

## TABLE OF CONTENTS

INTRODUCTION.....	1
BACKGROUND .....	3
The AFSPA, 1958.....	3
VIOLATION OF INTERNATIONAL HUMAN RIGHTS LAW .....	7
Violation of the right to life .....	9
Violation of the right to liberty and security of person.....	15
Torture, ill-treatment and “disappearances” .....	16
Violation of the right to remedy.....	19
An undeclared state of emergency for undefined reasons and for unlimited periods .....	22
RECOMMENDATIONS .....	23
Appendix 1:.....	25
Armed Forces (Special Powers) Act, 1958.....	25
Armed Forces (Assam and Manipur) Special Powers (Amendment) Act 1972 .....	27
Appendix 2: List of Dos & Don’ts as directed by the Supreme Court in NPMHR v. India in 1997 .....	29



# India

## Briefing on the Armed Forces (Special Powers) Act, 1958

### Introduction

The Armed Forces (Special Powers) Act, 1958 (AFSPA) a law operative in “disturbed areas”, including large parts of the Northeast region of India and Jammu Kashmir, has facilitated grave human rights abuses, including extrajudicial execution, “disappearance”, rape and torture by bestowing sweeping powers on the armed forces in these areas.<sup>1</sup> The Act violates non-derogable provisions of international human rights law, including the right to life, the right to remedy and the rights to be free from arbitrary deprivation of liberty and from torture and cruel, inhuman or degrading treatment or punishment (ill-treatment) as enshrined in the International Covenant on Civil and Political Rights (ICCPR), to which India is a state party since 1979, and other treaties and standards. Amnesty International welcomes the review of this Act by the Government of India and calls on the Government of India to repeal the AFSPA and ensure that all future legislation is in line with international human rights standards.

The AFSPA empowers security forces to arrest and enter property without warrant and gives the security forces power to shoot to kill in circumstances where members of the security forces are not at imminent risk. It facilitates impunity because no person can start legal action against any members of the armed forces for anything done under the Act, or purported to be done under the Act, without permission of the Central Government.

Amnesty International is concerned about reports of grave human rights abuses perpetrated by armed groups and government forces in areas where the AFSPA is in force. In areas of both Jammu and Kashmir and the Northeast abuses are a feature of daily life. This briefing prepared for a government-convened committee reviewing the Act primarily focuses on reported abuses committed by security forces and facilitated by the AFSPA; however, Amnesty International is also concerned about abuses perpetrated by armed groups. Armed groups in Jammu and Kashmir and the Northeast are responsible for gross human rights abuses, including torture, hostage taking, extortion and killings of civilians. Amnesty International condemns abuses by armed groups and calls on such groups to respect minimum human rights standards

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<sup>1</sup> The Armed Forces (Special Powers) Act, 1958 is in force in parts of the Northeast. In 1990, a version of the Armed Forces (Special Powers) Act was brought in force in parts of Jammu and Kashmir.

and principles of international humanitarian law and to immediately halt killings of civilians, torture, ill-treatment, hostage-taking and other abuses.

States worldwide face the challenge of promoting security without sacrificing human rights (i.e. the minimum standards necessary to protect the safety and integrity of individuals). Amnesty International recognises the duty of all states under international human rights law to protect their populations from violent criminal acts, including those committed by armed groups. However, such measures should be implemented in a framework of protection of all human rights enshrined in the Universal Declaration of Human Rights. In its concluding observations on India in 1997, the Human Rights Committee (HRC) recognized that “terrorist activities in the border states that have caused the death and injury of thousands of innocent people, force the State Party to take measures to protect its population” yet emphasised that “[a]ll measures adopted must be in conformity with the State Party’s obligations under the Covenant”.<sup>2</sup>

Amnesty International is concerned at the high incidence of custodial deaths, torture, rape, extrajudicial killings and “disappearances” in the Northeast and Jammu and Kashmir in general and those among them which are facilitated by the AFSPA in particular. While some action has been taken in recent years to bring perpetrators of human rights violations in these areas to justice, the organization remains concerned that the AFSPA has enabled many perpetrators to escape punishment.

Amnesty International appreciates the efforts of the Supreme Court of India to limit the excessive powers granted to the military by the AFSPA, in particular by ruling that a declaration under Section 3 of the AFSPA is to be reviewed every six months, strengthening the safeguards for the rights of arrested persons and determining that a list of pre-existing “Do’s and Don’ts” are legally binding. However, even with these improvements, the AFSPA falls far short of international standards, including provisions of treaties to which India is a state party.

Amnesty International therefore urges the Government of India to recognize the need to repeal the AFSPA as it did for the Prevention of Terrorism Act (POTA). The United Progressive Alliance which came to power in May 2004 repealed POTA after

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<sup>2</sup> Concluding observations of the Human Rights Committee: India, Report of the Human Rights Committee, UN Doc. A/52/40 (1997), paras. 416-450, at para. 419.

recognizing “concerns with the manner in which POTA ha[d] been grossly misused”.<sup>3</sup> Similar concerns exist with regard to the AFSPA.

## BACKGROUND

### The AFSPA, 1958

The AFSPA, 1958 is a law in force in large parts of the Northeast that gives armed forces special powers in a locality declared as “disturbed areas”.<sup>4</sup> It was originally introduced in the Northeast region of India including the state of Assam and the Union Territory of Manipur in response to armed political activity in that region. The Act was to remain in force for one year. Tensions in that region originated in demands for self-determination by the Naga people in the post independence period which led to an armed struggle. The AFSPA has its roots in British colonial legislation dating back to the mid-19<sup>th</sup> century. More directly, it was based on a British colonial ordinance, called the Armed Forces (Special Powers) Ordinance promulgated in 1942 to assist in suppressing the “Quit India Movement”, a phase in the movement for Indian independence. The AFSPA itself began as the Armed Forces (Assam and Manipur) Special Powers Ordinance, 1958 that came into force in May 1958, and was passed by parliament in September. In 1972, the AFSPA was amended to confer the power to declare an area “disturbed” on the Union government, specifically the Governor who is appointed by the President and represents the Union in states. This power was previously vested in the state government. The amendment also extended the AFSPA to other states in the Northeast.<sup>5</sup> A version of the same law was introduced in Jammu and Kashmir in December 1990 and six districts in the Kashmir Division and two districts in the Jammu Division were declared “disturbed areas”. The term “armed forces” refers to both armed and paramilitary forces operating in “disturbed areas”, such as the Border Security Force (BSF), Assam Rifles, Rashtriya Rifles, Sikh Regiment, National Security Guards (NSG), and others.

State and army officials consider the Act necessary to protect the state against what are known as internal disturbances, uphold the “integrity of the nation”, fight

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<sup>3</sup> *Common Minimum Programme of the United Progressive Alliance*. May 2004. The misuse of POTA was recognized in the United Progressive Alliance’s Common Minimum Programme; the terrorism prevention act was repealed in late 2004.

<sup>4</sup> The full Act can be found in Appendix 1.

<sup>5</sup> Following the 1972 amendment, the Act extended to the States of Assam, Manipur, Meghalaya, Nagaland and Tripura and the Union Territories of Arunachal Pradesh.

“terrorism and insurgency” and protect “sensitive border areas”.<sup>6</sup> On 3 January 2005, General Officer Commanding in Chief (Eastern Region) Lt. General Arvind Sharma reiterated that the AFSPA is “absolutely essential” to tackle insurgency in the country “...without the AFSPA, the Army will not be able to function in insurgency situations...”.<sup>7</sup> Army officials also cite the need to protect the morale and integrity of the army as reason not to scrutinize allegations against army personnel.

