and the state.<sup>45</sup>

### ➤ Major incidents and Community Feedbacks

1. *EEVFAM v. Union of India*<sup>46</sup> (2016): The Supreme Court ruled that just because AFSPA applies doesn't mean security forces can do whatever they want. All actions must still respect the right to life. The actions of the Defence must be reasonable otherwise the protection of the acts performed will not be available.
2. *Irom Sharmila's Protest*<sup>47</sup>: Called the "Iron Lady of Manipur," Irom Sharmila went on a hunger strike for 16 years demanding the repeal of AFSPA in Manipur. Her protest drew national and international attention. She adopted the path of Non-Violence for the repeal of the AFSPA in Imphal, the "Malom Massacre" deeply traumatised the lives of the people living therein.
3. *Operation Blue Bird* (1987, Manipur)<sup>48</sup>: Launched in Oinam, Manipur, affecting over 30 villages. Villagers reported torture, fake encounters, sexual violence, and looting by security forces. Even court officials were blocked from recording testimonies. Despite petitions, no accountability followed.
4. *Kunan Poshpora Mass Rape* (1991, J&K)<sup>49</sup>: During a search operation, around 100 women were allegedly raped by army personnel. Official inquiries were delayed or suppressed. In 2014, police admitted to being pressured not to disclose findings. The Supreme Court is still hearing the matter.
5. *Bijbehara Firing* (1993, J&K)<sup>50</sup>: BSF opened fire on peaceful protestors, killing around 35 civilians. Magistrate and NHRC confirmed it was unprovoked. Courts ordered

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<sup>45</sup> *Ibid.*

<sup>46</sup> *Extra Judicial Execution Victim Families Association v. Union Of India*, WP(Crl.) No. 129 of 2012.

<sup>47</sup> Dipa Dutta, "Explained: Irom Sharmila and Her Struggle Against AFSPA," *Indian Express* (6 Feb. 2016), available at: <https://indianexpress.com/article/explained/explained-irom-sharmila-and-her-struggle-against-afspa-5725171/> (last accessed on 17 July 2025).

<sup>48</sup> Rahul Karmakar, "Manipur's horror: When Operation Bluebird struck terror," *Hindustan Times* (5 Nov. 2014), available at: <https://www.hindustantimes.com/india/manipur-s-horror-when-operation-bluebird-struck-terror/story-0FTWgabR6PJesb9dd9xMUL.html> (last accessed on 17 July 2025).

<sup>49</sup> Rahul Pandita, "Kunan-Poshpora: A Forgotten Mass-Rape Case of 2 Kashmir Villages," *Hindustan Times* (24 Feb. 2020), available at: <https://www.hindustantimes.com/india/kunan-poshpora-a-forgotten-mass-rape-case-of-2-kashmir-villages/story-1rmD1TqawPnMMB1LLQzgyJ.html> (last accessed on 17 July 2025).

<sup>50</sup> *Sonaullah Dar v. Union of India*, OWP No. 149 of 1996 (HC J&K).

compensation, but prosecution of BSF personnel remains uncertain.

6. Pathribal Fake Encounter (2000, J&K)<sup>51</sup>: Five civilians were falsely branded as militants and killed. CBI named army officers responsible. Despite Supreme Court intervention, the army closed the case with no punishment for the accused.
7. Manorama Killing (2004, Manipur)<sup>52</sup>: Manorama Devi was picked up, tortured, and found dead with bullet injuries to her private parts. Public outrage included the well-known “naked protest,” but no criminal case has been tracked.
8. Shopian Rape and Murder<sup>53</sup> (2009, J&K): Two women, were found dead. Initial police reports denied rape, but forensic evidence later confirmed it. Despite suspensions, no real justice has been delivered till date.
9. Mass Graves (2008–09, J&K)<sup>54</sup>: Around 3,000 unmarked graves were found, believed to hold victims of enforced disappearances and extra-judicial killings under AFSPA. SHRC verified many as locals, but investigations have stalled.
10. Machil Encounter<sup>55</sup> (2010, J&K): Three civilians were killed and passed off as militants. The army eventually sentenced seven soldiers to life imprisonment, one of the few cases where justice was visibly served in matters of AFSPA.
11. 1,528 Extrajudicial Killings (1979–2012, Manipur)<sup>56</sup>: A Supreme Court case revealed

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<sup>51</sup> Surabhi Agarwal, “Why Justice Eludes the Victims of Pathribal Fake Encounter,” *Indian Express* (29 July 2017), available at: <https://indianexpress.com/article/india/why-justice-eludes-the-victims-of-pathribal-fake-encounter-4804985/> (last accessed on 17 July 2025).

