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The Armed Forces Special Powers Act: Time For A Renewed Debate in India on Human Rights and National Security

For decades, The Armed Forces (Special Powers) Act (AFSPA) has enabled serious human rights violations to be committed by soldiers in Jammu & Kashmir (J&K) and parts of northeast India, and shielded those responsible. Attempts to challenge the AFSPA have been met with weak responses from authorities, and little apparent commitment to tackle impunity.

In 2013, two high-level official committees released damning reports[i] highly critical of the way the AFSPA facilitated sexual violence and extrajudicial executions. The reports of the Justice Verma Committee and the Justice Hegde Commission supported calls made to authorities by the UN[ii] and Indian bodies[iii] to address the abuses committed under the AFSPA and end the effective impunity enjoyed by security forces.

The Armed Forces Special Powers Act

The Armed Forces (Special Powers) Act, 1958, and a virtually identical law, the Armed Forces (J&K) Special Powers Act, 1990, have been in force since 1958 in parts of Northeast India, and since 1990 in J&K. The laws provide sweeping powers to soldiers, including the power to shoot to kill in certain situations and to arrest people without warrants. They also provide virtual immunity from prosecution by requiring prior permission from the Central Government before security personnel can be prosecuted. This permission is almost never given.

The law has facilitated grave human rights violations, including extrajudicial executions, enforced disappearances, rape and torture and other ill treatment.

These two reports have renewed debates on the special powers granted to security forces in India and their impact on human rights. This briefing examines recent developments and outlines the ongoing rights violations being committed in areas where the AFSPA is in force.

Amnesty International India urges the Government of India to repeal the Armed Forces Special Powers Acts, 1958 and 1990.

Increasing Opposition to the AFSPA

The Justice Verma Committee

The *Committee on Amendments to Criminal Law* (popularly referred to as the Justice Verma Committee) was a three-member committee headed by Jagdish Sharan Verma, a retired Supreme Court judge, set up by the central government in December 2012 to review laws against sexual assault. The committee was formed a week after the gang rape and murder of a 23 year-old woman on 16 December 2012.

The incident was a flashpoint in India, causing thousands to protest in the streets, clashes with riot police, and backlash from the media and human rights groups against the government's initial response to the incident. The committee's 657-page report included a section on sexual violence in conflict zones, in which the committee said that the AFSPA legitimized impunity for sexual violence, and recommended immediate review of the continuance of the AFSPA in internal areas of conflict.

The committee's report, released in January 2013, was welcomed by several rights groups and organizations, including the UN High Commissioner for Human Rights. The report noted that in conflict zones legal protection for women in conflict areas was often neglected, and emphasized that women in conflict areas were entitled to the security and dignity afforded to citizens elsewhere in the country.

In its recommendations, the committee said that sexual violence against women by members of the armed forces or uniformed personnel should be brought under the purview of ordinary criminal law.

The committee also recommended an amendment to the AFSPA to remove the requirement of prior sanction from the central government for prosecuting security personnel for certain crimes involving violence against women.

In interviews to the media, J. S. Verma said that sexual violence could not in any way be associated with the performance of any official task, and therefore should not need prior sanction from the government.[iv]

Following the committee's recommendations, new laws on violence against women were passed in April 2013. These included an amendment to the Code of Criminal Procedure which removed the need for prior sanction for prosecuting government officials for certain crimes involving violence against women, including rape, sexual assault, sexual harassment, voyeurism and stalking. However a similar amendment to the AFSPA that was proposed by the committee was ignored.[v]

The Justice Hegde Commission

In January 2013, the Supreme Court appointed a three-member commission headed by Santosh Hegde, a retired Supreme Court judge, in response to a public interest litigation seeking investigation

into 1,528 cases of alleged extrajudicial executions committed in the state of Manipur in northeast India between 1978 and 2010.

The commission was established to determine whether six cases identified by the court were 'encounter' deaths – where security forces had fired in self-defence against members of armed groups – or extrajudicial executions. It was also mandated to evaluate the role of the security forces in Manipur.

In its report submitted to the court in April 2013, [vi] the commission found that all seven deaths in the six cases it investigated were extrajudicial executions, and also said that the AFSPA was widely abused by security forces in Manipur. The commission said that the continued operation of the AFSPA in Manipur has made "a mockery of the law," and that security forces have been "transgressing the legal bounds for their counter-insurgency operations in the state of Manipur."

The commission echoed a statement made by the Jeevan Reddy Committee, a committee formed to review the AFSPA in 2005, which said that the law had become "a symbol of oppression, an object of hate and an instrument of discrimination and high-handedness."

The committee's report recorded how security forces in Manipur were disregarding procedural safeguards set out in Supreme Court rulings and army directives to ensure that AFSPA powers were used with exceptional caution and with the minimum force necessary.

