



Balalatha's

**CSB IAS ACADEMY**

The Road Map to Mussoorie...



**Mains iMPACT – 03/10/2024**

**ARMED FORCES (SPECIAL POWERS) ACT, 1958**

**SYLLABUS:**

GS 3 > Internal Security

**REFERENCE NEWS:**

The Manipur government has extended the Armed Forces (Special Powers) Act (AFSPA) in the hill districts of the State for another six months, a government notification said. Effective from October 1, the provisions of the Act will be extended to the whole State, except 19 police station limits in seven valley districts, thus maintaining the status quo, since three such notifications were passed since March 2023.

The Union Home Ministry also recently extended the Armed Forces (Special Powers) Act (AFSPA) in parts of Nagaland and Arunachal Pradesh for another six months. The areas under the purview of the Act remain unchanged since the last notification issued in March.

**WHAT IS AFSPA?**

The Armed Forces (Special Powers) Act (AFSPA) is a law in India that grants special powers and immunity to the armed forces to maintain public order in "disturbed areas." AFSPA gives security forces sweeping powers to arrest, search, and even shoot to kill in situations where public order is under threat.

- An area can be considered to be disturbed due to differences or disputes among 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.
- It can be applied only after an area has been declared "disturbed" under section 2 of the Act.
- The 'special powers' of armed forces under AFSPA are:
  - 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 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.
  - Security personnel acting under AFSPA are protected from legal action without the prior approval of the central government. This means they cannot

be prosecuted or sued for actions taken in the line of duty unless sanctioned by the government.

- The law allows the use of **force, even to the extent of causing death**, against individuals who violate laws or carry out violent acts.

### **ARGUMENTS IN FAVOUR OF ARMED FORCES SPECIAL POWERS ACT:**

- **Maintaining Internal Security:** AFSPA is seen as a vital tool for the armed forces in **combating insurgencies** in regions where normal law enforcement agencies are unable to maintain public order. It is intended to help the armed forces operate effectively in highly volatile and conflict-ridden areas.
  - In **Nagaland**, where multiple insurgent groups have sought secession from India, AFSPA has been used to maintain order and suppress insurgent activities.
- **Combating Militancy and Insurgency:** The law has played a role in controlling militancy and insurgency in regions like **Jammu & Kashmir** and the northeastern states. It allows for swift action, including **search and detention**, which is considered essential in regions where insurgents may blend in with the local population.
  - In **Manipur**, where several insurgent groups operate, AFSPA has provided the armed forces with the authority to detain suspected militants and prevent potential terrorist attacks.
- **Protection of National Integrity:** AFSPA is regarded as essential for **protecting national integrity** in border areas where insurgencies are fuelled by **foreign support**, especially in states bordering China, Pakistan, and Myanmar. The armed forces are seen as the last line of defence in these sensitive regions.
  - In **Jammu & Kashmir**, where cross-border terrorism is a constant threat, AFSPA has enabled the military to carry out operations against militants entering the region from **Pakistan**.
- **Maintaining Public Order in Disturbed Areas:** In areas declared as **disturbed**, local law enforcement agencies may lack the resources or capacity to handle internal disturbances, armed conflict, or militant activities. AFSPA empowers the armed forces to intervene and restore order where the police and civil administration cannot.
  - In **Manipur** and **Nagaland**, where multiple insurgent groups operate, the presence of the armed forces under AFSPA has helped control insurgency activities and maintain public order in otherwise lawless regions.
- **Operational Flexibility for Armed Forces:** AFSPA grants the armed forces the authority to **arrest without a warrant, search premises, and use force**, including lethal force, if necessary, to maintain order. These powers are vital for security operations in conflict zones, where threats may arise suddenly, and rapid action is required.
  - In anti-terrorist operations, militants often use civilians as human shields, hide in civilian areas, or engage in guerilla warfare tactics. The flexibility provided by AFSPA allows the army to act swiftly, preventing escalation and loss of life.
- **Deterring Insurgent Activity:** The presence of armed forces with special powers acts as a **deterrent to insurgent groups**, who may otherwise escalate violence or recruit more aggressively. Insurgents are less likely to take over towns, attack security forces, or engage in open combat knowing that the military has **enhanced operational powers**.

