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AFSPA act

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Why in news?

The **Union Home Ministry** reimposed the **Armed Forces (Special Powers) Act (AFSPA)** in **Manipur**, declaring six police station limits in five districts “**disturbed areas**”, in the wake of the ethnic violence in the State.

What is AFSPA?

The **Armed Forces (Special Powers) Act (AFSPA)** is a controversial law that grants special powers to the Indian Armed Forces and Central Armed Police Forces in areas declared as "disturbed." It was originally enacted to deal with internal security challenges, particularly in regions affected by insurgency and violence.

Background of AFSPA:

- **Colonial Origin:**
- The roots of AFSPA trace back to the **British colonial period** when the **Armed Forces Special Powers Ordinance** was promulgated on **August 15, 1942**, to suppress the Quit India Movement. This ordinance laid the foundation for similar laws during the post-independence period, especially to address internal security challenges caused by Partition.
- **Post-independence:**
- In **1958**, the **Armed Forces (Assam and Manipur) Special Powers Act** was passed, replacing earlier laws like the Assam Disturbed Areas Act of 1955, which was introduced to deal with uprisings in the **Naga Hills** and adjoining regions. The law was later expanded to cover more areas in the Northeast and was also invoked in **Jammand Kashmir** in **1990**.

Key Features of AFSPA:

- **Unbridled Powers:**
- The AFSPA gives the armed forces significant powers in areas designated as "disturbed." These powers include:
 - The authority to **fire upon** individuals and kill them if they are found acting in contravention of the law.
 - The power to **arrest** or **search premises** without a warrant.
- **Protection from prosecution:** The law provides immunity to the armed forces from legal action or prosecution without the prior approval of the **Central Government**.
- **Disturbed Area Notification:**
- The **disturbed area** status can be declared by the **Central Government** or the **Governor** of a State. The **Ministry of Home Affairs (MHA)** issues periodic notifications declaring certain areas as "disturbed." This allows the armed forces to operate under the provisions of AFSPA.

Disturbed Areas Under AFSPA:

- **Definition of Disturbed Area:**

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- Under Section 3 of the AFSPA, a "disturbed area" is one where the use of armed forces is necessary to aid civil authorities in maintaining law and order. These areas are typically marked by ongoing violence, insurgency, or civil unrest.
- The **Central Government** or the **State Governor** can declare an area as disturbed if there are significant disturbances due to religious, racial, regional, or ethnic conflicts, or other social and political unrest.
- **Amendment of AFSPA (1972):**
- In **1972**, the AFSPA was amended to allow both the **Central Government** and the **State governments** to jointly decide whether an area should be declared disturbed. This amendment gave more flexibility to local authorities in invoking the law.
- **Duration of the Declaration:**
- Once an area is declared as disturbed, it remains so for a period of **three months** as per **The Disturbed Areas (Special Courts) Act, 1976**. The government may extend or lift the disturbed status after reviewing the situation. The **State government** can suggest whether the Act should remain in force in a particular state or region.

Current Applications:

- **Ongoing Use:**
- As of now, the **Union Home Ministry** continues to issue periodic notifications for areas in **Nagaland** and **Arunachal Pradesh**, maintaining the disturbed status for these regions. Other states may also invoke the Act depending on the prevailing security conditions.

Controversy and Criticism:

- **Human Rights Concerns:**
- The AFSPA has been highly controversial due to its broad powers and the **lack of accountability** for security forces. Critics argue that it often leads to **human rights violations**, including **extrajudicial killings**, **forced disappearances**, and **torture** of civilians.
- **Protests and Calls for Repeal:**
- Several human rights groups, activists, and even political leaders have called for the repeal of AFSPA, citing its impact on civilians in disturbed regions. In response to these concerns, there have been various demands for greater oversight, transparency, and accountability in the implementation of the Act.

The **Armed Forces (Special Powers) Act (AFSPA)** is a law designed to give the Indian military special powers to combat insurgency and maintain internal security in areas marked as disturbed. While it has been seen as a necessary tool for dealing with violent uprisings and unrest, its controversial nature and human rights implications have led to ongoing debates about its fairness and efficacy.

Supreme Court's Guidelines on AFSPA and Related Recommendations

Supreme Court's 1998 Ruling (**Naga People's Movement of Human Rights v. Union of India**):

1. **Constitutionality of AFSPA:**

- The **Supreme Court affirmed the constitutionality of the Armed Forces (Special Powers) Act (AFSPA)**, ruling that it does not infringe upon the Constitution.
- The powers granted under Sections 4 and 5 of AFSPA were found to be neither arbitrary nor unreasonable.

1. **Consultation with State Governments:**

- While the Central government has the authority to declare a 'disturbed area' **suo-mot(on its own)**, it is **preferable for the central government to consult with the state government** before issuing such a declaration.

1. Restrictions on Declaring a 'Disturbed Area':

- AFSPA does not give **unrestricted authority** to declare an area as a 'disturbed area'. The declaration must be carefully assessed.

1. Time Frame for Declaration:

- Any declaration under AFSPA must be **time-bound** with regular **assessments** of the situation.
- After **six months**, a **review** of the declaration is necessary to determine if it should be extended or lifted.

1. Use of Force:

- **Minimization of Force:** When implementing AFSPA, officers must use the **least amount of force** required to achieve the objective.
- They must strictly adhere to the **guidelines in the army's "Dos and Don'ts"** during operations.

Way Forward: Recommendations from Various Committees

1. Jeevan Reddy Committee (2004):

- **Repeal of AFSPA:** The committee recommended that **AFSPA be repealed** and its provisions be incorporated into the **Unlawful Activities (Prevention) Act (UAPA), 1967**.
- **Clarification of Armed Forces Powers:** The UAPA should specify the powers of the armed and paramilitary forces more clearly.
- **Grievance Cells:** Establish grievance cells in districts where the armed forces are deployed to address human rights violations and other issues.

1. Second Administrative Reforms Commission (ARC):

- In its **5th Report**, the ARC also recommended the **repeal of AFSPA**. However, these recommendations have not been implemented so far.

1. Santosh Hegde Commission:

- **Regular Review:** The commission recommended that AFSPA be **reviewed every six months** to assess its necessity and ensure its implementation remains justified.
- **Humane Implementation:** The Act should be amended to make it more humane and ensure **greater accountability** for security forces.
- **Amendment of UAPA:** Instead of relying solely on AFSPA, the **UAPA should be amended** to more effectively deal with terrorism.
- **Accountability for Security Forces:** The armed forces should not be **immune from investigation** for excesses committed during their operations in disturbed areas.

These guidelines and recommendations suggest a balance between ensuring national security and protecting human rights. However, despite these recommendations, the **debate over AFSPA** remains unresolved, with the call for its **repeal or reform** continuing.