Neither the Justice Verma Committee nor the Santosh Hegde Commission was expressly mandated to consider the role of the AFSPA in violence against women or extrajudicial executions, respectively. However, both pointed to the AFSPA as being a key cause of both past and ongoing human rights violations.

The Santosh Hedge Commission primarily criticized the lack of enforceable safeguards against abuse of the AFSPA's provisions. For example, it said,"…though the Act gives sweeping powers to the security forces even to the extent of killing a suspect with protection against prosecution, etc., the Act does not provide any protection to the citizens against possible misuse of these extraordinary powers…normally, the greater the power, the greater the restraint and stricter the mechanism to prevent is misuse or abuse. But here in the case of the AFSPA in Manipur, this principle appears to have been reversed."[vii]

Similarly, the Verma Committee concluded that the provision requiring sanction to prosecute allowed for crimes against women to be committed by security forces with impunity. The committee recommended that the AFSPA be amended to waive the requirement for sanction if the armed force personnel were accused of crimes against women.

International opposition

The AFSPA has also been subject recently to severe criticism by several UN experts, including the Special Rapporteurs on violence against women, its causes and consequences; on extrajudicial, summary or arbitrary executions; and on the situation of human rights defenders.

Rashida Manjoo, the UN Special Rapporteur on violence against women, its causes and consequences, said after her visit to India in April 2013 that the AFSPA had "resulted in impunity for human rights violations broadly."

She called for the repeal of the law, saying, "the interpretation and implementation of this act, is eroding fundamental rights and freedoms – including freedom of movement, association and peaceful assembly, safety and security, dignity and bodily integrity rights, for women, in J&K and in states in north-east India. Unfortunately, in the interests of State Security, peaceful and legitimate protests often elicit a military response, which is resulting both in a culture of fear and of resistance within these societies."[viii]

Cristof Heyns, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, visited India in March 2012. In his report to the UN Human Rights Council, he stated that "the powers granted under AFSPA are in reality broader than that allowable under a state of emergency as the right to life may effectively be suspended under the Act and the safeguards applicable in a state of emergency are absent. Moreover, the widespread deployment of the military creates an environment in which the exception becomes the rule, and the use of lethal force is seen as the primary response to conflict." [ix]

Calling for the repeal of the law, he said that "retaining a law such as AFSPA runs counter to the principles of democracy and human rights."

Margaret Sekaggya, the UN Special Rapporteur on the situation of human rights defenders, who visited India in January 2011, also called for the AFSPA to be repealed in her report, and said that she was deeply disturbed by the large number of cases of defenders who claimed to have been targeted by the police and security forces under laws like the AFSPA.

International and national human rights groups and activists, including Amnesty International, have called for the AFSPA's repeal for years, with little purposeful response or definitive action from the government. The central government, and state governments of J&K and states in northeast India, has also failed to engage in meaningful debate on the Act despite well-documented evidence of abuses. Amnesty International India welcomes the national and international attention being brought to the AFSPA and the violations it facilitates.

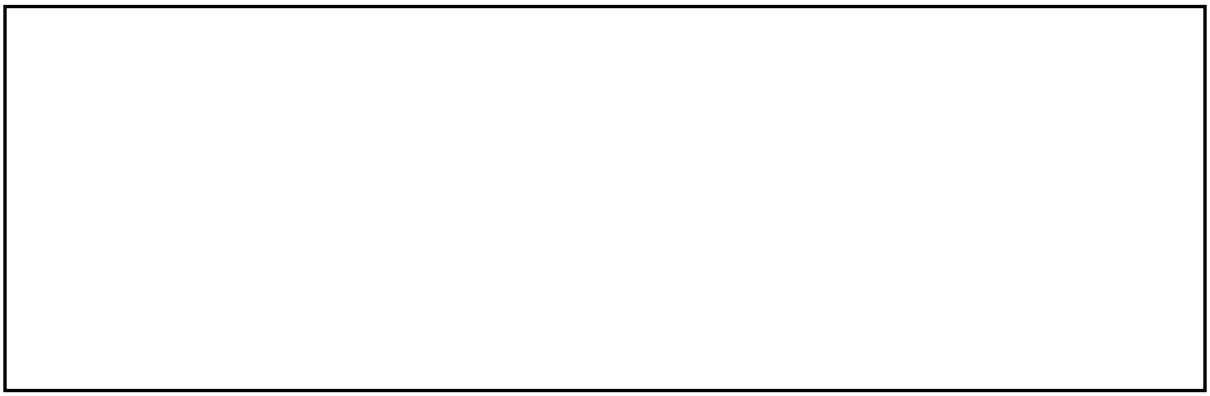
Background

In the Name of National Security: Defence of the AFSPA

The government of India has frequently said that it cannot take action to amend the AFSPA because of the opposition it faces from security forces. In February 2013, India's finance minister (and former home minister) said: "The army has taken a strong stand against any dilution of the AFSPA… We can't move forward because there is no consensus."[x]

