

WGHR STATEMENT ON ARMED FORCES (SPECIAL POWERS) ACT

New Delhi, 27 August 2012 - When the Armed Forces (Assam and Manipur) Special Powers Bill was introduced in the Lok Sabha in August 1958, MP Mahanty of Dhenkanal raised a point of order stating that “we cannot proceed with this Bill unless certain constitutional obligations imposed under article 352(1) of the constitution are fulfilled” as certain parts of the bill directly come under emergency provisions of the Indian Constitution. The then Union Home Minister Mr. G. B. Pant justified the bill arguing that ***“the local Government may make use of the army, if it so chooses in the manner provided in this Bill, and can use the army only for this limited purpose, and thereafter the ordinary processes of law are to be followed”***.

Today, 54 years have gone by “the ordinary processes of law” is yet to replace the “special powers” in many part of the country. In fact the application of the “special powers” has been steadily spreading ever since. The “disturbed areas” confined to only the Naga Hills in 1950s spread to Lushai Hill in 1960s, to Tripura and Imphal valley in 1970s, Brahmaputra valley and Punjab in 1980s and Kashmir valley in 1990s. In these areas, the fundamental rights such as the right to life, the right to a fair trial, the right to remedy and reparation, the right against torture and the right against arbitrary detention (as well as a series of economic, social and cultural rights) have been consistently violated.

The exercise of special powers have also gone way beyond the “limited purpose” that the Home Minister proposed as the military stationed in the ‘disturbed areas’ embarks upon its mission to “win the hearts and minds” of the population. Over and above the usual leveling of football grounds or organizing medical camps, the military civic action programmes are now intruding into academic seminars and religious ceremonies! The prolonged application of this Act has not only institutionalized militarism and a climate of impunity but has also alienated the public and fuelled a cycle of violence, increasing insurgency rather than dampening it.

The resistance against AFSPA is no longer confined to opposition parties or civil society but many official bodies including the Union Home Ministry’s Committee to Review the Armed Forces Special Powers Act (2005), the Second Administrative Reforms Commission (2007) and the Working Group on Confidence-Building Measures in Jammu and Kashmir (2007) have all recommended its repeal.

AFSPA has come up prominently during the second review India’s human rights record in the Working Group on Universal Periodic Review (UPR) of the UN Human Rights Council in May 2012 and several recommendations were made:

1. Repeal AFSPA or adopt the negotiated amendments to it that would address the accountability of security personnel, the regulation concerning detentions as well as victim’s right to appeal in accordance to international standards (Slovakia);
2. Review AFSPA to align it with its obligations under the International Covenant on Civil and Political Rights and other international standard (Switzerland); and
3. Carry out an annual review of the AFSPA aiming to gradually reduce its geographical scope (France).

4. Guarantee effective access to justice in cases of human rights violations committed by security forces personnel with regard to the use of torture (Spain).
5. Implement effective judiciary proceedings making possible the bringing to justice security forces personnel who have committed human rights violations (France)

This is not the first time that the issue of AFSPA is raised in the UN forum, it came up during the first UPR review in 2008 and earlier almost all the major human rights treaty bodies of the UN have exposed how AFSPA violates a series of universal human rights standards and have recommended its repeal.

Ms. Margaret Sekaggya, UN Special Rapporteur on Human Rights Defenders, in her report presented to the UN Human Rights Council (March 2012) following her official visit to India in January 2011, highlighted the plight of Irom Sharmila, who has been on a hunger strike since 2000 demanding the repeal of AFSPA and recommended that “*The National Security Act, the Armed Forces (Special Powers) Act, the Unlawful Activities Act, the Jammu and Kashmir Public Safety Act and the Chhattisgarh Public Safety Act should be repealed*”.

Prof. Christof Heyns, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions who also made an official visit to India in March 2012, also describes AFSPA “*more intrusive than it would be the case under a state of emergency, since the right to life is in effect suspended, and this is done without the safeguards applicable to states of emergency*”. The then Union Home Minister Mr. P. Chidambaram, promptly stated in the media that his Union Home Ministry has already recommended amendments to AFSPA, but a final decision on the matter is pending with the Cabinet Sub Committee on Security. The Defence Ministry, it has been reported, is blocking the proposed amendment. In this context it is interesting to note that the Government of India’s interlocutors’ report on Jammu and Kashmir, made public in May 2012, has also recommended the review AFSPA and went on to urge the Defence Ministry to consider how to respond “positively” to the issue.

WGHR strongly urges the government of India to utilize this opportunity of the UPR process at the UN Human Rights Council to repeal AFSPA as recommended by numerous countries. Such an act from the Government would be consistent with India being a democratic nation that claims to comply with its constitutional mandate and international human rights commitments. ■

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The Working Group on Human Rights in India and the UN – a national coalition of fourteen human rights organisations and independent experts – works towards the realisation of all civil, cultural, economic, political and social human rights in India and towards holding the Indian government accountable to its national and international human rights obligations. For information on WGHR, please visit: www.wghr.org