



AUGUST 2008

INDIA

## Getting Away With Murder 50 Years of the Armed Forces (Special Powers) Act

They kept on pouring water into my nostrils until the water came out in my ears; it felt warm inside my ears. Then they stamped on both my thighs while two persons held my feet while another man sat on my head... They touched the wires' ends to my chest and gave me shocks three times. Each time I felt as if my whole body had contracted... I keep remembering how they used to beat me and see everything that happened to me vividly.

–14-year-old child tortured by Indian soldiers in the northeastern state of Manipur<sup>1</sup>

In August 2008, India celebrates 61 years of independence and democracy. But many are lamenting another anniversary: 50 years of the Armed Forces (Special Powers) Act (AFSPA or “the Act”). Enacted on August 18, 1958, as a short-term measure to allow deployment of the army to counter an armed separatist movement in the Naga Hills, the AFSPA has now been in force for five decades in states in India’s northeast. Similar laws have also been used in Punjab and in Jammu and Kashmir.

The AFSPA gives the armed forces wide powers to shoot to kill, arrest on flimsy pretext, conduct warrantless searches, and demolish structures in the name of “aiding civil power.” Equipped with these special powers, soldiers have raped, tortured, “disappeared,” and killed Indian citizens for five decades without fear of being held accountable. The Act violates provisions of international human rights law, including the right to life, the right to be protected from arbitrary arrest and detention, and the right to be free from torture and cruel, inhuman, or degrading treatment. It also denies

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<sup>1</sup> Witness statement of arrest and torture in Manipur cited in L.A. Pinto and N. Thockchom, “Indigenous Children of North East India: the denial of childhood,” Centre for Organisation Research and Education, Imphal, Manipur, 2000.

the victims of the abuses the right to a remedy. The best 61<sup>st</sup> Independence Day present for the people of India would be a repeal of this draconian legislation.

## Facilitating Rights Violations

The AFSPA is based on a 1942 British ordinance intended to contain the Indian independence movement during the Second World War. A new ordinance was adopted by the Indian government in May 1958, then endorsed by parliament in August 1958, and given presidential assent on September 11, 1958. Concerned legislators warned the Indian government at the time that human rights violations would ensue. Describing it as a “lawless law” during the parliamentary debate, Laishram Achaw Singh, a member from Manipur, said that the AFSPA would only “harass innocent folk and deteriorate the situation.”<sup>2</sup>

Initially the AFSPA applied only to the northeast territories of Assam and Manipur and was aimed at containing an armed rebellion by Naga militants. In a 1972 amendment, the AFSPA was extended to each of the seven new states created in the region: Assam, Manipur, Meghalaya, Nagaland, Tripura, Mizoram and Arunachal Pradesh.<sup>3</sup> Similar laws were also applied to counter militancy in Punjab from 1985 to 1994.<sup>4</sup> A version of the Act has been active in Jammu and Kashmir since 1990.<sup>5</sup>

The powers that the AFSPA extends to the armed forces come into force once an area subject to the Act has been declared “disturbed” by the central or state government. This declaration is not subject to judicial review.<sup>6</sup>

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<sup>2</sup> “The Armed Forces (Special Powers) Act - Repressive Law,” *Combat Law: The Human Rights Magazine*, vol. 2 (1), April/May, 2003.

<sup>3</sup> “Legal and Constitutional Aspects,” Part II, Report of the Committee to Review the Armed Forces (Special Powers) Act, 1958, Government of India, 2005, p. 10; Ministry of Home Affairs, Armed Forces (Special Powers) Act 1958, [http://www.mha.nic.in/pdfs/armed\\_forces\\_special\\_powers\\_act1958.pdf](http://www.mha.nic.in/pdfs/armed_forces_special_powers_act1958.pdf) (accessed August 4, 2008).

<sup>4</sup> Ministry of Home Affairs, Armed Forces (Punjab and Chandigarh) Special Powers Act, 1983, <http://punjabrevenue.nic.in/armsact.htm> (accessed August 4, 2008).

<sup>5</sup> Ministry of Home Affairs, Armed Forces (Jammu and Kashmir) Special Powers Act 1990, [http://www.mha.nic.in/pdfs/Armed%20forces%20\\_J&K\\_%20Spl.%20powers%20act,%201990.pdf](http://www.mha.nic.in/pdfs/Armed%20forces%20_J&K_%20Spl.%20powers%20act,%201990.pdf) (accessed August 4, 2008).

<sup>6</sup> South Asia Human Rights Documentation Centre (SAHRDC), “Armed Forces Special Powers Act - A study in National Security tyranny,” November 22, 1995, [http://www.hrdoc.net/sahrdoc/resources/armed\\_forces.htm](http://www.hrdoc.net/sahrdoc/resources/armed_forces.htm) (accessed August 5, 2008).

