

## Militarisation and Armed Conflict

### SUMMARY OF KEY ISSUES IN PREVIOUS UPR CYCLES

During its second UPR in 2012, India received 3 recommendations related to either repeal of the Armed Forces Special Powers Act (AFSPA) or the adoption of negotiated amendments to address the accountability of security personnel. At least 7 recommendations were made addressing the issues such as training programmes on human rights for its law enforcement officials as well as judicial and legal officials, access to justice in cases of human rights violations committed by security forces personnel and an independent committee to receive claims against the police referred to by the Special Rapporteur on Human Rights Defenders. India did not accept any of these recommendations.

India's claim that all human rights violations are redressed stands sharply refuted by the report of the National Human Rights Commission (NHRC) which in its report to UPR2 stated that AFSPA remains in force in Jammu & Kashmir (J&K) and the North-Eastern States, conferring an impunity that often leads to the violation of human rights. The Indian government's response stressed that most complaints of army and paramilitary abuses were found to be untrue and that the Act had been upheld by the Supreme Court of India (SC). India's response failed to acknowledge that it is in breach of its international human rights obligations.

### NATIONAL LEGAL FRAMEWORK

AFSPA, 1958 (North East India), AFSPA, 1990 (Jammu & Kashmir): The law is operational in government designated 'disturbed areas'. It grants extraordinary powers to the armed forces in such areas such as allows them to fire upon anyone on suspicion; arrest without warrant; search and seize any premises or property on reasonable suspicion. In addition to this, the security forces enjoy legal immunity from prosecution. This Act is currently operating in the states of Assam, Meghalaya, Arunachal Pradesh, Mizoram, Nagaland, Manipur and J&K.

Unlawful Activities Prevention Act, 1967: The Act defines terrorism in a vague manner, including under its ambit damage to property and "disruption of supplies or services essential to community" thus infringing on the fundamental right of citizens to demonstrate. Other provisions include the power to detain an accused for 180 days without filing charges anyone including up to 90 days in police custody.

The National Security Act, 1980 and Chhattisgarh Special Public Security Act, 2005: these Acts provide for "preventive detention" of Indians as well as foreigners. The definition of 'unlawful activity', includes committing an act, uttering words, writing or making visual representations that may 'create risk or danger' for public order, peace and public tranquillity or create an impediment in the administration of law.

J&K Public Safety Act 1978: The Act empowers the State Government to detain anybody for two years without trial under the pretext of maintaining public order, and after an amendment in 1990; the State of J&K is now further empowered to keep the detainees in the jails outside the State.

Maharashtra Control of Organised Crime Act 1999: this Act departs from basic fair trial principles and allows the state to intercept wire, electronic or oral communication; makes confessions made to senior police officials admissible in evidence and can be read against the co-accused too. There is also no provision of an anticipatory bail for 6 months to the accused

Indian Penal Code, 1860 (S.124 A): This provision under the IPC has seen an increase in its misuse to crush and curb all voices of dissent or criticism of the government. It is used to specifically target political dissenters, who consequently suffer incarceration, face criminal prosecution, harassment and at times even conviction.

Code of Criminal Procedure, 1973 (S. 197): The requirement of prior sanction of the state for criminal prosecution of a public servant has largely become a ruse to obstruct and delay prosecution, and becomes a legal shield against accountability.

### CHALLENGES

There has been increased militarisation in Jammu and Kashmir after the unrest that followed the killing of Burhan Wani in July, 2016. There has been use of excessive and disproportionate force by the police. Pellet guns have been used in Kashmir to control protests by civilians which have led to more than 11,000 people being wounded including around 450 being injured by pellet injuries. From July to November, 2016, the state government ordered the shutdown of mobile communication and internet services for long periods in the Kashmir valley in order to maintain law and order. Further, in October, 2016, a local newspaper 'Kashmir Reader' was ordered by the State Government to stop publication. India, in August 2016, rejected UNHRC's request to visit Kashmir to investigate alleged human rights violations by Indian security forces.

