



## SC Halts Criminal Cases under AFSPA

**For Prelims:** [Armed Forces \(Special Powers\) Act, 1958](#), [Disturbed Areas](#), [Supreme Court \(SC\)](#), Parliament, Central Armed Police Forces, Disturbed Areas (Special Courts) Act, 1976

**For Mains:** Continuation of AFSPA, Human Rights Implications, Other Alternatives, Arguments in favour and against, and Long-term Consequences of AFSPA.

[Source: IE](#)

### Why in News?

Recently, the [Supreme Court \(SC\)](#) has quashed [FIRs](#) and set aside all proceedings against **30 21 PARA (Special Forces)** personnel accused of **allegedly killing civilians in Nagaland**.

- The **Union Ministry of Home Affairs (MHA)** declined to grant sanctions for initiating criminal prosecution against these personnel.

### Note:

- The **AFSPA Act has been extended for six months** (starting from 1st October 2024) in **eight districts of Nagaland and three districts of Arunachal Pradesh**.
  - The extension follows a **review of the law and order situation** in the two states to maintain order and facilitate the operations of armed forces in "disturbed" areas.
- As per MHA, **AFSPA has been lifted in 70% of northeastern states** but remains in force in Jammu and Kashmir, with potential consideration for revoking it in J&K.

### What are the Key Facts of the Case and the Supreme Court's Ruling?

- **Background:**
  - The incident involved a **tragic case of mistaken identity by Army personnel**, leading to the **deaths of civilians in Nagaland in 2021**.
  - The subsequent **legal proceedings were halted** by the **Supreme Court** due to the **lack of Central government (Ministry of Home Affairs) sanction** required under **Section 6** of [Armed Forces Special Powers Act \(AFSPA\), 1958](#).
  - Thus, the **Supreme Court** has **closed criminal proceedings against Army personnel** involved in the incident and left the possibility open for the proceedings to be revived if the government grants the required sanctions.
- **Legal Provisions:**
  - **Section 6 of the AFSPA:** It **protects actions** carried out under the act stating that **no prosecution, suit, or other legal proceedings** can be initiated against any individual for actions taken or believed to be **taken under the Act without prior approval from the**

## Central Government.

### What is Armed Forces Special Powers Act (AFSPA),1958?

#### ▪ Background:

- On 15<sup>th</sup> August 1942, the British colonial government introduced the **Armed Forces Special Powers Ordinance** to suppress the [Quit India movement](#).
  - This led to several ordinances, including one for "**Assam disturbed areas**" in 1947 passed by the Indian government to deal with the security challenges after partition.
- The **Armed Forces (Assam and Manipur) Special Powers Act, 1958**, followed the **Assam Disturbed Areas Act of 1955** to address unrest in the Naga Hills.
  - The Act was **later replaced by the AFSPA** for broader use.

#### ▪ About:

- AFSPA was passed by Parliament on 11th September 1958. It was implemented in response to **escalating violence in the [North-eastern States](#)**, which the State governments struggled to manage.
- It grants extensive powers to the armed forces and [Central Armed Police Forces](#) in "**disturbed areas**".
  - It allows them to **kill individuals violating the law, arrest and search premises without a warrant, and receive protection from prosecution** and legal suits **unless sanctioned by the Central government**.
- Both the **state and Union governments can issue notifications** declaring certain areas as "disturbed", granting the armed forces the authority under AFSPA.
- For the States of **Arunachal Pradesh and Nagaland**, the MHA issues periodic "**disturbed area**" notifications.

#### ▪ Disturbed Area Under AFSPA:

- A "disturbed area" is designated by a notification under **Section 3 of the Act**, which is invoked where the **deployment of armed forces in aid of civil power** is deemed necessary.
- The Act was amended in 1972 to allow **both the Central government and State governments to declare** an area as "disturbed."
  - Such a designation can be **based on conflicts or disputes** between different religious, racial, linguistic, regional, or caste communities.
- The **Central Government, or the Governor of a State or the Administrator** of a Union Territory, can declare any part or the entirety of a State or Union Territory as disturbed.
  - Once declared, the area remains under this status for a **continuous period of 3 months**, as per the [Disturbed Areas \(Special Courts\) Act, 1976](#).
  - The **State government** can recommend whether the Act should continue in the region.

