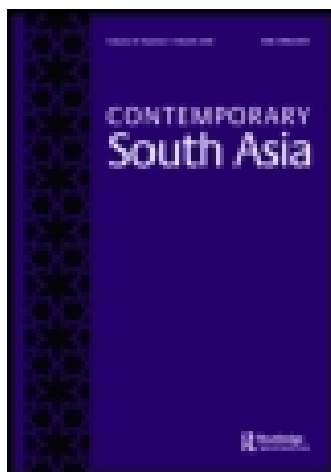


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### Fifty-year disturbance: the Armed Forces Special Powers Act and exceptionalism in a South Asian periphery

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## INTRODUCTION

### **Fifty-year disturbance: the Armed Forces Special Powers Act and exceptionalism in a South Asian periphery**

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Northeast India is one of South Asia's most contested spaces. Contestation has taken multiple forms, from armed opposition to the Indian state to violence against migrants, from movements for separate federal states and autonomous units to struggles to control black market trade, from protests against extractive industries to demands for more funds from the central government. Often overlooked in studies of the Northeast is the centrality of the Armed Forces (Special Powers) Act 1958 (AFSPA) in creating the environment in which contestation takes place. The AFSPA has become the 'elephant in the room' when it comes to the Northeast, mentioned in virtually every text but rarely examined beyond the rubric of security studies or human rights. The papers in this special issue examine the impact of the AFSPA after 50 years of operation. The content of the Act has changed little over 50 years, with the most notable changes being only amendments to who is able to declare an area disturbed and warrant the imposition of the Act in 1972 and a qualifier on the length of time for which a person can be detained resulting from a 1997 legal challenge. Yet the Act has impacted on the Northeast, India, and South Asia in ways that are profound and underexplored.

For the authors featured in this issue of *Contemporary South Asia*, the AFSPA is far more than a legal framework providing impunity for members of the armed forces engaged in the Northeast. The Act enforces a state of exception that allows democracy to be permanently suspended and the peoples of the region to be under permanent surveillance. Several authors refer to Agamben's (2005) use of the state of exception, although others, without referring to Agamben's work, discuss the dynamic in almost identical terms. The Act produces a culture where persons and places are able to be classified as 'disturbed' and subject to *de facto* martial law. This does not just affect interactions between soldiers and civilians, but between the centre and states, between the region's industrial estates and their employees, between civil society and government, between India and its neighbours.

Exceptionalism has its own culture, and within this culture identity politics are heightened and refashioned, manifesting in rivalries between some communities and also solidarities between others. The Act shapes the ways development monies are distributed in the region, ensures that counter-insurgency imperatives are at the heart

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of planning and implementation, and that the power to set the development agenda remains in the hands of the Indian Government. The Act reproduces the construction of the unruly frontier region, of the undisciplined tribal, the backward indigene. The Act divides power between the armed forces and armed militants, leaving a space where politics is compromised and the peoples caught between undertake struggles that have little prospect of success but invite a complete rethinking of the forms resistance can take.

This introduction to the special issue begins by discussing the provisions of the Act itself and the context in which it was legislated in the decade after Indian independence. The sections that follow discuss the dimensions of exceptionalism enforced by the AFSPA at the international, national, and local levels. At the international level, the Act is primarily seen as a violation of basic human rights – and international human rights organisations have pressured the Indian Government to repeal the Act, to which there has been little response beyond reiterating the necessity of the Act to maintain the security of India. At the national level, discussions of the Act are far more complex and multidimensional. The question of how such an extraordinary law can exist for five decades in the world's largest democracy demands analysis of the ways the Northeast is constructed at the national level and the ways the AFSPA has built upon these constructions and also reproduces them, reinforcing the state of exception. At the local level the AFSPA is part of everyday life. While generalising about the local context in the Northeast is difficult, in much of the region the AFSPA generates a constant fear that seeps into social relations on even the most basic level; visiting a relative, being introduced to a stranger, visiting the market, travelling to college, or joining an association. Finally, each of the four papers featured in the special issue will be introduced.

### **The AFSPA 1958**

In August 1958 the Indian Parliament debated the adoption of the AFSPA to be applied to the hill areas of Assam, particularly the Naga Hills, and the then Union Territory of Manipur, to assist the Indian armed forces in fighting armed opponents. The AFSPA has been applied to the Northeast region of India since 1958 and it has also been applied in Jammu and Kashmir as the Armed Forces (Jammu and Kashmir) Special Powers Act 1990 and in the Punjab as the Armed Forces (Punjab and Chandigarh) Special Powers Act from 1983 to 1997. Despite these other deployments, the focus of this special issue will be on the AFSPA in the Northeast states as this is where the Act has been in place for 50 years, where it has been most heavily embedded in institutions, politics, economics, and everyday life, and where the Act has gained its symbolic status as a tool of state-making. Furthermore, analysis of the contemporary politics of the Northeast region are less familiar than the other areas subject to similar acts – thus the 50-year anniversary of the AFSPA offers an opportunity to re-examine the Northeast region during this particular juncture in contemporary South Asia.