The state government of J&K has been vocal about lifting the AFSPA from the state, but says that it cannot repeal or amend the Act, which was passed by the central government. However, in recent weeks, the Chief Minister of the state has backed away from his call to repeal or lift the AFSPA following attacks on security forces.[xi]

Army officials have long held the opinion that the AFSPA is "absolutely essential" to combat



insurgency in the country and protect the borders. A former Deputy Chief of Army Staff wrote in January 2013, "In a virulent insurgency, security forces just cannot operate without the cover of the AFSPA. Without it, there

would be much hesitation and caution which would work to the advantage of insurgents."[xii]

Army officials also routinely cite the need to protect the morale and integrity of the army as reason not to scrutinize allegations against army personnel. A retired, senior Indian diplomat told Amnesty International India in May 2013, "If the AFSPA goes, the army will have to go first. The army knows that if the AFSPA is lifted, they'll be flooded with lawsuits, which is indeed bad for morale…if you deploy the Army, you give them immunity. That's the narrative the government has accepted from the Army."

Army officials have said that removing the requirement for sanction in cases of violence against women, as the Justice Verma Committee recommended, would have a "de-motivating" effect on army personnel. A former deputy Chief of Staff for the army, who was stationed in J&K, wrote: "No military personnel would want to get involved in false civil cases and spend the next few years doing the rounds of civil courts where all the false evidence from the hostile local witnesses will be marshaled against them."[xiii]

A Temporary Measure

The AFSPA, 1958 was first introduced in states in the north-east region of India, including Assam and Manipur, in response to armed political activity arising from demands for self-determination. The Act was supposed to remain in force for only one year. However the AFSPA was never lifted, and was further amended in 1972 to extend to other states in the northeast. In 1990, a version of the same law was introduced in J&K. A version of the Act was also implemented in the state of Punjab in 1983, but later repealed in 1997 when the militancy had been, according to the government, "decisively dealt with." The AFSPA 1958 has also been lifted from some parts of the northeast, although it has yet to be repealed.

Although rights groups in J&K and states in northeast India have opposed human rights abuses, army officials have discredited the opposition saying that it is driven by a foreign agenda. An army

officer writing in 2011 said, "There appears to be a concerted campaign on the part of some foreign-funded NGOs to demonize the Army and delegitimize its counter-insurgency and counter-terrorist operations."[xiv]

Legal Challenges

The constitutional validity of the AFSPA was challenged in 1997 in the Supreme Court of India in the *Naga People's Movement of Human Rights vs. Union of India* case[xv]. The Court, after hearing petitions challenging it, filed in the 1980s and early 90s, upheld the constitutional validity of the AFSPA, ruling that the powers given to the army were not "arbitrary" or "unreasonable."[xvi]

In doing so, however, the Court failed to consider India's obligations under international law.

The Court further ruled that the declaration of an area as "disturbed" – a precondition for the application of the AFSPA - should be reviewed every six months. Concerning permission to prosecute, the Court ruled that the central government had to divulge reasons for denying sanction.[xvii]

The Ministry of Defence and Ministry of Home Affairs have stated in replies to Right to Information (RTI) requests from human rights activists in J&K that no sanction has been granted between 1990 and 2012 by either ministry.

The Court also ruled that safeguards issued by the Army in the form of a list of "Do's and Don'ts" – including one requiring army personnel to use 'minimum force' in all circumstances - were legally binding, and that soldiers violating them should be prosecuted and punished.

Activists called the ruling "shocking" and said it did not provide sufficient limits on the abuse of power granted under the AFSPA. Legal commentators have pointed out that the Court did not adequately consider whether the AFSPA violated the framework of fundamental rights guaranteed by the Constitution of India, particularly the rights to equality (Article 14); expression, assembly, association and movement (Article 19); and life and personal liberty (Article 21).[xviii]

In May 2012, the Supreme Court reviewed the applicability of section 7[xix] of the AFSPA, which mandates prior permission from the central government to prosecute a member of the security forces in areas where the AFSPA is in force.

The case, *CBI v. General Officer Commanding,* concerned the deaths of five villagers from Pathribal in south Kashmir. The five individuals were allegedly shot and killed by army personnel on 25 March 2000. The accused army personnel claimed that the villagers killed were foreign militants, but forensic evidence proved otherwise.

The Central Bureau of Investigation conducted an investigation and filed charges against the accused in 2006. The CBI contended that no sanction was necessary to prosecute in a civilian court as the accused could not be considered as having acted as part of their "official duty". However, the Army argued that sanction was required, as the accused soldiers' actions were done "in performance of their official duty".

