

To
Justice B P Jeevan Reddy
Chairperson
The Committee to Review the Armed Forces (Special Powers) Act, 1958
Jawaharlal Nehru Stadium
Near Gate No 23 - A
New Delhi – 110003

14 January 2005

Respected Justice Reddy,

SUB: SUBMISSION BY SAHELI WOMEN'S RESOURCE CENTRE
FOR THE REPEAL OF AFSPA

This is in response to the notice from the Committee to Review the Armed Forces (Special Powers) Act, 1958 (AFSPA) inviting individuals, organisations, parties, institutions and all non-governmental organisations interested in the issue to send their responses which will be considered while reviewing the working of the Act and make recommendations for its amendment or replacement (your notification of 9 Dec 2004, Times of India, New Delhi).

Saheli is a Delhi-based women's organisation working since 1981 on issues of women's rights and gender-based discrimination. In our outreach and solidarity work, we work closely with human rights organisations in different parts of the country. We have been consistently highlighting human rights abuses in the North East and Kashmir, with particular attention to the impact of women. In the course of our work, we have also been a part of fact-finding teams to the North East, where we have had the opportunity to travel extensively and meet with women and men in villages of Nagaland, Manipur, Assam, Meghalaya and Tripura. The heart rending stories of atrocities over more than four decades made it amply clear that the enforcement of the AFSPA has resulted in innumerable incidents of arbitrary detention, torture, rape, and looting by security personnel. These testimonies are contained in two of the accompanying documents to this submission:

1. *Where 'Peacekeepers' have Declared War: Report on Violations of democratic rights by security forces and the impact of the Armed Forces (Special Powers) Act on civilian life in the Seven States of the North East (April 1997)*, National Campaign Committee Against Militarisation and Repeal of Armed Forces (Special Powers) Act. (1997)
2. *Four Years of the Ceasefire Agreement between the Government of India and the NSCN: Promises and Pitfalls*, Ram Narayan Kumar with Laxmi Murthy. (2002)

At the very outset we would like to state that we have serious issues with **the Terms of Reference of the Committee.**

- The mandate of amendment/replacement and not repeal raises grave concerns that the process will inevitably result in legislation (new or amended) with same legal and human rights implications as the AFSPA; such **foreclosing of the option to entirely repeal and strike from the law books the Act is deeply problematic.** For it is well-known and documented that the AFSPA for almost half a century, has aided, abetted and given impunity to human rights violations on a wide scale.
- We would also like to draw the attention of the Committee to widespread human rights abuses by the security forces in Jammu and Kashmir - issues that have been of greater concern since the application of a variant of the AFSPA in the region in 1990. For too long, victims of arbitrary killings, torture, detention, molestation and rapes have been denied justice. **The Committee must therefore extend its mandate to review the working of the law in Jammu & Kashmir as well.**

Yet, despite these reservations, we have chosen to place our concerns before the Committee in the hope that you will take into account the long and chequered history of this legislation in the North-East as well as Jammu & Kashmir with an open mind, and that your final recommendations will **recommend nothing less than the Repeal of the Act that has been so long overdue.**

Heavy militarisation in the north east has taken its toll on the very notion of "normal civilian life" and led to innumerable instances of violations committed against civilian populations. Encounter deaths, extra judicial killings, disappearances, arbitrary arrests, rape and torture have been a regular feature among the relentless series of atrocities meted out to the people by the army with impunity, especially in areas where they are protected by legislation like AFSPA.

The most widely known incidents of such excesses are the horror of army torture and violence against the villagers of Oinam (Manipur) in 1987; the gang rape of the women of Ujanmaidan (Tripura) by security forces in 1988; the terror wreaked by the army in Assam during Operation Rhino in 1991; the shelling of the town of Ukhrul (Manipur) with mortars in May 1994; and December 1994 on Mokokchung (Nagaland), indiscriminate firing on civilians by armed forces personnel when a tyre of their own jeep burst in the town of Kohima (Nagaland) in March 1995; torture of the villagers of Namtiram (Manipur) in 1995;

the army's reign of terror in Jesami (Manipur) in January 1996; and the rampage of the village of Huishu (Manipur) in March 1996 and of course, most recently, the torture, rape and killing of Thangjam Manorama alias Henthoi (Manipur) 2004.(1)(3)

Needless to say, the impact on women over decades of militarisation has been particularly acute. Daily life has been routinely affected by the arbitrary house searches, body searches, questioning, threats and harassment of all sorts. What this has meant for entire families is a severe impact on their sense of safety and the freedom of mobility – which in turn has had a direct impact on their livelihoods, their safety in fields, their access to forest/forest produce and their ability to receive medical care. At the same time, children for generations have had to grow up without the concept of safety, regular education, easy access to basic facilities or even the freedom to play without fear. The psychological impact of such militarisation has been immeasurable, as of course, has been the sense of alienation that it engenders.

