

To cite this article: Dr Mayong Tikhak and Ms Tania Anya (2026). BALANCING NATIONAL SECURITY AND THE RIGHT TO LIVELIHOOD: A CONSTITUTIONAL ANALYSIS OF AFSPA IN NORTHEAST INDIA, International Journal of Education and Social Science Research (IJESSR) 9 (5): 276-294 Article No. 1297, Sub Id 1987

BALANCING NATIONAL SECURITY AND THE RIGHT TO LIVELIHOOD: A CONSTITUTIONAL ANALYSIS OF AFSPA IN NORTHEAST INDIA

Dr Mayong Tikhak¹ and Ms Tania Anya²

¹Assistant Professor, Department of Law, The ICAFI University, Tripura, Kamalghat, Mohanpur, West Tripura – 799210, India. Email: mayongnokjatihak@gmail.com Corresponding Author.

²Research Scholar, Department of Law, Nagaland University, Lumami, Dist. Zunheboto, Nagaland – 798627. Email: tanianya123@gmail.com

DOI : <https://doi.org/10.37500/IJESSR.2026.9516>

ABSTRACT

The Northeast region of India represents a distinctive constitutional and legal context where national security laws work along with fundamental rights, indigenous self-government and customary laws. AFSPA (Armed Forces Special Powers Act, 1958) is the important means to deal with insurgency that affect national security. However, if the exceptional powers are used over a period of time, their implications could have repercussions not only on national security but also on livelihood, dignity, movement and socio-economic development of people. This paper looks at the extent to which these laws affect the constitutional right to livelihood guaranteed by Article 21. It adopts a doctrinal and analytical approach to examine the constitutional provisions, statutory powers and leading Supreme Court decisions. The analysis also considers the Northeast's distinctive constitutional architecture, including Articles 371A–371H and the Sixth Schedule and the implications of prolonged security governance for local autonomy and development. The paper also argues that emergency security legislation does not formally extinguish the right to livelihood. Its constitutional risk lies in the cumulative and indirect effects of prolonged, geographically extensive and weak accountable security measures. It concludes that national security and livelihood are not competing constitutional absolutes, but objectives that must be reconciled through legality, necessity, proportionality, periodic review, civilian oversight and effective remedies.

KEYWORDS: AFSPA, right to livelihood, national security, Northeast India, socio-economic development

1. INTRODUCTION

The constitution of India ensures that the national and individual liberty must coexist in constitutional order. The state has the absolute authority to control over the armed conflict and insurgency

maintaining the public order. However, the actions of the state must be subject to legality, fundamental rights, judicial review and institutional accountability.¹

The problem of armed conflict and insurgency has become one of the biggest problems in northeast India due to its historical evolution. The region has historically experienced armed insurgency, ethnic conflict, political violence, border-related security concerns and demands for greater autonomy. In order to control the alienation, the parliament has enacted and applied special security legislation in several Northeastern States, such as the Armed Forces (Special Powers) Act, 1958 and the Unlawful Activities (Prevention) Act, 1967 (UAPA). The AFSPA is considered as draconian law taken from British era. Moreover, the UAPA provides another layer of counter-insurgency and national-security regulation.²

The conventional justification for such controversial law is that extraordinary security threats may require extraordinary legal powers. However, it cannot violate the constitutional provisions for the sake of national security, whereas, the national security itself is a constitutional objective.³

The core question is that *“To what extent can the prolonged exercise of extraordinary security powers under AFSPA constitutionally interfere with the conditions necessary for livelihood and socio-economic development in Northeast India.”*

As considering the question, there must be distinction between direct legal deprivation and indirect constitutional impairment because neither the AFSPA says that a person shall be deprived of employment, trade, property or livelihood, nor does it expressly suspend Article 21. But the actual exercise of the power conferred under AFSPA affects the movement, access to markets, agricultural activity, transportation, commercial operations, construction and access to public institutions,⁴ when such powers effects for long then it raises the questions under Article 21.⁵

The judicial view is very important in this matter. In *Olga Tellis v. Bombay Municipal Corporation*, the Court stated that the right to livelihood is very integral part of the right to life under Article 21.⁶ Therefore, the right to livelihood has the constitutional significance which extends beyond physical survival by which individuals sustain themselves.

¹ Thangkhanlal Ngaihte, Armed Forces in India's Northeast: A Necessity Review, 35 S. Asia Rsch. 368, 368–85 (2015), <https://doi.org/10.1177/0262728015606259>

² Dolly Kikon, The Predicament of Justice: Fifty Years of Armed Forces Special Powers Act in India, 17 Contemp. S. Asia 271, 271–82 (2009), <https://doi.org/10.1080/09584930903108937>.

³ INDIA CONST. art. 355.

⁴ Duncan McDuié-Ra, Vision 2020 or Re-vision 1958: The Contradictory Politics of Counter-Insurgency in India's Regional Engagement, 17(3) Contemporary South Asia 313, 313–30 (2009).

⁵ INDIA CONST. art. 21

⁶ *Olga Tellis v. Bombay Municipal Corporation*

This paper does not argue that every security restriction amounts to an unconstitutional deprivation of livelihood. Instead, the security legislation must be examined considering the constitutional validity of whether the exercise of extraordinary powers remains necessary, proportionate, accountable and compatible with the substantive conditions of dignified life.

