

AFSPA

Armed Forces (Special Powers) Acts



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AFSPA



- **Armed Forces Special Power Act is a series of act create by the Indian parliament that empowers Armed Forces to maintain public order in disturbed areas.**
- **Article 355 of the Indian Constitution confers power to the Central Government to protect every state from internal disturbance.**
- **Armed Forces get the authority to prohibit gathering of 5 or more persons in an area.**



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AFSPA



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➤ AFSPA

- Enacted in 1958 for NE & 1990 for J&K

➤ Applicable in Areas Disturbed

- Provide special powers, Legal Protection & Support
 - Enabling act
 - Facilitates Conduct of Operations
 - Constitutional validity up held by SC in 1988
 - DO & Don'ts incorporated
- Does not provide immunity/impunity – HR violations
- Post Manorama Devi incident – Call for repeal /amendments

AFSPA: Jeevan Reddy Committee



- **Premise.** Act a symbol of oppression, high headedness discrimination and hate
- **Recommended Repeal of Act**
- **Instead Unlawful Activities (Prevention) Act, 1967 be amended to incl :-**
 - **Centre & State can seek Army Assistance in Aid to Civ Auth**
 - **Six Months validity**
 - **Can be extended**
 - **Special powers conferred, not to violate HR**
 - **Army to op on guidelines by Army Headquarters**
 - **Detailed procedure for dealing with arrested persons**
 - **Grievances Cell at District level**



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ABOUT AFSPA



The Armed Forces (Special Powers) Act of 1958 (AFSPA) is one of the more stringent legislations that the Indian Parliament has passed in its 45 years of Parliamentary history.

Under this Act, all security forces are given **unrestricted and unaccounted power to carry out their operations**, once an area is declared disturbed.

Even a **non-commissioned officer** is granted the right to shoot to kill based on mere suspicion that it is necessary to do so in order to "maintain the public order".



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ABOUT AFSPA



- The act gives forces the power to arrest any person without any warrant only on the basis of suspicion.

Enter or search premises without warrant.

Ban the possession of firearms.

- A person taken into custody may be handed over to the nearest police station.



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ABOUT AFSPA



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The Urgency

WHAT IS AFSPA?

It is Armed Forces (Special Powers) Act

Was imposed in Assam at the height of insurgency in 1990

It empowers armed forces to enter any premises or arrest any person without warrant

It has been repeatedly extended, most recently till August this year

WHY THE EXTENSION

Recent incidents indicate the police needs Army to fight insurgents



The army will need AFSPA to deal with militants, especially in interstate border areas

State police too has favoured continuation of AFSPA

This is especially since the process of updating NRC

DEMAND TO WITHDRAW

There is demand from various quarters to withdraw the Act since Insurgency is at its lowest ebb in the state

ABOUT AFSPA



- An area is declared disturbed by notification under section 3 of the AFSPA, The central government or The Governor of the state can declare the whole or the part of the state as a disturbed area by just a suitable notice in the official Gazette.
- AFSPA can be invoked in places where the use of Armed Forces in aid of the civil power is necessary.



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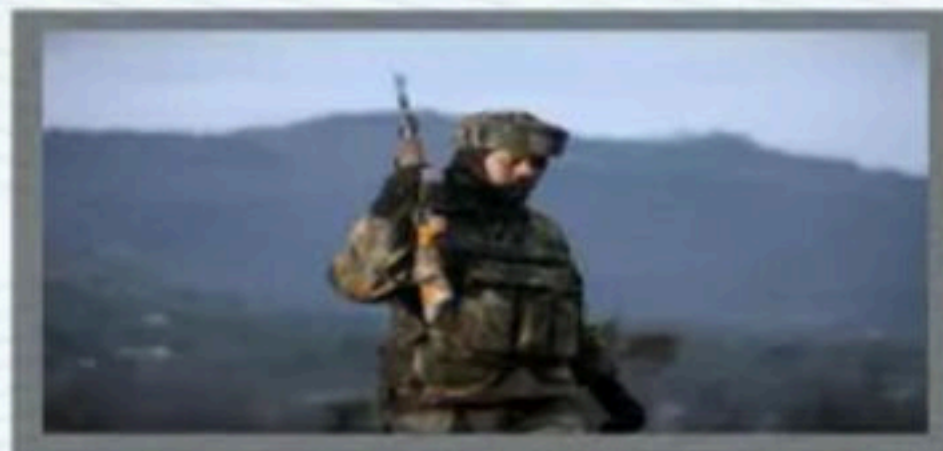
ABOUT AFSPA



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AFSPA explained: How does it work exactly?



TRIPURA just went
AFSPA FREE!

Which other states are under
AFSPA right now?



ASSAM
NAGALAND
MANIPUR*
ARUNACHAL
PRADESH*
MEGHALAYA*

JAMMU & KASHMIR

How does one officially declare
a region to be 'disturbed'?

Section (3) of the AFSPA Act empowers the governor of the state or Union territory to issue an official notification on The Gazette of India.

Once declared 'disturbed', the region has to maintain status quo for a minimum of three months, according to The Disturbed Areas (Special Courts) Act, 1976.

But what about the state govt's role? Does it have any say in this?

The state governments, as in Tripura's case, can suggest whether the Act is required to be enforced or not. But under Section (3) of the Act, their opinion can still be overruled by the governor or the centre.

Is Tripura then the first state to completely do away with AFSPA?

No. It was applied in Punjab and Chandigarh in 1983 due to secessionist movements and lasted for 14 years until there 1997.

HISTORY OF AFSPA



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- The Act dates back to the British era.
- When in order to crush Quit India Movement of 1942, Four ordinances were promulgated for disturbed areas in Bengal, Assam, East Bengal and the United Provinces.
- These acts were again invoked by the Central Government to tackle severe security crisis in the country in 1947, in the wake of the Partition.