During the trial, the judges at one point told the lawyers representing the Army, "You go to a place in exercise of AFSPA, you commit rape, you commit murder, then where is the questions of sanction? It is a normal crime which needs to be prosecuted, and that is our stand."

Despite this, the Court re-affirmed the requirement for sanction to prosecute in a civilian court, and gave the army the first option to try the accused in a military court saying, "the question as to whether the act complained of, is done in performance of duty or done in purported performance of duty, is to be determined by the [central government] and not the court."[xx]

The army chose to try its personnel by court-martial and the proceedings are currently ongoing. However, the victims' families are skeptical that the military trial will result in justice.[xxi]

Several rights groups, including Amnesty International, expressed their disappointment with the ruling, which effectively allowed army officials to continue to avoid judgment in a civilian court[xxii].

In both these cases, the Supreme Court appeared to believe that rights abuses committed by armed forces were capable of being suitably addressed by the military and central government. However rights groups and activists, and even the Justice Verma Committee and the Santosh Hegde Commission reports, have contradicted these notions by offering evidence of how the AFSPA continues to perpetuate human rights violations and impunity.

Abuse of powers under the AFSPA: continuing violations of international law

Use of lethal force and violations of the right to life

On 4 March 2009, Mohammed Wahid Ali watched army personnel drag his 12 year-old son away from the rest of the family and shoot him outside their home in Imphal, Manipur.[xxiii] The death of 12 year-old Azad Khan was the first of six cases examined by the Justice Hegde Commission to establish whether they were "fake encounters" – staged extrajudicial executions.

As with all the cases examined, the Commission found that Azad Khan's killing was an extrajudicial execution, and falsely reported as a death in an "encounter" with security forces. Security personnel told the Commission that they had fired at Azad Khan in self-defence. The post-mortem report stated that the victim suffered four bullet injuries, all of which were potentially fatal, while none of the security forces were injured.

The Commission said, "It is extremely difficult to believe that nearly 20 trained security personnel equipped with sophisticated weapons…could not have overpowered or disabled the victim."

The Justice Hegde Commission described the use of force in all the six cases it investigated as being "by no stretch of the imagination…minimum force". "On the contrary", it said, "the use of maximum force is visible in all the six cases."[xxiv]

The commission found that in some cases, up to 89 bullets were fired by security forces, and in one case, the victim had suffered 16 wounds from bullets shot at close range. In all the cases, no army or police personnel, or their vehicles, were hit or injured by bullets allegedly fired by the victims.[xxv]

The commission described the army's list of "Do's and Don'ts", which imposed legally safeguards – including requiring the use of 'minimum force' in all circumstances - as being "largely on paper" and "mostly followed in violation."[xxvi] The report said that some of the senior officers who deposed before the commission "appeared surprised when some of the guidelines were read to them", while junior officers "did not appear to have any idea about the guidelines."

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."

Violations of International Law

Section 4 of the AFSPA provides far-reaching powers for soldiers to use lethal force. Allowing the fatal shooting of people merely for gathering in groups of five or more constitutes disregard for the right to life. This key human right is non-derogable and must be protected at all times, and is enshrined in article 6 of the International Covenant on Civil and Political Rights, to which India is a state party.

Section 4 also falls well short of international standards on the use of force, including the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The latter requires law enforcement officials, or armed forces engaged in law enforcement, to use firearms only as a last resort, and use them with lethal intent only when strictly unavoidable in order to protect life.

Violations of Constitutional Law

Article 21 of the Constitution of India states that "no person shall be deprived of his life or personal liberty except according to procedure established by law". The Supreme Court has said that such procedure must be just, fair and reasonable. It has also ruled that any law, to be valid, must not violate the framework of fundamental rights guaranteed by the Constitution of India.

As legal commentators have pointed out, the Supreme Court in the *Naga People's Movement for Human Rights* case did not rigorously analyze whether the AFSPA violated Article 21

Sanction to Prosecute and violations of the right to remedy

Section 6 of the AFSPA, 1958 and Section 7 of the AFSPA, 1990 say that
"No prosecution, suit or other legal proceeding shall be instituted, except with 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."

Violations of International Law
Sections 6 and 7 of the AFSPA violate victims' rights to an effective remedy. Article 2(3) of the ICCPR says that state 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 person acting in an official capacity." The UN Human Rights Committee, which monitors implementation of the ICCPR, has clarified that "no official status justifies persons who may be accused of responsibility for [human rights] violations being held immune from legal responsibility."[xxvii]

The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law state that remedies must include access to an effective judicial remedy.

Violations of Constitutional Law
The right to an effective remedy is implicit in article 32 of the Constitution of India. The rights guaranteed in the Constitution include a right to enforceability of these rights.