The Northeast refers to the wedge of land situated on the far-eastern periphery of India. It is almost completely cut off from the rest of India, joined only by a narrow tract of land at Siliguri in West Bengal. The Northeast is comprised of eight federal states centred on the Brahmaputra and Barak river valleys and surrounding hill ranges. The Northeast shares borders with Bangladesh, Bhutan, Burma, China (Tibet), and Nepal, and many of the peoples in the region have ethnic and linguistic



(Ministry of Home Affairs 1958/1998, Section 4a). Secondly, the Act allows armed forces personnel to arrest without warrant and with any necessary force ‘any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence’ (Ministry of Home Affairs 1958/1998, Section 4c). Thirdly, the Act allows armed forces personnel to enter and search any premises without a warrant to ‘make any such arrest’ (Ministry of Home Affairs 1958/1998, Section 4d). Once a person has been arrested under the Act, Section 5 instructs that they only be handed over to police with ‘the least possible delay’, although this was amended in 1997 to recommend that persons arrested be brought before a district magistrate within 24 hours, excluding transportation time. The most significant part of the Act is Section 6, which states:

No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act. (Ministry of Home Affairs 1958/1998, Section 6)

Derived from the British armed forces Special Powers Ordinance of 1942, which conferred the power to arrest and kill on suspicion to the Armed Forces in the wake of heightened nationalist agitations, the AFSPA of 1958 was intended to operate for one year. During the parliamentary debate, both of the Members of the Parliament from Manipur opposed the adoption of the Act – the member Mr. Laishram Achaw Singh stating:

I fail to understand why the military authorities are to be invested with special powers. I have found that these military authorities have always committed excesses in many cases, especially in the sub-divisions of Kohima and Mokokchung [present-day Nagaland] . . . such things have deteriorated the situation. The tribal people have risen against the military people there. It is, therefore, dangerous to invest the military authorities with extraordinary powers of killing and of arrest without warrant and of house breaking . . . This is a lawless law . . . I am afraid that this measure will only sever the right of the people and harass innocent folk and deteriorate the situation. (Singh cited in *Combat Law* 2003)

Aside from Singh, few other objections were recorded. The AFSPA was made law on 11 September 1958 and retrospectively enacted to May of the same year. Interestingly, and perhaps prophetically, the circumstances Singh described in 1958 have become the norm throughout much of the Northeast over the past 50 years.

The AFSPA is not applied uniformly across the states of the Northeast; it applies in areas declared ‘disturbed’ by the Ministry of Home Affairs or the Governor of the respective state (Ministry of Home Affairs 1958/1998, Section 3). Designating an area as ‘disturbed’ previously had no time limit, but since a 1997 challenge by the Naga People’s Movement for Human Rights, the designation must be reviewed periodically every sixth months – yet there is no limit on the number of times this designation can be renewed, effectively meaning some areas can, and have been, classified as disturbed for decades. The designation ‘disturbed’ is not open to judicial review, nor can it be contested by state governments (South Asian Human Rights Documentation Centre [SAHRDC] 1995), let alone local governments in the said area or concerned civil society actors. As of 2008 much of the Northeast was designated as ‘disturbed’, including: the areas of Arunachal Pradesh bordering Assam, the entire state of Assam, the entire state of Manipur (with the periodic

exception of parts of the Imphal Valley), a large corridor of Meghalaya bordering Assam, the entire state of Nagaland, and the hill areas of Tripura (Human Rights Watch 2008, 8–14). The only states with no ‘disturbed areas’ are Sikkim, only recently included and administered as part of Northeast India, and Mizoram. The removal of ‘disturbed’ status in Mizoram was the result of a peace accord between the Indian Government and the Mizo National Front in 1986, resulting in the creation of Mizoram as a state. Yet prior to this Mizoram was a ‘disturbed’ area for 19 years, and before this, in 1966, was bombed by the Indian Air Force (Dommen 1967).

In this environment, militant groups have thrived and the number of insurgent groups in the Northeast has increased dramatically since the AFSPA has been in operation. Indeed, as will be discussed by several authors in this special issue, 50 years of the AFSPA has closed all avenues for non-violent forms of contestation. While militancy has increased in some areas, it has decreased in others. Importantly, militant groups do not always receive widespread popular support from the communities that they claim to represent. Again this is not uniform; in some parts of the region, militant groups enjoy deep community support and legitimacy, as throughout the Mizo struggle; in others, they are viewed as an antisocial element involved in organised crime and extortion, as in parts of Meghalaya for instance. The increase in militancy has been used to argue that the Act is ineffective and that it has actually made the situation in the Northeast worse, yet it is also used by the Act’s proponents as proof that the Act should not be repealed and extraordinary powers are necessary (Baruah 2005, 63).

