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## **India: Security forces cannot claim immunity under AFSPA, must face trial for violations**

Members of the Indian army must stand trial when facing charges of serious violations of human rights, instead of hiding behind the controversial Armed Forces (Special Powers) Act, 1958 (AFSPA), Amnesty International said today.

On 4 February, India's Supreme Court stated that the Indian army could not invoke the AFSPA to avoid the prosecution of eight officers charged with the March 2000 killing of five Kashmiri villagers at Pathribal.

Under the often criticized special powers, security personnel cannot be prosecuted for human rights violations without approval from the central government.

"We welcome the Supreme Court's statement that there should be no need to obtain prior approval for prosecuting security personnel charged with having committed grave human rights violations such as rape and murder," Amnesty International's Asia-Pacific Program Director Sam Zarifi said.

"While the Court's remark opens the chance for the prosecution of the eight army personnel Amnesty International reiterates its demand for the repeal of the AFSPA, which has been in force in various parts of north-east India for over five decades and in Jammu and Kashmir since 1990," Sam Zarifi said.

Recent information obtained by human rights defenders in India states that, of the 50 instances in which the Jammu and Kashmir state authorities had sought approval for prosecuting security personnel for grave human rights violations - including torture, rape and extra-judicial executions - the Union home ministry has said it had "recommended" approval in eight cases and the Defence ministry none.

"For far too long, Indian security forces have used the AFSPA as a cover for serious human rights violations. The Supreme Court's statement should finally allow some light to be shed on some of the army's most gruesome violations – providing some hope for justice for the victims and a step forward imposing the rule of law," said Sam Zarifi.

The Supreme Court's statement came in a case that pitted the army against India's premier investigating agency, the Central Bureau of Investigation (CBI).

The armed forces had claimed that the five were Lashkar-e-Toiba guerrillas involved in the shooting of 35 members of the Sikh community at Chhattisingpura in the valley prior to the visit of the then United States' President Bill Clinton to India in the same month. The CBI's investigation showed that the five people killed were in fact villagers from Briangan, Halan and Anantnag.

"The AFSPA has provisions giving protection to personnel engaged in armed operations in designated

areas from any legal proceedings unless it is approved by the Union government,” Sam Zarifi said, adding that “this rarely happens in practice, as a result of which these laws have provided impunity for perpetrators of grave human rights violations.”

## **Background**

After a series of protests in Manipur and Jammu and Kashmir, India’s Union government, in November 2004, appointed a five-member committee led by a former Judge of the Supreme Court, B. P. Jeevan Reddy to review the AFSPA. The committee, in its June 2005 report, recommended repeal of the act, but wanted its substantive provisions be transferred to an existing legislation – the Unlawful Activities (Prevention) Act, 1967 – a move which drew protests from human rights organizations. India’s Armed Forces and the Ministry of Defence are steadfastly opposed to the repeal of AFSPA.