For decades, human rights groups and women’s organizations in the Northeast have expressed opposition to human rights abuses in the region and to the AFSPA. In the late 1990s, an India-wide campaign was initiated in opposition to this Act, and mobilised support for its repeal.<sup>8</sup> Activism aimed at the repeal of the Act was reinvigorated following the alleged sexual assault and death in custody of a woman named Thangjam Manorama in Imphal, Manipur, India in July 2004. A group of 32 civil society organizations based in Manipur formed a coalition called the Apunba Lup to protest abuses under the AFSPA and call for its repeal. Members of Apunba Lup publicly protested for months following Thangjam Manorama’s death. Others from the Northeast have expressed their opposition to the AFSPA through more extreme protests such as self-immolation, a fast until death or naked protests.<sup>9</sup> In response to protests in Manipur, the Act was withdrawn from the Greater Municipal District of Imphal. Human rights activists and academics from across India have also called for the total repeal of the AFSPA, raising concerns that the Act violates basic rights and international human rights and humanitarian law. They have recorded serious human rights abuses and charge that there was inadequate debate in Parliament when the Act was initially introduced.<sup>10</sup> Activists from Jammu and

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<sup>6</sup> *Naga People's Movement of Human Rights v Union of India* [1997] ICHRL 117 (27 November 1997); Presentation by Lt. General V.K. Nayar, Former Governor Manipur, at People’s Tribunal on The Armed Forces Special Powers Act, 1958. New Delhi, 19 February 2005; *The Economic Times* “Army opposes review of special powers, says Act is essential”, January 2005.

<sup>7</sup> *Economic Times*, 4 January 2005 in *The AFSPA: Lawless Law Enforcement According to Law?* Asian Centre for Human Rights. 21 January 2005.

<sup>8</sup> See India: Official sanction for killings in Manipur. AI Index: ASA 20/014/1997. The campaign was known as the “National Campaign Committee Against Militarization and Repeal of Armed Forces (Special Powers) Act”.

<sup>9</sup> A woman named Irom Sharmila began a fast until death on 2 November 2000 after an Assam Rifles unit killed 10 people just outside Imphal. She was arrested on the charge of attempted suicide and as of February 2005 was being forcibly fed. On 15 August 2004, Chittaranjan Mangang, a Manipur Students Federation (MSF) advisor attempted to self immolate and later died. In July 2004, women protested naked against the alleged rape, torture and murder of Thangjam Manorama by paramilitary soldiers during a demonstration outside the Assam Rifles base in Imphal, Manipur.

<sup>10</sup> See *The AFSPA: Lawless Law Enforcement According to Law?* Asian Centre for Human Rights. 21 January 2005, *Why the AFSPA Must Go: A Fact Finding Report*. Committee for the Repeal of the Armed Forces (Special) Powers Act. February 2005, *Combat Law: License to Kill Armed Forces*

Kashmir reporting human rights violations to Amnesty International have consistently expressed concern about this Act.

Judicial review of the Act was slow. In November 1997, the Supreme Court upheld the constitutional validity of the Act after hearing petitions challenging it filed in 1980, 1982, 1984, 1985 and 1991.<sup>11</sup> The court ruled that the powers given to the army were not “arbitrary” or “unreasonable”<sup>12</sup> and concluded that they did not violate the contested provisions of the Indian Constitution.<sup>13</sup> It further ruled that the declaration of an area as “disturbed” should be reviewed every six months.<sup>14</sup> With respect to the “prosecution, suit or other legal proceeding” of army personnel subject to “sanction” (i.e. government permission) the Court ruled: “We are of the view that since the order of the central government refusing or granting the sanction... is subject to judicial review, the central government shall pass an order giving reasons”.<sup>15</sup> The court also ruled that safeguards in the form of a list of “Dos & Don’ts” for security forces are legally binding.<sup>16</sup>

Some human rights groups, journalists and activists harshly criticized the judgment as a “shocking ruling”.<sup>17</sup> They said the judgment provided insufficient limits on the abuse of power where the law is in force and echoed concerns that the law supplants local power, suspends people’s rights and protects the guilty. Following the 1997 judgment, the National Human Rights Commission (NHRC) recommended that “the concerned Ministries issue carefully formulated guidelines to all concerned personnel of the armed forces and para-military forces, based on the orders of the Supreme Court”.<sup>18</sup>

Amnesty International has not received timely responses to requests for access to undertake research in India, and access to parts of the Northeast is restricted even for

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*(Special Powers) Act*. Vol. 2 Issue I. April – May 2003, *People’s Tribunal on The Armed Forces (Special Powers) Act, 1958*. Human Rights Law Network – Tribunal Secretariat. Publication forthcoming.

<sup>11</sup> See India: If They Are Dead Tell Us. “Disappearances” in Jammu and Kashmir. 02/03/1999, AI Index: ASA 20/002/1999.

<sup>12</sup> *Ibid.*, para. 36.

<sup>13</sup> *Ibid.*, para. 74. In paragraph 36 of the judgment, the Supreme Court also ruled that the powers given to the army deployed in a state in “aid of the civil power” were not intended to supplant or substitute the state powers.

<sup>14</sup> *Ibid.*, para. 38.

<sup>15</sup> *Ibid.*, para. 74.

<sup>16</sup> *Ibid.*

<sup>17</sup> In *India: If They Are Dead Tell Us. “Disappearances” in Jammu and Kashmir*. 02/03/1999. Amnesty International – ASA 20/002/1999.

<sup>18</sup> *National Human Rights Commission Annual Report 1997-98*.

Indian citizens through the Restrictive Areas Permit Act. In the context of restricted access to information, the incidents of abuse documented in this report are those for which Amnesty International has been able to obtain strong documentary evidence and/or are based on the accounts of credible local sources.

### **The Review Committee**

After months of protests and *bandhs* (strikes) in the state of Manipur calling for repeal of the AFSPA, the Prime Minister of India, Manmohan Singh, visited Manipur in November 2004. A day before the visit, his government appointed a five member committee to review the AFSPA. The Prime Minister promised that the “government would consider replacing the Act with a more ‘humane’ law that would seek to address the concerns of national security as well as rights of citizens”.<sup>19</sup>

The Review Committee has since “called for representations on whether it should recommend to the Government of India to: i.) amend the provisions of the Act to bring them in consonance with the obligations of the Government towards protection of Human Rights, or ii.) replace the Act by a more humane legislation”.<sup>20</sup> The committee has held hearings, including in the Northeast, and has invited comments from individuals, organizations, institutions and all non-governmental organizations.<sup>21</sup> A number of groups calling for repeal of the Act have rejected the Review Committee and refused to participate in the process because of its limited mandate of amending or replacing – not repealing – the Act.

Amnesty International - with this briefing - wishes to contribute to the discussion. It favours the repeal of the AFSPA on the grounds that, both in word and in deed, the Act has violated India’s human rights obligation and facilitated the violation of human rights, as well as enabled impunity for perpetrators. In the past, Amnesty International has called for the review or repeal of the Act and its various sections.<sup>22</sup>

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<sup>19</sup> “Former SC judge to head AFSPA review committee”, *Outlook* 19 November 2004. Also according to *Outlook*, the committee is headed by Justice BP Reddy a retired Supreme Court judge and comprised of SB Nakade, a jurist, Dr. Shrivastha, former Special Secretary in the Home Ministry, Lieutenant General NR Raghavan, former Director General Military Operations in the Army and Sanjay Hazarika, a journalist.