2. RESEARCH OBJECTIVES

The paper has the following objectives:

1. To examine the constitutional status of the right to livelihood under Article 21.
2. To analyse the relationship between national-security legislation and fundamental rights.
3. To examine the relevance of Articles 371A–371H and the Sixth Schedule to security governance in Northeast India.
4. To undertake a textual analysis of Sections 3, 4 and 6 of AFSPA.
5. To analyse the constitutional significance of *Naga People's Movement of Human Rights v. Union of India*.
6. To examine the rule-of-law implications of *Extra Judicial Execution Victim Families Association v. Union of India*.
7. To determine whether existing constitutional safeguards sufficiently protect livelihood and socio-economic development in prolonged conflict environments.
8. To propose a constitutional framework balancing security with livelihood, dignity and development.

3. RESEARCH METHODOLOGY

This paper adopts a primarily doctrinal and analytical legal methodology including the sources like Constitution of India, Armed Forces (Special Powers) Act, 1958, judgments of the Supreme Court and High Courts, constitutional provisions relating to tribal autonomy, constitutional schedules concerning autonomous governance and relevant governmental and Law Commission materials where legally relevant.

The paper critically examines the language, structure and legal consequences of the relevant provision of the statutes and compares them with constitutional validity. Here, the author does not assume that every socio-economics consequence is caused by security legislation. Whereas, it distinguishes the socio-economic consequence from directly authorized by law and arising from the prolonged practical exercise of statutory powers. This distinction is essential to avoid overstating the legal proposition.

4. CONSTITUTIONAL FRAMEWORK: LIVELIHOOD, DIGNITY AND NATIONAL SECURITY

4.1. Article 21 and the Right to Livelihood

Article 21 provides:

“No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Subsequent constitutional jurisprudence has expanded Article 21 into one of the most important sources of substantive rights.

In the case of *Olga Tellis v. Bombay Municipal Corporation*⁷, the Supreme Court held that the right to life encompasses the right to livelihood as well, because a life cannot be meaningfully enjoyed where an individual is denied the means to sustain life. Therefore, this principle has important implication in conflict-affected regions. The livelihood in northeast India mainly depends upon agriculture, forest and natural resource access, transportation, local markets, small-scale commerce, tourism, government employment, education, road connectivity, access to health facilities and freedom of movement. However, the security restriction in the region seriously hampers these factors which may implicate Article 21, even if the Article 21 does not expressly mention about “livelihood”.

4.2. Human Dignity

Now, the concept of Article 21 has broadened by connecting life with dignity. The right to life does not protect merely biological existence, it also protects a life possessing dignity and meaningful contribution in society.⁸ The livelihood is not only about survival but also includes the elements of personal autonomy and dignity, having dual constitutional character.

When a person unable to reach workplace, market, agriculture field, operate a business or access to basic essential services due to prolonged security restrictions may experience an impairment which is different from an ordinary inconvenience.⁹ The constitutional inquiry must therefore examine the intensity, duration and necessity of the restriction.

The State's obligation to preserve national security should also consider the right to livelihood because Article 355 of the Constitution says that the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the Constitution.

In the case *Naga People's Movement of Human Rights v. Union of India*, the SC recognised the Article 355 as constitutional relevance while considering AFSPA. Therefore, the constitutional question is not whether the State may respond to insurgency or not. Instead, the question is “what constitutional limits govern the manner in which national security is pursued?” The state cannot violate the constitutional provisions in the name of national security using as a trump card. It should be subject to fundamental rights and judicial review.¹⁰

⁷ *Olga Tellis*, (1985) 3 S.C.C. at 555–56

⁸ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 S.C.C. 608, 618–19 (India)

⁹ *Rituparna Bhattacharyya*, *Living with Armed Forces Special Powers Act (AFSPA) as Everyday Life*, 83 *GeoJournal* 31, 31–48 (2018)

¹⁰ *K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1, 260–62 (India).

5. NORTHEAST CONSTITUTIONALISM AND SECURITY GOVERNANCE

The Northeast India has different constitutional structure from rest other part of the country. The Constitution recognises distinctive historical, cultural and territorial conditions through special provisions.

5.1. Article 371A: Nagaland

Article 371A provides special protection to several aspects of Naga life such as religious or social practices of the Nagas; customary law and procedure; administration of civil and criminal justice involving decisions according to Naga customary law; and ownership and transfer of land and its resources. It will not apply to Nagaland unless the Legislative Assembly decides otherwise by resolution. This provision is constitutionally significant because it protects a form of substantive autonomy.

Land is not only a means of an economic commodity. It has connection with a cultural resource; a community resource; and an element of customary identity. Therefore, the security governance in that region which affects the access to land, movement or control over resources must be understood against this constitutional background.

5.2. Article 371B: Assam

Under Article 371B, a Legislative Assembly committee is created comprising elected representatives from certain tribal areas. This reflects the acknowledgment in the Constitution that governance of tribal regions warrants institutional consideration of their distinctive interests.