In most operations, be they cordon and search, combing, arrests, searches, or interrogation, the armed forces have, under the aegis of the AFSPA done away with the basic, minimal safeguards accorded to women suspects by the Criminal Procedure Code as well as the SC directives. Arrest by male security personnel, interrogation in army camps and police stations, torture and sexual abuse including rape by security personnel in custody has become routine.

Testimonies presented by survivors, women's groups (both from within and outside the region) of such violence and harassment at several National Conferences of the Women's Movement over the years have highlighted these and many other aspects of life under the rule of the gun. From Oinam to the Manorama case, we have seen how the impunity given to the armed forces under the AFSPA has sharply increased women's vulnerability to molestation, harassment, sexual assault and rape.

Testifying before a fact-finding team in which Saheli was a member, Dr. Yangerla Ao, District Mother and Child Health officer, Mokokchung and member of the Ao Women's Association, estimated that the incidence of rape of Naga women by security forces is at least four times more than the number reported. She cited the example of the rampage on December 27, 1994 by the Task Force of the 16 Maratha Light Infantry in Mokokchung. Many women were raped, sexually assaulted, stripped naked. Their clothes were dipped into petrol to burn down their homes. As a doctor, she examined and treated 15-16 cases of rape and molestation. However, only four victims of rape and four victims of molestation

were prepared to come forward and testify. This is partly due to fear of reprisal by the army men, and partly due to the social stigma attached to rape. (2)

The use of rape as a tactic to terrorise a community into submission is nowhere more apparent than the north east and Kashmir. In fact, as we all know, instances of rape by security forces have been documented even after the ceasefire in Nagaland.

In Jammu & Kashmir mass rape of Kashmiri women by security forces was first documented in the Chapora (Srinagar) mass rape incident on March 7, 1990. According to human rights investigations, mass rape began to be routinely used in search and cordon operations. Investigations into gang rape by the security forces in Pazipora, August 1990, Kunan Poshpora, February 1991, Chak Saidpora, October 1992, Theno Budpathery Kangan, September 1994 and Wavoosa in Srinagar, 1997 establish rape as a common form of collective punishment. (4)

AFSPA : Constitutional Contradictions

The AFSPA which grants armed forces personnel the power to shoot to kill, stands in clear violation of the several Constitutional rights of the citizens of this country, and contravenes both Indian and International law standards. The Act is a violation of the Right to Life enshrined in Article 21 of the Constitution of India which guarantees the right to life to all people: "No person shall be deprived of his life or personal liberty except according to procedure established by law." Judicial interpretation that "procedure established by law" means a "fair, just and reasonable law" has been part of Indian jurisprudence. Yet, Section 4(a) of the AFSPA, grants armed forces personnel the power to shoot to kill and violates the constitutional right to life – a right that is non-derogable i.e. non-negotiable under any circumstances, whatsoever.

A recent judgment of the Delhi High Court is significant. In the case of Ashwani Kumar Gupta who lost his limbs and sustained grievous injuries in following a bomb blast at Chandni Chowk in October 1997 the Court has held that the "...right to life of any citizen is not negotiable." In his judgement, Justice Sanjay Kishan Kaul held that "In a civil society there should not only be punishment for violation of the laws but also compensation for the victims of the crime..." and that "any case of terror, in which the victim loses his life or sustains grievous injury, will reflect on the State's inability to provide a safe and secure environment, guaranteed to each citizen under the Constitution." (The Pioneer. 8.1.05)

The AFSPA also violates the International Covenant on Civil and Political Rights (ICCPR). Indian signed the ICCPR in 1978, taking on the responsibility of securing the rights guaranteed by the Covenant to all its citizens. In particular, the Act is in contravention of Article 6 of the ICCPR guaranteeing the right to life, which is a non-derogable right. This means no situation, or state of emergency, or internal disturbance, can justify the suspension of this right. It also violates Article 9 of the ICCPR which guarantees liberty and security of person.

At the same time, the AFSPA is an emergency legislation that Constitutionally requires to be reviewed every 6 months. That it should be continued to be imposed for years with only a nominal if any process at all, is unacceptable. (*A critique of its specific provisions is attached*) (5).

Special powers for the armed forces on crimes and punishment

But what the AFSPA has meant on the ground is that in case after case of every kind – be they encounter deaths, extra judicial killings, disappearances, arbitrary arrests, rape or torture – citizens have found it impossible to even get a fair hearing, much less access any kind of justice. The examples abound.

