

## PROMOTING IMPUNITY: On The 2021 Oting Massacre Case In Nagaland

The Hindu

Paper - III  
(Internal Security)

In denying sanction to the Nagaland police to prosecute 30 Army men for the December 2021 killing of 13 civilians in a botched up operation, the Union government has sent out a disconcerting message that it is unable or unwilling to do anything about impunity in insurgency hit States.

### What is the Issue?

In what was later described as a case of mistaken identity, six workers returning home in a vehicle from a coal mine bordering Assam were gunned down by the security forces at Oting village in Mon district. Seven more villagers were shot dead later, following a scuffle with villagers who had found the bodies in an Army vehicle. Prior sanction to prosecute Army personnel is necessary under Section 6 of the Armed Forces (Special Powers) Act (AFSPA).



### Nagaland Police Demand

A Special Investigation Team of the Nagaland Police completed its probe in March 2022, and filed a charge sheet in the case. It had sought sanction for prosecution from the Defence Ministry's Department of Military Affairs. The police had claimed they had established the involvement of 30 personnel, who allegedly violated standard operating procedures and rules of engagement, and resorted to indiscriminate and disproportionate firing on the vehicle. Meanwhile, the Army also ordered a court of inquiry, but its outcome is not known. On petitions by the wives of the Army personnel involved, the Supreme Court of India stayed the criminal proceedings in July 2022.

### Reduction of Notified Areas and Peace Efforts

The Centre has been quite keen on reducing the areas covered by the law giving special powers in disturbed areas to the armed forces. In recognition of the significant improvement in the security situation in the northeastern region, it has reduced the notified areas in Nagaland, Assam and Manipur in recent years.

On the political side, it has been working towards peace accords and getting insurgents and extremists to lay down arms. However, it is quite incongruent with its overall policy of creating an atmosphere conducive for peace and development, and making partners out of those laying down weapons, for the government to disallow the prosecution of those suspected to be involved in an admittedly mistaken counter insurgency operation.

## Conclusion

It would have redounded to the government's credit had it allowed the criminal courts to decide on the extent of culpability of the Army men. Prosecution of armed forces personnel involved in excesses is quite rare, leading to the widespread impression that AFSPA is used to promote impunity. The government must demonstrate its commitment to peace in the region and justice for the victims by either granting sanction for their prosecution, or taking exemplary action based on the findings of the military court of inquiry.

### Armed Forces (Special Powers) Act (AFSPA)

- AFSPA gives the armed forces and the Central Armed Police Forces deployed in "disturbed areas" unbridled powers to kill anyone violating the law and to search any premises without a warrant, and with protection from prosecution and legal proceedings.
- This law was first implemented in 1958 to deal with the Naga insurgency. The act was amended in 1972 and the powers to declare an area as "disturbed" were given to the states as well as the central government.
- Tripura repealed the Act in the year 2015 and Meghalaya was under AFSPA for 27 years, but it was repealed by the Ministry of Home Affairs on April 1, 2018.
- AFSPA is currently in force in parts of Assam, Nagaland, Manipur and Arunachal Pradesh while Jammu and Kashmir is in force in some areas under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990.

### Disturbed area

- If it appears to the Governor of a State or the Central Government, in the case of any State or Union Territory, that the situation therein is so disturbed and dangerous that the use of armed forces in co-operation with the civil authorities is necessary. the Governor of that State or Union Territory or the Central Government may, by notification in the Official Gazette, declare that State or Union Territory or any part thereof to be a disturbed area. After which central security forces are deployed there.

- As per the Disturbed Areas (Special Courts) Act, 1976, once declared disturbed, the area is maintained as a disturbed area for a period of three months. Due to differences or disputes between various religious, racial, language, regional groups, castes, communities, the Governor or the Central Government declares an area as a disturbed area. State governments can suggest whether this act should be implemented or not, but the governor or the central government has the power to accept or not accept its suggestion.

### Disturbed Areas Act (DAA)

The Assam Disturbed Areas Act was introduced in 1955 for Nagaland to suppress the Naga insurgency. This act is called mini AFSPA as it gives the armed forces the same powers as AFSPA. The State Government has the power to declare the whole or any part of the district as a disturbed area by notification in the Official Gazette. The only difference is that DAA is granted as a state power, but AFSPA can be invoked by the state governor or the central government.

### Salient Features of AFSPA Act

- Section (3) of AFSPA provides that the Central Government is empowered to deploy armed forces in aid of civil authorities if the Governor of a State issues an official notification in the Gazette of India. Once an area is declared 'disturbed' it has to maintain status quo for at least three months as per the Disturbed Areas Act of 1976.

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- Section (4) of the AFSPA gives special powers to army officers in disturbed areas to shoot (even if it kills) any person violating the law and/or suspected of violating the law (this includes five assembly of more than one person, carrying of arms) etc. The only condition is that the officer must give a warning before firing.

### **Supreme court directive**

In 1998, in Naga People's Movement of Human Rights v. Union of India, the status of AFSPA was specifically challenged by the Supreme Court and a five-judge bench concluded that the Act was not violative of the Constitution and the powers conferred under it. May go. Sections 4 and 5 of the Act are not arbitrary and redundant and hence the ban of the Constitution is not violative. In addition, Section 4 requires Army SEALs to strictly observe minimum force when suspected of violating said injunction. Arrests under section 4 and any person detained are to be handed over to the Wireless Police Station within 24 hours of such arrest. Some similar orders were given by the Supreme Court in 2016 to 2017 as well.

### Expected Question

**Que. Consider the following statements–**

1. Section (4) of the AFSPA gives special powers to army officers in disturbed areas to shoot anyone violating the law and/or suspected of violating the law.
2. AFSPA is currently in force in parts of Assam, Nagaland, Manipur and Arunachal Pradesh while Jammu and Kashmir is in force in some areas under the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990.

Which of the statements given above is/are correct?

- (a) Only 1                                      (b) Only 2  
(c) Both 1 and 2                              (d) Neither 1 nor 2

**Answer : C**

### Mains Expected Question & Format

**Que.:** Human rights activists constantly highlight the view that the Armed Forces (Special Powers) Act, 1958 (AFSPA) is a draconian act, giving rise to human rights abuses by the security forces. Which sections of the Act do activists oppose? Critically evaluate its necessity in the context of the views expressed by the Supreme Court.

**Answer Format :**

- ❖ Explain the Armed Forces (Special Powers) Act, 1958.
- ❖ Raise concerns about misuse of AFSPA
- ❖ Which sections of AFSPA do activists oppose?
- ❖ Give a balanced conclusion citing the order of the Supreme Court.

**Note:** - The question of the main examination given for practice is designed keeping in mind the upcoming UPSC mains examination. Therefore, to get an answer to this question, you can take the help of this source as well as other sources related to this topic.