**The right to life** is violated by section 4(a) of the AFSPA, which grants the armed forces power to shoot to kill in law enforcement situations without regard to international human rights law restrictions on the use of lethal force. Lethal force is broadly permitted under the AFSPA if the target is part of an assembly of five or more persons, holding weapons, or “carrying things capable of being used as weapons.” The terms “assembly” and “weapon” are not defined.<sup>7</sup>

**The right to liberty and security of person** is violated by section 4(c) of the AFSPA, which fails to protect against arbitrary arrest by allowing soldiers to arrest anyone merely on suspicion that a “cognizable offence” has already taken place or is likely to take place in the future. Further, the AFSPA provides no specific time limit for handing arrested persons to the nearest police station. Section 5 of the AFSPA vaguely advises that those arrested be transferred to police custody “with the least possible delay.”<sup>8</sup>

**The right to remedy** is violated by section 6 of the AFSPA, which provides officers who abuse their powers under the AFSPA with immunity from legal accountability. This section of the AFSPA prohibits even state governments from initiating legal proceedings against the armed forces on behalf of their population without central government approval. Since such a sanction is seldom granted, it has in effect provided a shield of immunity for armed forces personnel implicated in serious abuses.<sup>9</sup>

In practice the AFSPA also facilitates violation of **the right to be free from torture, and from cruel or degrading treatment.**<sup>10</sup> Since the AFSPA provides powers to arrest without warrant and then detain arrested persons for unspecified amounts of time, the

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<sup>7</sup> Ministry of Home Affairs, Armed Forces (Special Powers) Act 1958, (4a).

<sup>8</sup> Ministry of Home Affairs, Armed Forces (Special Powers) Act 1958, (4c) and (5); Amnesty International (AI), “India: Briefing on The Armed Forces (Special Powers) Act, 1958,” AI Index: ASA20/025/2005, May 9, 2005, <http://www.amnesty.org/en/library/asset/ASA20/025/2005/en/dom-ASA200252005en.pdf> (accessed August 5, 2008), pp. 15-16.

<sup>9</sup> UN Human Rights Committee, “Concluding Observations of the Human Rights Committee: India,” CCPR/C/79/Add.81, August 4, 1997, [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/85e8bbf07b5dbdc88025652bo05538bd?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/85e8bbf07b5dbdc88025652bo05538bd?Opendocument) (accessed August 4, 2008), para. 21.

<sup>10</sup> Amnesty International, “India: Briefing on The Armed Forces (Special Powers) Act,” p. 16.

armed forces routinely engage in torture and other ill-treatment during interrogation in army barracks.<sup>11</sup>

Areas declared “disturbed” under the AFSPA over the past 50 years vary significantly according to their conflict history, ethnic constituency, and levels of militancy. However, all these areas share a common experience of widespread human rights abuses during the imposition of the AFSPA. The AFSPA has also had the opposite effect to that intended by the Indian government: in each state where the AFSPA has been implemented and soldiers have been deployed, the armed forces have become a symbol of oppression and an object of hate.<sup>12</sup>

Human rights violations have served to fuel conflicts and act as a recruiting sergeant for militant groups in many parts of the country. Arbitrary detention, torture, and the killing of peaceful critics have had the effect of closing democratic and peaceful paths of opposition, forcing organizations underground and fueling a growth in militancy.<sup>13</sup> It is estimated that over 70 armed opposition groups may be operating across the northeast alone.<sup>14</sup> While the conflict has died down in Punjab, there are numerous militant groups operating in Jammu and Kashmir.

Many militant groups have been responsible for human rights abuses, including torture, indiscriminate killings with bombs and landmines, hostage taking, and targeted attacks upon civilians regarded as “enemies.” Human Rights Watch has called on all militant groups to cease attacking civilians and ensure compliance with international humanitarian law.

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<sup>11</sup> Ibid.; SAHRDC, “Armed Forces Special Powers Act - A study in National Security tyranny.”

<sup>12</sup> “Recommendations,” Part IV, Report of the Committee to Review the Armed Forces (Special Powers) Act, 1958, Government of India, 2005, p. 75.

<sup>13</sup> Committee for the Repeal of the Armed Forces Special Powers Act, “End Army Rule: Report on the Working of the Armed Forces (Special Powers) Act in the North-East,” August 19, 2004.

<sup>14</sup> B. Nepam and M. Turner, “Armed Violence and Poverty in Northeast India,” Centre for International Cooperation and Security, University of Bradford, November 2004, pp. 13-15.

