

Salient Points of Amnesty International's Report on AFSPA (July 1, 2015)

International human rights watchdog, Amnesty International (AI), has released a latest report on Armed Forces Special Powers Act (AFSPA) in Indian Occupied Jammu and Kashmir on July 1, 2015, "Denied: Failures in accountability for human rights violations by security force personnel in Jammu and Kashmir". The report severely criticizes the Act for creating an environment of impunity for Indian security forces in IOK enabling them to commit atrocious human rights violations without any fear of being tried.

The report recommends that India withdraw AFSPA from IOK, turn over cases of human rights violations and disappearances to civil courts, and invite the UN Special Rapporteur and the UN Working Group on disappearances to visit with "unimpeded access" to victims and witnesses. "Repeal the Armed Forces Special Power Act. The law continues to feed a cycle of impunity for human rights violations (in IOK)," the AI has asked Government of India.

The report documents the obstacles to justice faced in several cases of human rights violations committed by Indian security force personnel in Indian Occupied Jammu and Kashmir. The report is based on in-depth research in IOK, including interviews with 58 family members of victims of alleged human rights violations by security forces, Right to Information applications, examination of police and court records, and interviews with civil society groups, lawyers, and government officials. It focuses particularly on Section 7 of the AFSPA, which grants virtual immunity to members of the security forces from prosecution for human rights violations.

It reveals that the central government has denied permission, or 'sanction', to prosecute under section 7 of the AFSPA in every case brought against members of the army or paramilitary, or in a small number of cases, has kept the decision pending for years. The AI has sought removal of all "requirements of sanction or prior permission" to prosecute security force personnel involved in the human rights violations.

"One of the primary facilitators of impunity for security force personnel has been the existence of provisions like Section 7 of the Armed Forces Special Powers Act (AFSPA), 1990 under which members of the security forces are protected from prosecution for alleged human rights violations," reads the report. "Remove all requirements of sanction or any prior executive permission for prosecution of security

force personnel from all relevant legislations including the Armed Forces Special Powers Act and the Code of Criminal Procedure”.

“To date not a single alleged perpetrator of human rights violation has been prosecuted in a civilian court. Impunity is a long standing problem in J&K... In this atmosphere, faith in judiciary and Government is nonexistent,” the report said.

“5 July 2015 will mark 25 years since the AFSPA in effect came into force in Jammu and Kashmir. Till now, not a single member of the security forces deployed in the state has been tried for human rights violations in a civilian court. This lack of accountability has in turn facilitated other serious abuses,” said Minar Pimple, Senior Director of Global Operations at Amnesty International while commenting on the report.

It says victims and their families face “intimidation and threats from security forces when attempting to bring cases against accused security force men”.

One of the grim examples of AFSPA’s disastrous consequences, says the report, is the case of Javaid Ahmad Magray, 17-year-old student of Nowgam district. It says that on April 30, 2003, Magray was picked up by personnel of Assam Regiment. A few hours later, his family found him dead in a hospital. An enquiry, led by then district magistrate of Nowgam, concluded that “deceased boy was not a militant...and has been killed without any justification by a Subedar [a junior commissioned officer in the Indian Army] and his army men being the head of the patrolling party.”

The State Home Department, according to the report, wrote a letter to the Ministry of Defence in July 2007, seeking the prosecution of nine Army personnel of Assam Regiment. After six years, the report says, the Ministry rejected the application, arguing that “the individual killed was a militant from whom arms and ammunition were recovered. No reliable and tangible evidence has been referred to in the investigation report.”

The report says the Army has dubbed “more than 96 per cent of all allegations of human rights violations against its personnel in Jammu & Kashmir as false or baseless.” “However the evidence for finding the majority of allegations false is not publicly available. Few details of the investigations or military trials conducted by the security forces are available to the public,” it adds.

The report says in a “rare exception”, in November 2014, the Army had revealed that a court martial had convicted and sentenced to life imprisonment five soldiers for

shooting and killing three men in a fake encounter in Machil area of north Kashmir's Baramulla district, in 2010. "The convictions in the Machil case were a welcome measure. But for justice to be consistently delivered, security force personnel accused of human rights violations should be prosecuted in civilian courts," Iyer told media persons.