<sup>20</sup> *The Hindu*, 10 December 2004.

<sup>21</sup> *The Hindu*, 10 December 2004.

<sup>22</sup> See *India: Call or repeal or review of the Armed Forces Special Powers Act, 1958*. Amnesty International Index number: ASA 20/090/2004, 11 August 2004 and *India: Official sanction for killings in Manipur*, AI Index: ASA 20/014/1997, 1 April 1997



The organization is supporting Indian civil society and now calling for repeal given that the main provisions violate international human rights law and have facilitated grave human rights violations. Amnesty International also calls on the Government of India to ensure that any future legislation complies fully with international human rights and humanitarian law treaties to which India is a state party, especially the ICCPR and the four Geneva Conventions, as well as taking into account more detailed standards including the UN Code of Conduct for Law Enforcement Officials, the UN Principles for the Prevention of Extra-Legal, Arbitrary and Summary Executions and the UN Declaration on the Protection of All Persons from Enforced Disappearances.

## **VIOLATION OF INTERNATIONAL HUMAN RIGHTS LAW**

Amnesty International considers the AFSPA and the equivalent Act in Jammu and Kashmir to amount to *de facto* derogation from the non-derogable rights provided for in the ICCPR. Amnesty International is concerned that the AFSPA violates international human rights law, specifically the right to life, the right to liberty and security of the person and the right to remedy. In addition, it enables violation of the right to be free of torture or ill-treatment as enshrined in the ICCPR.

The organization has received reports of human rights abuses in the states of Jammu and Kashmir and the Northeast. These are areas stricken with armed conflict. While Amnesty International has received reports of human rights violations facilitated by the AFSPA in various states in the Northeast, the cases documented in this report are primarily from the state of Manipur where armed opposition has been particularly active since the 1950s.

Since 1990 when the Jammu and Kashmir State Assembly dissolved, the state experienced confrontation with armed groups. Central rule was imposed and the military and paramilitary were called in to assist the state government. In the following years, armed struggle ensued and there has been a heavy toll of lives lost, about which reliable figures are impossible to obtain.

In the Northeast region of India, insecurity prevails due to the internal armed conflicts, which have been raging for decades. There are “a myriad of local insurgencies, tribal and ethnic clashes, irredentist claims and problems associated with illegal immigration – all fuelled by narcotics trafficking, the proliferation of small arms and

light weapons, and kidnapping and extortion”.<sup>23</sup> In Manipur, what began as a movement for self-determination for the Naga people is today far more complex. Other tribal and non-tribal communities have become engaged in the conflicts and a faction-ridden armed opposition has emerged, organised on the basis of community affiliations and demands for greater autonomy and self-determination. The troubled political history of Manipur has been perpetuated by a multitude of factors including anger at economic under-development, drug-smuggling and corruption. Human rights abuses are a feature of daily life in Manipur. This has taken a heavy toll. The Chief Minister of Manipur, Ibobi Singh, reportedly said that “since 1980 when Manipur became a disturbed area over 8,000 innocent people and 12,000 members of armed opposition groups and security forces have lost their lives”.<sup>24</sup>

In these areas, the AFSPA as well as other state and national security laws are in force giving security forces wide-ranging powers and facilitating human rights abuses. In response to India’s third (and most recent) periodic report in July 1997, the UN Human Rights Committee remained “concerned at the continued reliance on special powers under legislation such as the Armed Forces (Special Powers) Act, the Public Safety Act and the National Security Act in areas declared to be disturbed and at serious human rights violations, in particular with respect to Articles 6, 7, 9, and 14 of the Covenant, committed by security and armed forces acting under these laws as well as by paramilitary and insurgent groups.”<sup>25</sup> Abuses in the areas under discussion are also perpetrated by police officials and armed groups.

There is no systematic assessment of human rights violations in the Northeast. However, reports received by Amnesty International suggest a pattern of widespread abuses in the areas under discussion. In late 1997, Amnesty International documented a pattern of human rights violations carried out by police and security forces in the state of Manipur without censure by the authorities in 1995 and 1996.<sup>26</sup> The organization, in November 1998, expressed concerns at reports of rape and sexual abuse of women and children by security forces in the Indian states of Assam and Manipur.<sup>27</sup> Indian human rights groups have documented hundreds of cases of

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<sup>23</sup> *India’s troubled northeast: insurgency and crime*, IISS Comments, Vol 10 Issue 6, July 2004. See: [www.iiss.org/stratcom](http://www.iiss.org/stratcom).

<sup>24</sup> *Sangat Express*, 16 June 2003 in *The AFSPA: Lawless Law Enforcement According to Law?* Asian Centre for Human Rights. 21 January 2005.

<sup>25</sup> CCPR/C/79/Add.81, para 18.

<sup>26</sup> See Amnesty International report India: Official Sanction for Killings in Manipur. ASA 20/014/1997.

<sup>27</sup> ASA 20/28/98 - 12 November 1998. Public statement - India: Amnesty International campaigns against rape and sexual abuse by members of the security forces in Assam and Manipur. Amnesty International

violations.<sup>28</sup> Between July 2003 and May 2004, the Asian Centre for Human Rights (ACHR) documented over twenty extrajudicial executions and arbitrary killings in Manipur.<sup>29</sup> In Jammu and Kashmir, some documentation of human rights violations has been conducted by local lawyers and political groups and Amnesty International has monitored and reported on violations in the state for decades highlighting cases of “disappearance”, arbitrary killing, and preventative detention.<sup>30</sup>

### **Violation of the right to life**

Section 4 of the AFSPA empowers officers (both commissioned and non-commissioned) in a “disturbed area” to “fire upon or otherwise use force, even to the causing of death” not only in cases of self-defence, but against any person contravening laws or orders “prohibiting the assembly of five or more persons”.

Article 6 of the ICCPR provides for a non-derogable right to life, encapsulated in the provision that “No one shall be arbitrarily deprived of his life”. In its General

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<sup>28</sup> See *The AFSPA: Lawless Law Enforcement According to Law?* Asian Centre for Human Rights. 21 January 2005; *An Illusion of Justice: Supreme Court Judgement on the Armed Forces Special Powers Act*, People’s Union for Democratic Rights May 1998; *Why the AFSPA Must Go: A Fact-Finding Report*, Committee for the Repeal of the Armed Forces (Special) Powers Act. Delhi February 2005; *where ‘peacekeepers’ have declared war* National Campaign Committee Against Militarisation and Repeal of the Armed Forces (Special Powers) Act. April 1997; Submission to the International Covenant on Civil and Political Rights Human Rights Committee. *Armed Forces (Special Powers) Act, 1958: A Report on Human Rights Violations in North East India* Nandita Haksar, Advocate, Supreme Court of India, New York, March 1991; “ARMED FORCES SPECIAL POWERS ACT - A study in National Security tyranny” South Asia Human Rights Documentation Centre. 22 November 1995.

<sup>29</sup> *The AFSPA: Lawless Law Enforcement According to Law?* Asian Centre for Human Rights. 21 January 2005.