In upholding the constitutional validity of the requirement for sanction for prosecution of soldiers, the Supreme Court in the Naga People's Movement for Human Rights case said that where allegations of rights abuse are found to be correct upon initial inquiry, sanction "should be granted for prosecution and/or a civil suit or other proceeding against the person/persons responsible for such violation." However such sanction is almost always denied or kept pending for years, depriving those who have suffered abuse of their right to an effective remedy.

In January 2012, the Supreme Court, in a case relating to sanction to prosecute in corruption cases, observed that delay in granting sanction "deprives a citizen of his legitimate and fundamental right to get justice… which is a constitutionally protected right." It stated

Requiring official permission from the central government to prosecute a member of the security forces in a civilian court has contributed to a deeply entrenched culture of impunity for security forces operating in northeast India and J&K. Sanction for prosecution is rarely, if ever, granted.

The state government is required to forward requests for sanction to prosecute under the AFSPA to the central government for a decision in cases where the accused person is a centrally deployed member of the security forces. The Ministry of Defence issues decisions concerning members of the Indian Army, and the Ministry of Home Affairs does so in cases involving members of paramilitary forces, including reserve police forces under the control of the central government.

In 2012, the J&K government said in a response to an RTI request that it had not received sanction for prosecution from either the Ministry of Defence or the Ministry of Home Affairs in a single case from 1990 to 2011.

The Ministry of Defence, in response to RTI requests, has said that it received 44 applications for sanction to prosecute between 1990 and 2012 from the J&K government.[xxix] It denied sanction in 35 cases, while nine are still under consideration.

RTI requests made by rights groups like the J&K Coalition of Civil Society to the Ministry of Home Affairs have been refused, and in many cases, merely forwarded to the headquarters of different paramilitary forces. Most of the forces have refused to divulge this information and claimed that they

are exempt from responding to RTI applications, despite the RTI Act expressly stating that this exemption does not apply to information pertaining to human rights violations.[xxx]

There are also several discrepancies between the cases listed as forwarded by the J&K State Home Department[xxxi] and those received by the Ministry of Defence.[xxxii] Some applications have been pending for several years, while up to 20 others appear to have not been processed at all.[xxxiii] Activists have told Amnesty International India that applications for sanction are sometimes "misplaced" by the state or central government.

The Supreme Court in the *Naga People's Movement for Human Rights* case ruled that decisions on sanction would be subject to judicial review. However judicial review has proved to be a very limited safeguard.

Despite the Supreme Court's decision, there have been few opportunities to seek judicial review on sanction decisions made by the central government. Until 2010, there were no available records of the number of sanction applications received, or decisions issued on those applications by either the Ministry of Home Affairs or Ministry of Defence. Additionally, lack of transparency in the sanction application process, years of delay in many applications, and the state's failure to inform families of the process, resulting in an acute lack of awareness, has precluded many families of victims from seeking judicial review of decisions issued by the Ministry of Home Affairs or Ministry of Defence.

In some cases, Amnesty International India found that police and government officials failed to keep families informed of the progress of their cases.[xxxiv] Several families interviewed by Amnesty International India were unaware that police had sought sanction in their cases, let alone received a response from the government. Particularly in cases from the early to mid-1990s, the families assumed that the police had closed investigations.[xxxv]

In Manipur, where the Assam Rifles paramilitary force is deployed, the Justice Hegde Commission reported that only one request for sanction to prosecute a member of the Assam Rifles under the AFSPA had been made since 1998. The request was denied.

The Justice Hegde Commission also said that no action had been taken against any Assam Rifles personnel since 1998 for violating the legally binding "Do's and Don'ts" issued by the Indian Army. Assam Rifles authorities told the commission that the force had received 66 complaints against its personnel stationed in Manipur in the last five years, of which only three have been addressed. In the last five years, the Manipur government has sought permission to prosecute an Assam Rifles officer for alleged human rights violations in only one case under the AFSPA. Permission was denied by the central government.

Since 1998, the committee said, there were 15 petitions filed against paramilitary personnel from the Assam Rifles: 10 pertaining to custodial deaths, four cases of missing persons, and one case of torture. But it received no information on any action having been taken in any case.[xxxvi]

In two of the extrajudicial executions investigated by the committee, judicial enquiries had concluded that the "encounters" were staged. However, there was no information about whether sanction to prosecute was applied for, or whether any legal proceedings were initiated.[xxxvii]

The Justice Hegde Commission proposed that all cases of "encounters" resulting in death should be immediately investigated, and reviewed every three months by a committee. The committee also recommended a special court for ensuring that cases of extrajudicial killings are expedited in the criminal justice system.

The commission also recommended that all future requests for sanction from the central government be decided within three months, failing which sanction would be granted by default.

Amnesty International India is concerned that mandating such a time-bound response is an insufficient safeguard, and does not substitute for the ability to pursue a case without obstacles.