## Arunachal Pradesh

In Arunachal Pradesh, the areas that border with Assam have been declared disturbed.<sup>15</sup> Violence in the state is largely directed toward the Chakma and Hajong tribal populations that migrated from Bangladesh (then East Pakistan) in the 1960s.<sup>16</sup> In addition to the local anti-immigrant movement, insurgent groups from neighboring Assam and Nagaland reportedly have a significant presence, particularly in the Changlang district. Many civilians have been victims of violence committed by militants from neighboring states and by the security forces.<sup>17</sup> For example, Indian security forces assaulted villagers of Borduria during a search for National Socialist Council of Nagaland (NSCN) militants on June 5, 2002.<sup>18</sup>

## Assam

Although parts of Assam came under AFSPA in 1958, the entire state of Assam was declared a disturbed area in November 1990 when fresh violence started in the state.<sup>19</sup> Militancy first broke out in 1979 with the emergence of the United Liberation Front of Assam (ULFA), established in reaction to large-scale immigration from Bangladesh. ULFA remains the principal insurgent group in Assam. A second round of insurgency emerged in the 1980s with the Bodo tribal groups calling for a separate state. This movement is led principally by the National Democratic Front of Bodoland (NDFB).<sup>20</sup> Despite peace processes engaging insurgent groups and the Indian government, violence remains common in Assam.

The armed forces carry out abuses in the name of counterinsurgency operations<sup>21</sup> and are shielded from accountability by the AFSPA. One of the starkest abuses under the

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<sup>15</sup> "Feed Back Received by the Committee," Part III, Report of the Committee to Review the AFSPA, p. 64.

<sup>16</sup> Asian Centre for Human Rights (ACHR), "India Human Rights Report 2007, Arunachal Pradesh," May 2007, <http://www.achrweb.org/reports/india/AR07/arunachal.htm> (accessed August 4, 2008).

<sup>17</sup> ACHR, "India Human Rights Report 2005, Arunachal Pradesh," 2005, <http://www.achrweb.org/reports/india/AR05/arunachal.htm> (accessed August 4, 2008).

<sup>18</sup> Committee for the Repeal of the Armed Forces Special Powers Act, "End Army Rule".

<sup>19</sup> "Feed Back Received by the Committee," Part III, Report of the Committee to Review the AFSPA, p. 50.

<sup>20</sup> Nepram and Turner, "Armed Violence and Poverty in Northeast India," pp. 12-13.

<sup>21</sup> ACHR, "India Human Rights Report 2007, Asom", May, 2007, <http://www.achrweb.org/reports/india/AR07/asom.htm> (accessed August 4, 2008).

AFSPA in Assam has been the imprisonment of young children. More than 20 children between the ages of four and 12 have languished in different jails across the state. The unarmed children and their mothers were first detained by Bhutanese soldiers in a 2003 counterinsurgency operation against militant bases in Bhutan. They were then handed over to Indian authorities and jailed. The children have grown up behind bars with their only crime being that they are children of suspected separatists.<sup>22</sup>

Children have also suffered sexual violence at the hands of the armed forces. A 12-year-old girl was raped by a member of the Assam Rifles in Karbi Anglong on February 7, 2005.<sup>23</sup> Medical tests confirmed that the abuse was sustained after the child was sedated with sleeping tablets. Fearing a backlash against the military and the AFSPA similar to that which followed the death of Manorama Devi in Manipur (see below), police arrested the accused and his accomplices. Local women's groups are demanding justice emphasizing that the usual token monetary compensation for such heinous crimes committed by security personnel is unacceptable.<sup>24</sup>

## Manipur

Sections of Manipur were declared disturbed areas after the 1958 adoption of the AFSPA, and the entire state of Manipur was brought under the act on September 8, 1980.<sup>25</sup>

While Naga tribes in Manipur supported the Naga armed rebellion, other ethnic groups in Manipur also began a separatist campaign against the merging of their state with the Indian Union in 1949. The conflict has evolved to include numerous insurgent groups with various ethnic and tribal affiliations. Conflicts between different tribal and ethnic groups have also emerged, leading to devastating attacks upon civilians and rampant extortion. Conflict triggers include perceived threats to land distribution, rises in taxes and perceptions of inequity between tribes.<sup>26</sup>

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<sup>22</sup> "Ray of hope for ULFA kids in jail," *The Tribune*, June 10, 2006.

<sup>23</sup> "Girl raped by Assam Rifles constable," *The Tribune*, February 9, 2005.

<sup>24</sup> "Rape taints Assam Rifles again," *The Telegraph*, February 9, 2005.

<sup>25</sup> "The Armed Forces (Special Powers) Act - Repressive Law," *Combat Law*.

<sup>26</sup> Nepram and Turner, "Armed Violence and Poverty in Northeast India," pp. 13-15.

Human rights violations by security forces engaged in counterinsurgency operations in Manipur have occurred with depressing regularity over the last five decades. Torture, which includes beatings, electric shocks, and simulated drowning, is common. Arbitrary arrests and extrajudicial executions continue. New “disappearances” stopped after the Manipur government introduced a system for providing “arrest memos” but at least 17 people remain missing since they “disappeared” in the 1980s and 1990s.<sup>27</sup>

Manipuris have long campaigned for the repeal of the AFSPA, a few engaging in acts of desperation including self-immolation and stripping naked in front of an army camp. Irom Sharmila, a human rights activist, has been on a fast until death since 2000, kept alive by being force-fed by doctors while in judicial custody.<sup>28</sup>

Opposition to the AFSPA came to a head following the killing of Thangjam Manorama Devi in July 2004. After being arrested by members of the Assam Rifles, Manorama was found dead near her house in the Ngariyan area the next morning.<sup>29</sup> She had been shot through the lower half of her body, leading to suspicion that bullet wounds had been used to hide evidence of rape.<sup>30</sup> For several weeks following Manorama’s killing, ordinary Manipuris joined in protest demonstrations calling for repeal of the AFSPA.