- In **Punjab**, during the period of militancy in the 1980s, AFSPA helped suppress violent insurgent activities by **Khalistani separatist groups**, eventually restoring peace in the region by the mid-1990s.
- **Temporary Nature of the Law:** AFSPA is not a permanent law for the entire country. It is imposed selectively in areas officially declared "**disturbed**" by the central or state government, based on prevailing security conditions. Once the situation improves, AFSPA can be withdrawn, making its use a temporary measure during periods of instability.
  - In **Punjab**, AFSPA was lifted in **1997** after insurgency was brought under control. Similarly, in parts of the Northeast, AFSPA has been lifted from many areas where the security situation has improved.
- **Ensuring Effective Counterinsurgency Strategy:** AFSPA ensures that the armed forces can **coordinate effectively with local law enforcement** and civil administration. This coordination helps in **intelligence gathering, joint operations**, and the establishment of **lawful control over disturbed regions**.
  - In **Nagaland**, a combination of military action under AFSPA and **political negotiations** led to a ceasefire agreement with several insurgent groups, allowing for peace talks.

#### ARGUMENTS AGAINST AFSPA:

- **Allegations of Human Rights Violations:** The biggest criticism against AFSPA comes from allegations of **human rights violations**. The immunity granted to security forces is often seen as leading to **excesses** such as arbitrary arrests, extrajudicial killings, torture, and sexual violence.
  - The **Malom Massacre in Manipur (2000)**, where 10 civilians were allegedly shot dead by security forces, led to protests against AFSPA. The **Irom Sharmila** hunger strike, which lasted for 16 years, was a notable protest against the law in Manipur.
  - **Santosh Hegde Committee (2013)** recommended to properly reviewing the act every six months to see if its implementation is necessary. It found that all seven deaths in the six cases it investigated were extrajudicial executions and highlighted widespread abuse of AFSPA by security forces in Manipur.
- **Alienation of Local Populations:** The enforcement of AFSPA has led to **resentment and alienation** among local populations in regions like Jammu & Kashmir and the Northeast. Locals often feel **targeted** and oppressed under the act, leading to distrust between civilians and the security forces.
  - In **Kashmir**, where the law has been in force for over three decades, AFSPA has contributed to the perception of an **oppressive military presence**. The **Kunan Poshpora incident** was a mass rape that occurred on 23 February 1991 when a unit of the Indian security forces, after being fired upon by militants, launched a search operation in the twin villages of Kunan and Poshpora.
- **Legal Immunity and Lack of Accountability:** The legal immunity granted to security personnel is a major concern. Since armed forces cannot be prosecuted without central government approval, many cases of **alleged abuse** remain unaddressed, leading to a **culture of impunity**. Section 4 of AFSPA grants specific powers to authorised officers including use of firearms against individuals.
  - In **Nagaland**, the **Oting incident** in 2021, where 14 civilians were killed in a botched army operation, renewed calls for the repeal of AFSPA in the Northeast.

- **Prolonged Enforcement:** Another criticism is that AFSPA was initially introduced as a **temporary measure** to address insurgencies but has been extended indefinitely in many areas. The **lack of a time frame** for reviewing and lifting AFSPA has been a cause of concern.
  - The recent extension of AFSPA for another 6 months in Nagaland, Arunachal etc leads to perpetuity of the legislation and status quo.
- **Undermines state autonomy:** Section 3 of AFSPA grants the central government the authority to designate any area as a Disturbed Area without requiring the consent of the respective state