HISTORY OF AFSPA



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HISTORY OF AFSPA



- The act was promulgated for the first time in 1958 by the president Dr Rajendra Prasad as Armed Forces Special Powers (Assam and Manipur) Act to cut down the violence in North Eastern States.
- The act has been imposed on Punjab and Chandigarh in 1983.
- In Jammu and Kashmir in 1990.
- Almost Entire North East has experienced the imposition of this act.



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HISTORY OF AFSPA



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POWERS GIVEN TO FORCES



- According to this act Armed Forces are given power to use any kind of force against a person who acts against law and order.
(Even if it causes death under section 4 of the act)
- To stop and search any vehicle suspected of carrying arms or suspected person.
- To destroy arms dump, hide-outs, prepared or fortified shelter or training camp



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POWERS GIVEN TO FORCES



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POWERS GIVEN TO FORCES



- Army officers have **legal immunity** for their actions.
- Government's judgement over declaring an area disturbed is **beyond judicial review**.
- This act offer protection from **prosecution, suit or legal proceedings** to persons acting in good faith under this act.



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OPPOSITION OF THE ACT



- The act is largely opposed because of the impunity it provides against human right abuses, violence unleashed.
- The infringement of fundamental rights.
- The constitutionality of AFSPA under Indian law is questioned.



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OPPOSITION OF THE ACT



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OPPOSITION OF THE ACT



- Its relevance in the light of Article 4 of the International Covenant on civil and Political Rights (ICCPR) is put into scrutiny.
- Civil rights activists have requested to repeal the AFSPA.
- Supreme Court has upheld the validity of the AFSPA.



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OPPOSITION OF THE ACT



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OPPOSITION OF THE ACT



- A committee headed by B P Jeevan Reddy recommended repeal of the law.
(Unlawful Activities (Prevention) Act, 1967)
- The 5th report of the Second Administrative Reforms Commission on public order also recommended repeal of the act.
- AFSPA is operational in certain pockets/areas only now.



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OPPOSITION OF THE ACT



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JUDGEMENT OF SC ON AFSPA(2016)



- The supreme court, in a curative petition, held that, whoever the victim may be, there must be a **through enquiry**. This is to apply irrespective of the fact whether the aggresor was a common person or one of the states.
- The judge held that this was necessary for the **preservation of individual liberties**. The court also held that there is **no concept of absolute immunity from a trial enjoyed by the army personnel if an offence contrary to the law of the land** has been committed by such an army person.
- Lastly, a through enquiry must be conducted on all the **encounter killings**.



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JUDGEMENT OF SC ON AFSPA(2016)



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THE JUDGEMENT

Not permissible for armed forces to use excessive force on citizens



Internal disturbances not war. Citizens can't be treated as enemy to justify shoot and kill



Even if person is armed in disturbed area can't be killed under presumption that he is an enemy



If such excessive force leads to death, must be thoroughly enquired

into by Independent body

The rule book of dos and don'ts in operations will apply whether it is militants, or terrorists or dreaded criminals

Armed forces personnel will face criminal prosecution in such cases of unjustified deaths



Can't cite AFSPA to claim immunity from all that is done in lawful discharge of official duty

SHOULD AFSPA CONTINUE?



- AFSPA should not be removed as it will encourage miscreants and anti-state people to instigate tensions in the disturbed areas.
- AFSPA will also tie the hand of our army which is regarded as the most exemplary one. It will decrease the morale of the army. They will think twice before acting against any person who they suspect as a criminal.
- A soldier undergoes psych evaluation and other procedures which confirms his mental faculties. Personnel of the armed forces should be given immunity against things done by the heat of the moment.



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SHOULD AFSPA CONTINUE?



Whatever happens to the debate one thing stands strikingly clear – the armed forces are one of the **best apolitical and professional guarantors of peace in the country.**

That they have taken a stance against intense political pressure in national interest needs to be seen from a larger perspective – that of **keeping Kashmir and NE together** under extreme pressures.

This stand is borne out of the larger perspective that **current run of peace is at best fragile** and a lot more needs to be done to bring normalcy the way the nation requires.



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SHOULD AFSPA CONTINUE?



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We need Afspa to work smoothly. Though there is complete peace in lower and central Assam, two districts in upper Assam are still witnessing insurgent activities led by anti-talk Ulfa which is also known as Ulfa (Independent)

An Army Officer

Afspa is necessary now. Taking advantage of the protest against CAA, anti-talk Ulfa faction has managed to attract fresh recruits

A Police Officer

WAY OUT



- Therefore, the AFSPA must either be repealed by setting out clear procedures, scrapping of the act or it must be stuck down by the supreme court as entirely unconstitutional. Amendments may be in the form of making the armed forces more accountable for the acts committed.
- If any officer of the army has been involved in any activity of killings under this act, there must be an independent committee set up to decide whether the officer must be prosecuted or punished for the acts committed.



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WAY OUT



- Human rights excesses are dealt with severely and every soldier is provided with guidelines in the form of the COAS 'Ten Commandments' for conducting operations.
- The reported incidents of human rights violations have also come down substantially over the years and the issue of AFSPA and rights violations need to be viewed separately.
- Violations can occur even without AFSPA as these are isolated incidents carried out by an individual soldier who may have gone astray.
- Unfortunately, removal of AFSPA has become an emotive issue and is seen in some quarters as the panacea for all ills.
- It should be remembered that the Army was not responsible for bringing about insurgency and **AFSPA is only an enabling provision for it to battle the insurgents or terrorists**. A solution to the problem also has to be found outside the military or legal realms.



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WHATS YOUR OPINION?



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