5.3. Article 371C: Manipur

Article 371C highlights specific provisions regarding Hill Areas of Manipur and also deals with the establishment of Hill Areas Committee of the Legislative Assembly. The Constitution thus prescribes that the entire security installation in Manipur is in compliance with the larger scheme of political and territorial accommodation. This is significant considering that Manipur has remained one of the major places for the evolution of constitutional litigation relating to AFSPA.

5.4. Article 371G: Mizoram

Article 371G addresses specific facets of Mizo traditional customs and culture, including the customary laws related to ownership and transfer of land and other natural resources, as per the requirements laid down in the Constitution.

5.5. Article 371H: Arunachal Pradesh

According to Article 371H, the responsibility of law and order in Arunachal Pradesh is given to the Governor, subject to the jurisdiction of the Constitution.

It follows from this provision that the Constitution itself acknowledges that the situation with respect to security and governance in Arunachal Pradesh is different from many other parts of India. Nevertheless, special constitutional arrangements cannot be viewed as a basis for permanent exemption from fundamental rights.

5.6. The Sixth Schedule

The Sixth Schedule establishes autonomous district councils in specified tribal areas of Assam, Meghalaya, Tripura and Mizoram.¹¹ The constitutional objective is to preserve a degree of local self-government and protect tribal interests.

The District Councils are assigned with legislative, administrative and financial power in specified subjects. The provision also permits councils to establish and manage institutions and infrastructure such as primary schools, dispensaries, markets, roads, ferries, fisheries and waterways.¹²

This is very pertinent with regard to the connection between security and development. Socio-economic development depends on the existence of local institutions capable of infrastructure planning, market management, local resource management, promotion of education, provision of basic health services and promotion of economic activity.¹³

The conditions of conflict may impede the fulfilment of these functions. The legal question arising is not necessarily concerning AFSPA and the Sixth Schedule alone. It arises out of the conflicting nature of the centralized security structure and constitutionally decentralized governance.

The challenge posed by the constitution is not to allow the operations of security to actually make the constitutionally required local institutions ineffective.

5.7. Special Constitutional Autonomy and Security Centralisation

The Northeast poses a unique constitutional challenge because the Indian constitutional framework provides for both centralised national security power and decentralised or autonomous systems of governance. For one, the Union has powerful claims of authority in the sphere of defence and national security and deployment of armed forces. At the same time, the Constitution makes special constitutional provisions in relation to the various societies of the Northeast which recognise their unique social, cultural, customary, and territorial concerns.

The presence of the two constitutional objectives does not mean there's conflict between them. Security may, in theory, be a prerequisite for the effective exercise of autonomy. Where there is

¹¹ INDIA CONST. sched. VI.

¹² INDIA CONST. sched. VI, paras. 2–8

¹³ Rameshchandra Ningthoujam, *Disturbed Valley: A Case of Protracted Armed Conflict Situation in Northeast India*, 11 Deusto J. Hum. Rts. 185, 185–205 (2013)

insurgency, violence, or serious disturbance to public order, security measures may become necessary to protect constitutional governance itself. The constitutional problem arises when security becomes excessive and prolonged, thus marginalising the autonomous institutions which the Constitution is meant to guarantee.

This issue is particularly relevant in the territories where the local authorities have been accorded constitutional authority regarding lands, traditional practices, social functions, or local governance. The administration of security should therefore function according to the rules of legislation and practicality, in cooperation with civilian and independent authorities rather than taking their place. The main idea should not consist of making a choice between security and autonomy, but ensuring that security processes are restricted and accountable enough so that extraordinary measures do not substitute the constitutional institutions in the long run.

6. STATUTORY ANALYSIS OF THE ARMED FORCES (SPECIAL POWERS) ACT, 1958

6.1. Section 3: Declaration of Disturbed Areas

Section 3 grants the Governor or Central Government the authority to declare an area as a 'disturbed area' where there are disturbed or dangerous conditions such that the deployment of armed forces is required to aid civil authorities.¹⁴ The significance of Section 3 is that it acts as a legislative key to the extraordinary powers stated in Section 4.

The key constitutional issue in this context is the scope and duration of the declaration. A lengthy or wide-ranging declaration can turn a situation that is exceptional legal regime into an ordinary administrative condition.

In *Naga People's Movement v. Union of India*, the Supreme Court upheld the constitutionality of the provision under Section 3, but the Supreme Court ruling shouldn't be understood as a carte blanche for the government. The judgement stated that the exercise of statutory powers must remain subject to constitutional constraints.¹⁵

The constitutional issue becomes highly pressing when emergency declarations persist for very long periods of time. The emergency regime is easier to justify when the emergency situation is exceptional and temporary in nature.¹⁶ The longer the emergency persists, the higher the level of constitutional justification required for it to continue.

Therefore, duration is the essence of constitutional perspective. It should not be enough for a declaration of emergency to justify its existence just because it has existed for a long time.

¹⁴ Armed Forces (Special Powers) Act, No. 28 of 1958, § 3 (India Code 1958).

¹⁵ *Naga People's Movement of Hum. Rts.*, (1998) 2 S.C.C. at 130–41.

¹⁶ *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 S.C.C. 353, 403–04 (India).