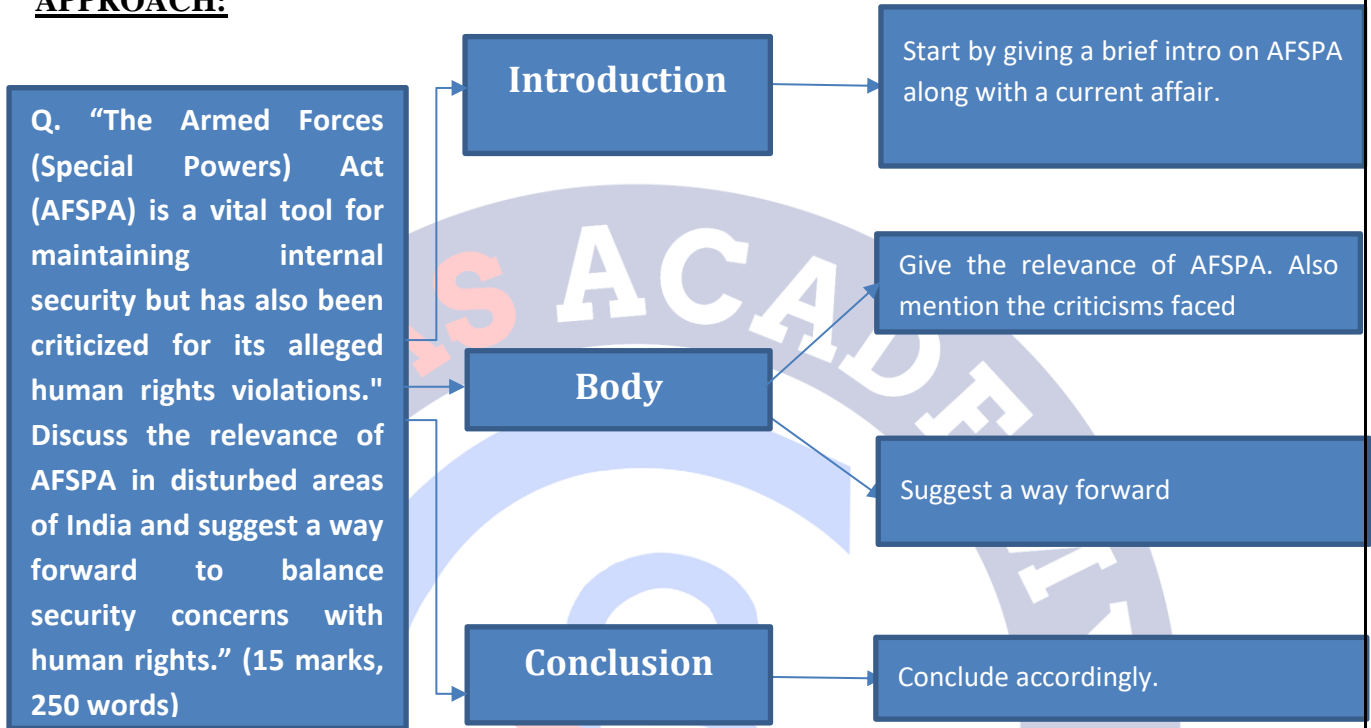
### **WAY FORWARD:**

- **Phased Withdrawal:** This has already been done in states like Tripura and parts of Assam and Manipur. The government can continue this approach by conducting regular security reviews to assess if the law is still necessary.
  - In Meghalaya, AFSPA was withdrawn in 2018 after years of relative peace. A similar model could be applied in other states where insurgency levels have declined.
- **Amendment of the Law:** Rather than a complete repeal, AFSPA could be amended to reduce its more draconian provisions, such as giving unchecked powers to the military. The amendment could include:
  - **Time-Bound Deployment:** Introduce a sunset clause that mandates a periodic review of the necessity of AFSPA in any region. This ensures that its application remains temporary and based on the actual security situation.
- **Establish Independent Oversight Committees:** Create independent review bodies at the central or state level to investigate allegations of human rights abuses by the armed forces under AFSPA. These bodies should be empowered to conduct thorough investigations, issue recommendations, and ensure accountability.
- **Judicial Review:** Implement a system where cases of alleged excesses by the armed forces can be subjected to judicial review without requiring prior approval from the central government. This would improve transparency and accountability.
  - The **Supreme Court of India** has taken up several cases regarding **human rights abuses** under AFSPA. In a 2016 ruling, the court stated that **excessive force** should not be used under the cover of AFSPA and ordered investigations into certain cases of alleged extrajudicial killings in Manipur.
- **Greater Civilian Involvement:** Encourage civilian involvement in security-related decision-making in AFSPA-imposed areas. By increasing collaboration between civil authorities and the military, the use of force can be more proportionate and targeted.
- **Build Trust with Local Communities:** The armed forces should invest in community engagement programs aimed at building trust with local populations. This could include:
  - **Development Projects:** Undertaking or supporting local development projects like building infrastructure, providing healthcare, and improving education can help reduce the resentment caused by prolonged military presence.
- **Follow Through on Expert Recommendations:** Various committees have been formed to review AFSPA over the years, including the Justice Jeevan Reddy Committee (2005) and the Second Administrative Reforms Commission (2007). Both recommended either the repeal or significant amendment of AFSPA.
  - **The Justice Reddy Committee** called for AFSPA's repeal, recommending that its provisions be incorporated into the Unlawful Activities (Prevention) Act (UAPA), which already covers many similar issues.

