

The List of Do's and Don'ts under the *Armed Forces (Special Powers) Act, 1958 (AFSPA)*

as cited in the judgment of the Supreme Court of India in the matter of
Naga People's Movement of Human Rights and Ors. vs Union of India (AIR 1998 SC465)

vis-à-vis

The List of Dos and Don'ts under AFSPA, and *Jammu and Kashmir Armed Forces (Special Powers) Act, 1990*

supplied by the Indian Army under the *Right to Information Act, 2005 (RTI Act)*

A Comparison

Sl. No.	List of Do's and Don'ts under AFSPA according to: <i>NPMHR v Union of India</i>	List of Do's and Don'ts under AFSPA and J&KAFSPA supplied by the Indian Army under the RTI Act
	List of Do's	List of Do's
	<p>There is no mention of a Preamble in the List →</p> <p>However significant parts of the Preamble are based on the observations of the Supreme Court of India in its judgment in <i>NPMHR v Union of India</i> →</p>	<p><u>Preamble</u></p> <ol style="list-style-type: none">1. Protection and respect of human dignity, human decency and human rights are the very essence of rule of law and social order in civilised society. Armed Forces are called in aid to civil authorities to maintain and restore law and order as also to provide assistance in case of natural calamities and catastrophes. Thus members of the Armed Forces act as the protectors of social order so that other citizens can enjoy the fruits in an orderly society.2. When deployed in aid to civil authority the Armed Forces of the Union operate in the State concerned in cooperation with the civil administration so that the situation affecting maintenance of public order which has necessitated the deployment of the Armed Forces is effectively dealt with and normalcy is restored. The Central Act viz., Armed Forces (Special Powers) Act, 1958

		<p>does not displace the civil power of the State by the Armed Forces of the Union and it only provides for deployment of Armed Forces of the Union in aid of the civil power. The word 'aid' postulates the continued existence of the authority to be aided. This means that even after deployment of the Armed Forces the civil power continues to function.</p> <p>3. The instructions given below in the form of Do's and Don'ts are binding instructions which are required to be followed by the members of the Armed Forces exercising powers under the Armed Forces (Special Powers) Act, 1958 and any disregard of these instructions would entail suitable action under Army Act, 1950.</p>
(i)	<p><u>1. Action before Operation:</u></p> <p>(a) Act only in the area declared 'Disturbed Area' under Section 3 of the Act.</p> <p>(b) Power to open fire is to be exercised under this Act only by an officer/JCO/WO and NCO.</p> <p>(c) Before launching any raid/search, definite information about the activity to be obtained from the local civil authorities.</p> <p>(d) As far as possible co-opt representative of the local civil administration during the raid.</p> <p><i>This sub-para is not mentioned in the List</i> →</p>	<p><u>4. Action before Operation:</u></p> <p>(a) Act only in the area declared as 'Disturbed' under Section 3 of the Act.</p> <p>(b) Before taking action to fire upon or using force, ensure:-</p> <p>(ii) power to open fire, using force or arrest is exercised only by an officer/JCO/WO or NCO</p> <p>← <i>There is no reference to this requirement</i></p> <p>← <i>There is no reference to this requirement</i></p> <p>4. (b) (i) There exists a prohibitory order against assembly of five or more persons or carrying weapons of firearms/amn or explosives substances in the disturbed area and the persons concerned have acted in contravention of such order;</p>