The Justice Verma Committee, which heard testimonies from women in conflict areas like Kashmir and states in the northeast, had recommended the complete removal of the requirement for prosecution sanction for crimes involving violence against women.

In response, the Indian Army and Ministry of Defence dismissed the recommendations, saying that sanction was already not required for those accused of sexual violence, as crimes against women lay "outside the discharge of official duty."[xxxviii] However this claim is belied by the situation on the ground.

Few cases involving sexual violence allegedly committed by security forces have been sent for sanction to prosecute to the central government. On record, there are only three received by the Ministry of Defence from 1990-2009 from J&K.[xxxix] In all these cases, however, sanction was denied.

In one case, an army major and his personnel were accused of raping a woman and a 16-year old girl in 1997. Following investigation, the J&K state home department forwarded the case to the Ministry of Defence for permission to file charges[xl] and prosecute the major and his personnel. The Ministry of Defence declined permission to prosecute in a civilian court

In its response outlining the reasons for not granting sanction, the Ministry said to the J&K police that the husband of one of the victims was "a dreadful Hizbul Mujahideen militant" and "the victim was forced to lodge a false allegation against the army and his unit by anti-national elements to malign the image of the security forces."[xli]

The number of cases sent for sanction on record is not representative of the magnitude of sexual violence perpetrated by the armed forces. Many of the same reasons that drive underreporting in the rest of India drive the low number of reported cases of sexual violence by security forces in J&K, and the lack of documentation of these cases. Interviews with families, lawyers and activists by Amnesty International India revealed that fear of reprisal, social stigma within local communities, and lack of police cooperation to register cases are all causes of underreporting.

There are no public records of the number of sanctions sought from areas of northeast India.

Beyond the AFSPA: A System of Impunity

Activists in both J&K and north-east India have highlighted other ways in which the AFSPA and the militarization of J&K have contributed to other practices in the criminal justice system that strengthen the effective immunity that members of security forces enjoy, and prevent victims of rights violations from being able to access justice.

Shafkat Hussain, a prominent lawyer who began practicing in the early 1990s in J&K, at the height of the armed uprising, told Amnesty International India, "How could anyone, including the police, file a case against the army? How can you do this in Kashmir? From 1990 to 2006, the police and anyone else filed very, very few cases against the army."

Lawyers in J&K have told Amnesty International India that police have been known to refuse to register cases against members of security forces, or delay filing cases. Investigations have gone on for five years or more in cases documented by local activists, and some have not been completed even after 15 years. Activists say that police officers are also threatened, or offered bribes, to close cases.

Lawyers and police personnel have told Amnesty International India that even today, the army largely refuses to cooperate with police investigations. Investigations into an incident of alleged mass rape in the towns of Kunan and Poshpora in J&K in 1991 reopened this year after representatives of the victims filed public interest litigation before the J&K High Court. However, police investigations have again stalled. Police personnel have said that among other difficulties, the army has refused to cooperate with police investigations, despite court orders requiring them to do so.

Families of victims of alleged extrajudicial executions, sexual violence, and custodial deaths have said that members of security forces have threatened and harassed them to force them to withdraw their complaints.

Activists in J&K have estimated that just six cases of potential human rights violations in J&K committed by personnel of the Rashtriya Rifles unit of the army, between 1999 and 2011, have been tried by court-martial.[xlii] However, authorities have consistently withheld information about court-martials involving other units of the Army and paramilitary forces.

In Manipur, the Justice Hegde Commission noted that there was inadequate oversight of investigations, and "serious lapses" from the police in gathering evidence.

The Commission said that the police had been investigating the six cases it examined for over three years. In one case, the committee found that six different investigating officers had overseen a single investigation that lasted more than a decade. The commission said that the decision about when an investigation should be concluded, "depends solely on the whim of the investigating officer."

After repeated requests, the commission was told that there was no official record of basic information about the number of civilians killed or injured by the police, army or special forces in Manipur.

Recommendations

States worldwide face the challenge of promoting security without sacrificing human rights. Amnesty International India recognizes the duty of the Indian government to protect people from rights abuses and crimes, including those committed by armed groups. However the AFSPA has been ineffective in meeting these goals, and has instead contributed to the creation of a 'culture of impunity' in areas where it is operational.

As the Justice Hegde Commission noted, "the continuous use of the AFSPA for decades in Manipur has evidently had little or no effect on the situation," while it has led to "gross abuse". The application of the AFSPA in J&K has created a similar situation, where impunity for rights violations by security forces has actually contributed to further abuses. As the Justice Verma committee noted, the use of the AFSPA has also legitimized sexual violence against women.

The Government of India must respect people's rights to life, liberty, assembly and remedy, and send a clear message that no rights violation by its forces will be tolerated.

