

AFSPA Act

[UPSC Notes]

What is AFSPA Act?

AFSPA is a legislative act that gives exceptional powers to armed or security forces and state & parliamentary police forces for maintaining and regulating law and orders in “disturbed areas”.

- Under this act, the Indian army and police (both central & state) get the power to shoot and kill rebels or protestors, search homes or properties that seem to be used by rebels and destroy them.
- All this is imposed on disturbed areas declared by Indian Home Ministry.
- It gives security forces the power to arrest people who have committed or are attempted to commit any knowable offence without any arrest warrant.
- It is applicable even if the offence is based on “reasonable suspicion”.
- With the support of this act, security forces get legal liberty for their actions to maintain laws in disturbed areas.
- The impact of AFSPA can be seen both in its favour and against. While government and armed forces justify it as reducing aggressiveness and rebellion, on the others side, some critics see human rights violations in this act.

Armed Forces Powers Under AFSPA

The AFSPA act provides special powers and legal immunity to armed forces in disturbed areas. These powers justify the following acts of armed forces against protestors or people violating laws and orders.

- Armed forces in disturbed areas are free to use any potency against people acting against law or order, even if it causes death, to maintain public security and order.
- This act gives power and freedom to armed forces to demolish any arms monstrosity, hide-outs, shelter, training camp, runaways, or other places where volunteers and gangs can make armed attacks or any other offence.
- Forces can arrest any person without an arrest warrant who has committed knowable offences or is suspected of attempting any knowable offences. Armed forces can use any power to arrest such a person if required.
- Additionally, if the armed force arrests any person and takes him into custody under the AFSPA act, they shall present over to the in-charge officer of the nearest police station without any delay along with the report of the situation that caused the arrest.
- Armed forces can search any building or premises of disturbed areas to arrest such persons and rescue people unlawfully restrained. The premises can also be checked if suspected of hiding explosives or other hazardous weapons.

- Armed forces can stop and search vehicles or vessels if they are suspected of carrying such persons or dangerous weapons.
- All the armed forces and Army officers have legal immunity for every action they take in disturbed areas under AFSPA . Any army person or officer, including state and parliament police of disturbed area, does not have to face any prosecutor actions, suit, or other legal proceedings for any of their acts. Moreover, even the government does not make any judgment on an area being subject to judicial review upon recognising it as a disturbed area.
- This AFSPA Act also protects a person from any suit, prosecution, and legal proceeding who acts in good faith of the area or has no intention of creating aggressiveness or violence. However, it excludes the approval of the Central Government to exercise the powers discussed by this Act.

Drawbacks of AFSPA

Many critics oppose the AFSPA act on the grounds of providing liberty for human rights abuses or violating them, unleashing violence, and adding fuel to the sequences of violence happening in disturbed areas.

- Many human rights activists have raised great questions on the act's validity in protecting human rights.
- Not only in India, but the AFSPA act has several questions from several international experts about its constitutionality under Indian law.
- They even questioned how this act could be justified while considering “Article 4 of the ICCPR”.
- Furthermore, they have also requested to revoke the AFSPA act as they believe it is an outdated and colonial-era law that violates current human rights standards.
- Most often, the AFSPA act is illustrated as the most despicable and most draconian law that undoubtedly violates international laws.

Impact of AFSPA Act According to Armed Forces

As per the armed forces, the AFSPA act supports & enhances border protection, mitigates violence & insurgency, and many such favourable arguments. Armed forces support entirely and agree with the AFSPA act.

- According to the armed forces, the act has given them the power and capability to protect borders for long years efficiently.
- Armed forces believe that the AFSPA act increases the effectiveness of reducing rebellion. A strict law is required to deal with insurgent elements of the country, especially in northeastern regions and Kashmir.
- Armed forces believe the act boosts their mental well-being and ensures law and order in disturbed areas. And if the act is revoked, it can lead to revolutionaries motivating citizens to file suits against the armed forces.

- According to the armed forces, revoking this law can have bad effects on operational requirements. Only state armed forces' security capacity might not be sufficient for the assigned role.
- They believe that act provides sufficient safeguards for the civilians also.

Controversies Related to AFSPA

Though government and armed forces give complete support to the Act, there are several controversies around this act.

1. **Violations of current Human Rights:**

Many critics state that the extraordinary powers and immunity given to armed or security forces often lead to violation of human rights, including fake encounters.

2. **The exploitation of Absolute Powers:**

Some powers given to security forces, such as shooting on sight suspects or rebels, violate the fundamental right to life. It puts the soldiers on the ground of the judgment of the worth of different lives, and people are merely subjected to an officer's decision.

3. **Violation of Fundamental Rights:**

The power given to armed forces for arbitrary arrest and detention of any person under the AFSPA is against the fundamental right assigned in Article 22 of the Indian Constitution.

4. **Immunity against any Penalising Action:**

The AFSPA act protects the security forces of disturbed areas against any prosecution, suit, and other legal proceedings. However, this immunity should only be introduced only with the former authorisation of the central government.

Supreme Court's Views on AFSPA

The Supreme Court sustained the impose of the Armed Forces Special Powers Act in a judgment of 1998 when the Naga People's Movement against the Union of India took place.

Orders by the Supreme Court in 2016

- In the judgment of 2016, the Supreme Court stated that each death in the disturbed areas, irrespective of a person being civilian or insurgent, must be enquired properly under Criminal Investigation Department (CID) at the command of the NHRC.

- As per the statement, every armed force member who violates the prohibitor orders is not a rival.
- Though if the person is judged as an enemy, a careful investigation needs to be conducted because every Indian citizen is authorised to all the fundamental rights as written in Article 21 of the constitution.
- Even in the case of the suspect being found an enemy in the investigation, an analysis should be taken into account to find whether the force used was excessive or retaliatory.
- No army personnel is given any absolute legal immunity when committing a crime.

Jeevan Reddy Committee's Proposals About AFSPA Act

A five-member committee was appointed in November 2004 by the Central government. Justice B P Jeevan Reddy led the committee to revise the necessities of the Act in the northeastern states.

- This committee recommended that there must be some suitable replacement for the AFSPA and that it must have appropriate provisions.
- Also, the Unlawful Activities (Prevention) Act, 1967, must be upgraded with proper provisions.
- As per the committee, this act needs to be revised to postulate the powers given to the security forces and paramilitary forces.
- Also, there should be Grievance cells in each district with employed armed forces.

Current Conflicts with AFSPA

For AFSPA, the recent conflict on this act happened when the Prime Minister highlighted that the endeavours are being made to enhance the law and orders for absolute removal of the Armed Forces Special Powers Act from the northeast states.

- The Prime Minister visited Diphu, Assam, to attend a "Peace, Unity and Development" rally where he put the statement of partial withdrawal of the AFSPA act from Manipur and Nagaland because of the peaceful conditions since the year 2014.
- The Nagaland Cabinet endorsed that the AFSPA act of 1958 should be revoked from the state in December 2021.
- This recommendation was made due to the incident in Mon district where armed forces killed 13 civilians in firing.
- After this firing in the Mon district of Nagaland, Chief Minister "Neiphiu Rio" along with Meghalaya's Chief Minister "Conrad Sangma" have called to revoke AFSPA from these states.
- Moreover, the removal of the AFSPA act has been the main demand in the Northeastern states for a very long time.