6.2. Section 4: Special Powers

Section 4 gives exceptional powers to the members of the armed forces deployed in disturbed areas. They have the power to use force, search and seize without warrant.¹⁷ Section 4(a) significantly permits the use of force, even to the causing of death.¹⁸ However, the Supreme Court upheld the section 4 in *Naga People's Movement of Human Rights v. Union of India* under certain safeguards and restrictions. The court ensures that the power should not be used unlimited, the armed forces should subject to legal requirements, including the requirement to use force only in circumstances authorised by the Act.¹⁹ The provision of section 4 may influence the economic activity in different ways. Such as:

6.2.1. Movement

The regulation affects issues related to movement that arise in the context of searches, checkpoints, restrictions, and security arrangements, which can disrupt movement from one village to another, or to/from farms, markets, workplaces, schools, hospitals, and commercial centres. The physical mobility is a prerequisite for any economic activity involving labour and markets.²⁰

6.2.2. Agriculture

In Northeast India, agricultural livelihood may depend upon regular access to land located outside residential settlements.²¹ The security environment leads to uncertainty in movement that would influence various areas of agricultural activities such as cultivation, harvesting, transport, livestock, and forest-related activities.

6.2.3. Small Businesses

The small businesses are mostly affected by this uncertainty.²² A shopkeeper, transporter, contractor or local trader operates through predictable movement and access.

Hence, repeated security measures might create uncertain conditions although without an express statutory prohibition on trade.

6.2.4. Infrastructure

Building infrastructure requires assured access to land, machinery and construction sites.

¹⁷ Armed Forces (Special Powers) Act, No. 28 of 1958, § 4 (India Code 1958)

¹⁸ Id. § 4(a)

¹⁹ *Naga People's Movement of Hum. Rts. v. Union of India*, (1998) 2 S.C.C. 109, 142–48 (India).

²⁰ Avijit Mistri, Migration from North-East India During 1991–2011: Unemployment and Ethnopolitical Issues, 65 *Indian J. Labour Econ.* 397, 397–423 (2022)

²¹ Rameshchandra Ningthoujam, Disturbed Valley: A Case of Protracted Armed Conflict Situation in Northeast India, 11 *Deusto J. Hum. Rts.* 185, 185–205 (2013).

²² Tuhin K. Das et al., Conflicts and Socioeconomic Consequences in Northeast India, 3(1) *Micronesian J. Hum. & Soc. Sci.* 79, 79–84 (2015).

When the security environment leads to prolonged uncertainty, it may complicate implementation processes.²³ At the same time, caution must be used in asserting this proposition. It is better to argue legally that AFSPA creates a security environment. Rather than claiming that AFSPA leads to frozen investment in a country without any evidence.

6.3. Section 6: Protection from Legal Proceedings

Section 6 states that no prosecution, suit or other legal proceeding can be started against any person acting under the Act without prior approval of the Central Government.²⁴

This provision was contested before the Supreme Court in the case of Naga Peoples Movement.

The Court affirmed the rule, stating that it does not provide absolute immunity. Rather, requirement of sanction is understood as a procedural protection.²⁵ The court also extended that the Central Government's decision on the sanction should be supported by valid reason and is subject to judicial scrutiny. So, it creates a clear distinction that section 6 does not provide blanket immunity to armed forces. However, section 6 creates an additional procedural barrier before ordinary legal proceedings begin. The difference is crucial from the viewpoint of constitutional accountability. The legal recourse availability does not necessarily amount to the accessibility of such legal remedy in practice.²⁶ Where victims perceive that prosecution depends on executive approval, the effectiveness of accountability may suffer.

The basic requirement of rule of law is that the government officials should exercise their coercive power under legal accountability. Therefore, the constitutional safeguards identified in *Naga People's Movement of Human Rights v. Union of India* are important:

1. complaints of abuse should be thoroughly investigated;
2. victims should receive appropriate compensation where violations are established;
3. appropriate sanction should be granted where prosecution is warranted; and
4. decision regarding sanction must be subject to judicial review.

These safeguards convert Section 6 from an apparently absolute shield into a conditional procedural protection. However, the effectiveness of the safeguards depends upon implementation.

²³ L. Chiro Kumar Singha, *Insurgency in North-East India: A Threat to the Socio-Economic Development*, 57(7) *Psychology & Educ. J.* (2021)

²⁴ Armed Forces (Special Powers) Act, No. 28 of 1958, § 6 (India Code 1958)

²⁵ *Naga People's Movement of Hum. Rts. v. Union of India*, (1998) 2 S.C.C. 109, 157–61 (India).

²⁶ Dolly Kikon, *The Predicament of Justice: Fifty Years of Armed Forces Special Powers Act in India*, 17 *Contemp. S. Asia* 271, 271–82 (2009)

7. NAGA PEOPLE'S MOVEMENT OF HUMAN RIGHTS v. UNION OF INDIA

This case is the most cited constitutional case about AFSPA. The Supreme Court noted that despite declaring AFSPA constitutional, it did not approve of completely unrestricted power to the military. Safeguards regarding the use of statutory powers were laid down by the Court.

