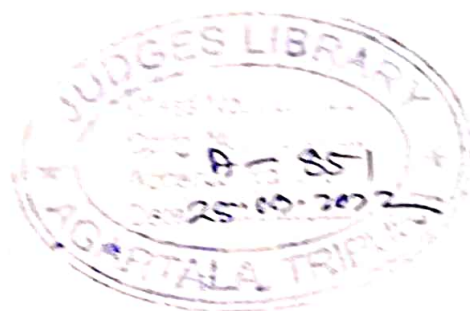


The Armed Forces (Special Powers) Act, 1958

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The Armed Forces (Special Powers) Act, 1958

[Act 28 of 1958]

[11th September, 1958]

An Act to enable certain special powers to be conferred upon members of the armed forces in disturbed areas ¹[in the States of ²[Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura]]

Be it enacted by Parliament in the Ninth Year of the Republic of India as follows:—

Statement of Objects and Reasons.—An Ordinance entitled the Armed Forces (Assam and Manipur) Special Powers Ordinance, 1958, was promulgated by the President on the 22nd May, 1958. Section 3 of the Ordinance empowers the Governor of Assam and the Chief Commissioner of Manipur to declare the whole or any part of Assam or the Union Territory of Manipur, as the case may be, to be a disturbed area. On such a declaration being made in the Official Gazette, any Commissioned Officer, Warrant Officer, non-commissioned officer or any other person of equivalent rank in the armed forces may exercise, in the disturbed area, the powers conferred by Sections 4 and 5 of the Ordinance. The Bill seeks to replace the Ordinance.

Statement of Objects and Reasons of Amending Act 7 of 1972.—The Armed Forces (Special Powers) Regulation, 1958, which is in force in the State of Nagaland and which confers certain powers on the armed forces operating in the area declared “disturbed” under the Regulation, will cease to be in force with effect from the 5th April, 1972. A similar permanent law, namely, the Armed Forces (Assam and Manipur) Special Powers Act, 1958 is in force in the States of Assam, Meghalaya and Manipur and in the Union territories of Arunachal Pradesh and Mizoram. The application of that law had also been extended to the former Union territory of Tripura and the Act is now in force in the State of Tripura. On the expiry of the Armed Forces (Special Powers) Regulation, 1958, it is proposed to apply the Armed Forces (Assam and Manipur) Special Powers Act, 1958 also to the State of Nagaland.

2. The Armed Forces (Assam and Manipur) Special Powers Act, 1958, empowers only the Governors of the States and the Administrators of the Union territories to declare areas in the concerned State or Union territory as “disturbed”. Keeping in view the duty of the Union under Article 355 of the Constitution, inter alia, to protect every State against internal disturbance, it is considered desirable that the Central Government should also have power to declare areas as “disturbed”, to enable its armed forces to exercise the special powers.

3. The Bill seeks to suitably amend the Armed Forces (Assam and Manipur) Special Powers Act, 1958 to achieve these objects.

CASE LAW ► Nature.—Armed Forces (Special Powers) Act, 1958 is not a colourable piece of legislation as Parliament was competent to legislate it, *Naga People's Movement of Human Rights v. Union of India*, (1998) 2 SCC 109 : 1998 SCC (Cri) 514.

1. Substituted by Act 7 of 1972, Section 2 (5-4-1972).

2. Substituted by Act 69 of 1986, Section 43 (w.e.f. 20-2-1987).

1. Short title and extent.—(1) This Act may be called ³[The Armed Forces (Special Powers) Act, 1958].

⁴[(2) It extends to the whole of the States of ⁵[Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura].]

2. Definitions.—In this Act, unless the context otherwise requires,—

- (a) “armed forces” means the military forces and the air forces operating as land forces, and includes other armed forces of the Union so operating;
- (b) “disturbed area” means an area which is for the time being declared by notification under Section 3 to be a disturbed area;
- (c) all other words and expressions used herein, but not defined and defined in the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), shall have the meanings respectively to them in those Acts.

CASE LAW ► Legislative competence.—Parliament is competent to enact the Act under List I Entry 2 and Article 248 r/w List I Entry 97 and later under List I Entry 2-A when it was introduced. This Act deals with deployment of armed forces in ‘aid’ of civil power and does not confer independent power on the armed forces for maintenance of public order in the State which is a State subject. Armed forces do not take over the civil administration but act in cooperation with the civil authorities. While making the declaration it is desirable that State Government should be consulted. Word ‘aid’ in List I Entry 2-A postulates continued existence of the authority to be aided, *Naga People’s Movement of Human Rights v. Union of India*, (1998) 2 SCC 109 : 1998 SCC (Cri) 514.