### **International dimensions**

At the international level, the Act is primarily discussed as a violation of basic human rights and India’s international obligations. It has been argued that the Act violates several core human rights norms, including the right to life by enabling members of the armed forces to shoot to kill (Section 4a), the right to liberty and security by enabling armed forces to arrest and detain anyone suspected of committing or being about to commit any ‘cognizable offence’ with no clearly specified period of release (Section 4c), the right to remedy by ensuring that no charges can be brought against the armed forces for any of their actions (Section 6), and it creates an environment where the right to be free from torture and from cruel or degrading treatment can be violated, and indeed allegations of torture, rape, and abuse at the hands of the armed forces operating under the Act abound (Human Rights Watch 2008, 6–7).

Since the 1990s major international human rights organisations such as Amnesty International, Human Rights Watch, the Asian Centre for Human Rights, and several different United Nations Agencies have released reports on human rights violations under the AFSPA and made recommendations to the Indian Government. In March 2009 Navanethem Pillay, the UN High Commissioner for Human Rights, visited New Delhi to address the National Human Rights Commission and a number of state-level commissions. In his speech Pillay urged the Indian Government to repeal ‘those dated and colonial-era laws that breach contemporary international human rights standards’, particularly ‘laws which provide the security forces with excessive emergency powers, including the Armed Forces Special Powers Act’ (National Human Rights Council 2009).

In its 2008 report *Getting Away with Murder*, Human Rights Watch pointed out that, aside from violating international human rights norms and treaties, the AFSPA provides impunity for the armed forces and paramilitary. Impunity is present in two forms; *de facto* impunity in which the state fails to prosecute due to lack of will or capacity, and *de jure* impunity in which laws protect perpetrators of human rights abuse, making it extremely difficult to bring cases against perpetrators (Human Rights Watch 2008, 16–17). The AFSPA provides *de jure* impunity in that members of the armed forces are not prosecuted in civilian courts, and under the provisions of the Act many human rights violations are not deemed criminal. Yet it also provides a form of *de facto* impunity as military courts responsible for prosecuting soldiers have often failed to investigate human rights violations or been ‘simply unwilling’ to bring charges against military personnel (Human Rights Watch 2008, 18).

Reports from the Asian Centre for Human Rights have focused on the ways the AFSPA has facilitated torture. A 2008 report provides evidence to demonstrate that, despite a 1997 amendment to the AFSPA that any person arrested under the Act must be handed over to civilian authorities within 24 hours, this is frequently ignored (Asian Centre for Human Rights 2008a, 36). In the cases, cited persons arrested have been detained for periods ranging from one week to several months. These periods of detention have facilitated torture, rape, and murder by the armed forces, including rape and torture of children (Asian Centre for Human Rights 2008a, 36–39). The Asian Centre for Human Rights publicises violations by the armed forces in its annual *India Human Rights Report*. The reports detail human rights violations in each state in India, and the AFSPA figures prominently in violations in the Northeast. In the Manipur section of the 2008 report, extrajudicial killings, arbitrary arrest, illegal detention, torture, and violence against women are all documented (Asian Centre for Human Rights 2008b, 105–111). This is followed by several pages documenting similar incidents by armed opposition groups.

Perhaps most interesting is attention to the AFSPA by the Committee on the Elimination of Racial Discrimination at the United Nations. During the 70th session in early 2007, the Committee responded to India’s submissions by expressing concern that the AFSPA had not yet been repealed and that armed forces continue to act with impunity in states that are ‘inhabited by tribal peoples’ (Committee on the Elimination of Racial Discrimination 2007, 3). In effect, the AFSPA is being contested by the committee on the grounds that it discriminates against tribal peoples. Race is very rarely brought into discussions of the AFSPA in India, where racism is predominantly viewed as a colonial form of power and control or something experienced by Indian nationals in other countries, rather than an embedded aspect of state-making in the exceptional Northeast.

The exposure of human rights violations under the AFSPA is aimed at appealing to India’s commitments and obligations under the international human rights framework. For example, Amnesty International states that the AFSPA violates core aspects of human rights ‘as enshrined in the International Covenant on Civil and Political Rights (ICCPR), to which India is a state party since 1979’ (Amnesty International 2006, 5). India has been able to respond by arguing that the AFSPA is necessary to deal with a major internal security threat. This is where the state of exception appears in its simplest form; under normal circumstances, such laws would not be necessary; but given the exceptional circumstances, the AFSPA is regrettable but necessary. For example, General J.J. Singh as Chief of Army Staff said of calls to repeal the Act in 2005, ‘we are fighting an unequal battle . . . we need some sort of

legal protection. Otherwise the army will be dragged to court every second day based on allegations against us' (*Telegraph* 2005). A further tactic has been to attribute blame for insurgency on 'foreign hands', located in Bangladesh, China, and Pakistan.

