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India: Supreme Court ruling could reinforce impunity in Jammu and Kashmir

A ruling by India's Supreme Court affirming that the armed forces can try soldiers suspected of human rights-related crimes in military courts could encourage an already prevalent culture of impunity, Amnesty International India warned today.

The Court ruled on 25 April 2013 that two members of the Border Security Force (BSF) - a central paramilitary force – suspected of killing a 16 year-old boy in January 2010 were at the time on “active duty” as defined by a 2007 central government notification. It held that the BSF therefore had the option of prosecuting the men in a military court.

The Court determined that an application filed earlier by the BSF seeking a military trial was technically inadequate, but gave the BSF the option of filing another application within eight weeks.

“This ruling is a setback to the victims’ families in their quest for justice,” said Shashikumar Velath, Director of Programmes, Amnesty International India.

“The Supreme Court should have taken a strong stance against human rights violations committed by security forces by ordering that the case be tried by a civilian court. By giving the option for a military trial, the Court allows security forces to continue to have effective immunity,” said Shashikumar Velath.

The local police had filed charges of murder against the two BSF members. The ruling comes less than a year after the Pathribal ruling, where the Supreme Court gave military authorities the option to try eight army officials suspected of being involved in extra-judicial executions in a court-martial.

International human rights law, in particular the International Covenant on Civil and Political Rights to which India is a state party, requires all courts, including military courts, to be competent, independent and impartial. “The ability of military courts to try cases of human rights violations implicating army and paramilitary forces in Jammu and Kashmir independently and impartially is highly doubtful, considering the culture of impunity in the state”, said Shashikumar Velath.

The central government has consistently withheld information about the outcomes of cases tried in military courts. The Armed Forces J&K (Special Powers) Act, 1990 mandates prior permission from the central government before legal proceedings can be initiated against any officials exercising powers conferred by the Act. Such permission is almost never given.

“Special powers and immunity for security forces must end, and the Supreme Court must reject these powers on human rights grounds rather than reinforce them on technical grounds,” said Shashikumar Velath. “Amnesty International repeats its call for the AFSPA to be repealed, in J&K and elsewhere, and for all persons charged with human rights-related offences to be tried before a competent, independent and impartial civilian court.”

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