

Armed Forces (Special Powers) ACT

Syllabus-GS 2: Govt., Schemes & Policies;

GS 3: Security

Why in News?

- ❖ Death of 14 civilians and one soldier in Nagaland raises the question of repealing of Armed Forces (Special Powers) act.

Information About AFSPA act-

- ❖ 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.
- ❖ **AFSPA gives armed forces the power to maintain public order in “disturbed areas”**. They have the authority to prohibit a gathering of five or more persons in an area, can use force or even open fire after giving due warning if they feel a person is in contravention of the law.
- ❖ **If reasonable suspicion exists, the army can also arrest a person without a warrant; enter or search premises without a warrant; and ban the possession of firearms.**

WHAT IS ARMED FORCES SPECIAL POWERS ACT?

➤ **Introduced in 1958, AFSPA** confers on members of the armed forces special powers to rein in suspects in areas declared “disturbed” on account of insurgent activities or similar threats. It has been in **force in Manipur since 1980**, and the alleged **excesses committed under it are the reasons** why activist **Irom Sharmila** has been on a **hunger strike since 2000**.

WHAT ARE SPECIAL POWERS?

AFSPA allows any commissioned officer, warrant officer and non-commissioned officer – or any other

person of equivalent rank – to:

➤ Fire upon or use force against any person acting ‘in contravention of any law for the time being in force in the disturbed area’

➤ Arrest suspicious people without warrant

➤ Destroy any structure suspected to house an arms dump, shelter from which armed attacks are made or are likely to be made

➤ Conduct searches without warrants for evidence, to recover a wrongfully confined person or property or arms or explosives

➤ **AFSPA bars prosecution or proceedings– except with Centre’s nod– against personnel for action committed while exercising powers under the Act**



Meaning of “Disturbed Area” Under AFSPA act?

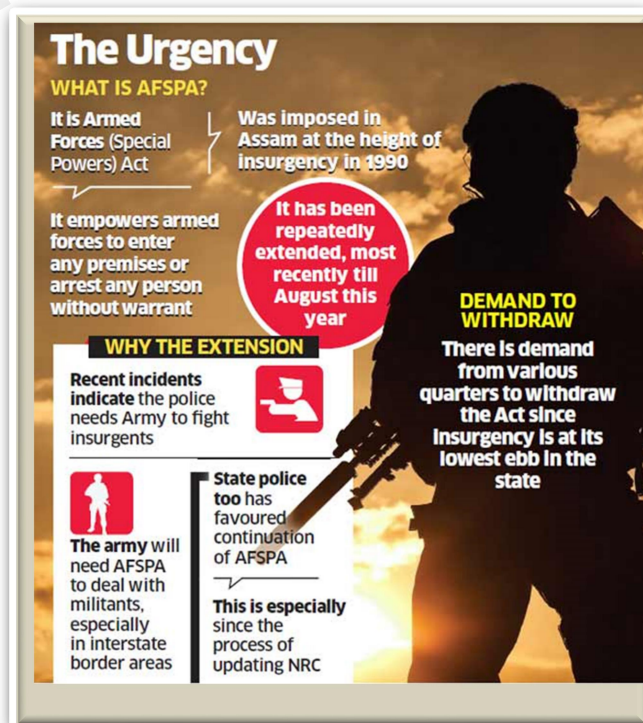
- ❖ A **disturbed area** is one which is declared by notification under **Section 3 of the AFSPA**. It can be invoked in places where the use of armed forces in aid of the civil power is necessary.
- ❖ An area can be disturbed due to differences or disputes between members of different religious, racial, 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.
- ❖ The **Ministry of Home Affairs** would usually enforce this Act where necessary, but there have been exceptions where the Centre decided to forego its power and leave the decision to the State governments.
- ❖ **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.

States Under AFSPA act?

- ✚ It is effective in the whole of Nagaland, Assam, Manipur (excluding seven assembly constituencies of Imphal) and parts of Arunachal Pradesh.
- ✚ In Arunachal Pradesh, the impact of AFSPA was reduced to eight police stations.
- ✚ Jammu and Kashmir too have a similar Act.

