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# Armed Forces (Special Powers) Act

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**Why is in news?** The Union Home Ministry extended for another six months the disturbed area status in parts of Arunachal Pradesh and Nagaland under the Armed Forces (Special Powers) Act, 1958.

## Disturbed Area under AFSPA:

A disturbed area is one which is declared by notification **under Section 3 of the AFSPA**.

An area can be **disturbed due to differences or disputes** between members of different **religious, racial, language or regional groups or castes or communities**.

## Power to declare it:

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 when there is a 'possible dispute or disharmony among the people or against the state/central government or active insurgency'.

A suitable notification would have to be made in the Official Gazette. As per Section 3, it can be invoked in places where "the use of armed forces in aid of the civil power is necessary".

## Recent notification:

According to two separate notifications, the decisions have been taken after review of the law-and-order situation in both the states.

The AFSPA gives armed forces personnel, operating in disturbed areas, sweeping powers to search, arrest, and to open fire if they deem it necessary for maintenance of public order.

Now, therefore, **Tirap, Changlang and Longding districts in Arunachal Pradesh** and the areas falling within the jurisdiction of Namsai, Mahadevpur and Chowkham police stations in **Namsai district** of Arunachal Pradesh, bordering the state of Assam, are **declared as 'disturbed area'** under Section 3 of the Armed Forces (Special Powers) Act, 1958 **for a period of six months with effect from October 1, 2023**, unless withdrawn earlier.

In the other notification, said the Central government in exercise of the powers conferred by Section 3 of the AFSPA, 1958 (28 of 1958) had **declared eight districts and 16 police stations in five other districts of Nagaland** as 'disturbed area' for a period of six months with effect from October 1, 2023.

## Armed Forces (Special Powers) Act:

The Act in its **original form was promulgated by the British** in response to the Quit India movement in 1942.

After Independence, Prime Minister Jawaharlal Nehru decided to retain the Act, which was first brought in as an ordinance and then notified as an Act in 1958.

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The **Armed Forces (Special Powers) Act, enacted in the year 1958**, grants extraordinary powers and immunity to the armed forces to bring back order in the “disturbed areas”.

The Act came into force in the context of increasing violence in the Northeastern States decades ago, which the State governments found difficult to control.

### **Powers given to armed forces:**

Armed forces 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 a premises without a warrant; and ban the possession of firearms.**

Any person arrested or taken into custody may be handed over to the officer in charge of the nearest police station along with a report detailing the circumstances that led to the arrest.

### **Recommendations to review AFSPA:**

**Justice Verma Committee:** The committee aimed to **review the laws against sexual assault**. It mentioned how the Armed Forces Special Powers Act legitimizes the immunity against sexual violence against women.

**Justice Jeevan Reddy Committee:** The committee observed that the law had become “a symbol of oppression, an object of hate and an instrument of discrimination and high headedness. It had **suggested that the act should be repealed.**

**Justice Hegde Commission:** The commission observed that there was a lack of enforceable safeguarding rights at the root level against the “sweeping powers” given to the armed forces.

**Second ARC Recommendation:** 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.

### **Naga People’s Movement for Human Rights vs Union of India- SC’s 1997:**

The verdict laid down guidelines for use of AFSPA:

The **1997 judgment of a Supreme Court’s Constitution Bench** held that the **power under Section 4(a) of the AFSPA** to use deadly force should be **employed only under “certain circumstances”**.

The court noted that the “power to cause death is relatable to maintenance of public order in a disturbed area and is to be exercised under definite circumstances”.

These **preconditions** include a declaration by a high-level authority that an area is “disturbed”. The officer concerned decides to use deadly force on the opinion that it is “necessary” to maintain public order. But he has to give “due warning” first.

The persons against whom the action was taken by the armed forces should have been “acting in contravention of any law or order for the time being in force in the disturbed area”.

### **Significance of AFSPA Act:**

**Effective Counter-Insurgency:** The fighting capability of the militants in the North-East and J&K has improved considerably. Hence, with the powers given by AFSPA, the armed forces have been able to protect the borders of

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the country for decades.

**Operational Hurdles:** The Armed Forces are required to **operate in hostile terrain**, facing an unfriendly population environment exposing themselves to grave dangers.

**Legal Battles:** Working under a challenging environment requires a protective law otherwise the forces get embroiled in legal battles and their effectiveness is reduced.

**Effective Law and Order:** The provisions of the AFSPA are invoked only when the State Government is unable to maintain peace and tranquility

### Success of AFSPA:

**Decline in extremist incidents:** Compared to 2014, there has been a 76% reduction in the extremist incidents in the year 2022.

**Decline in fatalities:** Deaths of security personnel and civilians have reduced by 90% and 97% respectively during this period.

**Decline in areas under imposition:** The improvement in security situation has allowed Disturbed Area notification under the AFSPA to be completely withdrawn from Tripura in 2015 and Meghalaya in 2018.

### Disadvantages of AFSPA:

The exercise of these extraordinary powers by armed forces has often led to allegations of **fake encounters and other human rights violations** by security forces in disturbed areas while questioning the indefinite imposition of AFSPA in certain states.

Human rights violations in AFSPA areas are **not inquired into and followed by adequate action**. Thus, it is **against the principle of natural justice**.

Section 6 of the Act "**immediately takes away, abrogates, frustrates the right to constitutional remedy** which has been given in article 32(1) of the Constitution.

AFSPA was outside the powers granted in the Constitution since it was declaring a state of emergency without following the Constitutional provisions for such a declaration.

**Ineffectiveness of the Act:** Critics argue that this act has **failed in its objective of restoring normalcy in disturbed areas** although being in existence for about 50 years.