Among the relevant “Do's and Don'ts” were requirements relating to:

- operating only in disturbed areas;
- obtaining information before operations;
- coordinating, where possible, with civil authorities;
- avoiding excessive force;
- avoiding harassment of civilians;
- prohibiting torture;
- avoiding indiscriminate firing; and
- maintaining relations with civilian authorities.

The court held that these instructions should be binding upon the members of the armed forces deployed in disturbed areas. This is important for the present research question because the Court recognised that legality of the legislation and legality of individual conduct are distinct questions. AFSPA may be constitutionally valid as a whole but its actions under AFSPA remain unlawful.

7.1. Limits of the Naga People's Movement Safeguards

The safeguards primarily regulate the exercise of coercive powers; they do not constitute a comprehensive framework for protecting livelihood, economic continuity or development. They were mainly created to avoid:

- Use of excessive force;
- Torture;
- Arbitrary behavior;
- Indiscriminate shooting; and
- Misuse of arrest/search powers.

They have not been primarily intended as a framework for socio-economic rights.

We do not have any measures established for:²⁷

- Access to agriculture;
- Continuity of business;
- Transportation;
- Infrastructure;
- Employment;
- Commercial activity;
- Economic rehabilitation;
- Development planning.

²⁷ Vibha Arora, Citizens, the Smoking Guns of AFSPA and Bare Life in Northeast India, 69 Sociological Bulletin 351, 351–67 (2020)

Thus, even if the measures in the framework do protect civilians from some forms of physical violence, they still do not ensure a sufficient level of addressing structural economic implications of long-term militarisation.

This constitutes a significant gap in the existing constitution-making frameworks.

8. EXTRA JUDICIAL EXECUTION VICTIM FAMILIES' ASSOCIATION v. UNION OF INDIA

The case of *Extra Judicial Execution Victim Families Association v. Union of India* ("EEVFAM") gives the clarity about constitutional limits on security operations in Manipur.²⁸

The case was about the allegation of extrajudicial killings and use of excessive force.

The Court declined to uphold the argument that the existence of insurgency or internal disturbance automatically legitimizes the excessive use of force.²⁹

The Court has held that there should be an inquiry into the allegations of excessive use of force or retaliatory force.

The decision has importance for three reasons.

First: Internal disturbance is not the same as war

The mere presence of an internal security challenge does not mean that the individuals living in the affected area are exempt from regular legal protection.

Second: Security personnel remain subjected to the law

The Court did not accept the idea that the armed forces should not be bound by law just because they are in a disturbed area.

Third: The rule of law is a prerequisite of legitimate security governance

The security operations should be subject to legal accountability.

Thus, the Court's arguments prove the proposition that prolonged security legislation cannot create a parallel legal order in which ordinary constitutional standards cease to operate.

9. THE RULE OF LAW AND SOCIO-ECONOMIC DEVELOPMENT

It has often been debated in the context of economy and institutions as to what is the correlation between the rule of law and development of human society. However, the issue also possesses constitutional implications.

A stable business environment requires predictable regulations, enforceable contracts and property rights, effective institutions, reliable transportation, employment, judicial mechanisms, and stable administration. In a same way, a dignified livelihood requires predictable employment opportunities, freedom of movement, secure property and access to markets, education, and essential public services. The conflict may disrupt these conditions.

²⁸ Extra Jud. Execution Victim Families Ass'n v. Union of India, (2016) 14 S.C.C. 536, 542–45 (India).

²⁹ Id. at 560–64

The constitutional question arises when the law on exceptional security is continuously applied, thus allowing the use of exceptional administrative measures.

Moreover, the link between an extraordinary security law and private investment is a contentious one, as distinguishing between direct and indirect institutional effects can prove to be a tricky task. It may influence the degree of permanence of land access, transportation availability, administrative coordination, security measures, regulatory compliance, and overall continuity of commercial activity, which may raise transaction costs, cause delays, and increase the perceived risk in such activities. On its own, this is insufficient to categorize AFSPA as a direct deterrent against investment, as such factors are significantly influenced by issues of insurgency, the region's degree of remoteness, level of developed infrastructure, administrative effectiveness, the investment climate, and the overall economy. Therefore, it would be more cautious to assume that AFSPA does not possess a direct legal link to investment but may affect a region's characteristics through its presence in the area.³⁰

Hence, the issue in question is no longer about whether the AFSPA an obstacle to development or not. But the crucial question is "Does the prolonged reliance upon extraordinary security powers bring about the situation where the legal and institutional environment indispensable for livelihood and development has been significantly compromised?"

10. PROPORTIONALITY AS THE CONSTITUTIONAL TEST

The modern constitutional system necessitates limitations on certain fundamental rights in accordance with the principles of legality and proportionality.³¹ The principle of proportionality provides a systematic framework for assessing whether an interference with constitutional rights is warranted. The first requirement is that the restriction must conform to the principle of legality, which states that the interference must come from law which is valid and is in accordance with the Constitution. The second requirement is that the restriction must serve a legitimate objective, such as the protection of national security, public order, or the sovereignty and integrity of the State. The third criterion is the rational relationship between the means and the goal, meaning that the interference must be directed towards achieving the stated goal. The fourth condition is that the measure used must satisfy the requirement of necessity, which requires consideration of whether the same objective could reasonably be achieved through a less restrictive alternative. Finally, the court must strike a balance between the benefits achieved by serving the legitimate objective and the harmful consequence of the interference with fundamental rights.³²

This structure is important in a situation where there is a prolonged disturbed-area declaration and the continued operation of extraordinary security measures. In cases where there is an immediate threat to

³⁰ L. Chiro Kumar Singha, *Insurgency in North-East India: A Threat to the Socio-Economic Development*, 57(7) Psychology & Education Journal (2021).