Controversy on the application of AFSPA, Act

- ❖ **Act provides the security personnel with absolute powers without being accounted for.** This leads to various atrocities and human rights violation by the security agencies.
- ❖ **AFSPA violates the Universal Declaration of Human Rights (UDHR)**, the International Covenant on Civil and Political Rights (ICCPR), and the Convention against Torture (India is a signatory, but it has not ratified it).
- ❖ **BP Jeevan Reddy committee** examining it in relation to the Northeast in 2005, and the **Veerappa Moily report** of the Second Administrative Reforms Commission of 2007, recommended that the Act be repealed.
- ❖ The reports of the Justice Verma Committee (2013) and the Justice Hegde Commission (2013) supported need to address the abuses committed under the AFSPA and end the effective impunity enjoyed by security forces.
- ❖ Supreme Court appointed Hegde Commission (2013) found that all seven deaths in the six cases it investigated were extrajudicial executions, and said that the AFSPA was widely abused by security forces in Manipur.



Need for AFSPA:

Arguments in favour of AFSP Act-

- Protect borders with the powers given by AFSPA, the armed forces have been able to protect the borders of the country for decades.
- **Effective Counterinsurgency** a strict law is needed to tackle the insurgent elements inside the country particularly in the Kashmir and north-eastern region.
- **Morale of forces** AFSPA boosts the morale (mental well-being) of the armed forces for ensuring the public order in the disturbed areas as removal of the Act would lead to militants motivating locals to file lawsuits against the army.
- **In operational requirements** absence of such a legal statute would adversely affect organisational flexibility and the utilisation of the security capacity of the state armed forces cannot fulfil their assigned role.

Arguments against AFSP Act-

- ✓ The act fails to protect and uphold human rights; this can be witnessed in the case of alleged custodial rape and killings of the **Thangjam Manorama** by the Assam rifles in 2004. The act reinforces a militarized approach to security which has proved to be not only inefficient but, also counterproductive in tackling security challenges.
- ✓ The power of **arbitrary arrest and detention** given to the armed forces goes against the fundamental right vested in Article 22, which provides safeguards on the **preventive and punitive detentions**. The Supreme Court has clearly stated that the person arrested has to be submitted to the court within 24hrs of the FIR. But these conditions have clearly been ignored.
- ✓ Even during the state of emergency, the right to life and liberty- **Article 21** and certain rights under article 20 cannot be suspended. But the absolute power given to armed forces dissolves the inherent rights given under the fundamental rights and all the powers are vested in the officers.
- ✓ The absolute authority vested in the armed forces to shoot on sight based on mere suspicion and for an offence as basic as violating an order. The power to shoot on sight violates the fundamental right to life, making the soldier on the ground the judge of the value of different lives and people the mere subjects of an officer's discretion.

Recommendation of various committees for the Betterment of the Act-

- ❖ A message must be sent out to the people of disturbed states like the Manipur, J&K that the government is willing to address their injustice, by making necessary changes to the existing law.
- ❖ The army fights high-intensity conflicts and people are the centre of the gravity. Therefore, there must be support from the people of the region to the armed forces to fight terrorism and insurgent activities. The armed forces must build the necessary trust factor amongst the local populace to ensure their support in countering insurgency.
- ❖ The existence of AFSPA in J&K is mainly to fight the proxy war being waged by external agencies and therefore such tough stringent laws are required to be given to the armed forces to act at

when the need arises. But there have to be enough measures to be taken to repeal some of the powers when the situation simmers down.

- ❖ Involvement of the state bureaucracy, army, and the grass-root civil society organisation in the developmental activities of the state. This will make the army 'pro-development' than a mere 'law and order' agency.
- ❖ The security forces and the government should fast track existing cases and ensure speedy justice to victims by prosecuting the guilty. They should adopt a transparent process in place of the current opaqueness to deal with allegations of human right violations by the forces.
- ❖ The government should consider the imposition and lifting of AFSPA on a case-by-case basis and limit its application only to few disturbed districts instead of applying it for the whole state.
- ❖ The government and the security forces must abide by the guidelines set out by – The Supreme Court, Jeevan Reddy Commission, Santosh Hegde Committee and the NHRC.

Conclusion:

- ❖ AFSPA should be amended to make it more comprehensive, with elaborate rules with respect to the manner of investigations of alleged human rights violations to reduce the possibility of it being abused.
- ❖ The Army should view human rights violations as the biggest threat to its credibility and its stellar record in fighting insurgencies over the last 62 years. It must re-establish the credibility of its legal system to deal with the problem.
- ❖ The Army should put in public domain details of all court-martials held with respect to human rights violations. It must sincerely carry out fresh investigations into all alleged cases of human rights violations in Manipur and elsewhere.
- ❖ Government should try to resolve the long running insurgency in North-eastern states through dialogue with insurgent groups.
- ❖ Development deficit in North-east region is also said to be major reason for insurgency, Government thus should take urgent steps to create new avenues of growth through Industrialization and Infrastructural development