

# Nagaland declared 'disturbed area' under AFSPA

July 1, 2021

**In news-** The entire state of Nagaland has been declared a "disturbed area" till December 31, 2021 under the Armed Forces (Special Powers) Act (AFSPA).

## **Key updates-**

- The AFSPA has been in force in Nagaland for decades and was not withdrawn even after a **framework agreement** was signed on August 3, 2015 between Naga insurgent group **NSCN-IM and government interlocutor R N Ravi** in the presence of PM Narendra Modi.
- The framework agreement came after over 80 rounds of negotiations spanning 18 years with the first breakthrough in **1997 when the ceasefire agreement was sealed** after decades of insurgency in Nagaland.
- However, there has been no progress in the peace talks as the NSCN-IM has sought a separate flag and constitution for Nagaland, which has been rejected by the Central government.

## **About AFSPA-**

- Armed Forces Special Powers Act (AFSPA), 1958 **gives armed forces the power to maintain public order in "disturbed areas"**.
- The Act **came into force in the context of** increasing violence in the Northeastern States decades ago.

## **Provisions:**

- Any suspect can be arrested without a warrant.
- Armed forces can search any house without any warrant and required force can be used to search

for it.

- The armed forces have the authority to **prohibit gathering of five or more persons** in an area.
  - The forces **can open fire on the disturbing factors after giving due warning** if they found any suspicious person.
  - If a person is a **repeated offender** and tries to disturb the peace of the area then armed forces are entitled to use force till his death.
  - If the Armed Forces suspect that any militant or offender is hiding in any house/building then the site or structure can be destroyed by the forces.
  - Any Vehicle can be stopped and searched.
- **Even in the case of wrongful action by the armed forces, legal action is not taken against them.**

It **is operational in** entire states of Nagaland, Assam, Manipur (except Imphal Municipal area), three districts namely Changlang, Tirap and Longding of Arunachal Pradesh and the areas falling within the jurisdiction of the eight police stations in the districts of Arunachal Pradesh, bordering the State of Assam.

### ***Process of declaring a Disturbed Area:***

- A “disturbed area” is one which is declared by **notification under Section 3** of the AFSPA.
- As per Section 3, 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.
- **Army and armed forces** are sent in the area only after the implementation of this law.
- As per the Section (3) of the AFSPA, it is **mandatory to seek the opinion of the state government whether** an area is disturbed or not.
- If an area is declared as the disturbed area, it will be under the **control of special forces for at least 3 months.**

### ***Criticisms:***

- The Act has been described as a **draconian law** that encourages the Army to carry out **human rights violations with impunity.**
- **Section 4** empowers officers to “fire upon or otherwise use force, even to the causing of death” not only in cases of self-defence but against any person contravening laws or orders.
- Hence it is criticized for providing sanction to soldiers for excessive use of force that is in contravention to international norms.
- This section is also said to be in **violation of Article 21** of the Indian Constitution.
- **Section 6** of the Act prohibits prosecution or other legal proceedings without the sanction of the central government.
- Hence it is argued that this provision gives blanket immunity to soldiers.

Many times the armed forces are blamed for conducting **fake encounters and sexually exploiting women** in the disturbed areas.