

AFSPA

MOST IMPORTANT NOTES FOR MAINS

SCAN TO EXPLORE





# **GS 3 -INTERNAL SECURITY**

# **AFSPA-ARMED FORCES SPECIAL POWERS ACT, 1958**



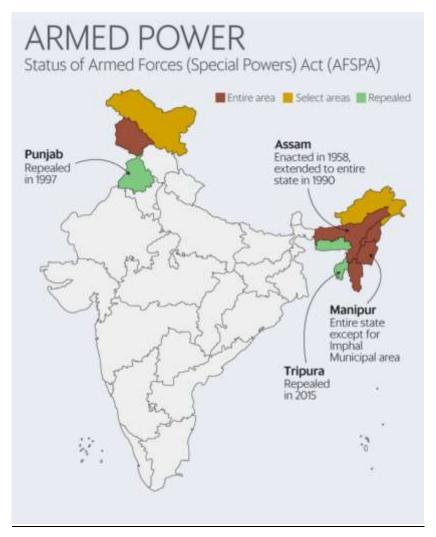
Have fun. Achieve dreams.

<u>IN NEWS:</u> Recently, the army operation resulted in the tragic death of 14 civilians in Nagaland, due to mistaken identity as insurgents. According to a report from Kohima, the government agreed to compensate the victims, but the incident led to the protest against the Armed Forces Special Powers Act (AFSPA) once again in the region.

In June 2021, the Ministry of Home Affairs had declared the entire State of Nagaland as a "disturbed area" for six more months under the AFSPA.

#### **AFSPA: HISTORY**

- AFSPA was first promulgated in 1942, by Linlithgow, in response to the Quit India movement in 1942.
- Its aim was "to confer special powers upon certain officers of the armed forces.
- After Independence, the Act was retained by the ordinance enacted in 1958, to control increasing violence in the North-eastern States, which the State governments found difficult to control.
- The Armed Forces (Special Powers) Bill was passed by both the Houses of Parliament and it was approved by the President on September 11, 1958. It became known as the Armed Forces Special Powers Act (AFSPA), 1958.



# **IAS Study Circle**

- The Armed Forces (Special Powers) Act was enacted in 1958 to bring under control what the government of India considered 'disturbed' areas.
- AFSPA gave armed forces the power to maintain public order in "disturbed areas".
- The Supreme Court has upheld the constitutionality of AFSPA in a 1998 judgement (Naga People's Movement of Human Rights v. Union of India).

#### **DISTURBED AREA:**

- **Section (3) of the AFSPA Act** empowers the governor of the state or Union territory to issue an official notification on The Gazette of India can declare an area as "**Disturbed Area**", following which the centre has the authority to send in armed forces for civilian aid.
- The Central Government, or the Governor of the State or administrator of the Union Territory can declare the whole or part of the State or Union Territory as a disturbed area through an official Gazette notification.
- Once declared 'disturbed', the region has to maintain status quo for a minimum of three months, according to The Disturbed Areas (Special Courts) Act, 1976.

## POWERS GIVEN TO ARMED FORCES UNDER AFSPA

- The armed forces have the following powers in the disturbed area,
  - Under Section 4 of the AFSPA, an authorised officer in a disturbed area enjoys certain powers.
    - The authorised officer has the power to open fire at any individual even if it results in death if the individual violates laws which prohibit
    - (a) the assembly of five or more persons; or
    - (b) carrying of weapons.
  - Can use force or even open fire after giving due warning if armed forces feel a person is in contravention of the law.
  - Can arrest a person without a warrant, seize and search premises
     without a warrant, and ban the possession of firearms.

#### **NEED FOR AFSPA**

- The Army is of the opinion that the AFSPA is absolutely essential to combat insurgency in the country and protect the borders.
- In a virulent insurgency, security forces cannot operate without the cover of the AFSPA. Without it, there would be hesitation which would work to the advantage of insurgents.
- Army officials also cite the need to protect the morale and integrity of the army as reason not to scrutinise allegations against army personnel.
- The AFSPA is applied to an area only when the ordinary laws of the land are found to be inadequate to deal with the extraordinary situation perpetrated by insurgents spreading terror.
- It is applied when the induction of the army becomes imperative to battle the terrorists and maintain the territorial integrity of the Country.
- The annulment of the law and the resultant lack of security cover would adversely affect the governance and development capacities in the insurgency affected states.
- It would motivate the insurgent leadership, field cadres, and their over ground supporters to engage in reckless damage to public life and property.
- It would dilute the capacity of an important Instrument of the state the armed forces to tackle the security challenges faced by the country. The absence of such a legal status would adversely affect the organisational flexibility of the security of the state.
- Army circles are worried that soldiers and officers will be dragged to civilian courts and that frivolous cases will be filed against them.

