

AS INTRODUCED IN THE RAJYA SABHA
ON THE 4TH DECEMBER, 2015

Bill No. LIII of 2015

THE ARMED FORCES (SPECIAL POWERS)
AMENDMENT BILL, 2015

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BILL

further to amend the Armed Forces (Special Powers) Act, 1958.

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

1. (1) This Act may be called the Armed Forces (Special Powers) Amendment Act, 2015.

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

Short title
and com-
mencement.

28 of 1958.

2. In the Armed Forces (Special Powers) Act, 1958 (hereinafter referred to as the principal
5 Act), in section 6, the following provisio shall be inserted, namely:—

Amendment
of section 6.

“Provided that no such sanction for the institution of any prosecution, suit or legal
proceeding shall be required against any public servant, police officer, or a member of

the armed forces on active duty in an areas notified as a disturbed area, if he is accused of having committed a sexual offence under section 375, sub-sections (1) & (2) of 376, section 376A, section 376C, section 376D or section 376E of the Indian Penal Code, 1860.” 45 of 1860.

Insertion of new section 6A.

3. In the principal Act, after section 6, the following section shall be inserted, namely:— 5

Breach of superior command responsibility.

“6A. (1) Whoever, being a public servant in command, control or supervision of the police or armed forces, or assuming command whether lawfully or otherwise, fails to exercise control over persons under his or her command, control, or supervision and as a result of such failure offences under section 375, sub-section (1) & (2) of section 376, section 376A, section 376C, section 376D or section 376E of the Indian Penal Code are committed, by persons under his or her command, control or supervision, shall be guilty of the offence of breach of command responsibility, where:— 10

- (a) such public servant either knew or owing to the circumstances should have known that the persons under his or her command, control or supervision may commit such offences; and 15
- (b) such public servant failed to take necessary and reasonable measures within his or her power to prevent or repress the commission of the said offences.

(2) Whoever is guilty of the offence of breach of command responsibility shall be punished with rigorous imprisonment for a term which shall not be less than seven years, but which may extend to ten years.” 20

STATEMENT OF OBJECTS AND REASONS

The Armed Forces (Special Powers) Act, 1958 was enacted as an enabling legislation to vest certain special powers in members of armed forces deployed in areas notified as “disturbed areas” to act in aid of the local civil administration in quelling threats posed to the law and order and security interests of the state. The Act vests certain special powers in the armed forces to enable them to carry out their duties effectively and grants them immunity from prosecution in respect of anything done or purported to be done in exercise of powers conferred under this Act.

However, the perpetration of sexual violence and rape on the local population can, under no circumstances be said to have been committed in furtherance of the effective discharge of their official duties or in pursuit of any lawful objective. In the event that such an act of rape or sexual violence is committed by any public servant, including police officers and members of the armed forces, there is no reason to grant them immunity from prosecution for such an offence, or await the grant of a sanction to institute legal proceedings aimed at remedying the grievances of victims of sexual violence in areas already affected by law and order disturbances and insurgencies.

The tight structure of command, and obedience that is inherent to law enforcement agencies and armed forces personnel dictates that if a superior officer fails to restrain his subordinates from committing rape or acts of sexual violence that are, and always will be beyond their authority to discharge their official duties, they too, must be held liable for having failed to properly discharge their duties in a lawful manner. The introduction of the offence of breach of command responsibility was also proposed by the Justice Verma Committee in its Report on Amendment to Criminal Laws in 2013.

Hence this Bill.

AVINASH PANDE

ANNEXURE

EXTRACTS FROM THE ARMED FORCES (SPECIAL POWERS) ACT, 1958

(28 OF 1958)

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Protection to
person acting
under Act.

6. 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.

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RAJYA SABHA

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further to amend the Armed Forces (Special Powers) Act, 1958

(Shri Avinash Pande, M.P.)