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India: Pathribal ruling a setback for justice in Jammu and Kashmir

Special powers that allow India's armed forces suspected of involvement in extra-judicial killings to sidestep the civilian courts have been reinforced in a disappointing court ruling over the notorious killings of five Kashmiri civilians 12 years ago.

India's Supreme Court has contradicted a reported statement by its Justices in February 2012 that army personnel suspected of murder should be placed in front of a civil judge.

Instead it opted to give military authorities eight weeks to bring about the court martial of eight army officials allegedly responsible for the unlawful killing of five youths in Pathribal, in March 2000. Failing that, the Central Bureau of Investigation (CBI), may apply to prosecute the army personnel.

"Today's ruling is a major setback – not only for victims in this case but for other victims unlawfully killed by army or paramilitary forces in Jammu and Kashmir," said Ramesh Gopalakrishnan, Amnesty International's India Researcher.

"The option of a court martial allows these army officials to continue to avoid judgment in court of law."

The CBI, which investigated the Pathribal killings, has contended it has sufficient evidence to show that the killings were extrajudicial executions and 'cold-blooded murder'. It filed charges against the eight army officials in local courts in Jammu and Kashmir. In response army officials invoked special powers stating that they need not appear for trial in a civilian court of law.

The Armed Forces J & K (Special Powers) Act, 1990 requires the CBI to seek official permission to initiate criminal proceedings against the eight accused officials.

"Today's ruling should have taken into account the evidence provided by the CBI; by giving the first option to the army for a court martial, this ruling reinforces immunity from prosecution in other cases of alleged extra-judicial killings in Jammu and Kashmir," said Gopalakrishnan.

"Instead of upholding the universal and constitutional right to life, the Supreme Court chose to rely on emergency laws which provide excessive powers, as well as impunity, to the army.

"The families of the victims must have their day in court. The Indian authorities must restore public confidence in the rule of law, and ensure justice for the victims of the Pathribal killings.

"Impunity for human rights violations by the army and paramilitary forces under "special powers" legislation must stop."