‘Disturbed or dangerous condition’ with which the Act deals is not similar to ‘armed rebellion’ within the meaning of Article 352 and therefore, validity of the Act cannot be challenged on ground of Parliament seeking to bypass Article 352 or 356. Articles 352 and 356 pertain to more drastic powers. While they deal with executive power of the Union, the Act has been enacted in exercise of legislative power under Articles 246 and 248. This Act was enacted to enable the Central Government to discharge the obligation imposed under Article 355, *Naga People’s Movement of Human Rights v. Union of India*, (1998) 2 SCC 109 : 1998 SCC (Cri) 514.

⁶**[3. Power to declare areas to be disturbed areas.**—If, in relation to any State or Union Territory to which this Act extends, the Governor of that State or the Administrator of that Union Territory or the Central Government, in either case, is of the opinion that the whole or any part of such State or Union Territory, as the case may be, is in such a disturbed or dangerous condition that the use of armed forces in aid of the civil power is necessary, the Governor of that State or the Administrator of that Union Territory or the Central Government, as the case may be, may, by notification in the Official Gazette, declare the whole or such part of such State or Union Territory to be a disturbed area.]

CASE LAW ► Declaration of disturbed area.—Declaration of disturbed area has to be for a limited duration in view of words ‘for the time being’ in Section 2(b). Declaration has to be reviewed after every six

3. Substituted by Act 7 of 1972, Section 3 (5-4-1972).

4. Substituted by Act 7 of 1972, Section 4 (5-4-1972).

5. Substituted by Act 69 of 1986, Section 43 (w.e.f. 20-2-1987).

6. Substituted by Act 7 of 1972, Section 4 (5-4-1972).

months to decide whether it should be continued or not. Authority must ensure that the area to be declared as disturbed should be such where situation cannot be handled without the aid of armed forces, *Naga People's Movement of Human Rights v. Union of India*, (1998) 2 SCC 109 : 1998 SCC (Cri) 514.

Declaration of disturbed area does not amount to delegation of power of Central Government to the Governor. It is a statutory conferment of power on the Governor. Moreover, issuance of declaration by itself would not oblige the Central Government to deploy armed forces, *Naga People's Movement of Human Rights v. Union of India*, (1998) 2 SCC 109 : 1998 SCC (Cri) 514.

Conferment of power on Central Government for declaration of disturbed area not violative of federal scheme of the Constitution. Decision to issue a declaration has to be taken by both the Central Government as well as the State Government/Administrator of Union Territory, *Naga People's Movement of Human Rights v. Union of India*, (1998) 2 SCC 109 : 1998 SCC (Cri) 514.

No arbitrary or unguided power has been conferred under the section. For declaring an area as a "disturbed area" under Section 3 there must exist a grave situation of law and order on the basis of which an opinion can be formed about the area being in such a disturbed or dangerous condition that the use of the armed forces in aid of the civil power was necessary, *Naga People's Movement of Human Rights v. Union of India*, (1998) 2 SCC 109 : 1998 SCC (Cri) 514.

► **Judicial review.**—Court can only see whether the material on the basis of which the opinion is formed is relevant but the Court cannot go into the sufficiency of that material. It was not open to the High Court to assess the material on the basis of which the Central Government formed the opinion for the purpose of making a declaration under Section 3, *Naga People's Movement of Human Rights v. Union of India*, (1998) 2 SCC 109 : 1998 SCC (Cri) 514.

► **Basis of declaration.**—There must exist a public order situation where assistance of armed forces is required in aid of civil power, *Extra-Judicial Execution Victim Families Assn. v. Union of India*, (2016) 14 SCC 536 : (2016) 4 SCC (Cri) 508.