Indian Prime Minister Manmohan Singh eventually responded by setting up the Justice B.P. Jeevan Reddy Committee to review the AFSPA. The committee recommended repeal of the Act in its report submitted on June 6, 2005.<sup>31</sup> The government has yet to act upon the committee’s recommendation.

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<sup>27</sup> Human Rights Watch interview with Babloo Loitongbam, Executive Director, Human Rights Alert, July 11, 2008.

<sup>28</sup> Amnesty International, “India: Briefing on The Armed Forces (Special Powers) Act,” p. 4; “Delhi police arrest Irom Sharmila,” *The Hindu*, New Delhi, October 7, 2006; “Protest against AFSPA takes tragic turn, youth burns self to death, MSF advisor passes away after setting self on fire,” *The Sangai Express*, August 16, 2004; “Women give vent to naked fury in front of 17 AR at Kangla,” *The Sangai Express*, July 15, 2004.

<sup>29</sup> “Commission begins probe in Manorama case,” *The Tribune* (Imphal, Manipur), August 30, 2004. <http://www.tribuneindia.com/2004/20040831/nation.htm> (accessed August 4, 2008).

<sup>30</sup> Sushanta Talukdar, “Manipur’s Protest,” *Frontline*, vol. 21 (17), August 14-27, 2004, <http://www.flonnet.com/fl2117/stories/20040827002903700.htm> (accessed August 4, 2008).

<sup>31</sup> J. Singh, “Impunity Institutionalized, Armed Forces Special Powers Act completes 50 years as Indian law,” *KanglaOnline*, June 12, 2008, <http://www.kanglaonline.com/index.php?template=kshow&kid=1209> (accessed August 4, 2008).

## Meghalaya

The roots of discord in Meghalaya can largely be attributed to rivalry between tribal residents and the mostly non-tribal immigrants from Bangladesh that began trickling in after the 1947 partition of India. Militancy erupted in the late 1980s. A 20-kilometer-wide belt in Meghalaya bordering Assam was declared a disturbed area in November 1990.<sup>32</sup>

The armed forces have committed numerous atrocities against civilians in Meghalaya under the auspices of the AFSPA. During “Operation Birdie” in 1997-98, many Khasi tribal women were reportedly raped. The Assam Rifles also used women as human shields, in violation of the laws of war, in a retaliation attack on the NSCN. The soldiers placed the muzzle of their guns on the women’s shoulders as they battled with the rebels.<sup>33</sup> While the violence in Meghalaya has largely died down, widespread allegations of arbitrary detention, rape, and torture have never been properly investigated.

## Mizoram

Mizoram was declared a disturbed area in January 1967.<sup>34</sup> Following the signing of a peace accord in June 1986, the AFSPA is no longer applied in Mizoram, though it remains a “sleeping” law.<sup>35</sup>

A devastating famine in the early 1960s and perceived government neglect resulted in an armed independence struggle by the Mizo National Front (MNF), which was initially formed as a relief organization.<sup>36</sup> During the 20-year conflict the rights of Mizos were restricted and violated under cover of the AFSPA with widespread allegations of torture, rape, extrajudicial killings, and arbitrary detention.

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<sup>32</sup> “Feed Back Received by the Committee,” Part III, Report of the Committee to Review the AFSPA, p. 52.

<sup>33</sup> Nepram and Turner, “Armed Violence and Poverty in Northeast India,” p. 28.

<sup>34</sup> “The Armed Forces (Special Powers) Act - Repressive Law,” *Combat Law*.

<sup>35</sup> “Feed Back Received by the Committee,” Part III, Report of the Committee to Review the Armed Forces (Special Powers) Act, 1958, Government of India, 2005, p. 65; “Annexures,” Report of the Committee to Review the Armed Forces (Special Powers) Act, 1958, Government of India, 2005, p. 143.

<sup>36</sup> SAHRDC, “Armed Forces Special Powers Act - A study in National Security tyranny.”

