

India: repeal Armed Forces Special Powers Act immediately

NOVEMBER 5, 2015

On the 15th anniversary of Irom Sharmila's hunger strike, the International Commission of Jurists calls on the Indian government to repeal the Armed Forces Special Powers Act without further delay.

Irom Sharmila began a hunger strike in November 2000, calling for the repeal of the AFSPA, following the unlawful killing of 10 civilians by security forces purportedly acting under it in Malom.

"The AFSPA has facilitated gross human rights violations by the armed forces in the areas in which it is operational," Sam Zarifi, Asia-Pacific Director of the ICJ said. "It is a repressive and draconian law that should have no place in today's India".

Once an area is declared "disturbed" under the AFSPA, armed forces are given a range of "special powers". These include the power to arrest without warrant, to enter and search any premises, and in certain circumstances, "fire upon or otherwise use force, even to the causing of death". These and other vaguely framed provisions give armed forces broad powers that are inconsistent with the government's obligations to respect the right to life.

In addition to leading to many unlawful killings in the areas in which it has been in effect, the provisions of the AFSPA have also facilitated torture, rape and enforced disappearances.

"The AFSPA has created a culture of impunity, shielding security forces from accountability in India for crimes under international law, and making it impossible for victims of human rights

violations to access justice”, Sam Zarifi said.

Under the AFSPA, governmental permission, or sanction, is required before any member of the armed forces can be prosecuted for crimes in a civilian court. Decisions regarding sanction take many years, and as yet, no member of the armed forces has been prosecuted in a civilian court.

The Indian government has often justified the need for the AFSPA as necessary to address terrorism and militancy in “disturbed areas”. “International law requires and experience shows that effective counter- terrorism measures must reinforce human rights, and not undermine and violate them,” said Sam Zarifi.

Calls for the repeal or amendment of the AFSPA –including from official bodies – have come from near and far for a number of years.

Several UN human rights bodies have recommended that the AFSPA be repealed or significantly amended. These include the Committee on the Elimination of Discrimination against Women (2014), the Special Rapporteur on violence against women (2014), the Special Rapporteur on extrajudicial, summary or arbitrary executions (in 2013 and again in 2015), the Special Rapporteur on the situation of human rights defenders (2012), the Committee on the Elimination of Racial Discrimination (2007), and the UN Human Rights Committee (1997).

In recent years, prominent Indian bodies have recognized the brutality of the AFSPA and echoed demands for repeal or amendment. The Justice Jeevan Reddy Committee set up by the Government of India to review the working of the AFSPA, has advocated its repeal. The Fifth Report of the Second Administrative Reforms Commission seconded this recommendation.

The Verma Commission, set up by the government following the gang rape in Delhi in 2012, called for the repeal of sanction provisions under the AFSPA as they relate to sexual offences. In 2015, a High Level Committee on the Status of Women also reportedly advocated its repeal.

In 2012, the Extra Judicial Execution Victims Family Association, Manipur (EEVFAM) filed a petition at the Supreme Court of India, alleging that between 1979 and 2012, 1528 people were extra-judicially executed by security forces in Manipur.