4. Special powers of the armed forces.—Any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces may, in a disturbed area,—

- (a) if he is of opinion that it is necessary so to do for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of firearms, ammunition or explosive substances;
- (b) if he is of opinion that it is necessary so to do, destroy any arms dump, prepared or fortified position or shelter from which armed attacks are made or are likely to be made or are attempted to be made, or any structure used as a training camp for armed volunteers or utilised as a hideout by armed gangs or absconders wanted for any offence;
- (c) arrest, without warrant, any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has

committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest;

- (d) enter and search without warrant any premises to make any such arrest as aforesaid or to recover any person believed to be wrongfully restrained or confined or any property reasonably suspected to be stolen property or any arms, ammunition or explosive substances believed to be unlawfully kept in such premises, and may for that purpose use such force as may be necessary.

CASE LAW ► Constitutional Validity.—Section 4 cannot be challenged on the ground that alternative provisions under general law, viz., Sections 130 and 131 CrPC being available, more drastic provisions contained in Section 4 were discriminatory and violative of Article 14. Sections 130 and 131 CrPC deal with individual and isolated cases while Section 4 is concerned with a situation where whole or a part of a State is in a disturbed or dangerous condition. Sections 130 and 131 CrPC cannot be treated as comparable and adequate to deal with the situation envisaged in Section 4, *Naga People's Movement of Human Rights v. Union of India*, (1998) 2 SCC 109 : 1998 SCC (Cri) 514.

► **Validity.**—Conferment of power on Non-Commissioned Officers does not render Section 4 invalid on ground of likelihood of misuse or abuse of power by such junior officers, *Naga People's Movement of Human Rights v. Union of India*, (1998) 2 SCC 109 : 1998 SCC (Cri) 514.

► **Interpretation/Construction.**—Word 'or' between the expressions 'five or more persons' and 'the carrying of weapons' cannot be read as 'and', *Naga People's Movement of Human Rights v. Union of India*, (1998) 2 SCC 109 : 1998 SCC (Cri) 514.

► **Exercise of power.**—Section 4(c) has to be read with Section 5 and power conferred thereunder has to be exercised in consonance with the overriding requirements of clause (1) and (2) of Article 22, *Naga People's Movement of Human Rights v. Union of India*, (1998) 2 SCC 109 : 1998 SCC (Cri) 514.

► **Handing over seized property.**—Seized property and material must be handed over to the officer-in-charge of the nearest police station at the earliest in accordance with the provisions of CrPC. Even where the provisions of CrPC are not applicable substance of the rules of CrPC will apply, *Naga People's Movement of Human Rights v. Union of India*, (1998) 2 SCC 109 : 1998 SCC (Cri) 514.

► **Power of armed forces.**—Power of armed forces to cause death of an enemy while on active service is not absolute. It has to be determined whether use of force is disproportionate or retaliatory or not. There is no blanket immunity available to perpetrator(s) of offence. No one can act with impunity particularly when there is loss of an innocent life. There can be no presumption that every victim of alleged fake encounter in State of Manipur is a militant or terrorist. There can be no such presumption one way or other. Thus it has to be determined whether deaths were in face encounters as alleged or whether deaths were genuine encounters in counter-insurgency operations and further it has to be determined whether use of force was disproportionate or retaliatory or not. Undoubtedly, terrorism is an undeclared war/proxy war and is meant to destabilise nation and demoralise security forces and thereby threaten unity, integrity, security, economic security and sovereignty of India. But as per Geneva Convention and International humanitarian law, killing an enemy is not the only available solution. Further instructions such as Ten commandments issued by Chief of Army Staff under caption "list of Dos and Don'ts" restrain the army force using excessive force while operating in disturbed areas caution and minimum force should be used against terrorists, militants and



insurgents who are our own people. These Ten Commandments should not only apply to army but also to other armed forces of Union and Manipur police as well, *Extra-Judicial Execution Victim Families Assn. v. Union of India*, (2016) 14 SCC 536 : (2016) 4 SCC (Cri) 508.

5. Arrested persons to be made over to the police.—Any person arrested and taken into custody under this Act shall be made over to the officer in charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest.

6. Protection to persons acting under Act.—No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.

CASE LAW ► Sanction for prosecution.—Discretion conferred on Central Government does not suffer from vice of arbitrariness. Order granting or refusing sanction, being subject to judicial review, must contain reasons, *Naga People's Movement of Human Rights v. Union of India*, (1998) 2 SCC 109 : 1998 SCC (Cri) 514.

7. Repeal and saving.—⁷[*Repealed*]

⁷ Repealed by Act 58 of 1960, Section 2 and Schedule I (26-12-1960).