<sup>52</sup> Human Rights Watch, *India: Repeal the Armed Forces (Special Powers) Act — Chapter 3: Cases of Abuse* (Sept. 2008), available at: <http://hrw.org/reports/2008/india0908/3.htm> (last accessed on 17 July 2025).

<sup>53</sup> “Militarization with Impunity: A Brief on Rape and Murder in Shopian, Kashmir,” *Kashmir Law Journal & Policy* (undated), available at <https://www.kljp.org/articles/militarization-with-impunity-a-brief-on-rape-and-murder-in-shopian-kashmir> (last accessed 17 July 2025).

<sup>54</sup> Angana P. Chatterji, Parvez Imroz, Gautam Navlakha, Zahir-Ud-Din, Mihir Desai and Khurram Parvez, *Buried Evidence: Unknown and Unmarked Mass Graves in Indian-Administered Kashmir* (March 2010), *Disappeared Asia*, at 65–67, available at: [https://www.disappeared-asia.org/voice/march\\_2010/pdf/65-67.pdf](https://www.disappeared-asia.org/voice/march_2010/pdf/65-67.pdf) (last accessed on 17 July 2025).

<sup>55</sup> Ehsan, Mir, and Pranav Kulkarni. “Machil Fake Encounter Case: Army Confirms Life Sentences for Its Six Army Personnel.” *The Indian Express*, 8 September 2015. Available at: <https://indianexpress.com/article/india/india-others/machil-fake-encounter-case-life-sentences-of-six-army-personnel-confirmed/> (last visited on 17 July 2025).

<sup>56</sup> OMCT (World Organisation Against Torture), “*Historic Supreme Court Case on Extrajudicial Killings in Manipur Must Be Complied With and Implemented.*” OMCT, 26 September 2018. Available at: <https://www.omct.org/en/resources/statements/historic-supreme-court-case-on-extrajudicial-killings-in-manipur-must-be-complied-with-and-implemented> (last visited on 17 July 2025).

1,528 alleged fake encounter deaths. A commission confirmed six sample cases as staged killings, but systemic action is still awaited.

## **BREAKDOWN OF THE LAWS IN THE LIGHT OF HUMAN RIGHTS.**

**Understanding the UAPA and AFSPA laws through with a Human Rights Lens.** India's security laws like the "Unlawful Activities (Prevention) Act (UAPA)" and "The Armed Forces (Special Powers) Act (AFSPA)" were brought in to protect the country from terrorism, insurgency, and internal threats. While their intent may be to safeguard national security, both laws have raised serious concerns about the protection of the basic human rights.

### **Where Human Rights Come Into Question**

#### **1. Right to Life and Liberty<sup>57</sup>**

- Laws like UAPA and AFSPA allow authorities to detain people without formal charges or trials for prolonged periods.
- Under the AFSPA, security forces are allowed to use force, even to the extent of killing someone, based on mere suspicion.
- Incidents like the Malom massacre, Pathribal fake encounter, and killings in Manipur have shown how these powers can lead to the loss of innocent lives without any kind of accountability.

#### **2. Right to have a Fair Trial<sup>58</sup>**

- UAPA makes getting bail extremely difficult. Even if formal charges haven't been filed, people can remain behind the bars for months.
- AFSPA laws protect the security personnel from prosecution unless the central government allows it. In most of the cases, that permission is never given, leaving families of victims without justice.

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<sup>57</sup> The Constitution of India, art. 21.

<sup>58</sup> The Constitution of India, art. 22.

- High-profile cases like Father Stan Swamy's show how harsh these laws can be, especially towards vulnerable individuals.

### **3. Freedom of Speech and Expression<sup>59</sup>**

- Activists, journalists, and students have been charged under UAPA simply for protesting or criticizing government policies on the ground of "incitement of offence" tests<sup>60</sup> to examine such allegations must be invoked rather than vague and empty allegations.
- Arrests like that of Safoora Zargar and Gautam Navlakha show how easy it is to silence dissent using such laws, even when there's little or no real evidence for the same offence.