<sup>30</sup> See 02/12/2003 India: Open Letter to the Chief Minister of Jammu and Kashmir on the failed promises of the Common Minimum Program. AI Index ASA 20/033/2003; 25/11/2002 India: Open Letter to Chief Minister Mufti Mohammed Sayeed. AI Index ASA 20/020/2002; 23/04/2001 India: Impunity must end in Jammu and Kashmir. AI Index ASA 20/023/2001; 30/08/2000 India: Open letter to Chief Minister of Jammu and Kashmir, Dr Farooq Abdullah AI Index ASA 20/042/2000; 15/06/2000 India: A trail of unlawful killings in Jammu and Kashmir: Chithisinghpura and its aftermath ASA 20/024/2000; 16/05/2000 India: Punitive use of preventive detention legislation in Jammu and Kashmir ASA 20/010/2000; 26/04/2000; 02/03/1999 India: 'If they are dead, tell us' - "Disappearances" in Jammu and Kashmir AI Index ASA 20/002/1999; 01/08/1997 India: Appeal to armed opposition groups in Jammu and Kashmir to abide by humanitarian law AI Index ASA 20/038/1997.

Comment on this Article, the Human Rights Committee has stressed that “[i]t is a right which should not be interpreted narrowly”.<sup>31</sup> It went on to state:

*“The Committee considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.”*<sup>32</sup>

The United Nations has developed other standards which elaborate upon this provision. For example, Article 3 of the UN Code of Conduct for Law Enforcement Officials, adopted by the General Assembly in 1979, and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the UN Congress on the Prevention of Crime and Treatment of Offenders in 1990.

The core principles require law enforcement officials to:

- “as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.”<sup>33</sup>
- use firearms only “when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender.”<sup>34</sup>

Amnesty International is concerned that allowing the fatal shooting of persons merely for gathering in groups of five or more clearly constitutes disregard for the fundamental right to life, which under international law cannot be derogated from even in times of emergency.

Indian human rights groups point out the excessive powers this section of the AFSPA bestows upon the armed forces as “under ordinary criminal law the violation of an

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<sup>31</sup> Human Rights Committee, General Comment No. 6: The right to life, art. 6 (Sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 6 (1994, para. 1).

<sup>32</sup> *Ibid.*, para. 3.

<sup>33</sup> Principle 4 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN Basic Principles), adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

<sup>34</sup> Code of Conduct for Law Enforcement Officials, adopted by UN General Assembly resolution 34/169 of 17 December 1979, Article 3, Commentary.

order under Section 144 which prohibits the assembly of 5 or more persons is punishable with a month's imprisonment. A person can be killed for the same Act under the AFSPA" [sic].<sup>35</sup>

In one case, on 16 November 2004 around 9:30pm, a retired school teacher L.D. Rengtuiwan, aged 75 was shot dead and his wife, who was unable to walk on her own, was injured by a bullet in Bungte Chiru village, Manipur, while relieving themselves behind their house. Twenty or 30 members of the para-military force, the Assam Rifles, were searching for six suspected members of the United Liberation Front (UNLF) and reportedly thought the two old people were UNLF members. The post mortem report points to the deliberate shooting of L.D. Rengtuiwan:

“the bullet which killed Mr. Rengtuiwan, went in through his chest and exited through his bottom. The pathway of the shot implies (i) firing at a close range and (ii) the person must have been in a “kneel down” position and the shot must have been fired from above his head at a sharp angle or more than 60 degrees.”<sup>36</sup>

Amnesty International has received numerous reports of security forces in other states of the Northeast opening fire arbitrarily during search operations, resulting in the death of innocent men, women and children in clear violation of the right to life. On 4 May 1995, there was a firing in Kohima, Nagaland where six people were shot dead. The Justice D.M. Sen Commission of Enquiry found that:

“...besides indiscriminate firing and shelling, some 16 R.R. (Rashtriya Rifles) personnel had entered private houses, beaten up the inmates and even killed innocent persons inside their residence. There is evidence beyond any reasonable doubt that Bishnu Sonar of Fired Service, Kohima, was shot dead by 16 R.R. inside his residence in presence of his wife Mrs. Naya. A number of witnesses had deposed to that effect. This was a cold-blooded murder. Again, Mhathung Lotha, a peon in the Administrative Training Institute, was shot and killed by some 16 R.R. in presence of his father Chumdemo Lotha – another cold blooded murder...There are five other innocent civilians, who were killed as a result of the firing by 16 R.R. personnel, although there is no

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<sup>35</sup> *Why the AFSPA Must Go: A Fact Finding Report*. Committee for the Repeal of the Armed Forces (Special Powers) Act. February 2005.

<sup>36</sup> *Why the AFSPA Must Go: A Fact Finding Report*. Committee for the Repeal of the Armed Forces (Special Powers) Act. February 2005.

direct evidence they were killed in the same cold-blooded and deliberate manner...”<sup>37</sup>

In one state – Manipur – Amnesty International received, in the period between 1995 and 1996, sufficient reports of deliberate and arbitrary killings by members of security forces and law enforcement personnel to conclude that there was official sanction for extrajudicial executions. That this provision of the AFSPA has facilitated actions violating Article 6 of the ICCPR is demonstrated by an incident, documented by Amnesty International in 1997, known as the shooting at the Regional Medical College (RMC) Hospital, Imphal, Manipur. The report, *India: Official sanction for killings in Manipur*, AI Index: ASA 20/014/1997, 1 April 1997, describes this incident where members of the Central Reserve Police Force (CRPF), a central law enforcement agency, killed 9 civilians:

“On the morning of 7 January 1995, several CRPF personnel were fired at by suspected members of an armed opposition group in a toilet complex attached to the RMC Hospital, Imphal. Together with other CRPF personnel who arrived on the scene, twelve CRPF officials returned fire. A total of nine civilians were killed. They were:

<b>Name</b>	<b>Profession</b>
<b>Momi Riba</b> (m)	A medical student at the RMC
<b>Laimayum Pradeep Sharma</b> (m)	An employee of toilet complex
<b>Wangkhem Upendra Singh</b> (m)	Unknown
<b>Saikhom Premchand Singh</b> (m)	An auto-rickshaw driver
<b>Hijam Khogen</b> (m)	An auto-rickshaw driver
<b>R.K. Khogen Singh</b> (m)	An auto-rickshaw driver
<b>Angom Debendra Singh</b> (m)	An auto-rickshaw driver
<b>Koijam Rajendra Singh</b> (m)	An auto-rickshaw driver
<b>Mohammad Jakir</b> (m)	A rickshaw puller

[...the CRPF claimed that the civilians had been killed during an exchange of fire with members of an armed opposition group. However, this version was disputed by local people who claimed that the nine men died as a result of indiscriminate and deliberate firing by CRPF personnel...]

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<sup>37</sup> *An Illusion of Justice. Supreme Court Judgement on the Armed Forces (Special Powers) Act*, People’s Union for Democratic Rights, Delhi, May 1998.

The first [of three series of shootings] followed an incident in the toilet complex in which members of an armed opposition group shot at CRPF officers and then fled the scene. One of the officers was hit and CRPF personnel subsequently ran from the toilet complex shouting "*hamara admimara hai, sab Manipuriko maro*" (our man has been killed - kill all Manipuris)...

...A Commission of Inquiry was constituted by the Government of Manipur on 13 January 1995... which found that:

*"... there can be no other explanation for the death of nine civilians and injury to another, except that they were fired upon by the CRPF after the militants had already retreated and when there was no further need for resorting to any firing by the CRPF."*<sup>38</sup>

Incidents of arbitrary killing and extra-judicial executions have been reported from other states in the Northeast region.

