

Extracts from Concluding Observations of United Nations' Treaty Bodies on the Armed Forces Special Powers Act (AFSPA)

Human Rights Committee (July 1997)

18. The Committee remains concerned at the continuing reliance on special powers under legislation such as the Armed Forces (Special Powers) Act, the Public Safety Act and the National Security Act in areas declared to be disturbed and at serious human rights violations, in particular with respect to articles 6, 7, 9 and 14 of the Covenant, committed by security and armed forces acting under these laws as well as by paramilitary and insurgent groups. The Committee, noting that the examination of the constitutionality of the Armed Forces (Special Powers) Act, long pending before the Supreme Court is due to be heard in August 1997, hopes that its provisions will also be examined for their compatibility with the Covenant. In this respect, bearing in mind the provisions of articles 1, 19 and 25 of the Covenant:

the Committee endorses the views of the National Human Rights Commission that the problems in areas affected by terrorism and armed insurgency are essentially political in character and that the approach to resolving such problems must also, essentially, be political, and emphasizes that terrorism should be fought with means that are compatible with the Covenant.

19. The Committee regrets that some parts of India have remained subject to declaration as disturbed areas over many years - for example the Armed Forces (Special Powers) Act has been applied throughout Manipur since 1980 and in some areas of that state for much longer - and that, in these areas, the State party is in effect using emergency powers without resorting to article 4, paragraph 3, of the Covenant. Therefore:

the Committee recommends that the application of these emergency powers be closely monitored so as to ensure its strict compliance with the provisions of the Covenant.

Committee on the Elimination of Discrimination against Women (January 2007)

8. The Committee is concerned that the State party has not taken adequate steps to implement the recommendations in regard to some concerns raised in the Committee's previous concluding comments adopted in 2000. (...) The Committee is also concerned that it has not been provided with any information on the report of the committee established to review the Armed Forces Special Powers Act in response to its previous concluding comments.

9. The Committee reiterates the concerns and recommendations in the concluding comments adopted in 2000 and urges the State party to proceed without delay with their implementation. The Committee requests the State party to provide information on the steps being taken to abolish or reform the Armed Forces Special Powers Act and to ensure that investigation and prosecution of acts of violence against women by the military in disturbed areas and during detention or arrest is not impeded.

Committee on the Elimination of Racial Discrimination (March 2007)

12. The Committee notes with concern that the State party has not implemented the recommendations of the Committee to Review the Armed Forces (Special Powers) Act (1958) to repeal the Act, under which members of the armed forces may not be prosecuted unless such prosecution is authorized by the Central Government and have wide powers to search and arrest suspects without a warrant or to use force against persons or property in Manipur and other north-eastern States which are inhabited by tribal peoples. (arts. 2 (1) (c), 5 (b), (d) and 6)

The Committee urges the State party to repeal the Armed Forces (Special Powers) Act and to replace it "by a more humane Act," in accordance with the recommendations contained in the 2005 report of the above Review Committee set up by the Ministry of Home Affairs. It also requests the State party to release the report.

Committee on Economic, Social and Cultural Rights (May 2008)

50. (...) The Committee also recommends that the State party consider repealing the Armed Forces Special Powers Act.

**Extracts from the Report of the Working Group on the Universal Periodic Review
on the Armed Forces Special Powers Act (AFSPA)**

UN Human Rights Council (April 2008)

Interactive dialogue and responses by the government of India

25. (...) The United Kingdom asked for additional information on (...) (b) steps to implement treaty body recommendations on the Armed Forces Special Powers Act (...).

27. Canada recognized that India is a highly diverse country facing many challenges. It raised issues concerning the Armed Forces (Special Powers) Act (AFSPA), the situation of civil society and the situation of Dalits. Canada referred to reports of torture and abuse by and impunity of police and security forces acting under the AFSPA. Canada spoke about the commitment of the Prime Minister and the studies undertaken to reform the AFSPA and asked what measures had been taken to repeal or reform this Act.

40. Germany asked India to provide complementary information on (...) (b) what the position of the Government was regarding the recommendation of several treaty bodies to repeal the Armed Forces (Special Powers) Act of 1958 (...).

47. With regard to questions on the Armed Forces (Special Powers) Act, 1958, the delegation stated that even though India is a country which has had to confront with terrorism for well over two decades, its laws, including the special laws enacted in this context, have always had clear elements of administrative as well as judicial reviews. It is well settled in Indian jurisprudence that all legislation must conform to the basic structure of the Constitution and is subject to judicial review. The constitutionality of the Armed Forces (Special Powers) Act 1958 has been upheld by a Constitution Bench of the Supreme Court. Moreover, it is important to note that the Armed Forces of India are governed by provisions of their Acts, which also ensure that any violations are expeditiously dealt with. In so far as ensuring human rights even while being engaged in counter terrorism operations, special training and operating procedures are in place to guide the forces on the ground.