



Armed Forces (Special Powers) Act, 1958 (AFSPA)

For Prelims: [Armed Forces \(Special Powers\) Act, 1958](#), [Quit India movement](#), [Disturbed Areas](#), [Naga Hills](#), Parliament, Central Armed Police Forces, Disturbed Areas, Disturbed Areas (Special Courts) Act, 1976,

For Mains: AFSPA. Arguments in favor and Arguments against,

[Source: TH](#)

Why in News?

Recently, the **Union Ministry of Home Affairs (MHA)** extended the [Armed Forces \(Special Powers\) Act, 1958](#) in parts of **Nagaland** and **Arunachal Pradesh** for another **six months**.

The AFSPA has been extended in **eight districts** and **21 police stations** in **Nagaland** for another **six months**.

- It will also be effective in specific areas of **Arunachal Pradesh**.

What is AFSPA?

▪ Background:

- The British colonial government had on **15th August, 1942**, promulgated the **Armed Forces Special Powers Ordinance** to suppress the [Quit India movement](#).
- It was the foundation for four ordinances, including one for the “**Assam disturbed areas**” invoked in **1947** to deal with Partition-induced internal security challenges.
- The **Armed Forces (Assam and Manipur) Special Powers Act, 1958**, followed the **Assam Disturbed Areas Act of 1955** to deal with the uprising in the **Naga Hills** and **adjoining areas**.
- The Act was replaced by the **AFSPA** for wider application. A similar Act specific to **Jammu and Kashmir** was enacted in **1990**.

▪ About:

- 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**.
- The Act came into force in the context of increasing violence in the [North-eastern States](#) decades ago, which the State governments found difficult to control.
- The **AFSPA** gives unbridled power to the **armed forces** and the [Central Armed Police Forces](#) deployed in “**disturbed areas**” as specified under the Act to kill anyone acting in contravention of law, arrest and search any premises without a warrant and ensures protection from prosecution and legal suits without the Central government’s sanction.
- The State and Union government can issue notification regarding the AFSPA. For the **States of Arunachal Pradesh and Nagaland**, the **MHA** issues periodic “**disturbed area**” notifications.

What are the Disturbed Areas described under AFSPA?

- A disturbed area is one that is declared by notification under **Section 3** of the **AFSPA**. It can be invoked in places where the use of armed forces in aid of civil power is necessary.
 - The Act was amended in **1972** and the powers to declare an area as “**disturbed**” were conferred concurrently upon the **Central government** along with the States.
- An area can be disturbed due to differences or disputes between members of different **religious, racial, language or regional groups** or **castes** or **communities**.
- 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.
- Once declared ‘**disturbed**’, the region is maintained as disturbed for a period of three months straight, according to The **Disturbed Areas (Special Courts) Act, 1976**. The government of the state can suggest whether the Act is required in the state or not.
 - Currently, the Union Home Ministry issues periodic “**disturbed area**” **notification** to extend AFSPA only for **Nagaland** and **Arunachal Pradesh**.

What are the Arguments in Favour and Against of AFSPA?

▪ Argument in Favour:

- **Addressing Ongoing Security Challenges:** The AFSPA is deemed necessary to tackle the persistent security threats in the regions where it's enforced.
 - The presence of armed groups and insurgent activities poses a continuous danger to public safety and stability.
 - Without the legal framework provided by AFSPA, it might be difficult for security forces to effectively counter these threats.
- **Empowering Security Forces:** AFSPA provides security forces with the legal authority required to combat insurgency and terrorism effectively.
 - It grants them the necessary powers to conduct operations, make arrests, and maintain public order in areas designated as disturbed.
 - This empowerment is crucial for enabling security forces to tackle complex security challenges efficiently.
- **Legal Protections for Personnel:** AFSPA offers legal protections to security personnel operating in disturbed areas.
 - These protections shield them from legal liability while they carry out their duties under challenging and often hazardous circumstances.
 - Such legal safeguards are essential for ensuring that security personnel can perform their tasks without fear of undue legal consequences.
- **Boosting Morale:** The legal protections provided by AFSPA are instrumental in boosting the morale of armed forces personnel.
 - Knowing that they are legally protected while carrying out their responsibilities can enhance their confidence and motivation to perform effectively in challenging environments.
 - This morale boost is crucial for maintaining the effectiveness and efficiency of security operations in troubled regions.