As noted, in the 1997 judgment responding to a constitutional challenge of the Act, the Supreme Court of India found section 4(a) of the AFSPA neither "arbitrary" nor "unreasonable", but the judgment failed to take into account India's obligations under international human rights and humanitarian law treaties to which it is a state party. The reasons given for the Court's apparent lack of concern about Section 4(a) appear to be the protection afforded by inquiries that are conducted into any allegation of misuse of the Central Act and the possibility of penal action under the Army Act. In paragraph 53 of the judgment, the Supreme Court stated:

*"On behalf of the Union of India it has been submitted that an inquiry is made whenever complaint about mis-use of powers conferred under the Central Act is received and that on enquiry most of the complaints were found to be false, and that whenever it is found that there is substance in the complaint, suitable action has been taken against the person concerned under the provisions of the Army Act."*

However, it is precisely the consistent finding of complaints to be "false," reflecting, in Amnesty International's view, more a culture of impunity created in part by the AFSPA than by the absence of wrongdoing on behalf of members of the armed forces which is of concern to the organization.

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<sup>38</sup> See *India: Official sanction for killings in Manipur*. Amnesty International – ASA 20/014/1997.

There are numerous examples in which "*suitable action*" has not been taken. The findings of Justice D M Sen<sup>39</sup> and other commissions and inquiries established in Manipur show that deliberate and arbitrary killings, arbitrary detention, torture and ill-treatment have in some circumstances been the subject of investigations. While action was taken in some cases, Amnesty International remains concerned that other incidents were not investigated or the investigations were inadequate resulting in impunity for perpetrators. Amnesty International would appreciate receiving detailed information from the Review Committee or the Government of India regarding the action taken against any officials for violations of the right to life of people in parts of India where the AFSPA is in force.

In addition to expressing concern about the violation of the right to life, local human rights groups have also criticized the following wording of the Act itself. Section 4(a) provides that lethal force may be used against persons for "... *carrying of weapons or things capable of being used as weapons or of fire arms, ammunition or explosive substances.*" The conditions in which the resort to the use of force is permitted are insufficiently defined and may include circumstances which have nothing to do with danger to public order or insurgent activities. For example, this wording could include individuals simply carrying farming implements, unconnected with political violence.

Amnesty International is also concerned that army personnel are not required to report on the circumstance in which army personnel are "... *of opinion that it is necessary... to fire...*" under Section 4. The organization is unaware of any accountability mechanism or provision for investigation of the exercise of this discretion. International standards require that "[t]here shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions".<sup>40</sup>

Amnesty International urges the Government of India to ensure that all armed forces and security services are required by law to fully respect every person's right to life and to operate in accordance with international law and standards, including the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Principles for the Prevention of Extra-Legal, Arbitrary and Summary Executions.

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<sup>39</sup> Shri Justice D M Sen, a retired Judge of the Guwahati High Court, headed a Commission of Inquiry appointed by the Government of Manipur into the incident in Impal, described above.

<sup>40</sup> Principle 9 of Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989.



## Violation of the right to liberty and security of person

Amnesty International is concerned that several provisions of the AFSPA violate the protection against arbitrary detention contained in the ICCPR and other international instruments. Section 4(c) and Section 5 of the AFSPA do not conform with Article 9 of the ICCPR. Section 4(c) provides:

*“Any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the Armed Forces may in a disturbed area, (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.”*

Article 9 of the ICCPR provides that “...No one shall be subjected to arbitrary arrest or detention...”. The HRC has explained this provision as follows:

*“...the Committee recalls that the notion of “arbitrariness” must not be equated with “against the law” but be interpreted more broadly to include such elements as inappropriateness and injustice. Furthermore, remand in custody could be considered arbitrary if it is not necessary in all the circumstances of the case, for example to prevent flight or interference with evidence: the element of proportionality becomes relevant in this context.”<sup>41</sup>*

Amnesty International is concerned that the provisions of the AFSPA allow for arbitrary detention as they provide for arrest without warrant, including when soldiers have a “reasonable suspicion” that a person is “about to commit a cognizable offence”. This, in effect, constitutes preventative detention rather than detention of suspects.

In addition, Article 9 of the ICCPR provides that a person must “... be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.” According to reliable sources, security forces rarely produce an arrest memo which explains the reasons for arrest.

There are reported breaches of the ICCPR even when the AFSPA is followed. Article 9 of the ICCPR further provides that “anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to

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<sup>41</sup> A v. Australia, Communication No. 560/1993, UN Doc. CCPR/C/59/D/560/1993 (30 April 1997), para. 9.2.

*exercise judicial power...*” The Supreme Court of India in 1997 ruled that arrested persons be produced before a magistrate within 24 hours of arrest, excluding journey time.<sup>42</sup> While Section 5 of the AFSPA provides for the arrested person to be handed over to the nearest police station "with the least possible delay" and despite the fact that the courts -- and in the late 1990s the National Human Rights Commission (NHRC) -- have issued directives that this provision should be interpreted as meaning "within 24 hours", Amnesty International has received reliable reports that members of the armed forces routinely ignored this rule and held people in their custody for longer than the recommended period before handing them over to the police.

Amnesty International urges the Government of India to ensure the strictest application of the provisions of international human rights law and standards prohibiting arbitrary detention, and ensuring that persons arrested are brought promptly before a judge to review the legality of the detention.

### **Torture, ill-treatment and “disappearances”**

The sweeping powers bestowed upon security forces under the AFSPA have fostered a climate in which security forces, and other agents of law enforcement, commit human rights abuses with impunity. Article 7 of the ICCPR provides that: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Like the right to life, this right is non-derogable, namely it must be fully adhered to in times of emergency, including war and internal strife.

Amnesty International has received reports that the AFSPA has in practice facilitated the torture and ill-treatment of people while in custody. In 1991, Supreme Court Advocate Nandita Haksar recorded the use of torture by armed forces and police in the Northeast to include: “ i). beating with riffle butts, kicking with boots and hitting with blunt weapons, ii). giving electric shocks, iii). depriving persons of food and drink and beating on soles of the feet, iv). threat to shoot, interrogation with gun pointed at forehead or inside the mouth.”<sup>43</sup>

Amnesty International has received dozens of reports of torture and ill-treatment, including sexual attacks, in areas where the AFSPA is in force. Reliable sources reported that in the early hours of 11 July 2004 members of the Assam Rifles arrested Thangjam Manorama at her residence in Bamon Kampu reportedly under the AFSPA

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<sup>42</sup> *NPMHR v. India*, para. 74.

<sup>43</sup> *Submission to the International Covenant on Civil and Political Rights Human Rights Committee: Armed Forces (Special Powers) Act, 1958: A Report on Human Rights Violations in North East India* Nandita Haksar, Advocate, Supreme Court of India, New York, March 1991.

as a suspected member of the People's Liberation Army. An arrest memo was given to her family at the time. Later that day, her dead body was found a few kilometres from her residence. There were multiple gun shot wounds on her back and her body also allegedly showed signs of torture. Reports further suggest that Thangjam Manorama was sexually assaulted.