At the international level, particularly in interactions between states, attention to human rights violations is often couched in arguments around democracy, dictatorship, discriminatory laws, and crimes against humanity during civil war. India's status as the world's largest democracy means that reports heavily critical of the AFSPA and other human rights violations in India generate much less attention than those aimed at regularly vilified states. After all, India has been perhaps the most successful postcolonial democracy anywhere, and certainly in South Asia. Federalism, the *panchayati* system of directly elected district-level and village-level governance, reservations aimed at redressing discrimination, and a vibrant civil society have all been lauded, although rarely without qualifiers (Dasgupta 2001; Kumar 2006; Lijphart 1996/2001). Indeed, several authors have argued that the strengths of Indian democracy are its perseverance despite significant odds (Jayal 2001; Kohli 2001). Threats to this democracy are usually attributed to communalism, nationalism, diasporic meddling, and Hindu fundamentalism (Nussbaum 2007), rarely to state-sanctioned suspensions of democracy and militarisation in border regions. Indian democracy is to be supported and preserved in a rough neighbourhood rather than overtly challenged.

This is particularly true of human rights violations in the Northeast, a part of India and South Asia that receives very little outside attention. While international pressure has emanated from the most prominent human rights actors thus far, the central government has resisted repealing the Act. The capacity to defend the Act is derived from the state of exception applied to the Northeast in India. International pressure to repeal the Act has less leverage as the Act is applied to a region of India that is considered so extraordinary that rules, laws, and moral codes do not apply in the same way as in other parts of India. The exceptionalism of the Northeast is the focus of the following section.

### National dimensions

The provisions of the AFSPA are extraordinary by any measure. This raises the question of how has such an extraordinary law persisted in India's democratic polity for 50 years? In that 50 years there have been legal challenges, review committees, and mass protests, yet only minor indications from the government that the Act may be revised let alone repealed. The question is even more pertinent when one considers the repeal of other extraordinary laws in India, particularly the Prevention of Terrorism Act 2002 (POTA) and the Terrorism and Destructive Activities Act 1985, and the high-level public and parliamentary debate over the National Security Act 1980, the Preventive Detention Act 1950, and the Unlawful Activities Prevention Act 1967/2004 (UAPA), leading to amendments in certain cases (Kalhan et al. 2007; Singh 2007).

One possible answer common to all of the papers featured in this special issue comes from the ways the Northeast itself is situated, materially and ideationally, in postcolonial India. As all of the authors in the present issue argue, the Northeast is an exceptional territory; ethnically, geographically, politically, socially, and constitutionally. While India contains diverse regions and a holistic national polity



or even coherent national society is not always identifiable, there is a distance between the Northeast and the rest of India that is qualitatively different to that between other regions in India, and between these regions and the central government. While regions and peoples throughout India are constructed and viewed differently to each other and these differences are pronounced and often articulated forcefully at the local level, they still fit into the larger nation, although rarely seamlessly, in ways that the Northeast does not.

There is a strong belief in both the Indian 'mainland' and in most of the Northeast itself that the different states, autonomous units, and peoples grouped together as 'the Northeast' will never be able to be part of India in the same ways as other diverse groups of peoples have been accommodated. There is a binary between the peoples of the Northeast and peoples in other parts of India. Rarely explicitly articulated in mainstream politics, this binary is constant in any interaction between the states of the Northeast and the central government and, crucially, between the armed forces and the peoples of 'disturbed areas'. The Northeast is exceptional and the rest of India is normal. This binary is bridged in certain ways, such as by particular individuals migrating to the rest of India to live and work, and *vice versa*, and through certain networks such as women's organisations, environmentalists, and human rights activists. Yet in the majority of interactions this binary is constant.

This binary structures the ways the Northeast is perceived externally in India and beyond, discussed throughout the articles in this special issue and in much of the literature on the region (Baruah 1999, 2005; Hazarika 1995), and exacerbates the distance between the 'mainland' and the Northeast. In the rest of India, the construction of the Northeast has a number of components. First, the region is portrayed as being endlessly and incurably violent. Building upon colonial classifications of peoples of the region as savage, predominantly used to justify their violent subjugation, the category 'tribal' in contemporary India continues to reproduce the stereotypes that enable the region to be constructed as a violent borderland, a distant and disturbed periphery of 'undifferentiated' and 'nameless insurgencies' (Baruah 2005, vii), where people owe allegiances to kin and clan ties and hereditary rulers over secular modern institutions, and respond to emotion over rationality (Singh 2002, 39). Secondly, and in some cases contradictorily, the peoples of the region are portrayed as 'simple' and unable to cope with the demands of citizenship in the modern state (Miri 2005; Prasad 2003). At the popular level, this component is extended to include notions that tribals are gullible, lazy, and frequently intoxicated. Far from an archaic view, scholars are often surprised at how embedded these stereotypes are in other parts of India and within the Northeast itself. This has been the catalyst for constitutional protection for many of the ethnic groups in the region embodied in the Sixth Schedule of the Constitution and Scheduled Tribe status, provisions both derided for prolonging the region's 'isolation' (Johri 1962) and celebrated for protecting ethnic and cultural rights and control over land (Gassah 1998). The need for protection has been used by many ethno-nationalist movements to demand autonomy and to differentiate themselves from cunning and predatory societies in other parts of India (Xaxa 1999). Thirdly, the economy of the region is viewed as being 'under-developed' and its peoples 'backward' and thus in need of paternal guidance from the Indian state (McDuie-Ra 2008). National security imperatives are an important part of this paternalism, and as a result development and economic planning are highly centralised through the Ministry of Development for the Northeast Region, and aided by the economic dependence of states from the Northeast on the central government for the majority