Sl. No.	List of Do's and Don'ts under AFSPA according to: <i>NPMHR v Union of India</i>	List of Do's and Don'ts under AFSPA and J&KAFSPA supplied by the Indian Army under the RTI Act
	<p><i>This sub-para is placed under para #2: 'Action during Operation' (see page #3 below) →</i></p> <p><i>This sub-para is placed under para #2: 'Action during Operation' (see page #3 below) →</i></p> <p><i>This sub-para is not mentioned in the List →</i></p> <p><i>This sub-para is placed under para #2: 'Action during Operation' (see page #3 below) →</i></p>	<p>4. (b) (iii) such officer is satisfied that action is necessary for maintenance of public order; and</p> <p>(iv) due warning is given by such person exercising powers under this section.</p> <p>4. (c) Under Sec 4(b) of the Act, any officer, JCO, WO and NCO may destroy those arms dump, prepared or fortified position or shelter from which armed attacks are made or are likely to be made or any structure used as training camp for armed volunteers or utilized as hide out by armed gang or absconders wanted for any offence. Before taking action, ensure that such officer is of the opinion that it is necessary to destroy any arms dump, etc.</p> <p>4. (d) Under Sec 4(c) of the Act, powers to arrest any person without warrant can only be exercised if that person has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed cognizable offence or is about to commit a cognizable offence. For effecting arrest, such force as may be necessary can be exercised. Ensure that only such a persons who has either committed a cognizable offence or against whom reasonable suspicion exists, is arrests, innocent persons are not to be arrested.</p>

Sl. No.	List of Do's and Don'ts under AFSPA according to: <i>NPMHR v Union of India</i>	List of Do's and Don'ts under AFSPA and J&KAFSPA supplied by the Indian Army under the RTI Act
(ii)	<p><u>2. Action during Operation:</u></p> <p>(a) In case of necessity of opening fire and using any force against the suspect or any person acting in contravention to law and order, ascertain first that it is essential for maintenance of public order. Open fire only after due warning.</p> <p>(b) Arrest only those who have committed cognizable offence or are about to commit cognizable offence or against whom a reasonable ground exists to prove that they have committed or are about to commit cognizable offence.</p> <p>(c) Ensure that troop under command do not harass innocent people, destroy property of the public or unnecessarily enter into the house/dwelling of people not connected with any unlawful activities.</p> <p>(d) Ensure that women are not searched/arrested without the presence of female police. In fact women should only be searched by female police.</p> <p>[sub-para (d) has been expanded considerably in List supplied by the Indian Army under the RTI Act]</p>	<p>(Page 3 is missing from the List provided. So any further sub-paras under para #4 and sub-paras #(a), (b) and the opening lines of (c) under para #5 are missing]</p> <p>← This instruction is contained in sub-para 4(b) (iii) and (iv) under the para: '<i>Action before Operation</i>' (see page #2 above)</p> <p>← This instruction is contained in sub-para 4(d) under the para: '<i>Action before Operation</i>' (see page #2 above)</p> <p>5. (e) Ensure that troops under command do not harass innocent people, destroy property of the public or unnecessarily enter into the houses/dwellings of people not connected with any unlawful activity.</p> <p>5. (d) The person acting under the Act while effecting the arrest of a woman or making search of woman or in searching the place in the actual occupancy of a female shall follow the procedure meant for the police officers as contemplated under the various provisions of the Code of Criminal Procedure, namely, the</p>

	<p><i>This sub-para is not mentioned in the List</i> →</p>	<p>proviso to Sub Section (2) of Section 47, Sub Section (2) of Section 51, Sub Section (3) of Section 100 and proviso to Sub Section (1) of Section 160 of the <i>Code of Criminal Procedure</i>. These provisions in substance provide as under:-</p> <p>(i) if any place is to be searched is an apartment in the actual occupancy of a female (not being the persons to be arrested) who, according to custom, does not appear in public, then before entering such apartment, such female shall be informed that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.</p> <p>(ii) Whenever it is necessary to cause a female to be searched, the search shall be made by another female with strict regard to decency.</p> <p>(iii) No male person under the age of fifteen years or woman is required to attend at any place other than the place in which such male person or woman resides.</p> <p>5. (f) Ensure proper record is maintained of arrested and released persons after apprehension.</p>
<p>(iii)</p>	<p><u>3. Action after Operation:</u></p> <p>(a) After arrest prepare a list of the persons so arrested.</p> <p>(b) Handover the arrested persons to the nearest Police Station with least possible delay.</p> <p>(c) While handing over to the police, a report should accompany with detailed circumstances occasioning the arrest.</p>	<p><u>6. Action after Operation:</u></p> <p>a) After arrest, prepare a list of the persons so arrested and handover the arrested person to the officer in charge of the nearest police station with the least possible delay together with a report of the circumstances occasioning the arrest so the arrested person can be produced before the nearest Magistrate within a period of 24 hours of his arrest excluding the time taken for journey from place of arrest to the Court of Magistrate.</p>