# AFSPA: CRITICISM

• India is the **only country in the world** where there is no war, and yet

- an emergency martial law was in force. The Act provides the security
  personnel with absolute powers without accountability. This leads to
  various issues.
- **Human rights violations:** In over 20 years, the Centre has denied prosecution sanctions under AFSPA in all cases recommended by the J&K government against army men.
- Till today, no security personnel involved in serious criminal offences in the Northeast has been charged or put behind bars. This is a violation of Human Rights under the Universal Declaration of Human Rights and the UN Declaration on the Rights of Indigenous Peoples.
- **Draconian Law**: Section 4, of AFSPA which gives the armed forces the power to open fire and even cause death, if prohibitory orders are violated. Human rights activists object on the grounds that these provisions give the security forces unbridled powers to arrest, search, seize and even shoot to kill.
- Section 6, which protects security forces personnel from prosecution except with the prior sanction of the central government. Critics say this provision has on many occasions led to even non-commissioned officers brazenly opening fire on crowds without having to justify their action.
- Critics say the act has failed to contain terrorism and restore normalcy in disturbed areas, as the number of armed groups has gone up after the act was established. Many even hold it responsible for the spiralling violence in areas it is in force.

#### **AFSPA: COMMITTEE RECOMMENDATIONS**

# • B.P JEEVAN REDDY COMMITTEE

 In 2004, the Central government appointed a five-member committee headed by Justice BP Jeevan Reddy to review the provisions of the AFSPA in the northeastern states.

- The committee recommended
  - Repeal of AFSPA and inserting the appropriate provisions in the Unlawful Activities (Prevention) Act, 1967.
  - UAPA should clearly specify the powers of the armed forces and paramilitary forces.
  - Grievance cells should be set up in each district where the armed forces are deployed.

#### • 2ND ARC RECOMMENDATION-

 <u>5th Report</u> on public order has also recommended the repeal of the AFSPA.

## • JUSTICE J.S VERMA COMMITTEE (2013)

- o mentioned the Act as a part of a section on offences against women in conflict areas.
- "Sexual violence against women by members of the armed forces or uniformed personnel must be brought under the purview of ordinary criminal law," the report said, adding that "there is an imminent need to review the continuance of AFSPA and AFSPAlike legal protocols in internal conflict areas as soon as possible."
- This resonates with the ruling by the Supreme Court in July 2016 that the Army and police are not free to use excess force even under the AFSPA.

#### • JUSTICE HEGDE COMMISSION (2013)

- The Supreme Court appointed the **Hegde Commission**. The commission found that all seven deaths in the six cases it investigated were **extrajudicial executions**.
- The commission also said that the AFSPA was widely abused by security forces in Manipur. This commission report applies to other areas where the AFSPA is in force.

#### AFSPA: SUPREME COURT JUDGEMENT

On July 8, 2016, in a landmark ruling, The Supreme Court of India ended the immunity of the armed forces from prosecution under AFSPA as follows:

- **No excessive force:** Army and paramilitary forces cannot use excessive and retaliatory force during counter-insurgency operations in areas declared as disturbed under the AFSPA.
- **Criminal courts have the jurisdiction:** over cases of alleged excesses by security forces which earlier were under a blanket of immunity provided by AFSPA.
- **Equality before law:** Court said it does not matter whether the victim was a common person or a militant or a terrorist, nor does it matter whether the aggressor was a common person or the state. The law is the same for both and is equally applicable to both.
- **AFSPA** is **not** invincible: The provisions of the Armed Forces (Special Powers) Act and the purported immunity it offers to the use of force "even to the extent of causing death" are not invincible.
- Preservation of rule of law: Such legal protection has to yield to larger principles of human rights, and the use of excessive or retaliatory force should be thoroughly inquired. This is essential for both democracy and the rule of law in the country.

Over 60 years since the implementation of AFSPA, it could not bring substantial improvement in insurgency affected regions of North East and Kashmir .In a Democratic country like India issue and concerns created by such a law cannot be tolerated ,so the government needs to bring a scientific and humanitarian approach towards solving the socio-economic problems of the disturbed areas rather than implementing the oppressive Act.Further, the Government should try to resolve the long-running insurgency in North-Eastern states through dialogue with insurgent groups.



Copyright © by Civils Café IAS Study Circle. All rights are reserved. No part of this document may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without prior permission of Civils Café IAS Study Circle.

© Civils Café IAS Study Circle.