of their budgets leaving states little room to negotiate on how money will be spent and how resources will be utilised.

Within the Northeast the rest of India is constructed in slightly more complex ways. Those most commonly identified are the feelings of alienation, neo-colonial control, occupation, and domination that are discussed thoroughly in existing literature, and are a major part of identity narratives, party politics, and civil society. However, peoples from the region interact with the 'national' in many ways. The Indian state has a major presence in the Northeast. The state makes its presence felt in the visual and cultural landscape of the Northeast, especially in urban areas, and the state is also responsible for the establishment and maintenance of many of the institutions through which peoples' lives are determined, such as the state government and departments, the Sixth Schedule, reservations in government employment, and the military. Many of the region's peoples interact with the state, and in many cases identify with it through holding Indian citizenship, employment in the civil service, the national education system, and social and political networks between the Northeast and the rest of India.

However, while there are spaces and interactions that bridge the distance between the Northeast and the rest of India, the region is predominately constructed externally and internally as an exception. Crucial to this exception is the idea that the region is a work in progress. Military occupation, the creation of federal states, centrally directed development and resource extraction, the provision for reservations for people in the region to study and work in other parts of India, are all part of the ongoing process of state-making in the Northeast; a process that aims to bring the Northeast 'up' to the level of development and sophistication of the rest of India. Parallels with colonial state-making are clearly evident. Paternalism and special provisions are combined with extraordinary laws and military occupation.

The state of exception in the Northeast is permanent not temporary. In his detailed study of extraordinary laws in India, Singh argues that exceptional contexts only gain meaning when compared with normal contexts, and thus 'the normal . . . stands outside and parallel to the exception, and yet is integrally related to it . . . the exception cannot have any meaning unless there is a normal situation that offsets it' (2007, 19) Considering the ways the Northeast has been brought into colonial and postcolonial state-making, it is difficult to assume it would ever be considered normal provided it remains part of India. The AFSPA is central to this, as it ensures 'entire populations . . . may be externalised and distanced from the (national) political community', excluding the people of the region as the 'enemy within' (Singh 2007, 310).

As an extraordinary law governing an exceptional place, the AFSPA has not been subject to national political debate in the same way as other Acts that affect peoples with greater political representation at the centre. The POTA was vigorously opposed and made a national election issue by the Congress in 2004, leading to its removal. The Terrorism and Destructive Activities Act 1985 was allowed to lapse after 10 years and was not renewed. The UAPA has undergone several major amendments, although admittedly many of these amendments have made the law more draconian as it has absorbed elements of the POTA. Yet the AFSPA remains in place. Recommendations for its repeal, as will be seen below, are readily countered by the seemingly logical national security argument. As Singh argues, this has meant that struggles for human rights and justice in the face of these laws are themselves 'imputed with extraordinariness' and are quickly juxtaposed to 'notions of national sovereignty, national security, national integrity, and national interest' (2007, 29).

In defence of the Act, the Northeast is cited as too violent, too unstable, and too strategically valuable to allow it to be 'lost' to militants (Kamboj 2004).

Several committees have been established to review the AFSPA in India. The two most recent are the Reddy Committee in 2005 and the Administrative Reforms Commission, also known as the Moily Commission, in 2007. The former will be the focus here as it best epitomises the dimensions of the AFSPA at the national level. The Reddy Commission was assembled by the Indian Government in the wake of the protests in Manipur in 2004 at the rape and murder of Manorama Devi (see Gaikwad, present issue). Headed by former Supreme Court Justice B.P. Jeevan Reddy, the Reddy Commission toured the Northeast in early 2005, accepting submissions from communities, lawyers, activists, academics, and members of local government. The commission also took submissions from the armed forces. The committee's report was submitted to the Prime Minister in June 2005. This was followed by silence. The recommendations of the report were not released. After more than a year the report appeared on *The Hindu* newspaper's web site, before parts of the report were leaked to other media and civil society actors.

Given the unwillingness of the government to release the report, it is unsurprising to discover the Reddy Commission recommended that the AFSPA be repealed. The report declared the Act to be too vague, easily abused, and that it had become a symbol of 'oppression' in the Northeast (Chasie and Hazarika 2009, 1). In a visit to Manipur in December 2006, the Prime Minister was quoted as saying the Act would be 'humanised' rather than repealed (SAHRDC 2006). Despite recommending repeal, the Reddy Committee did not recommend that the armed forces leave the Northeast and the UAPA should be further revised to take on certain provisions of the AFSPA (Baruah 2007, 5).