As in other areas militarized under the AFSPA, women in Mizoram were particularly vulnerable to violations by security personnel, including rape, sexual violence, and arbitrary detention. For example, a woman named Lianthangvuanga was raped by five soldiers when she was 13 years old. She managed to escape but then suffered the further trauma of witnessing her father being tortured by the army. He died as a result of his injuries. In recounting what had happened 30 years before, Lianthangvuanga revealed that for years she had not talked about her experience with anyone because family members and her community had chosen to “forget” the experience. She was left feeling shameful of herself for being violated by the officers.<sup>37</sup>

## Nagaland

Many ethnic Nagas opposed Indian rule following the British withdrawal from the region in 1947. Initially seeking political means to secure self-governance, people of the Naga Hills united under the banner of the Naga National Council (NNC). While India proclaimed the Naga Territory as part of the Indian Union, the NNC declared independence for Nagaland and embarked upon an armed struggle. The AFSPA was enacted in 1958 to end the separatist armed campaign.<sup>38</sup>

The NNC later fractured and was eventually overshadowed by the National Socialist Council of Nagaland (NSCN), which became the main insurgency group in the northeast by 1980. The NSCN has since split into two key opposing factions, the NSCN-IM and the NSCN-K, with clashes between the two resulting in many deaths. The Nagaland population has suffered the most from the armed forces and militant groups operating in the state.<sup>39</sup> As Naga writer Temsula Ao put it, “There are no winners, only victims and the results can be measured only in human terms. For the victims the trauma goes beyond the realm of just the physical maiming and the loss of life—their very humanity is assaulted and violated, and the onslaught leaves the survivors scarred both in mind and soul.”<sup>40</sup>

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<sup>37</sup> R. Goswami, M.G. Sreekala, and M. Goswami, “Women in armed conflict situations in India,” pp. 47-48.

<sup>38</sup> SAHRDC, “Armed Forces Special Powers Act - A study in National Security tyranny.”

<sup>39</sup> Nepram and Turner, “Armed Violence and Poverty in Northeast India,” p. 12.

<sup>40</sup> Temsula Ao, *These Hills Called Home*, (Penguin Books: New Delhi), 2006.

Civilians in Nagaland complain of the misuse of the AFSPA under which they have lived for 50 years.<sup>41</sup> The presence of the armed forces is a part of their everyday life. Violence has affected almost every family. Soldiers have been responsible for untold killings and “disappearances,” and for sexual abuse and rape of women.<sup>42</sup>

A particularly disturbing example of the volatile environment that has developed in areas militarized under the AFSPA is the 1995 killings in Kohima city. Soldiers began shooting indiscriminately after mistaking the sound of a tire bursting for a bomb attack. Seven civilians, including girls age three and eight, were killed in the hour-long firing that ensued. A further 22 were seriously injured, including seven children.<sup>43</sup>

## Tripura

The AFSPA was extended to Tripura state in November 1970.<sup>44</sup> At present, the hill district of the state, the Tripura Tribal Autonomous District Council, remains declared a “disturbed” area.<sup>45</sup> Insurgency in Tripura developed in response to an influx of immigrants from Bangladesh. The indigenous tribal population was reduced to 31 percent by 1991, and forced into the hilly interior regions, while immigrants dominated government jobs and local businesses. A tribal insurgency, led by the All Tripura Tiger Force (ATTF) and the National Liberation Front of Tripura (NLFT), continues to the present.<sup>46</sup>

Crimes against tribal women by the security forces have been a feature of the conflict in Tripura. One of the most widely known incidents was the 1988 gang rape of 14 tribal women in Ujanmaidan by the Assam Rifles.<sup>47</sup> Rape and sexual violence have continued in Tripura state. Three tribal women were allegedly gang raped by the Assam Rifles in

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<sup>41</sup> “Feed Back Received by the Committee,” Part III, Report of the Committee to Review the Armed Forces (Special Powers) Act, 1958, Government of India, 2005, pp. 54-55.

<sup>42</sup> R. Goswami, M.G. Sreekala, and M. Goswami, “Women in armed conflict situations in India: Baseline Report,” North East Network, Kuala Lumpur, Malaysia, [http://www.iwraw-ap.org/aboutus/pdf/FParmed\\_conflict.pdf](http://www.iwraw-ap.org/aboutus/pdf/FParmed_conflict.pdf) (accessed August 4, 2008), pp. 47-48.

<sup>43</sup> SAHRDC, “Armed Forces Special Powers Act - A study in National Security tyranny.”

<sup>44</sup> “The Armed Forces (Special Powers) Act - Repressive Law,” *Combat Law*.

<sup>45</sup> “Feed Back Received by the Committee,” Part III, Report of the Committee to Review the AFSPA, p. 48.

<sup>46</sup> Nepram and Turner, “Armed Violence and Poverty in Northeast India,” p.15.

<sup>47</sup> Nepram and Turner, “Armed Violence and Poverty in Northeast India,” p.29.

Dhalai district during a search operation on February 9, 2006. Several girls were also molested. One of the rape victims was pregnant and suffered a miscarriage following the incident.<sup>48</sup>

## Punjab

Punjab state was declared disturbed and subject to the Armed Forces (Punjab and Chandigarh) Special Powers Act from 1983 to 1997.<sup>49</sup> During this period, tens of thousands of people died during a separatist Sikh rebellion and the counterinsurgency launched by the Indian government in response.