³¹ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 S.C.C. 1, 261–64.

³² Modern Dental College & Research Centre v. State of Madhya Pradesh, (2016) 7 S.C.C. 353, 404–05.

security, temporary restrictions are permissible according to the Constitution; however, running the same restrictions for decades can necessitate more justifiable reasons, periodic review, and evidence demonstrating their continuing necessity. Therefore, just the existence of security objectives cannot be viewed as sufficient grounds for the extended introduction of restrictions on constitutional rights.

10.1. Prolonged Emergency and the Constitutional Problem of Normalisation

A big problem with constitutions occurs when a legal system that was meant for extraordinary security situations ultimately becomes a regular form of ruling.³³ Emergency powers get their constitutional justification, at least partially, from the existence of exceptional conditions where regular legal systems don't work. In regard to AFSPA, the court has acknowledged that in order to declare an area disturbed, one must be in a grave situation where the act of using armed forces in the aid of civilian authorities is important. The problem thus arises, when an extraordinary security scheme functions for a long time or indefinitely. There might be two possibilities in this case: either the issue remains sufficiently serious to justify extraordinary powers in the long term or innocent legal system becomes institutionalized despite the fact that ordinary constitutional laws could have dealt with the situation. The latter scenario leads to a serious constitutional problem, since the extraordinary methods might gradually stop being linked to the extraordinary case.

In the case *Extra Judicial Execution Victim Families Association v. Union of India*, it was held that the deployment of armed forces in support of civil governance is meant to restore normality. The Court also added that such an arrangement should not continue for an indefinite period. It is noteworthy that the principle of proportionality requires any restrictions to be proportionate in nature and extent with reference to the type of situation that necessitates them. As is visible from this, it becomes mandatory to prove the justification and need for the application of extraordinary powers, if such powers remain effective for a long period.

11. LIVELIHOOD AS A STRUCTURAL RIGHT

Livelihoods in the conflict-affected and securitized regions tend to depend on several related conditions such as access to land, freedom of movement, security of person, functioning markets and adequate transport and infrastructure.

Nevertheless, a disruption of economic activity is not always a transgression of Article 21. The constitutional validity needs to be evaluated according to circumstances. Such issues as causal connection between the government action and the deprivation, gravity of the impact, the justifiability and the proportionality of such interference, availability of legal remedies, and opportunity of adopting alternative but equally effective measures should be taken into consideration. In *Olga Tellis v. Bombay Municipal Corporation*, the Supreme Court highlighted the close connection between the right to livelihood and the right to life, emphasising at the same time that this fundamental right is treated by

³³ Thangkhanlal Ngaihte, *Armed Forces in India's Northeast: A Necessity Review*, 35 S. Asia Rsch. 368, 368–85 (2015)

law and the Constitution as not being absolute, it may be subject to legitimate restrictions.³⁴ Therefore, the concept of a livelihood should not be viewed as an automatic violation of any Article. On the contrary, it serves as the basis for equal dignity of a citizen, provided that various restrictions are not systemically affecting those standards.

12. SOCIO-ECONOMIC DEVELOPMENT AS A CONSTITUTIONAL VALUE

Although “development” is not a Fundamental Right as such which cannot be enforced by the citizen against the State, economic and social development nonetheless finds a place in the Constitution. The Constitution makers have mandated that social and economic welfare of the people shall be a goal of the State policy through the Directive Principles of State Policy. Article 38 provides that the State shall strive to promote social, economic and political justice, and to reduce inequities. Article 39A provides that the State shall secure to all workers a living wage and Article 41 deals with the right to work, education and public assistance within that capacity. Article 43 also provides for the right of workers to enjoy a decent standard of living.³⁵

These provisions are not directly enforceable as are the Fundamental Rights. However, they possess constitutional relevance beyond merely a policy stance. Article 37 itself recognises the Directives of national importance, and the Supreme Court has held that they could inform interpretation of the Fundamental Rights.

This is of particular importance in relation to Article 21. In *Olga Tellis v. Bombay Municipal Corporation*, the Supreme Court acknowledged the constitutional relevance of livelihood in relation to the concept of life, referring to Articles 39(a) and 41 while interpreting Article 21. The judgment holds that the constitutional notion of 'life' cannot be severed from the socio-economic conditions required to sustain an individual in a meaningful sense.

Consequently, it is wrong to view the Constitution as establishing a binary between Article 21 as a justifiable right, and the Directive Principles as inspirational goals only. The two are in fact complementary. While the latter do not confer an enforceable right to development, they lend interpretative content to rights such as life, livelihood, dignity and so on.