Amnesty International India urges the Government of India to:

- Repeal the Armed Forces Special Powers Acts, 1958 and 1990.
- As an interim measure, pending repeal of the AFSPA, grant sanction to pending cases for prosecution of members of security forces suspected of human rights violations, and remove the requirement for sanction to prosecute in all cases of alleged human rights violations.
- Ensure that security legislations comply fully with India's international legal obligations and are in line with international standards including the UN Principles for the Prevention of Extra-legal, Arbitrary and Summary Executions.

Amnesty International India urges state governments in states where the AFSPA is in force to:

- Initiate full and independent investigations into all human rights violations, including sexual violence and extrajudicial executions, allegedly committed by security forces in areas where the AFSPA is in force; where sufficient admissible evidence is found, prosecute suspects – including those with command responsibility - in fair and speedy trials in civilian courts, without recourse to the death penalty.

- Ensure that victims of human rights violations are provided effective reparation, including adequate compensation and rehabilitation.

- Ensure that police officials are held accountable for any lapses in registering or investigating cases of human rights violations allegedly committed by security forces.

- Ensure that law enforcement personnel, including security forces that carry out law enforcement, are trained in upholding international standards, including the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

- Protect the civilian population from rights abuses and violent crimes, including acts committed by armed groups, and prosecute those responsible for such attacks within the

framework of criminal law and in conformity with international human rights law and standards.

ENDNOTES

[i] "The Report of the Committee on Amendments to Criminal Law" Government of India. 23 January 2013. Committee led by retired Justice J.S. Verma; and "Extrajudicial Killings in Manipur" Government of India. 4 April 2013. Commission led by retired Justice Santosh Hedge.

[ii] Several UN bodies and experts, including the Special Rapporteur on extrajudicial, summary or arbitrary executions (2013) and the Special Rapporteur on the situation of human rights defenders (2012), have said that the AFSPA must be repealed.

[iii] A number of Indian bodies, including the Second Administrative Reforms Commission, the Jeevan Reddy Committee to review the AFSPA, and the Prime Minister's Working Group on Confidence-Building Measures in J&K, have urged repeal of the AFSPA.

[iv] Interview between (Retd.) Justice J.S. Verma and NDTV. 30 January 2013. http://www.ndtv.com/article/india/your-call-with-justice-retd-js-verma-full-transcript-324315

[v] The Justice Verma Committee was not the first national body to recognize the plight of women in "disturbed" areas. Referring to 'Women in Disturbed' areas, the Planning Commission in its 12th Five-year Plan, stated "Women in disturbed areas face special issues including continuous army presence, suspended civil rights and lack of normal access to facilities/services due to continuous violence. They are most vulnerable to atrocities and need special attention in areas like health care measures, schools, free legal aid and so on." The Planning Commission went on to say that it would conduct a gendered review of the AFSPA and document human rights violations under the AFSPA as they relate to women, and perform a needs assessment of women in disturbed areas.

[vi] Although the Commission submitted its report to the Supreme Court on 4 April 2013, the Court refused to make the report public, claiming the media and human rights groups would "sensationalize" its contents, according to statements by the petitioners. The petitioners, a Manipur-based victims' group and a local human rights organization, only secured a copy of the report in July 2013.

[vii] Commission of Inquiry. Santosh Hegde Commission Report. Page 93. 4 April 2013.

[viii] Special Rapporteur on Violence against Women, its causes and consequences finalises country mission to India. 1 May 2013. Rashida Manjoo.

[ix] Cristof Heyns observed that "impunity for extrajudicial executions is the central problem. This gives perpetrators a free rein, and leaves victims in a situation where they either are left helpless, or have to retaliate." Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Cristof Heyns, Mission to India. 29 May 2013.

[x] Sandeep Joshi. "Army's stand makes it hard to amend AFSPA: Chidambaram." 2013. The Hindu. http://www.thehindu.com/news/national/armys-stand-makes-it-hard-to-amend-afspa-chidambaram/article4386754.ece

[xi] PTI: Srinagar. "Discussions on the AFSPA to continue, says Omar Abdullah." 3 July 2013. The Indian Express. http://www.indianexpress.com/news/discussions-on-afspa-to-continue-says-omar-abdullah/1137156/

[xii] Lt. Gen. Harwant Singh, Former Deputy Chief of Staff for the Army. "AFSPA in J&K: Selective withdrawal may be harmful." Indian Defence Review. 8 Jan. 2013. http://www.indiandefencereview.com/afspa-in-jk-selective-withdrawal-may-be-harmful/

[xiii] Indian Defence Review. "Justice Verma Committee Report and AFSPA." Lt. Gen. Harwant Singh. 4 February 2013. http://www.indiandefencereview.com/justice-verma-committee-report-and-afspa/

[xiv] Major General Dr. G. D. Bakshi. "AFSPA debate: Disarming the state." 18 November 2011. The Times of India. http://articles.timesofindia.indiatimes.com/2011-11-18/india/30414142_1_afspa-special-powers-indian-army

[xv] Supreme Court of India. Naga People's Movement of Human Rights vs. Union of India. 27 November 1997

[xvi] Supreme Court of India. Naga People's Movement of Human Rights vs. Union of India. 27 November 1997

[xvii] Amnesty International, India: Briefing on the Armed Forces (Special Power) Act, 1958, AI Index: ASA 20/025/2005, 9 May 2005.