Sikh militants were responsible for serious human rights abuses during the insurgency which paralyzed the economy and led to widespread extortion and land grabs.<sup>50</sup>

To defeat the insurgents, the Indian government ordered counterinsurgency operations that led to the arbitrary detention, torture, extrajudicial execution, and enforced disappearance of thousands of Sikhs.<sup>51</sup> Special counterinsurgency laws including the AFSPA contributed to an increase in “disappearances” and extrajudicial executions of civilians and militants alike. To hide the evidence of their crimes, security forces secretly disposed of the bodies, usually by cremating them. While the insurgency faded over time, families continue to pursue accountability for violations suffered at the hands of security personnel. Government officials resist

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<sup>48</sup> SACHR, India Human Rights Report, 2007; *The Telegraph*, “Rape slur stalks Assam Rifles - Gangrape charge denied, high-level probe launched,” February 14, 2006. [http://www.telegraphindia.com/1060214/asp/northeast/story\\_5842042.asp](http://www.telegraphindia.com/1060214/asp/northeast/story_5842042.asp).

<sup>49</sup> “Patil: Punjab not a disturbed area,” *The Hindu*, December 10, 2005, <http://www.hindu.com/2005/12/10/stories/2005121016531600.htm> (accessed, August 10, 2008).

<sup>50</sup> Human Rights Watch and Ensaaf, India - Protecting the Killers: A Policy of Impunity in Punjab.

<sup>51</sup> Ram Narayan Kumar, Amrik Singh, Ashok Aggrwal, and Jaskaran Kaur, *Reduced to Ashes: The Insurgency and Human Rights in Punjab* (Kathmandu: South Asia Forum for Human Rights, 2003). For other reports on abuses by Indian security forces, see Human Rights Watch/Asia and Physicians for Human Rights, *Dead Silence*; Human Rights Watch, *India—Punjab in Crisis: Human Rights in India* (New York: Human Rights Watch, 1991); Amnesty International, “Human Rights Violations in Punjab: Use and Abuse of the Law,” May 1991, <http://www.amnestyusa.org/document.php?id=8D63FE02A44B98C8802569A600600B91> (accessed August 10, 2008); Amnesty International, “Punjab Police: Beyond the Bounds of Law,” April 1995, <http://www.amnestyusa.org/document.php?id=3D24566B3D60358B802569A500715046> (accessed August 10, 2008); Amnesty International, “Break the Cycle of Impunity and Torture in Punjab,” AI Index: ASA 20/002/2003, January 2003, <http://web.amnesty.org/library/Index/ENGASA200022003?open&of=ENG-IND> (accessed August 10, 2008).

any accountability efforts because they claim it would affect the morale of security forces operating in difficult circumstances in other parts of the country.<sup>52</sup>

## Jammu and Kashmir

Jammu and Kashmir state has been declared a disturbed area since a state version of the AFSPA, the Armed Forces (Jammu and Kashmir) Special Powers Act, was adopted in 1990. Massive human rights violations have ensued.

Since 1989, Kashmiris have been trapped in an armed conflict between abusive Indian government forces and armed militant groups waging a brutal separatist struggle with the backing of the Pakistani government. At least 20,000 Kashmiri civilians have been killed. Militants and Indian security forces have committed widespread and numerous human rights abuses. Extrajudicial executions are prevalent. Police and army officials have told Human Rights Watch that alleged militants taken into custody are often executed instead of being brought to trial because they believe that keeping hardcore militants in jail is a security risk.<sup>53</sup>

There have also been widespread complaints of torture and arbitrary detention. Thousands of people have also “disappeared” in Jammu and Kashmir since the beginning of the conflict.<sup>54</sup> Many believe they were killed and probably ended up in unmarked graves that security forces say are the burials of unidentified militants. Human rights groups have long called for an independent investigation and forensic tests to establish the identity of those in the graves, but the government has yet to respond to that demand.

In many other cases Indian security forces have shot civilians under the authority of the Armed Forces (Jammu and Kashmir) Special Powers Act. For example, on February 23, 2006, soldiers in Handwara shot at a group playing cricket, suspecting

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<sup>52</sup> Human Rights Watch and Ensaaf, *India - Protecting the Killers: A Policy of Impunity in Punjab*.

<sup>53</sup> Human Rights Watch, *“Everyone Lives in Fear”: Patterns of Impunity in Jammu and Kashmir*.

<sup>54</sup> Asian Human Rights Commission, Urgent Appeals Desk, “Justice: Action Against Enforced Disappearance,” April 23, 2003, <http://www.ahrchk.net/ua/mainfile.php/2003/434/> (accessed August 7, 2008); Dinesh Manhotra, “3744 Persons Missing Since 2000,” *The Daily Excelsior*, February 26, 2003, <http://www.dailyexcelsior.com/web1/03feb27/state.htm#9> (accessed August 7, 2008).

that a militant was hiding among them, and killed four boys, including an eight-year-old.<sup>55</sup> Even the army has admitted that the extraordinary powers to shoot have led to “mistakes.” The army described as an “error of judgment” the July 2005 killing of three teenage boys in Kupwara who had sneaked away to smoke a cigarette at night and were shot without warning by troops.<sup>56</sup> Such mistakes, which are not uncommon, greatly inflame public passions in Jammu and Kashmir.