The UAPA was amended in 2004 after the very controversial POTA law was repealed. Aspects of the POTA were rolled into the amended UAPA, allowing various kinds of activities and organisations to be regarded as 'unlawful' or 'terrorist' and allowing suspected individuals to be arrested and organisations to be banned with no requirement for ratification or juridical review (Kalhan et al. 2007, 105, 125). Given the ways that civil society and government opponents have been harassed and banned throughout the Northeast, there is grounds to assume this would continue and possibly increase under the UAPA. It is significant that the Reddy Commission suggested absorbing the AFSPA into the UAPA on the grounds that the UAPA applied to all of India, and thus the process of absorbing the AFSPA would reduce the feeling of discrimination felt by the people of the Northeast (SAHRDC 2006). In the end this was rejected. The process reveals what Baruah describes as the 'impasse in India policy towards the Northeast' (2007, 5). A high-level committee recommends repeal of the AFSPA, the Indian Government suppresses the report, but even the report itself does not recommend the removal of the armed forces or the repeal of extraordinary laws, only this particular law, and only because it may lessen feelings of exceptionalism, decreasing the attractions of insurgency. Despite this, the Indian Government was still not prepared to dismantle the exceptional status of the Northeast.

### **Local dimensions**

At the local level the AFSPA is more than an extraordinary law. The AFSPA is the legal framework for the military occupation of the region and the subsequent

militarisation of everyday life. Armed personnel are encountered on the roads, in the main towns, in the markets, and in border areas. Military cantonments and bases occupy the centre of state capitals, strategic hills, bridges and border crossings. Members of the armed forces frequently stop vehicles to search passengers and cargo. Check-points are numerous, heavily curtailing movement. Members of the different border security forces routinely stop civilians in the proximity of borders. As Kikon describes in her article, persons found in proximity of borders in the Northeast, even internal borders between states, are routinely regarded as suspicious and can be subject to harassment, detention, and death. Stopping, searching and questioning have made everyday life oppressive for most people in 'disturbed areas'. After 50 years, many people in the region have known no other situation.

Incidences of murder, rape, and torture reported at the hands of the armed forces and by militant groups impute a deep sense of fear and uncertainty in everyday life. This shapes the choices people make about their own movements and those of their family members, especially when movement may be necessary for education, employment, livelihoods, and healthcare. Movement, even within the region, usually always requires interactions with the armed forces, perpetuating the fear that each search, each routine questioning, each suspicion on the part of the armed forces could escalate into violence or detention, and under the protection of the AFSPA there is no way to prevent this happening or to seek justice when it does.

Fear of the armed forces, and also militants, is not restricted to people's interactions in public. The AFSPA enables the search of any premises without warrant on mere suspicion of different offences. For many people in the Northeast, the home, the private sphere, provides no shelter from harassment and violence. Even for people in the region whose interactions with the armed forces have never involved more than a cursory glance or the unpacking of luggage at a checkpoint, the fear that they could be apprehended at any moment or that their houses could be entered by armed men or that a family member may not return from work is entrenched. After 50 years this has placed an extreme psychological burden on people and communities in the region.

There are gendered aspects to this fear and psychological burden. As Chenoy argues, women in the Northeast 'are routinely questioned on the thinnest of pretexts and are thus exposed to sexual harassment' (2002, 132). Sexual violence directed against women by the armed forces has been widely publicised and contested by activists throughout the Northeast and in other parts of India (see Gaikwad, present issue). However, those who experience sexual violence are not the only ones deeply affected by the militarisation of the Northeast, despite being perhaps the most visible. Goswami, Sreekala, and Goswami's (2005, 19) study of women in armed conflict in the region identifies six categories of women affected: women relatives of armed activists, women relatives of state armed forces, women militants or combatants, women as shelter providers, women as victims of sexual and physical abuse, woman as peace negotiators, women as rights activists. They argue that in a militarised society, even in locations where actual armed conflict is minimal, violence against women is far higher than in non-militarised societies (Goswami, Sreekala, and Goswami 2005, 34). This is evident in the very high levels of violence against women recorded in the Northeast states in various Indian Government reports, exemplified by Meghalaya having the second highest level in all of India in a 2002 national report, despite a predominately and oft-celebrated matrilineal society (McDuie-Ra 2007). Race and gender intersect in harassment and violence directed

towards tribal women, particularly by non-tribal members of the armed forces. Tribal women are perceived to be less bound by moral codes that apply to women in other parts of India, more sexually available, and somehow seen to be inviting sexual attention by their dress or their capacity to move around without male companions, magnifying the fear in any interactions with the armed forces.

