

Bill No. XXII of 2017

THE ARMED FORCES SPECIAL POWERS (AMENDMENT)
BILL, 2017

A

BILL

*further to amend the Armed Forces (Special Powers) Act, 1958 and the Armed Forces
(Jammu and Kashmir) Special Powers Act, 1990.*

BE it enacted by Parliament in the Sixty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the Armed Forces Special Powers (Amendment) Act, 2017. Short title and commencement.

(2) It shall come into force with immediate effect.

28 of 1958. 5 2. In the Armed Forces (Special Powers) Act, 1958, in section 6, the following provisions shall be inserted, namely:— Amendment of section 6.

10 "Provided that the Central Government shall take a decision on sanction for institution of prosecution, suit or any other legal proceeding within three months of receiving a request for the same, failing which the sanction shall be deemed to have been given and where such sanction is expressly denied, it shall be communicated, along with the reasons, to the complaints and families of the victims, if any:

Provided further that no such sanction for institution of any prosecution, suit or any other legal proceeding shall be required if there is allegation of commission of

sexual offence under section 354B, section 375, section 376, section 376A, section 376C or section 376D of the Indian Penal Code, 1860". 45 of 1860.

Amendment of section 7. **3.** In the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990, in section 7, the following provisions shall inserted, namely:— 21 of 1990.

"Provided that the Central Government shall take a decision on sanction for institution of prosecution suit or any other legal proceeding within three months of receiving a request for the same, failing which the sanction shall be deemed to have been given and where such sanction is expressly denied, it shall be communicated, along with the reasons, to the complaints and families of the victims, if any: 5

Provided further that no such sanction for institution of any prosecution, suit or any other legal proceeding shall be required if there is allegation of commission of sexual offence under section 354B, section 375, section 376, sections 376A, section 376C or section 376D of the Indian Penal Code, 1860". 10 45 of 1860.

STATEMENT OF OBJECTS AND REASONS

The Armed Forces (Special Powers) Act (AFPSA), 1958 and the Armed Forces (Jammu & Kashmir) Special Powers Act, 1990 have been in operation in several North-Eastern and Jammu and Kashmir States of the country for many years now. The rise of insurgency and militancy in these States had necessitated the enforcement of this Act in order to enable armed forces to aid the civilian police forces in maintenance of law and order.

Over the years, however, the Acts have attracted widespread criticism for breeding a culture of impunity with serious allegations of grievous offences like murder, rape, fake encounters, enforced disappearances having been committed in the name of counter-insurgency operations. One of the reasons for such criticism has been the requirement of sanction from Central Government for launching prosecution against any member of Armed Forces under the AFSPA. Because such sanction does not come in a timely manner or does not come at all, there is hardly any accountability for the offences committed.

The Hon'ble Supreme Court in the case of Naga People's Movement of Human Rights notes that, 'In order that the people may feel assured that there is an effective check against misuse or abuse of powers by the members of the armed forces it is necessary that a complaint containing an allegation about misuse or abuse of the powers conferred under the Central Act, AFSPA should be thoroughly inquired into and, if it is found that there is substance in the allegation, the victim should be suitably compensated by the State and the requisite sanction under section 6 of the AFSPA should be granted for institution of prosecution'.

In yet another writ petition asking for investigation for 1528 cases of enforced disappearances in Manipur (Extra judicial Execution Victim Families Association Vs. Union of India), the Hon'ble Supreme Court notes that, 'The law is therefore very clear that if an offence is committed even by army personnel, there is no concept of absolute immunity from trial by the criminal court constituted under the code of criminal procedure. To contend that this would have a deleterious and demoralizing impact on the security forces is certainly one way of looking at it, but from the point of view of a citizen, living under the shadow of a gun that can be wielded with impunity, outright acceptance of the proposition advanced is equally unsettling and demoralizing particularly in a constitutional democracy like ours'.

The Justice Santosh Hegde Committee constituted by the Hon'ble Supreme Court in the above with petition recommended that the Central Government be given a reasonable time limit to pass order on sanction under the AFSPA, preferably within three months from the date of its receipt of the request of the prosecution, failing which its sanction shall be presumed.

The situation attains an alarming level of seriousness when the offences committed are sexual in nature which clearly have an element of subjugation of the opposite gender and require severe condemnation. The Justice Verma Committee recommended that there should be no need for sanction for initiating prosecution in certain sexual offences and stated in its report that, 'we notice that impunity for systematic or isolated sexual violence in the process of Internal Security duties is being legitimized by the AFSPA.'

Therefore, the Bill intends to prescribe a time limit for decision on sanction failing which the sanction shall be deemed to have been given and where it has been denied, it must be supported with reasons in writing. In case of sexual offences though, there should be no need of prior sanction.

Hence, this Bill

HUSAIN DALWAI

EXTRACT FROM THE ARMED FORCES (JAMMU AND KASHMIR)

SPECIAL POWERS ACT, 1990

(21 OF 1990)

* * * * *

Protection of
persons acting
in good faith
under this Act.

7. No prosecution, suit or other legal proceeding 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 the powers conferred by this Act.

* * * * *

RAJYA SABHA

A

BILL

further to amend the Armed Forces (Special Powers) Act, 1958 and the Armed Forces
(Jammu and Kashmir) Special Powers Act, 1990.

(Shri Husain Dalwai, M.P.)