### What are the Committees and their Recommendations on AFSPA?

- **Recommendations of Jeevan Reddy Committee:** In November 2004, the Central Government established a five-member committee led by Justice B.P. Jeevan Reddy to review the AFSPA's provisions in the northeastern states. The committee recommended a few measures that need to be taken.
  - Repealing the AFSPA and incorporating its provisions into the [Unlawful Activities \(Prevention\) Act, \(UAPA\)1967](#).
  - Modifying the UAPA Act to **clearly define the powers** of the armed and paramilitary forces.
  - Setting up **grievance cells** in each district where armed forces are deployed.
- **Second ARC Recommendations:**
  - The 5th report of the [Second Administrative Reforms Commission \(ARC\)](#) **recommended repealing the AFSPA**, since it will remove feelings of discrimination and alienation but these recommendations have not been implemented.
- **Recommendations of Santosh Hegde Commission:**
  - **Reviewing the AFSPA every 6 months** to ensure its necessity and enhance its

- humanitarian aspects.
- **Amending the UAPA Act** to address terrorism, rather than relying solely on the AFSPA.
  - **Allowing investigations of armed forces** for excesses committed during their duties, even in "disturbed areas."

## What are the Reasons for Violence in the North-Eastern States of India?

- **Multi-Ethnic Diversity:** The North-East is India's most **ethnically diverse region**, home to around 40 million people and 213 of the 635 tribal groups.
  - Each tribe has a distinct culture, leading to **resistance against integration with common society** and concerns over the **loss of cultural identity**.
- **Lack of Economic Development:** Government policies have contributed to economic stagnation in the region, resulting in **limited employment opportunities**.
  - This economic disenfranchisement drives many youths to join insurgent groups in search of better prospects.
- **Demographic Changes:** The **influx of refugees** from Bangladesh has altered the region's demographic landscape, causing discontent and fueling the insurgency, particularly with groups like the **United National Liberation Front (ULFA)**, which was formed in response to anti-immigrant sentiments.
- **Perceived Army Excesses:** The implementation of the AFSPA has been criticised as draconian, contributing to **alienation among locals** and being **used as propaganda by insurgent groups**.
  - **Irom Sharmila Chanu from Manipur fasted for 16 years** to protest the use of AFSPA in the Northeast and to demand its repeal.
- **Political Instability in Neighboring Counties:** The ongoing instability in Bangladesh and Myanmar has further complicated the security dynamics in the North-East, contributing to the region's insurgency issues.
- **External Support:** Historically, insurgent groups in the North-East have received support from neighbouring countries.
  - East Pakistan (now Bangladesh) provided training and weapons in the 1950s and 1960s, **while China offered support from 1967 to 1975 as part of its revolutionary foreign policy**.

## Way Forward

- **Building Trust and Confidence:** Implement a **bottom-up governance model** to **empower local communities** and **bridge the gap** between the government and the populace.
- **Prioritising Peace Accords:** There is a need to **establish peace accords with insurgent groups** as a prerequisite for the **eventual repeal of AFSPA** which should be accompanied by **proper rehabilitation and support** mechanisms.
- **Enhanced Connectivity:** Improving **infrastructure and connectivity** in the Northeast should be the priority to **bolster security and peace in the region**.
- **Adherence to Human Rights:** The focus should be to **strengthen counterinsurgency operations** by ensuring **adherence to human rights norms**, which will enhance the **effectiveness and legitimacy** of security measures.

### Drishti Mains Question:

Analyse the implications of AFSPA in the Northeast region of India, focusing on its impact on security, 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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