It is especially pertinent to consider this in contexts where conflict-affected restrictions on movement could impact livelihood, access to markets and essential services. The issue before the Court in such a situation would be whether such restrictions still conform to a wider constitutional obligation to advance dignity, livelihood and social justice.³⁶

³⁴ *Olga Tellis v. Bombay Mun. Corp.*, (1985) 3 S.C.C. 545, 572–73 (India)

³⁵ INDIA CONST. arts. 38–43

³⁶ *Olga Tellis v. Bombay Municipal Corp.*, (1985) 3 S.C.C. 545, 557–58.

13. CRITICAL ASSESSMENT

The existing legal framework has substantial safeguards against arbitrary or excessive use of security powers. These include judicial review, remedies through Articles 32 and 226 of the Constitution, statutory limitations on the powers conferred by AFSPA, safeguards through Supreme Court jurisprudence, civil and administrative coordination, investigation of allegations of excessive or illegal force, compensation where violations are established, and review of executive decisions. These safeguards demonstrate that AFSPA do not make the use of State power insulated totally from the Constitution's reach.

However, there are three areas of concern. First, the long-drawn use of extraordinary security legislation presents a different constitutional challenge. Measures which are meant to deal with peculiar security needs can take on a different character if they acquire the status of a permanent fixture, and especially if they entail exceptional powers as part of civilian administration. Second, indirect socio-economic effects are relatively underdeveloped in the jurisprudence. Courts have traditionally focused on direct impacts, such as the violation of physical integrity, the use of force, detention and other direct interferences, whereas the effects on livelihood, mobility, economic activity, market access and development have been relatively ignored. Third, accountability barriers may limit access to legal remedies. Section 6 of AFSPA does not confer total immunity on personnel, but the need for prior sanction before prosecution introduces an additional step into the process of criminal accountability.

The constitutional framework thus provides substantial safeguards against specific forms of abuse, but is limited in its reach when it comes to considering cumulative and systemic relationship between prolonged use of security governance and impact on socio-economic development. This does not necessarily indicate the violation of socio-economic rights by AFSPA, but rather highlights an area of jurisprudence in which the Constitution's reach would benefit from being expanded to consider the broader consequences of extraordinary security measures.

14. PROPOSED CONSTITUTIONAL SAFEGUARDS

A rights-compatible security framework should aim to reconcile legitimate security objectives with the Constitution and socio-economic development. First of all, disturbed-area declarations should be subject to meaningful periodic review taking into account prevailing security conditions, geographical necessity, actual incidents of violence, the availability and effectiveness of ordinary policing, the functioning of the civilian administration, development conditions and the impact of prolonged extraordinary powers on fundamental rights. Second, where possible, the application of extraordinary powers should be geographically tailored rather than maintained through the unnecessary or indefinite expansion of their territorial scope, thus ensuring that exceptional measures are applied only to areas in which it is genuinely needed. Third, stronger civilian oversight should be imposed by maintaining effective coordination between security forces and civilian administration rather than allowing security operations to take place outside of ordinary administrative structures. Fourth, extended security

regimes should undergo periodic socio-economic impact assessments examining their effects on agriculture, education, healthcare, transportation, markets, infrastructure, employment and investment. Fifth, allegations about the misuse or excessive exercise of security powers should be investigated without further ado and in an independent and transparent manner, thus making sure that Constitutional remedies are actually available. Sixth, where unlawful security operations have visibly impaired livelihood or other protected interests, redress should extend beyond criminal measures and should include appropriate compensation and, where necessary, rehabilitation. Finally, security measures should respect constitutionally protected customary and autonomous institutions save for cases of interference that has been legitimised by a clear constitutional or statutory basis. Collectively, these measures would not remove the State's ability to counter insurgency or address security threats, but would ensure that exceptional powers remain legitimate, adequate and accountable, as well as respond to their consequences to civilian life and socio-economic development.

15. ANSWER TO THE CORE RESEARCH QUESTION

The answer to the research question “To what extent do emergency security legislations legally compromise the constitutional right to livelihood and socio-economic development in Northeast India?” is consequently necessarily qualified. While emergency security legislations do not extinguish or suspend the constitutional protection of livelihood under Article 21 by mere existence, the Supreme Court has upheld the constitutional validity of AFSPA while still recognising the State’s legitimate interests in responding to serious threats to national security and public order.

However, the constitutional validity of such legislation cannot be the limit of the constitutional inquiry. For the manner in which such extraordinary powers are exercised may affect the conditions through which livelihood is made possible. The Supreme Court has recognised livelihood as an important aspect of the right to life under Article 21, particularly in cases where deprivation of livelihood affects the meaningful enjoyment of life. Hence, the consequences of security operations which substantially interfere with movement, agricultural access, commercial activity, infrastructure, employment or access to essential services, can engage constitutional concerns relating to the life, dignity and livelihood.

The constitutional concern becomes more acute where such excessive, prolonged, geographically overbroad, inadequately reviewed, insufficiently accountable or disproportionate extraordinary measures are deployed. Thus, the principal conclusion of this study is that emergency security legislation does not legally abolish the right to livelihood, but its prolonged or excessive operation may indirectly interfere with the conditions necessary for the effective enjoyment of livelihood, dignity and socio-economic development.

