



**Syllabus subtopic:** Security challenges and their management in border areas; linkages of organized crime with terrorism

### News:

The Cabinet Secretariat has notified rules reasserting the Union Home Ministry as the authority that would decide on the imposition of **the Armed Forces (Special Powers) Act (AFSPA)** in the Union Territories of Jammu and Kashmir and Ladakh.

### Prelims and Mains focus:

AFSPA- features, draconian provisions, misuses and need for review.

### About AFSPA

- In simple terms, AFSPA gives armed forces the power to maintain public order in “disturbed areas”.
- 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 premises without a warrant; and ban the possession of firearms.

### What qualifies for a “disturbed area” and who has the power to declare it?

1. A disturbed area is one which is declared by notification under Section 3 of the AFSPA. An area can be disturbed due to differences or disputes between members of different religious, racial, language or regional groups or castes or communities.
2. 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. A suitable notification would have to be made in the Official Gazette. As per Section 3, it can be invoked in places where “the use of armed forces in aid of the civil power is necessary”.

### Origin of AFSPA

The Act came into force in the context of increasing violence in the North eastern States decades ago, which the State governments found difficult to control. The Armed Forces (Special Powers) Bill was passed by both the Houses of Parliament and it was approved by the President on September 11, 1958. It became known as the Armed Forces Special Powers Act, 1958.



## Special powers given to army officials

1. Under Section 4 of the AFSPA, an authorised officer in a disturbed area enjoys certain powers. The authorised officer has the power to open fire at any individual even if it results in death if the individual violates laws which prohibit (a) the assembly of five or more persons; or (b) carrying of weapons. However, the officer has to give a warning before opening fire.
2. The authorised officer has also been given the power to (a) arrest without a warrant; and (b) seize and search without any warrant any premise in order to make an arrest or recovery of hostages, arms and ammunitions.
3. Individuals who have been taken into custody have to be handed over to the nearest police station as soon as possible.
4. Prosecution of an authorised officer requires prior permission of the Central government.

## Role of the judiciary

There were questions about the constitutionality of AFSPA, given that law and order is a state subject. **The Supreme Court has upheld the constitutionality of AFSPA in a 1998 judgement (Naga People's Movement of Human Rights v. Union of India).**

In this judgement, **the Supreme Court arrived at certain conclusions including:**

- (a) a suo motu declaration can be made by the Central government, however, it is desirable that the state government should be consulted by the central government before making the declaration;
- (b) AFSPA does not confer arbitrary powers to declare an area as a 'disturbed area';
- (c) the declaration has to be for a limited duration and there should be a periodic review of the declaration 6 months have expired;
- (d) while exercising the powers conferred upon him by AFSPA, the authorised officer should use minimal force necessary for effective action,
- (e) the authorised officer should strictly follow the 'Dos and Don'ts' issued by the army.

## Has there been any review of the Act?

On November 19, 2004, **the Central government appointed committee headed by Justice B P Jeevan Reddy made the following recommendations:** (a) AFSPA should be repealed and appropriate provisions should be inserted in the Unlawful Activities (Prevention) Act, 1967; (b) The Unlawful Activities Act should be modified to clearly specify the powers of the armed forces and paramilitary forces and (c) grievance cells should be set up in each district where the armed forces are deployed.

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The 5th report of the Second Administrative Reforms Commission on public order has also recommended the repeal of the AFSPA.

These recommendations have not been implemented.