

# THE RULE OF GUNS THAT CONTINUES TO HAUNT INDIA

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On December 26, for the first time since the Modi government came to power in 2014, the Union Home Ministry constituted a panel led by its officers to review the withdrawal of the Armed Forces (Special Powers) Act (AFSPA) in Nagaland.

An exhaustive report prepared by a committee led by retired Supreme Court judge B.P. Jeevan Reddy under the Congress-led UPA government in 2005 has, however, gathered dust. The committee had recommended that the AFSPA be repealed.

The Home Ministry's decision to set up a new panel was necessitated after a botched operation by the Army led to the killing of more than a dozen civilians on December 4 in Nagaland's Mon district. The region witnessed severe protests with the State Assembly, where the Bharatiya Janata Party (BJP) has 12 MLAs, unanimously passing a resolution to repeal the Act.

The para commandos unit of the Army stationed in Jorhat, Assam, entered neighbouring Nagaland on receiving an intelligence input about the movement of insurgent groups, but killed the miners who were returning from a coal mine.

The AFSPA gives unfettered powers to the armed forces and the Central armed police forces deployed in "disturbed areas" to kill anyone acting in contravention of law and arrest and search any premises without a warrant and with protection from prosecution and legal suits. The civil administration or police in Nagaland was not informed of any such operation.

The law first came into effect in 1958 to deal with the uprising in the Naga Hills, followed by the insurgency in Assam. A reincarnation of the British-era legislation that was enacted to quell the protests during the Quit India movement, the AFSPA was issued by way of four ordinances in 1947. The ordinances were replaced by an Act in 1948 and the present law effective in Northeast was introduced in Parliament in 1958 by the then Home Minister, G.B. Pant. It was known initially as the Armed Forces (Assam and Manipur) Special Powers Act, 1958. After the States of Arunachal Pradesh, Meghalaya, Mizoram, and Nagaland came into being, the Act was adapted to apply to these States as well.

## 'Disturbed areas'

The Act was amended in 1972 and the powers to declare an area as "disturbed" were conferred concurrently upon the Central government along with the States.

Currently, the MHA issues periodic "disturbed area" notification to extend AFSPA only for Nagaland and Arunachal Pradesh, where it is applicable in the districts of Tirap, Changlang, Longding and areas falling under Namsai and Mahadevpur police stations bordering Assam. The notification for Manipur and Assam is issued by the State governments. Tripura revoked the Act in 2015 and Meghalaya was under AFSPA for 27 years, until it was revoked by the MHA from April 1, 2018. The Act was implemented in a 20-km area along the border with Assam. Jammu and Kashmir has a separate J&K Armed Forces (Special Powers) Act, 1990.

Though a committee was constituted on December 26 to study the withdrawal of AFSPA from Nagaland, the Ministry had taken incremental steps to reduce its applicability in the past. In

2017, however, it failed to convince the Assam and Manipur governments to begin a phased withdrawal. Both the States, governed by the BJP, resisted the move. This was despite North East reporting the lowest insurgency related incidents in two decades. According to the MHA, till August 31, 2021, the number of such incidents were down to 135 from 1,743 reported in 1999.

On December 30, the MHA extended AFSPA in the whole of Nagaland for another six months, stating the area is in “such a disturbed and dangerous condition that the use of armed forces in aid of the civil power is necessary”. The order issued under Section 3 of the Act is reviewed every six months.

Till a few years ago, the notification published in the Gazette of India used to specify detailed reasons such as the number of incidents, killings and insurgent groups operating in the area. It stopped post 2018 with the Ministry regurgitating the same text every six months that the use of armed forces in aid of civil powers is necessary. While for Nagaland, the same text is being repeated for the past several years, the reasons for extending the provisions of the Act in Arunachal Pradesh were specified till 2018, not any more.

According to Vappalla Balachandran, former Special Secretary, Cabinet Secretariat, it is a typical bureaucratic practice to extend the notifications without any justification.

“They have to give reasons, it is wrong. If they are called to court tomorrow, they (the Ministry) will have to justify the order, it seems there is no application of mind,” Mr. Balachandran said.

Assam reported only 15 insurgency-related incidents in 2020 and till August 2021, it reported 17 incidents, from a high of 536 in 2000. However, the September 10 notification by Assam mentions “evil design hatched by foreign intelligence agencies” and that the State shares boundary with Bangladesh “and is surrounded by other countries like People’s Republic of China, Myanmar and Bhutan” among eight reasons to extend AFSPA in the State. Besides noting threat from United Liberation Front of Asom (I), the notification states that “the emergence of Islamic terrorists groups like HUM, JMB and HM (Hizbul Mujahideen) in Assam also pose threats to the security scenario.”

### **‘Violent activities’**

A December 8 order by the Manipur government extending AFSPA in the State for a year said, “the Governor of Manipur is of the opinion that due to violent activities of various extremist/insurgent groups, the entire State of Manipur is in such a disturbed condition that the use of Armed Forces in aid of civil power is necessary.” While Manipur reported 740 incidents in 2008, in 2021, it only recorded 72 violent incidents.

A senior government official said “the disturbed area” tag also facilitates more funds from the Centre and it is one of the reasons for States to continue its application.

Since 1995, the Centre has been implementing the Security Related Expenditure (SRE) scheme for all North East States except Mizoram and Sikkim. Under the scheme, the Centre reimburses 90% of the expenditure incurred by States on various security related items, which include raising of the India Reserve Battalions, logistics to the Central Armed Police Forces and the Army, petrol, maintenance of designated camps of insurgent groups with which Suspension of Operations have been signed. In the past seven years, the SRE reimbursement in North East stood at Rs. 2,001 crore.

The official stated that a blanket withdrawal of AFSPA may not be feasible but the option to remove it police station-wise, in phases, was on the table.

## ***In Focus***

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***The ordinances were replaced by an Act in 1948 and the current law effective in North East was introduced in Parliament in 1958***

***The Act was amended in 1972 and the powers to declare an area as “disturbed” were conferred concurrently upon the Central government along with the States***

***AFSPA gives powers to the armed forces deployed in ‘disturbed areas’ to kill anyone acting in contravention of law, arrest and search any premises without a warrant***

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