## The AFSPA and Impunity

Impunity occurs when perpetrators of human rights violations are not held accountable by the state for their actions.<sup>57</sup> Impunity can be divided into two types. De facto impunity takes place when the state fails to prosecute for lack of capacity or will, often for political reasons, such as state support for the abuses or to protect high-ranking officials or state institutions. De facto impunity has been rampant in India, where in even well-documented abuse cases there is no political will to prosecute.

The second kind of impunity is de jure impunity, in which laws or regulations providing immunity or amnesty make it difficult or impossible to prosecute a perpetrator for human rights abuses. India has several such provisions in its laws, aimed at shielding its military personnel and civilian officials from legal accountability. Such laws are contrary to the right to a remedy and reparation for gross violations of international human rights law.<sup>58</sup>

Both forms of impunity lead to more human rights violations and undermine faith in the government and security forces; de jure impunity sends a particularly negative signal to victims about state indifference to and complicity in their suffering.

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<sup>55</sup> Mir Ehsan and Majid Jahangir, “Four Shot in Kupwara, Village Blames Army,” *The Indian Express*, February 23, 2006, [http://www.indianexpress.com/res/web/ple/full\\_story.php?content\\_id=88448](http://www.indianexpress.com/res/web/ple/full_story.php?content_id=88448) (accessed August 8, 2008).

<sup>56</sup> Human Rights Watch interview with Col. V.K. Batra, army spokesman, Srinagar, August 4, 2005. For more information on this case see Human Rights Watch, “*Everyone Lives in Fear*”: *Patterns of Impunity in Jammu and Kashmir*, pp. 69-70.

<sup>57</sup> See U.N. Commission on Human Rights “Report of the independent expert to update the set of principles to combat impunity,” E/CN.4/2005/102/Add.1, February 8, 2005, p. 6.

<sup>58</sup> See U.N. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (December 16, 2005), Part VIII, “Access to Justice.”

Among the worst immunity provisions provided under Indian law is the one that protects those operating under the AFSPA. It is often used to prevent civilian prosecutors from prosecuting soldiers. AFSPA requires prior approval of the central government for civilian prosecutions of military personnel.<sup>59</sup> That approval is seldom forthcoming. This has occurred, for instance, in the Manorama case in Manipur and in several well-known cases in Jammu and Kashmir.<sup>60</sup>

The Indian government claims that the soldiers responsible for human rights violations have to face military courts. Under the Army Act, the military may transfer a soldier from civilian to military custody for offenses that can be tried by a court martial.<sup>61</sup>

However, available information shows scant evidence that the military is fully and effectively prosecuting soldiers and officers for abuses committed by them.<sup>62</sup> One high-profile case that highlights the military's failure to prosecute its own is the 2000 killing in Pathirabal of five persons whom the army falsely claimed were militants. Military responsibility for the deaths became evident in 2001 when it was conclusively determined that those killed were local villagers, not militants.<sup>63</sup> In 2006, the civilian Central Bureau of Investigation filed criminal charges against five military officers for these killings: for more than five years military prosecutors either failed to fully investigate the case or were simply unwilling to bring charges against the officers, whose cases are now pending before civilian courts.<sup>64</sup> Even now, the

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<sup>59</sup> Ministry of Home Affairs, Armed Forces (Special Powers) Act 1958, (6).

<sup>60</sup> Human Rights Watch, "*Everyone Lives in Fear*": *Patterns of Impunity in Jammu and Kashmir*.

<sup>61</sup> Army Act, Section 125, Criminal Procedure Code (1973), Section 475, provides that military personnel held in civil custody who could be tried by both civilian and military courts will be delivered to the commanding officer for trial by court martial.

<sup>62</sup> The military courts have largely remained impervious to outside judicial scrutiny. According to Col. Indra Sen Singh, the high courts, concerned about undermining military discipline by interfering in military affairs, have "generally adopted a 'hands off' attitude towards the [sic] military matters." Col. Indra Sen Singh, "Military Justice System: Re-enforcing the Confidence," in *Military Law: Then, Now and Beyond*, p. 231.

<sup>63</sup> Justice S. R. Pandian, Report of the Inquiry Commission, October 27, 2000.

