

Killing with impunity

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Section 6: Impunity to the armed forces: Under Section 6 of the Armed Forces Special Powers Act, "No prosecution, suit or other legal proceedings shall be instituted, except with the previous sanction of the Central Government against any person in respect of anything done or purported to be done in exercise of powers conferred by this Act."

This provision violates India's treaty obligation under Article 2 (3) of the ICCPR according to which: "Each State Party to the present Covenant undertakes: to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

What is more worrying is the fact that Section 6 of the AFSPA has been overtaken by Section 197 of the Criminal Procedure Code amended in 1991 to provide virtual impunity to the armed forces. Impunity has been made a feature of normal criminal jurisprudence. In fact Section 197 of the CrPC has made section 6 of the AFSPA redundant. If the Central Government were to give permission under section 197 of the CrPC, there is no reason as to why the same permission will not be granted under Section 6 of the AFSPA.

The United Nations Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions lucidly summarized the impunity and extrajudicial executions in her report to the 57th session of the United Nations Commission on Human Rights:

"Impunity for human rights offenders seriously undermines the rule of law, and also widens the gap between those close to the power structures and others who are vulnerable to human rights abuses. In this way, human rights violations are perpetuated or sometimes even encouraged, as perpetrators feel

Excerpts from the Asian Centre for Human Rights' 2005 representation to the Committee to Review AFSPA

that they are free to act in a climate of impunity..., extrajudicial killings and acts of murder may sometimes also go unpunished because of the sex, religious belief, or ethnicity of the victim. Longstanding discrimination and prejudice against such groups are often used as justification of these crimes. The increasing difficulties in securing injustice alienate the people from the State and may drive them to take the law into their own hands, resulting in a fur-



ther erosion of the justice system and a vicious circle of violence and retaliation. If unaddressed, such situations may easily degenerate into a state of anarchy and social disintegration. Human rights protection and respect for the rule of law are central to lasting peace and stability. It is, therefore, crucial that conflict prevention strategies and post-conflict peace-building efforts include effective measures to end the culture of impunity and protect the rule of law."

While examining the third periodic report of the government of India, an expert of the United Nations Human Rights Committee stated, "Article 6 of the Armed Forces (Special Powers) Act, which pre-

vented all legal proceedings against members of the armed forces, was extremely worrying; if the Government's fear was that citizens would bring vexatious or frivolous actions, that was a matter better left to the courts to resolve. It was inadmissible for citizens to be deprived of a remedy as was at present the case."

In this concluding observations, the UNHRC noted, "that criminal prosecutions or civil proceedings against members of the security and armed forces, acting under special powers, may not be commenced without the sanction of the Central Government. This contributes to a climate of impunity and deprives people of remedies to which they may be entitled..."

There are adequate legal guarantees for preventing vexatious and frivolous actions. However, by making it mandatory to seek prior permission of the Central Government to initiate any legal proceedings against the armed forces, the executive has expressed its lack of faith in the judiciary.

Recommendations: The supremacy of the judiciary must be upheld and the requirement of government sanction for civil proceedings be abolished and be left to the courts to decide whether proceedings are vexatious or abusive; Any armed forces personnel who does not follow the procedure established for maintenance of public order, arrest, search and seizure shall be punishable with imprisonment which may extend to two years, or with fine, or with both;

In the event of not following the procedure pertaining to maintenance of public order, arrest, search and seizure, the court may award such compensation as it deems fit to the person, so proceeded against and it shall be paid by the officer, person, authority or government, as may be specified in the order.

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