



AFSPA in Nagaland

 drishtiias.com/printpdf/afspa-in-nagaland-1

Why in News

- Through a Home Ministry notification Nagaland has been declared a “disturbed area” for six more months till June, 2019 under the Armed Forces (Special Powers) Act, 1958 (AFSPA).
- According to Home Ministry the area comprising the whole of State of Nagaland is in such a disturbed and dangerous condition that the use of armed forces in aid of civilian power is necessary.

Introduction: AFSPA

- 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.

Disturbed Areas

- 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.

History of Nagaland Insurgency

- The British annexed Assam in 1826, and in 1881, the Naga Hills too became part of British India.
- In 1946 Naga National Council (NNC) was formed under the leadership of Angami Zapu Phizo. It declared Nagaland "an independent state" on August 14, 1947.
- On March 22, 1952, Phizo formed the underground Naga Federal Government (NFG) and the Naga Federal Army (NFA).
- The Government of India sent in the Army to deal with insurgency and, in 1958, Armed Forces (Special Powers) Act was enacted.
- The Naga Hills, a district of Assam, was upgraded to a Nagaland state in 1963.
- On November 11, 1975, the government got a section of NNC leaders to sign the **Shillong Accord**, under which this section of NNC agreed to give up arms.
- A group of about 140 members led by Thuingaleng Muivah, who were at that time in China, refused to accept the Shillong Accord, and formed the National Socialist Council of Nagaland (NSCN) in 1980.
- In 1988, the NSCN split into NSCN (IM) and NSCN (K) after a violent clash. While the NNC began to fade away, the NSCN (IM) came to be seen as the "mother of all insurgencies" in the region.
- NSCN (IM) seeks a "Greater Nagalim" comprising "all contiguous Naga-inhabited areas", along with Nagaland. That included several districts of Assam, Arunachal and Manipur, as also a large tract of Myanmar.

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 has 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 also said that the AFSPA was widely abused by security forces in Manipur.

Need for AFSPA

- 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 scrutinize allegations against army personnel.

Way Forward

- 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