<sup>64</sup> Central Bureau of Investigation, "CBI Files Charges Against Four Commissioned and One JCO of 7 RR In the Pathribal Encounter Case," May 11, 2006, [http://www.cbi.gov.in/pressreleases/pressrelease\\_yr.php?yr=czoznjoiOTJhNTEyZmM2YjJhZGNkOWMxYjgyYzIxMDI4MmJlNDcyMDA2Ijs=](http://www.cbi.gov.in/pressreleases/pressrelease_yr.php?yr=czoznjoiOTJhNTEyZmM2YjJhZGNkOWMxYjgyYzIxMDI4MmJlNDcyMDA2Ijs=) (accessed August 9, 2008).

various procedural obstacles to prosecuting military personnel in civilian courts make a trial in this case uncertain.<sup>65</sup>

## Repeal the AFSPA

Human Rights Watch urges the government of India to repeal the Armed Forces Special Powers Act (1958) and the Armed Forces (Jammu and Kashmir) Special Powers Act (1990).

The AFSPA is a symbol of abuse, oppression, and discrimination. Its application and misuse has fueled a cycle of atrocity and impunity and inflamed passions for militancy in various parts of the country. The growth of militant groups under the 50-year application of the AFSPA is evidence that countering armed insurgency with disregard for human rights is ineffective.

Human Rights Watch is not alone in calling for repeal of the AFSPA. Human rights groups in India have called for repeal for decades. Other Indian voices calling for repeal have included the:

- B.P. Jeevan Reddy Committee (2005);<sup>66</sup>
- Administrative Reforms Committee headed by Veerappan Moily (2007);<sup>67</sup> and
- Working Group on Confidence-Building Measures in Jammu and Kashmir headed by Mohammad Hamid Ansari (2007).<sup>68</sup>

Internationally, repeal has been called for by the:

- UN Special Rapporteur on extrajudicial, summary or arbitrary executions (2006);<sup>69</sup>

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<sup>65</sup> For more information on this case see “IV. The Origins of Impunity: Failure of Accountability in Jammu and Kashmir Since the Start of the Conflict” in Human Rights Watch, *“Everyone Lives in Fear”: Patterns of Impunity in Jammu and Kashmir*, September 2006, vol. 18, no.11(C), [http://www.hrw.org/reports/2006/india0906/5.htm#\\_ftn234](http://www.hrw.org/reports/2006/india0906/5.htm#_ftn234).

<sup>66</sup> “Recommendations,” Part IV, Report of the Committee to Review the AFSPA, 2005, p. 74.

<sup>67</sup> R. Suryamurthy, “Moily Panel for Repeal of AFSPA,” *The Tribune*, June 25, 2007 <http://www.tribuneindia.com/2007/20070626/nation.htm#1> (August 4, 2008).

<sup>68</sup> Praveen Swami, “Bit of Consensus,” *Frontline*, vol. 24(9), May 5-18, 2007 <http://flonnet.com/fl2409/stories/20070518002902500.htm> (accessed August 4, 2008).

<sup>69</sup> UN Special Rapporteur on extrajudicial, summary or arbitrary executions, “Civil and Political Rights, the Question of Disappearances and Summary Executions, Addendum - Summary of cases transmitted to Governments and replies received,”

- Committee on the Elimination of Discrimination against Women (2007);<sup>70</sup> and
- Committee on the Elimination of Racial Discrimination (2007).<sup>71</sup>

In 1997, the UN Human Rights Committee expressed concern regarding the continuing reliance on the AFSPA and at human rights violations by security personnel in areas declared “disturbed.” It expressed concern about the “climate of impunity” and lack of remedies resulting from the requirement of government approval for legal proceedings against armed forces acting under special powers. The Committee recommended that this requirement be abolished.<sup>72</sup>

Should the AFSPA be repealed, any future legislation aimed at dealing with militancy in areas currently subject to the AFSPA must comply with international human rights and humanitarian law. Such laws must ensure that the reporting, investigation, and prosecution of unlawful acts by members of the armed forces are not impeded.

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E/CN.4/2006/53/Add.1, March 27, 2006, [http://www.extrajudicialexecutions.org/reports/E\\_CN\\_4\\_2006\\_53\\_Add\\_1.pdf](http://www.extrajudicialexecutions.org/reports/E_CN_4_2006_53_Add_1.pdf) (accessed August 4, 2008), p. 75.

<sup>70</sup> UN Committee on the Elimination of Discrimination against Women, “Concluding comments of the Committee on the Elimination of Discrimination against Women: India,” CEDAW/C/IND/CO/3, February 2, 2007, [http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/fb74dfo8b78fo554c12572a4003f9720/\\$FILE/No724398.pdf](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/fb74dfo8b78fo554c12572a4003f9720/$FILE/No724398.pdf) (accessed August 4, 2008), paras. 8-9.

<sup>71</sup> UN Committee on the Elimination of Racial Discrimination, “Consideration of Reports Submitted by State Parties Under Article 9 of the Convention, Concluding observations of the Committee on the Elimination of Racial Discrimination: INDIA,” CERD/C/IND/CO/19, May 5, 2007, <http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.IND.CO.19.doc> (accessed August 4, 2008), para. 12.

<sup>72</sup> UN Human Rights Committee, “Concluding Observations of the Human Rights Committee: India,” paras. 18, 19, 21.