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Why Nagaland Killings have Rekindled Debate on AFSPA

What is the issue?

The recent killing of civilians by security forces in a case of alleged mistaken identity in Nagaland has once again rekindled the debate over the Armed Forces Special Powers Act (AFSPA).

What is the recent Naga killing about?

- Six civilians said to be workers in a coal mine were killed by security forces in an area between Tiru and Oting village in Nagaland's Mon district.
- The incident triggered violence in the area in which eight more civilians were killed after security forces allegedly opened fire.
- The killing of civilians has been condemned by local civil society organisations, Naga outfits, national political parties, and the state government itself.
- The Government has promised an inquiry by a Special Investigation Team.

What is AFSPA?

- AFSPA was enacted in 1958 and was first implemented in the Northeast, and then in Punjab.
- It gives armed forces special powers to control "disturbed areas" which are designated by the government.
- According to The Disturbed Areas (Special Courts) Act, 1976 once declared 'disturbed', the area has to maintain status quo for a minimum of 3 months.
- The law is based on the Armed Forces (Special Powers) Ordinance of 1942, which was issued during the Quit India movement.
- AFSPA is confined to be enacted only when a state, or part of it, is declared a 'disturbed area'.
- Continued unrest, like in the cases of militancy and insurgency, and especially when borders are threatened, are situations where AFSPA is

resorted to.

- **Section (3) of the AFSPA Act empowers the Governor** of the state or Union territory to issue an official notification on The Gazette of India, following which the centre has the authority to send in armed forces for civilian aid.
- But under Section (3) of the Act, their opinion can still be overruled by the Governor or the centre.
- Currently, AFSPA is in effect in **Jammu and Kashmir, Nagaland, Assam, Manipur (excluding seven assembly constituencies of Imphal) and parts of Arunachal Pradesh**.

What are the powers of AFSPA?

- After giving such due warning, fire upon or use other kinds of force even if it causes death.
- To arrest without a warrant anyone who has committed cognizable offences or is reasonably suspected of having done so and may use force if needed for the arrest.
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- Stop and search any vehicle or vessel reasonably suspected to be carrying such person or weapons.
- Army officers have legal immunity for their actions where no prosecution, suit or any other legal proceeding against anyone acting under that law.
- The government's judgment on why an area is found to be disturbed is not subjected to judicial review.
- Protection of persons acting in good faith under this Act from prosecution, suit or other legal proceedings, except with the sanction of the Central Government, in exercise of the powers conferred by this Act.

Why is the law controversial?

- The Act gives enormous power to the armed forces and the impunity for security personnel for their actions taken under the law.
- Under AFSPA, the armed forces may shoot to kill or destroy a building on mere suspicion with only such due warning as he may consider necessary.
- Once AFSPA is implemented, no prosecution shall be instituted except with the previous sanction of the central government.
- The **Jeevan Reddy Committee** formed in 2004 considered the act as a symbol of hate, oppression and an instrument of high handedness and

recommended a complete repeal of the law.
- Irom Sharmila, known as the Iron lady of Manipur, has been a towering figure who is well-known for her 16-year-long hunger strike against AFSPA against the **Malom massacre**.

What has Supreme Court said about AFSPA?

- In 2016, the Supreme Court clarified that the notion that the Act provides a free hand to security forces is flawed.
- The Court held that due process needs to be followed in civilian complaints reported from areas under the AFSPA and that the Act doesn't provide blanket immunity to army personnel in anti-insurgency operations.
- The continuance of the Act in any region for extended periods symbolizes failure of the civil administration and the armed forces.
- The apex court also ruled that over 1,500 cases of alleged fake encounters in Manipur over the last 20 years must be investigated.

What consequences will this incident have?

- It is clear that the continued reliance on AFSPA as a way to impose public order must be brought to a halt and the long-pending demand for its repeal acceded to.
- The incident could put a spanner in the Naga peace talks between the Government and the National Socialist Council of Nagalim (NSCN-IM) and 7 Naga National Political Groups for a solution that has been in the works.

References

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