

27– 08 – 2022

News: A draconian law that needs to disappear

- The north-east needs to be freed from the net of AFSPA, as it has subsumed constitutional rights with impunity.

Armed Forces Special Powers Act (AFSPA)

- Armed Forces Special Powers Act (AFSPA) was enacted in **1958**, granting **extra-ordinary powers and immunity to the armed forces to bring back order in the disturbed areas.**
- 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.**
- Once a region is declared '**disturbed**' then it has to **maintain the status quo for a minimum of three months**, as per The Disturbed Areas Act of 1976.
- The **state governments can suggest** whether the Act is required to be enforced or not. But under Section (3) of the act, their **opinion can be overruled** by the governor or the Centre.

- Ministry of Home Affairs (MHA) is the authority that would decide on the imposition of AFSPA in the Union Territories of Jammu and Kashmir (J&K) and Ladakh.
- Initially when the act came into force in 1958 the power to confer AFSPA was given only to the governor of the state. This **power was conferred on the central government with the amendment in 1978** (Tripura was declared a disturbed area by the central government, over the opposition by the state government).
- The act **does not explicitly explain the circumstances on which it can be declared as 'disturbed area'**. It only states that “the AFSPA only requires that such authority be of the opinion that whole or parts of the area are in a dangerous or disturbed condition such that the use of the Armed Forces in aid of civil powers is necessary.
- 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**”.

Some of the Immunities / Powers include:

- **Fire upon anyone** after giving warning who is acting against law and order in disturbed areas.
- **Arrest anyone** without warrant.
- **Stop and search** any vehicle or vessel.
- **Legal immunity** for these actions.
- Presently, AFSPA is enforced in Area **under 8 police stations of Arunachal Pradesh, Assam, Manipur (excluding 7 assembly constituencies of Imphal), Mizoram, Entire state of Nagaland and Jammu and Kashmir.**