▪ Argument Against:

- **Violation of State's Autonomy:** **Section 3 of AFSPA** grants the central government the authority to designate any area as a Disturbed Area without requiring the consent of the respective state.
 - This undermines the autonomy of the states and can lead to misuse of power by the central government.
- **Excessive Use of Force:** Section 4 of AFSPA grants specific powers to authorized officers, including the use of firearms against individuals, which can potentially result in fatalities.
 - This provision raises concerns about the excessive and disproportionate use of force by security forces.
- **Violation of Civil Liberties:** Section 4 also grants officers the power to arrest without a warrant and to seize and search premises without any warrant.
 - This can lead to violations of individuals' civil liberties, as it bypasses standard legal procedures and safeguards against arbitrary detention and searches.
- **Lack of Accountability:** Section 7 of AFSPA requires obtaining prior executive approval

from central or state authorities for the prosecution of a member of the security forces.

- This provision creates a lack of accountability and transparency in cases of alleged human rights violations by security forces, as it allows them to operate with impunity.
- **Evidence of Abuse:** The Supreme Court-appointed Hegde Commission in 2013 found that all seven deaths in the six cases it investigated were extrajudicial executions.
 - Additionally, it highlighted widespread abuse of AFSPA by security forces in Manipur.

What are the Supreme Court's Guidelines?

- Questions regarding the **constitutionality of AFSPA** arose due to its intersection with the **jurisdiction of states** over **law and order matters**. The **Supreme Court**, in its **1998 ruling in Naga People's Movement of Human Rights v. Union of India**, affirmed the constitutionality of AFSPA.
- In this landmark judgment, the Court reached specific conclusions, including:
 - The Central government has the authority to make a **suo-motto declaration**, yet it is preferable for the **central government** to consult with the **state government** before issuing such a declaration.
 - AFSPA does not grant **unrestricted authority** to designate an area as a '**disturbed area**'.
 - The declaration must have a defined time frame, and there should be regular assessments of its status. After **six months** have passed, a review of the declaration is necessary.
 - When implementing the powers granted by **AFSPA**, the authorized officer should employ the **least amount of force** required for **successful operations**, and adhere strictly to the guidelines outlined in the army's "Dos and Don'ts."
 - The Supreme Court determined that the Act does not infringe upon the Constitution, and the powers granted under **sections 4 and 5** are **neither arbitrary nor unreasonable**.

Way Forward:

- **Recommendations of Jeevan Reddy Committee:**
 - In **November 2004**, the Central government appointed a **five-member committee** headed by **Justice B P Jeevan Reddy** to review the provisions of the act in the **northeastern states**.
 - The committee recommended that:
 - AFSPA should be repealed and appropriate provisions should be inserted in the **Unlawful Activities (Prevention) Act, 1967**.
 - The **Unlawful Activities Act** should be modified to clearly specify the powers of the **armed forces** and **paramilitary forces** and **Grievance cells** should be set up in each district where the armed forces are deployed.
- **Second ARC Recommendations:**
 - The **5th report** of the **Second Administrative Reforms Commission (ARC)** on public order has also recommended the **repeal of the AFSPA**. However, these recommendations have not been implemented.
- **Recommendations of Santosh Hegde Commission:**
 - The AFSPA should be reviewed **every six months to assess the necessity of its implementation**, with the aim of making the Act more humane and the security forces more accountable.
 - The committee suggested that the Unlawful Activities (Prevention) Act could be suitably amended to tackle terrorism, instead of relying solely on AFSPA.
 - It was also recommended that the armed forces should not be immune from investigation for excesses committed during the discharge of their duties even in "disturbed areas".

Drishti Mains Question:

Q. Discuss the arguments in favor of and against the continuation of AFSPA, taking into account its impact on security operations, human rights, and governance.

UPSC Civil Services Examination, Previous Year's Question (PYQs)

Mains

Q. Human rights activists constantly highlight the fact that the Armed forces (Special Powers) Act, 1958 (AFSPA) is a draconian act leading to cases of human rights abuses by security forces. What sections of AFSPA are opposed by the activists? Critically evaluate the requirement with reference to the view held by the Apex Court. **(2015)**

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