Frequently overlooked are the ways that the AFSPA and a militarised Northeast affect men, particularly young men from hill areas and from upper-Assam. Young men are profiled as insurgents by the military and are the targets of recruitment by insurgents. They are subject to pressures and harassment from both sides. Movement, employment, education, and social networks are all jeopardised in this environment. Young men who move in groups attract high levels of suspicion and harassment, yet young men who move around on their own are far more vulnerable to harassment and without a companion it can be difficult to trace individuals when disappearances occur. The psychological impact militarisation has on young men is rarely examined beyond being a catalyst to join militant groups and/or the armed forces. Attention from scholars and civil society is given to combatants and to the role of men in ethno-nationalist and student movements, but little attention is given to the impacts of militarisation on non-combatants, particularly the long-term psychological impacts of living in this environment.

The AFSPA and the counter-insurgency culture has bred a symbolic presence at the local level that constantly enforces the extraordinariness of the Northeast and the presence of the Indian state as an occupying force (see Farrelly, present issue). Any time spent travelling in the Northeast will quickly acquaint visitors with the very visible physical presence of the various military and paramilitary units, but also the intense public relations paraphernalia that adorns barracks, markets, public events, stadiums, and highways. Recently, photographs of members of certain battalions surrounded by children from tribal villages or from a school or sports club have appeared at the gates to barracks in different parts of the region. Reading this symbolism is complex and inevitably symbolises different things to different peoples. Although at a certain level such symbols signify surveillance and occupation, they also signify integration and paternalism, capturing both the exception and the relationship with the normal. In many ways this resembles the everyday experiences with the AFSPA at the local level where exceptionality has become familiar, where exceptionality is the norm.

### **Papers in this special issue**

The papers in this special issue approach the AFSPA as far more than a legal framework, and posit that after 50 years the impact of the Act on aspects of life within and outside the Northeast have been phenomenal. Common to all these papers is the state of exception. Despite the changes that the Act has brought to the region and its peoples, much of the ideological framework underpinning the Act has changed little over 50 years. Indeed, it seems to have been further entrenched. Legal challenges, commissions, reports, protests, and a proliferation of armed groups have not significantly altered the ways the region is governed, the way it is conceived in the national imaginary, or the prospects of peace.

The first paper, by Dolly Kikon, deconstructs the relationship between justice and law to explore the ways the Indian state has been able to legitimise lawlessness through the AFSPA. Kikon uses Derrida's separation of law and justice that extends justice beyond legal paradigms and deconstructs the assumption that the rule of law

is equivalent to justice to examine the AFSPA. The violent enforcement of justice is legitimised by the normalisation of the binary between crime and justice. In the Northeast this is highly problematic as legal practices have different meanings and impacts among citizens. For the inhabitants of the Northeast, their status as Indian citizens has been destabilised by their peripheral locations on the margins of the Indian legal system. This has created an AFSPA culture in which the terms ‘disturbed area’ and ‘suspicion’ have enabled the region to become a ‘site of surveillance, aberration and contradictions’ in which people in the Northeast ‘define and negotiate justice’ as inherently unequal citizens (Kikon 2009, 278).

The paper illustrates this with a detailed account of the murder of Nilikesh Gogoi by the Central Industrial Security Force, one of the many paramilitary forces operating in the Northeast. Kikon unravels the ways justice is played out in the militarised terrain around the oil fields and plantations along the Assam–Nagaland border area. The different accounts of justice understood by the state and by local inhabitants suggest that a shared understanding of rights and justice is non-existent, and this incoherence has led to the imposition of structures of power by the state that serve to regulate daily life. These structures of power mean that the inhabitants of disturbed areas have no guarantee that their rights will be protected, and instead, as in the case of the local people who initially protested against Gogoi’s murder but eventually compromised, must negotiate and adapt to existing power relations enforced by extraordinary law. Thus for Kikon, the AFSPA is a culture that has militarised social relations in the Northeast. In ‘disturbed’ areas the AFSPA must be examined beyond a legal framework that focuses on repeal or modification; instead, it is important to focus on the moral framework imposed by the Act.

The second paper, by Nicholas Farrelly, examines the ceasefire regimes in the Indo-Burmese borderlands, comparing the actions of the different governments to long-running insurgencies. For Farrelly, the Northeast is a site of cultural, political, and economic intersection, yet also is a site that cannot escape the ways it has been constructed in colonial and postcolonial state-building as a frontier that has been extremely difficult to govern. This has provided the continued impetus to extend the structures of the modern Indian state to the Northeast, yet the AFSPA ensures that democratic norms characteristic of the Indian polity are suspended within the broader mission of national cohesion. Central to this mission are the complimentary and contradictory initiatives that continue to reproduce the state of exception in the Northeast through measures aimed at protection of the region’s peoples through inner-line permits, protection of tribal land and political institutions, and generous financial incentives to leave militant groups, yet also aimed at securitisation through the AFSPA, the omnipresent military, and the system of governance that rewards loyal elites at the state level and breeds incessant corruption. Farrelly terms this a ‘pattern of controlled ambiguities’ (Farrelly 2009, 298), in which ambiguous laws such as the AFSPA hold legitimacy.