In the case of the illegal arrest, rape and torture of Thangjam Manorama alias Henthoi as well, the protest by 12 women activists in Imphal, standing naked in front of the headquarters of the Assam Rifles Headquarters at the historic Kangla Fort Camp in the centre of the city, shouting slogans and carrying a banner which said, 'INDIAN ARMY - RAPE US' on 16 July, 2004 is not just a sign of their anger, it is also a sign of the desperation of the people, a sign of their inability to prevent such violence and harassment by the armed forces, and/or have access to any justice or redressal. (3)

Following the Ujanmaidan case in Tripura (1988) again, when local action and petitions to the government failed to open any doors of justice, it took pressure from the outside, the investigation of an all-woman team and a petition to the Supreme Court by AIDWA (All India Democratic Women's Association) before the perpetrators were found guilty, and compensation granted to the victims. (1)

The Oinam incident (1987) during Operation Bluebird launched Assam Rifles was so ghastly that the Chief Minister, in a confidential communiqué to the Union Home Minister wrote, "The civil law has, unfortunately, ceased to operate in Senapati District Manipur due to

excesses committed by the Assam Rifles with complete disregard shown to the civil administration.the Deputy Commissioner and the Superintendent of Police were wrongfully confined, humiliated and prevented from discharging their official duties by the Security Forces". (2) A nationwide campaign against the disproportionate and unconstitutional powers of the AFSPA followed – a struggle that is on until this day.

Yet the official response has been an adamant affirmation of the AFSPA. General Officer Commanding-in-Chief (Eastern Command) Lt Gen Arvind Sharma, commenting on incidents of molestation and rape by Army personnel in some states of the North-East, said, "in a large army like ours, such incidents are likely to occur... But we make sure those who are on the wrong side are punished." (*Sangai Express, 03 Jan 2005*).

The claim that the armed forces 'own mechanisms' are sufficient to mete out justice to the guilty has been long proven to be dubious. In case after case, the process remains inaccessible to victims, and the lack of transparency of court martial and intra army judicial processes has meant virtually blanket impunity to the guilty.

Even in cases where the armed forces claim to have followed "due process", not only have the proceedings been entirely alienated from the victim, the verdicts/punishments have been a travesty and mockery of justice and the Rule of Law. Take for instance the two most recent verdicts on the crime of rape by Army personnel. According to Defense spokesman Lt. Col. A.K.Batra, one soldier has been dismissed for "breach of discipline", while another soldier has been dismissed and sentenced to one year's imprisonment for "indulging in misconduct"! Under our Constitution army personnel do not enjoy any immunity for rape and murder – the punishment under Law for a man in uniform committing rape is a minimum of ten years. (*Rape in J&K: Army sacks one more soldier. Indian Express. 3.1.05*)

In a country where the conviction for crimes especially for sexual assault are abysmally low conviction rate (believed to be only about 4%) in general, it is shameful for the so-called 'protectors of the nation' to have even less accountability for their crimes. A privilege granted to them by legislations such as the AFSPA.

Can the Review Committee stand by a law that offers army personnel immunity for rape, murder, torture and a host of other heinous crimes?

In Conclusion

It is imperative that the Government of India :

- **Immediately repeal the AFSPA and its variants**
- **Bring the armed forces within the democratic framework of accountability and justice without any further delay.**
- **Remove the military from playing a civil role in the region.**
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Legislations such as the AFSPA have been used as a means to control a people and crush political dissent for far too long. Political problems require political solutions, not military solutions and the extended use of force. It is essential that the Government of India bring the armed forces within the democratic framework of accountability and justice without any further delay. Indeed with 50% of the military forces in India acting in a domestic role, through internal security duties, there is a serious question as to whether the civil authority's role is being usurped.

Until today, democracy has had little chance in the North East. Where dialogue has been established, for instance in Nagaland, the overshadowing of civil life by the security forces has proved an impediment to normalisation of everyday life. De-militarisation coupled with genuine political negotiations is the only way to rebuild democratic processes in the region.

Regards,

Vani Subramanian, Laxmi Murthy

References Enclosed:

- (1) *Where 'Peacekeepers' have Declared War: Report on Violations of democratic rights by security forces and the impact of the Armed Forces (Special Powers) Act on civilian life in the Seven States of the North East (April 1997)*, National Campaign Committee Against Militarisation and Repeal of Armed Forces (Special Powers) Act. (1997)
- (2) *Four Years of the Ceasefire Agreement between the Government of India and the NSCN: Promises and Pitfalls*, Ram Narayan Kumar with Laxmi Murthy. (2002)
- (3) *A New Level of Rage*, Saheli Newsletter, Saheli, May-Aug 2004
- (4) *Reporting Conflict: A Handbook for Media Practitioners*, Dec 2004
- (5) *Critique Of Specific Provisions: The Armed Forces (Special Powers) Act, (1956)*