<p>(d) Every delay in handing over the suspects to the police must be justified and should be reasonable depending on the place, time of the arrest and the terrain in which such person has been arrested. Least possible delay may be 2-3 hours extendable to 24 hours or so depending upon particular case.</p> <p>(e) After raid make out a list of all arms, ammunition or any other incriminating material/document taken into possession.</p> <p>(f) All such arms, ammunition, stores, etc. should be handed over to the police State along with the seizure memo.</p> <p>(g) Obtain receipt of persons arms/ammunition, stores, etc. so handed over to the police. [no need for maintain record of receipts]</p> <p>(h) Make record of the area where operation is launched having the date and time and the persons participating in such raid.</p> <p>(i) Make a record of the commander and other officers/JCOs/NCOs forming part of such force.</p> <p>(j) Ensure medical relief to any person injured during the encounter, if any person dies in the encounter his dead body be handed over immediately to the police along with the details leading to such death.</p>	<p>(b) Every delay in handing over the arrested person to the police must be justified depending upon the place, time of arrest and the territory in which such person has been arrested.</p> <p>[time limits for handing over the apprehended person to the police have been brought in line with the provisions of the Constitution and the <i>Criminal Procedure Code</i>]</p> <p>(c) After raid, make out a list of all property, arms, ammunition or any other incriminating material/documents taken into possession.</p> <p>(d) All such property, arms, ammunition stores, etc. are to be handed over to the officer in charge of the nearest police station together with a report of the circumstances occasioning such search and seizure. [no mention of seizure memo]</p> <p>(e) Obtain receipt of persons and arms/ammunition stores, etc. so handed over to the police and maintain proper record of such receipts.</p> <p>(f) Maintain record of the area where operations are launched, with details of date, time and the persons participating in such operations.</p> <p>(g) Maintain a record of the Commander and other officers/JCOs/NCOs forming part of such task forces.</p> <p>(h) Ensure medical relief to all persons injured during the encounter. If any person dies in the encounter, the body be handed over immediately to the officer in charge of the nearest</p>
---	---

	<i>This sub-para is mentioned in the para 'Dealing with Civil Court (see page #8 below) →</i>	<p>police station along with the details leading to such death.</p> <p>(j) Maintain detailed record of the entire operation correctly and explicitly.</p>
(iv)	<p><u>4. Dealing with Civil Court</u></p> <p>(a) Directions of the High Court/Supreme Court should be promptly attended to.</p> <p>(b) Whenever summoned by the courts, decorum must be maintained and proper respect paid.</p> <p>(c) Answer questions of the court politely and with dignity.</p> <p>(d) Maintain detailed record of the entire operation correctly and explicitly.</p>	<p><u>7. Dealing with Civil Courts</u></p> <p>(a) Ensure that directions/instructions of the Supreme Court/High Courts and other subordinate judiciary are promptly attended to.</p> <p>← <i>There is no reference to this requirement</i></p> <p>← <i>There is no reference to this requirement</i></p> <p>← This provision is included in para #6 (see page #6 above)</p>
	List of Don'ts according to: <i>NPMHR v Union of India</i>	
(v)	<ol style="list-style-type: none"> 1. Do not keep a person under custody for any period longer than the bare necessity for handing over to the nearest police station. 2. Do not use any force after having arrested a person except when he is trying to escape. 3. Do not use third degree methods to extract information or to extract confession or other involvement in unlawful activities. 4. After arrest of a person by the member of the Armed Forces, he shall not be interrogated by the member of the Armed Forces. 5. Do not release the person directly after apprehending on your own. If any person is to be released, he must be 	The Indian Army has not supplied a List of Don'ts under the RTI Act