In another case, Mr. Thoudam Nanao Singh, aged 22, resident Imphal West District, Manipur was allegedly sexually abused and tortured by Sikh Regiment personnel on 29 October 1997. Mr. Thoudam Nanao Singh claims that he was with friends when they were picked up by personnel of the Sikh Regiment from Sekmaijing Bridge. He and his friends were allegedly taken to a camp at Mayang Imphal where he was beaten severely with a stick. He was accused of being a member of the People's Liberation Army (PLA) - which he denied - and asked to name other PLA members. Mr. Thoudam Nanao Singh says he was held and tortured for two days, including being kicked by army personnel with their boots and other forms of ill-treatment. At one point, he alleges that he was sat in a chair and blindfolded, and then five to six members of the security force put their genitals in his mouth until he vomited. After some time, he claims he was taken to a nearby field where he was forced to lie down and security forces sat on his back until his back was injured and fingers broken. Security forces also allegedly shot bullets near him and beat him. He claims he was forced to sign a declaration that he was not tortured in custody before he was reportedly handed over to the Singjamei Police Station and released on bail. On a second occasion, on 29 February 2004 at approximately 2 a.m. Mr. Thoudam Nanao Singh was reportedly taken by 17 Assam Rifles personnel from his home where he was in bed. He was reportedly tortured and ill-treated, including being beaten with a stick, kicked by army personal wearing boots, and suffocated with a wet cloth. The following day at approximately 11 p.m. he was handed over to the local police station and a complaint against him registered. He was then produced before a Magistrate's Court and secured bail.

In Nagaland, a Commission of Enquiry into the Firing and Arson Incident on 27 December 1994 at Mokokchung in which houses and shops were deliberately set on fire found army personnel guilty of arson and rape. The commission found that "...complaints of rape and molestation are fully substantiated. There can be no justification of such criminal misconduct on the part of our jawans [frontline army personnel]".<sup>44</sup>

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<sup>44</sup> *An Illusion of Justice. Supreme Court Judgement on the Armed Forces (Special Powers) Act, People's Union for Democratic Rights, Delhi, May 1998.*

Since the end of October 2004, the organization has become aware of three allegations of sexual violence by security forces in Jammu and Kashmir. Fahmeena, was reportedly gang-raped by security forces at a hotel in Srinagar on 29 October. On 4 November, at Mattan, Praveena Akhtar was allegedly gang-raped by security forces. Aisha Begum and her young daughter were reportedly sexually assaulted by a Major in their home at Handwara on the night of 6 November. These are some of dozens of reports of torture and ill-treatment received by Amnesty International.

Torture and ill-treatment are strictly prohibited in all circumstances, and are not permitted under the AFSPA. Amnesty International is concerned that torture and ill-treatment are routinely inflicted in areas where the AFSPA is in force on account of the wide powers given to security forces deployed in “disturbed areas” and the expectation of impunity which it generates among soldiers and which, unfortunately, is often fulfilled.

Amnesty International has also received reports of “disappearance” in Jammu and Kashmir. Although not permitted by the AFSPA, Amnesty International believes the sweeping powers bestowed on security forces by the Act and the culture of impunity it enables facilitates “disappearances”. The state government announced in February 2003 that a total of 3,744 people are missing in Kashmir.<sup>45</sup> Local human rights groups have informed Amnesty International that “disappearances” in the state number between 8,000 and 10,000 persons. In a 1999 publication, Amnesty International reported that

“(t)he number of people who have “disappeared” in Jammu and Kashmir is difficult to estimate in the face of widespread fear of relatives to report such incidents, the absence of systematic monitoring by domestic human rights organizations able to enjoy adequate protection to perform their task with confidence, and the lack of access by international human rights groups such as Amnesty International and by the relevant UN human rights mechanisms.”<sup>46</sup>

In one case from Jammu and Kashmir, Jalil Andrabi, a prominent lawyer and human rights activist, “disappeared” in March 1996. He was active in setting up district committees consisting of judicial, police and medical authorities to make regular visits to all jails, detention centers, interrogation centers and police lockups in the state as well as other national and international human rights activities. On the

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<sup>45</sup> *Daily Times*, 28 February 2003.

<sup>46</sup> In *India: If They Are Dead Tell Us. “Disappearances” in Jammu and Kashmir*. Amnesty International, ASA 20/002/1999.

morning of 27 March 1996, his body was found in the Jhelum River in a residential area of Srinager. He was tied up. He had died from a gunshot to the head and his body bore the marks of torture. Reports suggest that Jalil Andrabi had been dead for approximately one week.

Amnesty International reiterates its call on the Government of Jammu and Kashmir to establish an independent inquiry into the cases of “disappearances” reported from Jammu and Kashmir and urges relevant governments in the Northeast to do likewise with regard to the unknown number of cases of “disappearance” in that region.

### **Violation of the right to remedy**

The AFSPA – and other legislation relevant to the armed forces – requires the “sanction” (i.e. permission) from the central government before prosecutions can be initiated against members of the security forces for acts committed, or purported to be committed, under the legislation. Section 6 of the AFSPA specifies that:

*"[n]o 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".*

Article 2(3) of the ICCPR provides that states parties must:

*“...ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.”*

The right to an effective remedy is implicit in article 32 of the Indian Constitution. The fundamental rights in the Constitution of India include a right to enforceability of these rights. However, even during the first debate in the Lok Sabha at the time the AFSPA was being considered, one member reportedly stated that Section 6 of the Act *"immediately takes away, abrogates, pinches, frustrates the right to constitutional remedy which has been given in article 32(1) of the Constitution."*<sup>47</sup>

The importance of avoiding impunity has been articulated by the Supreme Court:

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<sup>47</sup> “ARMED FORCES SPECIAL POWERS ACT - A study in National Security tyranny” South Asia Human Rights Documentation Centre. 22 November 1995

*“In order that the people may feel assured that there is an effective check against misuse or abuse of powers by the members of the armed forces it is necessary that a complaint containing an allegation about misuse or abuse of the powers conferred under the Central Act should be thoroughly inquired into and, if it is found that there is substance in the allegation, the victim should be suitably compensated by the State and the requisite sanction under Section 6 of the Central Act should be granted for institution of prosecution and /or a civil suit or other proceeding against the person/persons responsible for such violation.”<sup>48</sup>*

This direction has been supplemented in Paragraph 52 of the judgment, where the court stated:

*“...we are of the view that since the order of the Central Government refusing or granting the sanction under Section 6 is subject to judicial review, the Central Government shall pass an order giving reasons.”<sup>49</sup>*

While judicial review would be an improvement, this can, in Amnesty International’s view, only be a limited safeguard, and cannot substitute for the ability to file a case without any preliminary obstacles.

Members of the Human Rights Committee have questioned how this section of the AFSPA was being applied in light of ICCPR article 2(3)(a) and expressed concern that this provision could be used to “destroy fundamental rights with impunity except at the good pleasure of the Central Government”.<sup>50</sup>

According to reliable sources, of almost 300 cases from Jammu and Kashmir investigated by police agencies and forwarded by the State Home Ministry to the Federal Ministry of Home Affairs for sanction, none have been granted sanction. This is despite assurances from the Chief of the Army Staff, Gen. N.C. Vij - in response to a question about army excess - that “any security personnel found committing any mistake or excesses would face punishment.”<sup>51</sup> Sanction was not granted in the case of Javaid Ahmed Ahanger (17, m), a high school student, who was picked up on the

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<sup>48</sup> *NPMHR v. India*, para. 61.

<sup>49</sup> *NPMHR v. India*, para. 52.