Much of the unravelling of this argument takes place through a comparative investigation of the different approaches taken by the Indian and Myanmar governments to achieve ceasefires in the Northeast and the Kachin state, respectively. In doing so, Farrelly demonstrates that the AFSPA is about more than security; it is also about economics. For people in the Northeast, the armed forces are not simply a symbol of control; a neo-colonial occupying force. They are also a source of employment and wealth. Farrelly challenges the conventional assumption that all politics in the Northeast revolves around anti-national

sentiment. Indeed, recruitment into the armed forces is about more than just personal wealth and the social status that comes from a government job; many people in the region also feel compelled to defend India. This raises the rarely discussed existence of dual-identities in the region; generally expressed as ethnic identity and Indian national identity. Even as anti-national movements have become entrenched, individuals do not always choose between one and the other. When the choice is made to take up arms against the Indian state, the AFSPA operates to counter this, but it also operates 'in conjunction with a set of equally ambiguous financial incentives, and social and political exceptions, that are largely absent from discussions of the law's implementation' (Farrelly 2009, 289). Farrelly focuses on the remuneration offered to militants for surrender, agreement to undertake vocational training, and for handing in weapons, with prices for the latter depending on the weapon itself. This encapsulates the ironies of exception in the Northeast, which allow the AFSPA to continue.

The third paper, by Namrata Gaikwad, focuses on the ways protests against the AFSPA by women in Manipur are carried out in an unstable and shifting ground. She questions not only the AFSPA and the 'quasi' colonisation of Manipur, but the very capacity of conventional methods of analysis to deconstruct protests against the Act and understand them within a rationalist framework that searches for means and ends. Using the naked protests by members of the Meira Paibis at the barracks of the Assam Rifles paramilitary forces in 2004 after the rape and murder of Manorama Devi and the ongoing fast since 2000 of Irom Sharmila in protest against the AFSPA, she examines the forms of expression that people adopt when caught between the Indian armed forces and their armed opponents. Action that seeks to transcend entrenchment may never lead to the removal of the AFSPA, but to overlook such action is to overlook the ways it confronts injustice and inequalities.

In her first example, Gaikwad examines the ways the Meira Paibis used their bodies as weapons against the state. Their naked protest and unfurling of banners calling upon the Indian Army to rape them received attention throughout the mainstream press in India, yet the complexities of the Act of protest defy rational explanation. In her second example, the ongoing fast of Irom Sharmila, Gaikwad offers the metaphor of the haunting to describe the figure of Sharmila. The response of the state to Sharmila's fast has been to keep her alive at all costs and thus her body has become a site where the dynamics of conflict are re-enacted. The Indian state cannot allow Sharmila to die as they risk being revealed as 'murderous and emasculated in the same gesture' (Gaikwad 2009, 308), thus as each year passes the figure of Sharmila continues to haunt the state. Her body has taken on a meaning that allows us to move beyond rationalist debates for and against the AFSPA and focus instead on the extraordinary protest; transcendental and divine, which is beyond the control of the state, haunting its actions and its Special Powers Act.

The final paper, by Duncan McDuie-Ra, departs slightly from the content of the previous articles to study the ways the state of exception shape development in the region and relationships with neighbouring countries. As India seeks to create stronger economic links with Southeast Asia, China, and to further integrate the economies of Bangladesh, Bhutan, and Nepal into its orbit, the Northeast has had to be rethought in ways that are conducive to opening borders, allowing greater movement of goods and peoples, and shifting the ways economic development has been conducted in the region from the neo-colonial extractive model to a more participatory approach. This is embodied in the Indian Government's *North East*

*Region Vision 2020* document released in 2008. The document seeks to recreate the Northeast as a conduit for regional integration, transforming it from a periphery to a corridor. To achieve India's development vision and aspiration for intra-regionals and inter-regional cooperation, the Northeast is required to become less of an exception and more of a cog in the Indian economic wheel.

McDuie-Ra argues that, while a new vision for the region is important, the persistence of the counter-insurgency mindset through more than five decades ensures that the approach outlined in the *Vision 2020* is subject to contradictory politics. Each measure designed to bring normalcy to the northeast is countered by measures to enforce its exceptionality. Not only is this dysfunctional as it does not provide any of the basic needs that many people in the region are denied and will serve to exacerbate grievances against the state, but it also shows that despite recognition of past development failures, each successive revelatory report on development needs in the region continues to offer the same solutions underpinned by the state of exception and each measure will continue to be assessed with regard to counter-insurgency. McDuie-Ra closes by arguing that the new vision for the Northeast is very much a 're-vision' of the state of exception first legislated in the AFSPA, and that although the Indian state may be willing to try to alter this mindset, it may not be capable of doing so.

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