	<p>released through civil authorities.</p> <p>6. Do not tamper with official records.</p> <p>7. The Armed Forces shall not take back a person after he is handed over to civil police.</p>	
	<p>List of Do's and Don'ts while providing aid to civil authority according to: <i>NPMHR v Union of India</i></p>	
(vi)	<p><u>Do's</u></p> <ol style="list-style-type: none"> 1. Act in closest possible communication with the civil authorities throughout. 2. Maintain inter-communication if possible by telephone/radio. 3. Get the permission/requisition from the Magistrate when present. 4. Use the little force and do as little injury to person and property as may be consistent with attainment of objective in view. 5. In case you decide to open fire:- <ol style="list-style-type: none"> (a) give warning in the local language that fire will be effective (b) attract attention before firing by bugle or other means (c) distribute your men in fire units with specified commanders (d) control fire by issuing personal orders (e) note number of rounds fired (f) aim at the front of crowd actually rioting or inciting to 	<p>The Indian Army has not supplied a List of Do's while providing aid to civil authority.</p>

	<p>riot or at conspicuous ring leaders, i.e. do not fire into the thick of the crowd at the back</p> <p>(g) aim low and shoot for the effect</p> <p>(h) keep Light Machine Gun and medium Gun in reserve</p> <p>(i) cease firing immediately once the object has been attained</p> <p>(j) Take immediate steps to secure wounded</p> <p>6. Maintain cordial relations with civil authorities and Para Military forces</p> <p>7. Ensure high standard of discipline</p> <p><u>Don'ts</u></p> <p>8. Do not use excessive force</p> <p>9. Do not get involved in hand to hand struggle with mob</p> <p>10. Do not ill treat anyone, in particular women and children</p> <p>11. No harassment of civilians</p> <p>12. No torture</p> <p>13. No meddling in civil administration affairs</p> <p>14. No military disgrace by loss/surrender of weapons</p> <p>15. Do not accept presents donations or rewards</p> <p>16. Avoid indiscriminate firing.</p>	<p>The Indian Army has not supplied a List of Don'ts while providing aid to civil authority.</p>
		<p><i>COAS Ten Commandments</i></p>
	<p>There is no mention of 'COAS Ten Commandments' in the <i>NPMHR v Union of India</i> judgement →</p>	<p>1. Remember that the people you are dealing with, are your own countrymen. All your conduct must be dictated by this one</p>

		<p>significant consideration.</p> <ol style="list-style-type: none"> 2. Operations must be people friendly, using minimum force and avoiding collateral damage – restraint must be the key. 3. Good intelligence is the key to success – the thrust of your operations must be intelligence based and must include the militant leadership. 4. Be compassionate, help the people and win their hearts. Employ all resources under your command to improve their living conditions. 5. No operations without police representative. No operations against women cadres under any circumstances without Mahila Police. Operations against women insurgents be preferably carried out by police. 6. Be truthful, honest and maintain highest standards of integrity, honour, discipline, courage and sacrifice. 7. Sustain physical and moral strength, mental robustness and motivation, 8. Train hard, be vigilant and maintain highest standards of military professionalism. 9. Synergise your actions with the civil administration and other security forces. 10. Uphold Dharma and take pride in your Country and the Army.
--	--	--

Compiled by Ms. Chitragda Singh and Venkatesh Nayak, Access to Information Programme, Commonwealth Human Rights Initiative (CHRI), New Delhi, 29 June, 2012.

1. Page 3 is missing from the documents supplied by the Indian Army under the RTI Act.
2. The red-coloured font points to minor changes in the paras supplied by the Indian Army as compared with the List cited in ***NPMHR v Union of India***.