[xviii] The Supreme Court has ruled that any law, to be valid, must not violate this framework. Maneka Gandhi vs. Union of India, 25 January 1978

[xix] Section 7. Protection of persons acting in good faith under this 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." The Armed Forces (J&K) Special Powers Act, 1990. 10 September 1990. Duplicate clause found in Section 6 of the Armed Forces Special Powers Act, 1958.

[xx] Rights groups have pointed out that this ruling effectively makes the qualification that the act be done as part of a soldier's 'official duty' redundant, as every request for prosecution would need sanction from the central government. Alleged Perpetrators report, p. 9. International People's Tribunal J&K.

[xxi] Hindustan Times. "Pathribal Encounter: Court-martial proceedings boycotted." Peerzada Ashiq. 30 January 2013. http://www.hindustantimes.com/India-news/Srinagar/Pathribal-encounter-Court-martial-proceedings-boycotted/Article1-1003957.aspx

[xxii] http://www.amnesty.org/en/for-media/press-releases/india-pathribal-ruling-setback-justice-jammu-and-kashmir-2012-05-01

[xxiii] Commission of Inquiry, Santosh Hegde Commission report, p. 10. 4 April 2013.

[xxiv] Commission of Inquiry. Santosh Hegde Commission report, p. 91. 4 April 2013.

[xxv] Commission of Inquiry. Santosh Hegde Commission report, p. 91. 4 April 2013.

[26] Commission of Inquiry. Santosh Hedge Commission report, p. 91. 4 April 2013.

[xxvii] General Comment No. 31, para 18

[xxviii] Dr. Subramanian Swamy vs. Dr. Manmohan Singh and Anr. Supreme Court of India. 31 January 2012.

[xxix] Communication from Ministry of Defence dated 03 April 2012 under Right to Information Act.

[xxx] Section 24(1), Right to Information Act, 2005. "Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government: Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub- section: Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in section 7, such information shall be provided within forty- five days from the date of the receipt of request."

[xxxi] The State Home Department of J&K submitted an affidavit to the J&K High Court in 2009 listing 458 cases received for grant of prosecution sanction since 1990. Of those, 50 appeared to have been listed as forwarded to the central government, either the Ministry of Home Affairs or the Ministry of Defence.

[xxxii] Affidavits filed before the High Court J&K from Ministry of Defence and State Home Department (J&K) in 2009.

[xxxiii] Estimate derived from crosschecking applications listed as sent as of 2009 by the J&K State Home Department and listed as received by the Ministry of Defence in 2011 and 2012. Information provided through RTI requests.

[xxxiv] The sanction process: The police department, upon completion of investigations, is responsible for seeking sanction to prosecute in order to present charges against the accused in a court of law. When an investigation is completed, the police headquarters sends the case to the J&K State Home Department, which then forwards the case to either the Minstry of Home Affairs or Minsitry of Defence depending upon whether the accused is a member of the army or paramilitary (the paramilitary forces, including central reserve police forces fall under the jurisdiction of the Ministry of Home Affairs). The central government then informs the state home department of its decision, and the state home department communicates the decision to the police headquarters. Families do not play a role in this process and thus are dependent on the police to receive communication about the status and results of the application process.

[xxxv] Interviews conducted by Amnesty International India in September 2013.

[xxxvi] Commission of Inquiry. Santosh Hedge Commission report. Page 94. 4 April 2013.

[xxxvii] Commission of Inquiry. Santosh Hedge Commission report. Page 94. 4 April 2013.

[xxxviii] Amnesty International India interview with a former senior diplomat and current strategic affairs and defence expert. May 2013.

[xxxix] Communication from the Ministry of Defence (Army) dated 5 June 2009. Right to Information Act, 2005.

[xl] Under section 7 of the AFSPA, charges may be prepared during the course of police investigations, but the case cannot be taken cognizance of by a court without sanction from the central government. *CBI versus General Officer Commanding. Supreme Court of India.*

[xli] Communication from the Ministry of Defence (Army) dated 22 December 2011. Right to Information Act, 2005.

[xlii] Alleged Perpetrators: Stories of Impunity. International People's Tribunal on Human Rights and Justice in Indian-Administered Kashmir [IPTK]. December 2012. Page 11.

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