In March 2016, the report by the Editors Guild of India revealed that in Chhattisgarh since July 2015, four journalists have been arrested on politically motivated charges and many journalists have been forced to leave Chhattisgarh due to intimidation by the police and vigilante groups. Tribal leader Soni Sori was attacked by some unknown assailants in South Chhattisgarh in February 2016 and the Jagdalpur Legal Aid Group (JagLAG) (women lawyers providing free legal assistance to tribal pre-trial detainees, in five districts of Chhattisgarh) were accused of being part of Maoist armed groups and were forced to leave. Similar attacks have taken place on other human rights defenders working in Chhattisgarh such as Bela Bhatia.

### ISSUES AND IMPACTS

In October, 2015, and January 2016, several tribal women and girls from remote villages of Bijapur, Sukma and Dantewada Districts in Chhattisgarh, reported accounts of being raped and sexually assaulted by police and paramilitary troops deployed in anti-Maoist operation. An FIR was registered in these cases in November, 2015 and January 2016 against the security forces, but none of the perpetrators have been arrested.

In December, 2015, the NHRC took suo moto cognizance of the assault and sexual violence perpetrated by the security forces. In March 2016, the NHRC sent a team to conduct spot investigation and its inquiry report found that 16 women prima facie victims of rape, sexual and physical assault by police personnel. However, the Inquiry Report of the NHRC has not yet been made available to the public.

In a 2011 judgment of the SC reported as Nandini Sundar & Ors. Vs. State of Chhattisgarh (2011) 7 SCC 547, the Court ruled that the former members of vigilante groups like Salwa Judum must be disarmed and not allowed to take part in any combat operations against Maoists. Since last two years, despite the Court's clear injunction against the use of local youth and surrendered Maoists in counter insurgency, the state continued to arm and use local youth under the name of the 'Armed Auxiliary Force' and the District reserve guards (DRG's). In 2016, many attacks and harassment of human rights defenders have been carried out by these vigilante groups such as Samajik Ekta Manch and AGNI who are supported by the local police during such incidences.

## CHALLENGES

CEDAW Committee Report (2014) recommended the repeal or amendment to AFSPA in accordance with the Justice Verma Committee Report; removal of prior sanction for prosecution of armed forces and police in cases of sexual violence against women; and to confer power on NHRC to inquire into complaints against armed forces. J. Verma Committee Report addressing sexual violence against women in conflict areas like Kashmir, North-East, Chhattisgarh, Odisha and Andhra Pradesh stated “impunity for systematic sexual violence in the process of internal security duties is being legitimized by AFSPA, which is in force in large parts of our country.”

## ISSUES AND IMPACTS

The Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns stated that, in reference to around 2,700 unmarked graves containing over 2,943 bodies of victims of extrajudicial executions from 1990 to 2009 in J&K, the Government expressed its intention to conduct investigations into unmarked graves. However, this has not yet transpired. The report recommended appointment of Commission of Inquiry in areas affected by extrajudicial executions and removal of legal barriers for the criminal prosecution of members of armed forces.

## RECOMMENDATIONS

**Repeal AFSPA and other security laws.**

**Amend the continuance of AFSPA and related legal protocols in accordance with recommendation of Justice Verma Committee Report.**

**Make provisions to ensure that 'disturbed areas' under AFSPA are regularly reviewed till AFSPA is amended/repealed every six months.**

**Remove requirement of sanction for prosecution of armed forces and Central Armed Police Forces and grant permission to enable prosecution in all pending cases involving human rights violations.**

**Amend the Army Act, and similar provisions in all laws governing the Central Armed Police Forces, to guarantee that cases of human rights violations of civilians are not tried in military courts.**

**Ensure that all allegations of human rights violations are promptly and independently investigated, and that perpetrators are prosecuted in civilian courts, and victims and their families receive reparations.**

**Investigate all allegations of excessive and lethal use of force, and prosecute and punish the perpetrators in uniform.**

**Ensure that sexual violence perpetrated by armed forces is brought under purview of criminal law.**

**Setting up of special commissioners who are either judicially or legislatively appointed for women's safety and security in all areas of conflict in the country.**

**Confer power on NHRC to investigate cases against armed forces personnel, especially violence against women.**

**Provide systematic training on women's rights to the Armed forces and other military personnel.**

**Appoint Commission of Inquiry in areas affected by extrajudicial executions.**

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