

Nagaland declared 'disturbed area' under AFSPA

April 2, 2022

In news- The Union Home Minister Amit Shah recently announced that the Armed Forces Special Powers Act (AFSPA) will be removed from several districts across Assam, Nagaland and Manipur.

Key updates-

- The decision comes in the backdrop of demands for AFSPA to be lifted after six civilians were killed Nagaland's Mon district in December 2021 in a botched operation by security personnel.
- The Centre accepted the recommendation of a high-level committee formed (**Dr. Vivek Joshi committee**) in the aftermath of the Mon killings and decided to withdraw AFSPA in a phased manner from April 1, 2022.
- The notification of "disturbed areas" under AFSPA has been in force in Assam since 1990, in Nagaland since 1995, and in Manipur, except the Imphal Municipality area, since 2004.
- Now, according to the Ministry of Home Affairs (MHA), AFSPA is being removed from 15 police station areas in seven districts of Nagaland; 15 police station areas in six districts of Manipur; and 23 districts entirely and one district partially in Assam.
- The first major move at the Central level on AFSPA was taken **in 2004**, when the **Jeevan Reddy Committee** set up by the then UPA government had recommended its repeal but the recommendation was rejected.

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.**

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 and 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.

The AFSPA **will now be applicable** fully only in 31 districts

and partially in 12 districts of four states in the **Northeast Assam, Nagaland, Manipur and Arunachal Pradesh**. It was completely withdrawn in Meghalaya in 2018, Tripura in 2015 and Mizoram in the 1980s.