<sup>50</sup> See India: ‘If they are dead, tell us’. “Disappearances” in Jammu and Kashmir. 02 March 1999.

Amnesty International. ASA 20/002/1999

<sup>51</sup> “Kashmir more Troops to be cut” *India News Online* 10 January 2005

(<http://news.indiamart.com/news-analysis/kashmir-more-troops--8618.html>).

night of 17 April 1990 by National Security Guards from his friend's house (next door to his own house) in Srinagar where he was preparing for an exam. His family found he was missing the following morning. When looking around outside the house blood stains and a tooth were found on the road. An army officer told Praveena Ahanger that her son had been taken to an army camp and would return shortly. Local police said the boy was brought to the police station with serious injuries at 3 a.m. the previous night and sent to the local hospital where he was pronounced dead by doctors after attempts to operate on him. Praveena Ahanger filed a habeas corpus petition in the Jammu and Kashmir High Court. The case was referred to the Additional District Judge Srinagar and the National Security Guards were indicted. The state government then sought sanction for launching prosecution, however, the Federal Home Ministry refused sanction on the grounds that "investigation has not been done properly." Praveena Ahanger has filed a petition with the High Court of Jammu and Kashmir to challenge the denial. The petition has been pending sub-judice with the High Court for five years. Amnesty International is unaware of similar figures for the Northeast, but by 1991 it was reported that there was "not a single instance in the North East when any person has sought permission of the Government to prosecute either an officer or soldier of the Armed Forces."<sup>52</sup> Amnesty International welcomes any information from the central government of the number of pending requests for sanction and of those cases denied or granted sanction from the Northeast.

When it is available, redress is slow and resource intensive for the complainant. In Jammu and Kashmir, police were allegedly directed not to file FIRs (First Information Report about an alleged crime) against security forces or record accusations of misconduct by security forces in their daily logs. In many cases in the Northeast, redress is out of reach because it is not possible for people to reach a lawyer or a court and some people face an anti-tribal bias in the courts.<sup>53</sup>

Remedy and redress are further limited by section 19 of the Protection of Human Rights Act (PHRA) which prohibits the NHRC and state human rights commissions from investigating allegations of human rights violations by members of the armed or

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<sup>52</sup> Submission to the International Covenant on Civil and Political Rights Human Rights Committee. *Armed Forces (Special Powers) Act, 1958: A Report on Human Rights Violations in North East India* Nandita Haksar, Advocate, Supreme Court of India, New York, March 1991.

<sup>53</sup> Submission to the International Covenant on Civil and Political Rights Human Rights Committee. *Armed Forces (Special Powers) Act, 1958: A Report on Human Rights Violations in North East India* Nandita Haksar, Advocate, Supreme Court of India, New York, March 1991.

paramilitary forces. The NHRC, human rights activists in India and at the international level have consistently campaigned for removal of this limitation of the NHRC's jurisdiction, to date without success.

Amnesty International believes that impunity is one of the main contributing factors to the continuing pattern of human rights violations the world over. By ensuring effective mechanisms of accountability, the Government of India can send a clear message that no violation will be tolerated. These mechanisms should include the prompt, thorough, impartial and independent investigation of any alleged violation. They should make public the results of such enquiries, bringing those found responsible promptly to justice before a civilian court, in proceedings which meet international standards of fairness and without the imposition of the death penalty. There should also be the provision of adequate reparation for the victim.

### **An undeclared state of emergency for undefined reasons and for unlimited periods**

Under the ICCPR, states may, "in times of emergency which threatens the life of the nation," take measure which derogate from certain obligations, they may only do so "to the extent strictly required by the exigencies of the situation."<sup>54</sup> Under Article 4(3) of the ICCPR,

*"Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation."*

Declaring an area a "disturbed area" and granting the military extensive powers is in practice imposing an undeclared emergency regime. In its ruling, the Supreme Court refuted this, claiming that the "Act does not displace the civil power of the State by the armed forces" and does not amount to a "Proclamation of Emergency under Article 352 or a proclamation under Article 356 of the Constitution."<sup>55</sup> However, the

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<sup>54</sup> See ICCPR, Article 4(1) and 4(3), respectively.

<sup>55</sup> *NPMHR v. India*, para. 74.



Human Rights Committee stated in its concluding observations on India's third periodic report:

*“The Committee regrets that some parts of India have remained subject to declaration as disturbed areas over many years - for example, the Armed Forces (Special Powers) Act has been applied throughout Manipur since 1980 and in some areas of that state for much longer - and that in those areas, the State party is in effect using emergency powers without resorting to article 4, paragraph 3, of the Covenant. The Committee recommends that the application of those emergency powers be closely monitored so as to ensure its strict compliance with the provisions of the Covenant.”<sup>56</sup>*

## RECOMMENDATIONS

Amnesty International calls on the Armed Forces Special Powers Act, 1958 Review Committee to:

- recommend that the Government of India repeal this Act.
- recommend that the Government of India ensure that any future legislation complies fully with international human rights and humanitarian law treaties to which India is a state party, especially the ICCPR and the four Geneva Conventions, as well as takes into account more detailed standards including the UN Code of Conduct for Law Enforcement Officials, the UN Principles for the Prevention of Extra-Legal, Arbitrary and Summary Executions and the UN Declaration on the Protection of All Persons from Enforced Disappearances.

In order to ensure the full protection of human rights in the regions of India under discussion, Amnesty International calls on the Government of India to take action beyond repealing the AFSPA. It specifically urges the Government of India to:

- as an interim measure, grant sanction to pending cases requesting sanction of the central authorities for prosecution of armed forces.
- initiate prompt and independent investigations into all human rights violations by officials and ensure (1) that perpetrators are brought to justice in

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<sup>56</sup> Concluding observations of the Human Rights Committee: India, Report of the Human Rights Committee, UN Doc. A/52/40 (1997), paras. 416-450, at para. 434.

procedures which meet international standards of fairness and do not impose the death penalty; (2) that victims of human rights violations are ensured full redress, including adequate compensation, proper medical care and rehabilitation.

- ensure that members of the security forces are ordered and trained to apply fully standards of international human rights law and, where appropriate, of international humanitarian law. This should include the UN Code of Conduct for Law Enforcement Officials, the UN Principles for the Prevention of Extra-Legal, Arbitrary and Summary Executions and the UN Declaration on the Protection of All Persons from Enforced Disappearances.
- amend section 19 of the Protection of Human Rights Act which prohibits the NHRC and State Human Rights Commissions from independently investigating allegations of human rights violations by members of the armed or paramilitary forces.
- invite independent human rights observers to investigate reported violations and abuses in Northeast India and Jammu and Kashmir, including the UN Special Rapporteur on torture, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, the UN Special Rapporteur on violence against women, and the UN Special Rapporteur on human rights defenders.

In addition, Amnesty International calls on all armed groups to:

- respect minimum human rights standards and principles of international humanitarian law.
- call an immediate halt to killings of civilians, torture, ill-treatment, hostage-taking and other abuses.

## Appendix 1:

### Armed Forces (Special Powers) Act, 1958

An Act to enable certain special powers to be conferred upon members of the armed forces in disturbed areas in the State of Assam and the Union Territory of Manipur.

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

1. (i) This Act may be called [The Armed Forces (Assam and Manipur) Special Powers Act, 1958].

(ii) It extends to the whole of the State of Assam and the Union Territory of Manipur.

2. In this Act, unless the context otherwise requires:

(a) "armed forces" means the military forces and the air 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 meanings respectively assigned to them in those Acts.