- The **Second Administrative Reforms Commission** recommended a more humane approach to dealing with insurgencies, emphasizing winning the hearts and minds of local populations.
- **Justice Verma Committee** (2013) recommended that any sexual violence against women by members of the armed forces must be brought within the purview of ordinary criminal law.
- **Human Rights Commissions:** Strengthen the role of national and state human rights commissions in investigating complaints related to AFSPA. These bodies should be given greater autonomy and resources to ensure proper investigation and timely resolution of grievances.
- **Training Armed Forces on Human Rights:** Ensure that members of the armed forces deployed in disturbed areas receive training on human rights, rules of engagement, and conflict de-escalation techniques. This would help reduce the potential for excessive force and build a more humane approach to maintaining law and order.
- **Political Solutions over Military Action:** The government should prioritize political dialogue and negotiations with insurgent groups rather than relying solely on military force. A political settlement that addresses grievances related to autonomy, economic development, and identity can help resolve long-standing conflicts.
  - In Nagaland, the signing of a ceasefire agreement in 1997 between the government and the NSCN-IM has led to relative peace and ongoing political negotiations. Political solutions like these are more sustainable than prolonged military deployment.
- **Economic Development and Infrastructure:** Insurgencies often thrive in areas with economic underdevelopment and social marginalization. The government should focus on improving infrastructure, employment opportunities, and basic services in disturbed areas to address the socioeconomic causes of insurgency.
  - In the Northeast, regions like Assam and Arunachal Pradesh are seeing growing investments in infrastructure, education, and tourism, which can help reduce insurgency by providing economic alternatives to armed rebellion.
- **Use of Technology to Minimize Civilian Harm:** Advances in surveillance technology, drone-based monitoring, and non-lethal crowd control measures can help reduce the need for excessive military force under AFSPA. By using better intelligence and surveillance, the armed forces can minimize collateral damage during operations and avoid civilian casualties.

**PRACTICE QUESTION:**

**Q. “The Armed Forces (Special Powers) Act (AFSPA) is a vital tool for maintaining internal security but has also been criticized for its alleged human rights violations.” Discuss the relevance of AFSPA in disturbed areas of India and suggest a way forward to balance security concerns with human rights.” (15 marks, 250 words)**

**APPROACH:****MODEL ANSWER:**

The **Armed Forces (Special Powers) Act (AFSPA)**, enacted in 1958, provides special powers to the armed forces to maintain public order in **disturbed areas**. It has been a critical tool in combating insurgency and terrorism, especially in **northeastern India, Jammu & Kashmir**, and previously, in **Punjab**. However, AFSPA has faced severe criticism for alleged **human rights violations** and its indefinite extension, raising concerns about its necessity and impact on civil liberties.