Consequently, the extent of such interference must be assessed contextually with attention to necessity, proportionality, duration, geographical scope, accountability, constitutional safeguards and the

availability of effective remedies. This approach affirms the State's legitimate security functions, but also recognises that security governance itself remains subject to constitutional limitations.³⁷

16. CONCLUSION

The constitutional dilemma posed by emergency security legislation in Northeast India ultimately hinges on a challenge of balance. The State cannot fulfil its constitutional responsibility to protect citizens from insurgency and violence without possessing effective security mechanisms. At the same time, constitutional democracy cannot permit security legislation to create a permanent zone in which ordinary constitutional values become secondary.

The jurisprudence of the Supreme Court provides the foundation for this balance. *Olga Tellis* establishes that livelihood forms part of the right to life. *Naga People's Movement of Human Rights v. Union of India* establishes that AFSPA is constitutionally valid but that its extraordinary powers are subject to legal safeguards and disciplined exercise. *EEVFAM* reinforces that security operations remain subject to the rule of law and that allegations of excessive force cannot be ignored merely because the State invokes internal security.

Taken together, these authorities suggest that the Constitution does not establish a choice between security and livelihood.

Rather, it requires the State to pursue security through constitutional legality.

The Northeast's special constitutional provisions make this requirement even more significant. Articles 371A–371H and the Sixth Schedule reflect a constitutional commitment to autonomy, customary law, local governance and protection of distinctive socio-cultural institutions. These arrangements should not be treated as obstacles to national security.

Properly understood, they are part of the constitutional design by which legitimate and sustainable security may be achieved.

The main legal challenge therefore lies in the transformation of exceptional powers into extended governance mechanisms. Where extraordinary legislation remains temporary, necessary and closely supervised, its interference with livelihood may be constitutionally justified. Where it becomes indefinite, geographically excessive or weakly accountable, the constitutional balance begins to shift. The resulting harm may not appear as a formal deprivation of livelihood, but as the gradual erosion of the legal, institutional and economic conditions through which livelihood becomes possible.

The constitutional objective should consequently be neither the unconditional continuation nor the unconditional abolition of emergency security legislation. The more defensible constitutional approach

³⁷ *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 S.C.C. 353, 404–05 (India).

is rights-compatible security governance: security measures that are lawful, necessary, proportionate, periodically reviewed, territorially limited, subject to meaningful civilian oversight and accompanied by effective remedies for violations.

Ultimately, the legitimacy of security legislation in a constitutional democracy should be measured not only by its ability to suppress violence, but also by its ability to preserve the conditions under which citizens can live, work, participate in economic life and pursue development with dignity.

17. REFERENCES

17.1. Cases

- *Extra Judicial Execution Victim Families Ass'n v. Union of India*, (2016) 14 SCC 536 (India).
- *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608 (India).
- *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India).
- *Modern Dental College & Research Centre v. State of Madhya Pradesh*, (2016) 7 SCC 353 (India).
- *Naga People's Movement of Human Rights v. Union of India*, (1998) 2 SCC 109 (India).
- *Olga Tellis v. Bombay Municipal Corporation*, (1985) 3 SCC 545 (India).

17.2. Constitutional Provisions

- INDIA CONST. arts. 21, 37–43, 355, 371A–371H.
- INDIA CONST. sched. VI, paras. 2–8.

17.3. Statutes

- Armed Forces (Special Powers) Act, No. 28 of 1958, §§ 3, 4, 6 (India).
- Unlawful Activities (Prevention) Act, No. 37 of 1967 (India).

17.4. Journal Articles

- Rituparna Bhattacharyya, Living with Armed Forces Special Powers Act (AFSPA) as Everyday Life, 83 *GeoJournal* 31 (2018).
- Tuhin K. Das et al., Conflicts and Socioeconomic Consequences in Northeast India, 3(1) *Micronesian Journal of Humanities and Social Sciences* 79 (2015).
- Dolly Kikon, The Predicament of Justice: Fifty Years of Armed Forces Special Powers Act in India, 17 *Contemporary South Asia* 271 (2009), <https://doi.org/10.1080/09584930903108937>.
- L. Chiro Kumar Singha, Insurgency in North-East India: A Threat to the Socio-Economic Development, 57(7) *Psychology and Education Journal* (2021).
- Duncan McDuaie-Ra, Vision 2020 or Re-vision 1958: The Contradictory Politics of Counter-Insurgency in India's Regional Engagement, 17(3) *Contemporary South Asia* 313 (2009).
- Avijit Mistri, Migration from North-East India During 1991–2011: Unemployment and Ethnopolitical Issues, 65 *Indian Journal of Labour Economics* 397 (2022).
- Rameshchandra Ningthoujam, Disturbed Valley: A Case of Protracted Armed Conflict Situation in Northeast India, 11 *Deusto Journal of Human Rights* 185 (2013).
- Vibha Arora, Citizens, the Smoking Guns of AFSPA and Bare Life in Northeast India, 69 *Sociological Bulletin* 351 (2020).



- Thangkhanlal Ngaihte, Armed Forces in India's Northeast: A Necessity Review, 35 *South Asia Research* 368 (2015), <https://doi.org/10.1177/0262728015606259>.