3. If the Governor of Assam or the Chief Commissioner of Manipur is of the opinion that the whole or any part of the State of Assam or the Union Territory of Manipur, as the case may be, is in such a disturbed or dangerous condition that the use of armed forces in aid of the civil powers is necessary, he may, by notification in the Official Gazette, declare the whole or any part of the State or Union territory to be a disturbed area.

4. 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 fire-arms, 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 hide-out by armed gangs or absconders wanted for any offence;

(c) arrest, without warrant, any person who has committed a cognisable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognisable 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 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.

5. 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. 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.

7. (1) The Armed Forces (Assam and Manipur) Special Powers Ordinance 1958 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have done or taken under this Act, as if this Act had commenced on the 22<sup>nd</sup> day of May, 1958.

Source: *Extraordinary Laws in India*. Indian Social Institute. New Delhi: 2002.

### **Armed Forces (Assam and Manipur) Special Powers (Amendment) Act 1972**

An Act to amend the Armed Forces (Assam and Manipur) Special Powers Act, 1958.

Be it enacted by Parliament in the Twenty-Third Year of the Republic of India as follows:

1. This Act may be called the Armed Forces (Assam and Manipur) Special Powers (Amendment) Act 1972.
2. In the Armed Forces (Assam and Manipur) Special Powers Act, 1958 (hereinafter referred to as the principal Act), in the long title, for the words “in the State of Assam and the Union Territory of Manipur” the words “in the States of Assam, Manipur, Meghalaya, Nagaland and Tripura and Union Territories of Arunachal Pradesh and Mizoram” shall be substituted.
3. In section 1 of the principal Act
  - (a) in sub-section (1) for the words, brackets and figures “the Armed Forces (Assam and Manipur) Special Powers Act 1958” the words, brackets and figures “the Armed Forces (Special Powers) Act 1958” shall be substituted:
  - (b) for sub-section (2) the following sub section shall be substituted, namely:
    - (2) It extends to the whole of the States of Assam, Manipur, Meghalaya, Nagaland and Tripura and the Union Territories of Arunachal Pradesh and Mizoram.
4. For section 3 of the principal Act, the following section shall be substituted, namely:

[5] If in relation to any State or Union Territory to which this Act extends, the Governor of the State or the Administrator of the Union Territory, as the case may be, is in such a disturbed or dangerous condition that the use of Armed Forces in aid of civil power is necessary, the Governor of the 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 State or Union Territory to be a disturbed area.

5. As from the Commencement of this Act, the principal Act, as extended by notification of the Government of India in the Ministry of Home Affairs No GSR 1970, dated 25<sup>th</sup> November 1970 to the then existing Union Territory of Tripura, shall cease to operate in the State of Tripura.

Source: *Extraordinary Laws in India*. Indian Social Institute. New Delhi: 2002.

**Appendix 2: List of Dos & Don'ts as directed by the Supreme Court in NPMHR v. India in 1997**

DOS

1. Action before Operation

- (a) Act only in the area declared 'Disturbed Area' under Section 3 of the Act
- (b) Power to open fire using force or arrest is to be exercised under this Act only by an officer/JCO/WO and NCO
- (c) Before launching any raid/search, definite information about the activity to be obtained from the local civil authorities
- (d) As far as possible coopt representative of local civil administration during the raid.

2. Action during Operation

- (a) In case of necessity of opening fire and using any force against the suspect or any person acting in contravention of law and order, ascertain first that it is essential for maintenance of public order. Open fire only after due warning
- (b) Arrest only those who have committed cognizable offence or who are about to Commit cognizable offence or against whom a reasonable ground exists to prove that they have committed or are about to commit cognizable offence
- (c) Ensure that troops under command do not harass innocent people, destroy property of the public or unnecessarily enter into the house/dwelling of people not connected with any unlawful activities
- (d) Ensure that women are not searched/arrested without the presence of female police. In fact women should be searched by female police only.

3. Action after Operation

- (a) After arrest prepare a list of the persons so arrested
- (b) Hand over the arrested persons to the nearest police station with least possible delay
- (c) While handing over to the police a report should accompany with detailed circumstances occasioning the arrest
- (d) Every delay in handing over the suspects to the police must be justified and should be reasonable depending upon the place, time of arrest and the terrain in which such person has been arrested. Least possible delay may be 2-3 hours extendable to 24 hours or so depending upon a particular case

- (e) After raid make out a list of all arms, ammunition or any other incriminating material/document taken into possession.
- (f) All such arms, ammunition, stores etc. should be handed over to the police station along with the seizure memo
- (g) Obtain receipt of persons and arms/ammunition, stores etc. so handed over to the police
- (h) Make record of the area where operation is launched having the date and time and the persons participating in such raid
- (i) Make a record of the commander and other officers/JCOs/NCOs forming part of such force
- (k) [sic] Ensure medical relief to any person injured during the encounter, if any person dies in the encounter his dead body be handed over immediately to the police along with the details leading to such death

#### 4. Dealing with civil court

- (a) Directions of the High Court/Supreme Court should be promptly attended to
- (b) Whenever summoned by the courts, decorum of the court must be maintained and proper respect paid
- (c) Answer questions of the court politely and with dignity
- (d) Maintain detailed record of the entire operation correctly and explicitly.

#### DON'TS

1. Do not keep a person under custody for any period longer than the bare necessity for handing over to the nearest police station
2. Do not use any force after having arrested a person except when he is trying to escape
3. Do not use third-degree methods to extract information or to extract confession or other involvement in unlawful activities
4. After arrest of a person by the member of the armed forces, he shall not be interrogated by the member of the armed force
5. Do not release the person directly after apprehending on your own. If any person is to be released, he must be released through civil authorities
6. Do not tamper with official records



7. The armed forces shall not take back a person after he is handed over to civil police.

List of Dos and Don'ts while providing aid to civil authority

#### DOS

1. Act in closest possible communication with civil authorities throughout
2. Maintain inter-communication if possible by telephone/radio
3. Get the permission/requisition from the Magistrate when present
4. Use little force and do as little injury to person and property as may be consistent with attainment of objective in view
5. In case you decide to open fire
  - (a) Give warning in local language that fire will be effective
  - (b) Attract attention before firing by bugle or other means
  - (c) Distribute your men in fire units with specified Commanders
  - (d) Control fire by issuing personal orders
  - (e) Note number of rounds fired
  - (f) Aim at the front of crowd actually rioting or inciting to riot or at conspicuous ringleaders, i.e., do not fire into the thick of the crowd at the back
  - (g) Aim low and shoot for effect
  - (h) Keep Light Machine Gun and Medium Gun in reserve
  - (i) Cease firing immediately once the object has been attained
  - (j) Take immediate steps to secure wounded
6. Maintain cordial relations with civilian authorities and paramilitary forces
7. Ensure high standard of discipline

#### DON'TS

8. Do not use excessive force
9. Do not get involved in hand-to-hand struggle with the mob
10. Do not ill-treat anyone, in particular, women and children

11. No harassment of civilians
12. No torture
13. No communal bias while dealing with civilians
14. No meddling in civilian administration affairs
15. No Military disgrace by loss/surrender of weapons
16. Do not accept presents, donations and rewards
17. Avoid indiscriminate firing.

Source: *Naga People's Movement of Human Rights v Union of India* [1997] ICHRL 117 (27 November 1997).