**RELEVANCE OF AFSPA IN DISTURBED AREAS:**

- Maintaining Internal Security:** AFSPA provides the **legal framework** for the armed forces to restore order in regions affected by insurgencies or terrorist activities. In **Nagaland** and **Manipur**, AFSPA has played a crucial role in suppressing insurgent activities and ensuring **territorial integrity**.
- Combatting Militancy and Insurgency:** The act allows for **swift military action**, including arrest without a warrant and use of force, which is critical in areas like **Jammu & Kashmir** where militants blend in with the local population. It has helped **prevent cross-border terrorism** and militant infiltration from **Pakistan**.
- Operational Flexibility:** The armed forces are granted **operational flexibility** to act in real-time without the constraints of civilian law enforcement, which is essential in conflict zones where threats may arise suddenly. This flexibility has been crucial in **counter-insurgency operations** in areas like **Manipur** and **Nagaland**.
- Protection of National Integrity:** In border states like **Arunachal Pradesh** and **Jammu & Kashmir**, AFSPA has been important in protecting national security

against foreign-backed insurgencies. It has enabled the military to conduct anti-insurgency operations and **preserve sovereignty**.

### **CRITICISM OF AFSPA:**

1. **Allegations of Human Rights Violations:** The **Malom Massacre** (2000) and the **Kunan Poshpora incident** (1991) are examples where AFSPA was allegedly misused, leading to **extrajudicial killings, torture, and sexual violence**. Such incidents have led to **alienation** among local populations and fuelled distrust of the armed forces.
2. **Legal Immunity and Lack of Accountability:** AFSPA grants **immunity** to security forces from prosecution, which has been criticized for promoting a **culture of impunity**. Cases of abuse often go unpunished, leading to further alienation of local populations, as seen in the **Oting incident in Nagaland** (2021).
3. **Prolonged Enforcement:** Originally meant as a **temporary measure**, AFSPA has been extended indefinitely in many regions, causing resentment among locals. In **Nagaland** and parts of **Manipur**, the law has been in place for decades, despite changes in the security situation.
4. **Alienation of Local Populations:** The prolonged presence of the military under AFSPA has created a perception of an **oppressive regime**, particularly in **Jammu & Kashmir** and the **Northeast**, leading to **alienation** of the local population and **distrust** in the government.

### **WAY FORWARD:**

1. **Phased Withdrawal and Review:** As security conditions improve, AFSPA should be gradually **phased out** in regions where it is no longer necessary. Regular **security reviews** should be conducted to assess whether the act's provisions are still required.
  - **Example:** In **Meghalaya**, AFSPA was lifted in 2018 after the security situation improved, providing a model for gradual withdrawal in other areas.
2. **Amendment of the Law:** AFSPA can be **amended** to introduce provisions that ensure **greater accountability** and **judicial oversight**. A **sunset clause** should be introduced, mandating periodic review of AFSPA's necessity in a particular area. **Independent oversight committees** can be established to investigate human rights violations, ensuring that security forces are held accountable for any misuse of power.
3. **Building Trust with Local Communities:** The armed forces should invest in **community engagement programs** and support local development projects. This will help build trust between the military and local populations, reducing the perception of the military as an occupying force. Undertaking local infrastructure, healthcare, and education projects can address some of the socioeconomic grievances that fuel insurgencies.
4. **Greater Civilian Involvement:** Encourage **civilian involvement** in decision-making related to AFSPA implementation. This can be done by improving collaboration between the armed forces and local authorities to ensure that the use of force is proportionate and justified.
5. **Political Solutions Over Military Action:** In the long term, the government should prioritize **political dialogue** and **negotiations** with insurgent groups, rather than relying solely on military action. A **political settlement** addressing grievances related to **autonomy, identity, and development** can provide a more sustainable solution to conflicts.

- **Example:** In Nagaland, the **ceasefire agreement** with insurgent groups has created a more peaceful environment, emphasizing the importance of political engagement over prolonged military presence.
- 6. **Strengthening Human Rights Mechanisms:** Strengthen the role of **national and state human rights commissions** to ensure that complaints related to AFSPA are investigated promptly. The military should also receive **training in human rights and conflict de-escalation**, ensuring that operations are carried out in a humane and lawful manner.

While AFSPA has played an important role in maintaining internal security and combatting insurgencies, its prolonged use and alleged misuse have caused alienation and human rights violations in some regions. The way forward lies in **reforming the law**, ensuring **greater accountability**, and focusing on **political solutions** and **development** to address the root causes of insurgency. Balancing the needs of national security with respect for human rights is essential for ensuring lasting peace and stability in the affected regions.