### **4. Violence Against Women**

- Under AFSPA laws, there have been grave reports of sexual violence, such as in the Kunan Poshpora case, where women were allegedly raped by security forces.
- Delays in investigation, suppressed reports, and lack of action show a gap in both justice and accountability where the cries are often unheard and shown no empathy towards.

### **5. Disappearances and Mass Graves**

- In Kashmir and Manipur regions, hundreds of unmarked graves and reports of people disappearing after being taken by security forces have been documented.
- These incidents point to possible enforced disappearances and extra-judicial killings and a very clear violation of human rights in a democratic country.

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<sup>59</sup> The Constitution of India, art. 19(a).

<sup>60</sup> Clear and present Danger Test Can be used to assess the gravity of such statements, *Schenck v. United States*, 249 U.S. 47 (1919).

## Why This Matters for India?

India is a signatory to important international agreements like the “Universal Declaration of Human Rights (UDHR)”<sup>61</sup> and “The International Covenant on Civil and Political Rights (ICCPR)”<sup>62</sup>. These treaties commits to protect the basic freedoms such as the right to life, liberty, and fair trials.

Even India’s own Constitution guarantees these rights under A.19, A.21 and A.22. When laws like UAPA and AFSPA override these rights in the name of security, it weakens trust in democracy and the rule of law<sup>63</sup>. The selective violence on the women infringes A.14,15 and is also administered by the “Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979”, which India is a part of since 9<sup>th</sup> July 1993<sup>64</sup>. The illicit practices of the special forces delegate powers to the authorities and inhumane torture and are often harshly treated it is against the “Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)”<sup>65</sup>, 1984 which India signed in 1997.

These Violate the practicalities of the Constitutionality as the AFSPA, UAPA also “The Preventive Detention Act” are a living echo of the laws that were predominant in the British India like the Colonial laws, “Defence of India Act”, “Rowlatt Act” which were a tool to of the British to suppress, control and punish the voices of freedom and liberty.

## What Can Be Done?

In the end it can be deduced that “Generalia specialibus non derogant”<sup>66</sup> a latin maxim Meaning “general provisions do not derogate from special provisions”<sup>67</sup> but here in this scenario it can be witnessed that the special laws are clearly in contradiction to the essence of the Indian Constitution. The proactive measures will be further required to make it in parlance with the working democracy.

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<sup>61</sup> UNGA, *Universal Declaration of Human Rights*, G.A. Res. 217A (III), UN Doc A/810 (1948).

<sup>62</sup> UNGA, *International Covenant on Civil and Political Rights*, G.A. Res. 2200A (XXI), UN Doc A/6316 (1966), 999 UNTS 171 (entered into force 23 Mar 1976, acceded by India on 10 Apr 1979).

<sup>63</sup> A.V. Dicey, *Introduction to the Study of the Law of the Constitution* (10th edn, Macmillan 1959).

<sup>64</sup> UNGA, *CEDAW*, G.A. Res. 34/180, UN Doc A/34/46 (1979), 1249 UNTS 13.

<sup>65</sup> UNGA, *CAT*, G.A. Res. 39/46, UN Doc A/39/51 (1984), 1465 UNTS 85.

<sup>66</sup> Vaibhav Sonkusare, *Critical Analysis of Generalia Specialibus Non Derogant*, *Manupatra* (online), available at <https://articles.manupatra.com/pdf/87575b37-8dbd-4634-abc7-de30feb317f3.pdf> (last accessed 19 July 2025).

<sup>67</sup> *Ibid*.

- **Reform, Not Repeal-** This is not about scrapping these laws altogether. These laws are critical in nature for the real threats from alien enemies. It's about bringing in better safeguards for the genuine threats not on mere notion of the individuals.

For instance:

- Setting clear time limits and judicial oversight for detentions under UAPA and procedural safeguards to the detained.
  - Removing the blanket protection for armed forces under AFSPA and ensuring cases against them are fairly scrutinized and through investigation of the actions can be completed.
- **Stronger Checks and Balances-** The check and balance principle is an integral part and parcel of the C.O.I, the Independent bodies should be monitored on the application of these laws, ensuring they aren't misused to target innocent lives.

The UAPA and AFSPA, intended for national security, have often resulted in prolonged detentions, suppression of dissent, and unchecked use of force. Incidents of fake encounters, disappearances, and sexual violence reflect systematic abuse. Upholding constitutional and human rights reforms, in fair trials, transparency, and accountability so that security doesn't come at the cost of justice and human dignity. So that justice doesn't cost blood of blameless.