Chapter VII

Recommendations and Conclusion

1. Urgent needs
The legislature of India ought to bolster quick examinations of extrajudicial executions, killings in authority, torture and assault by security strengths and paramilitary powers in Kashmir. Security staff, including police, armed force and paramilitary, in charge of these misuses ought to be arraigned in non-military personnel courts. Just with such trials and suitable disciplines will these powers get the reasonable, unequivocal message that human rights violation are not excused by their bosses. Those discovered liable of manhandle ought to be rebuffed paying little heed to rank. The disciplines ought to be at any rate as serious as those predetermined under non-military personnel law. The consequences of these examinations and the disciplines ought to be made open as methods for giving the general population of Kashmir motivation to trust in the administration's sense of duty regarding equity and the run of law.

A concentrated enlists of prisoners available to legal counsellors and relatives ought to be built up in the state. Moreover, the security offices ought to require that capturing officers give marked receipts to all prisoners to relatives, town senior citizens or people of comparative status. The receipt would be recovered
when the individual is discharged. Peace procedures are regularly joined by violence, usually by the individuals who feel they will lose if bargains are come to.

Viciousness ought not to be utilized as a reason to sever transactions, as this gives veto over the gatherings. They are helpless before the gatherings' felt requirement for an exit plan, which relates back to readiness. In the event that a commonly harming stalemate pushes parties into intercession prepare, it accepts commonly alluring open doors to draw them toward a positive conclusion. The day in and day out media requires a more proactive and straightforward open data condition in the armed force. It ought to be repeated that since laws, for example, AFSPA are established by Parliament, it is basically the duty of the legislature to speak with the general population over the progressing banter on AFSPA.

There is a genuine risk of AFSPA turning into an image of mistreatment and prisoner to past violation if the voices exuding from districts influenced by fear based oppression and uprising, alongside worldwide conclusion, are not heard and their grievances redressed. Therefore, business as usual is no longer satisfactory. Changes, if restricted, both in setting and substance, would be considered cursory and corrective by depreciators, who will keep on viewing AFSPA with offensiveness. There is a reasonable qualification amongst wrongdoing and true blue operations. An investigation of the shields visualizes assurance as it were for those people who act in accordance with some basic honesty while releasing their official obligations. The current
perception by the Supreme Court that "there is no invulnerability for assault or murder" is really the rehearsed reasoning of the armed force. The alternative of military working under Unlawful Activities Counteractive Action Act 2008, as a contrasting option to AFSPA, a choice prescribed by Justice Jeevan Reddy Commission is under discourse in a few quarters. The Act cooks for the twin needs of "security" and 'flexibility of activity'. The Act is far reaching and has been corrected to cover even radiation related dread acts moreover.

There are differing sentiments among legitimate lights on its relevance to the armed force in its present shape. There is a need to put some different focuses that are important in context. The Act has all an India locale and clearly the armed force can't be permitted to work unhindered all through the land.

The peace profit must be passed on to the general population immediately to guarantee that they turn into a piece of the procedure, prompting flourishing also, enduring peace. The general population of J&K have endured many years of supported brutality that was outsider to their social convictions. The unmistakable advantages of peace as far as lower deceivability of troops, flexibility from dread and open doors for development and flourishing are the prompt deliverables. The administrations at the state and focus alongside dependable partners ought to plan a system to dispose of the scourge of psychological oppression lastly end their control by antagonistic forces. The means should be taken in stages and the time is not far when security strengths won't be required to give a protected inside condition. Be that as
it may, automatic responses may return the square one. There is a need to exercise reasonability and awareness and, make measured strides without playing for her.

2. General Pervez Musharraf’s de-militarization plan
Self-appointed president of Pakistan Gen. Pervez Musharraf proposed a 3 point plan for Kashmir wherein he laid emphasis on the Demilitarization of the urban areas of Kashmir. Although not an authority as an academician or a legal expert the 3 pointer plan by him seems apt for the current scenario of Kashmir. He discussed the plan with the Indian Prime Minister Dr. Manmohan Singh, saying that New Delhi should take small but sincere steps towards the betterment of Kashmir and at least have the urban areas like Srinagar demilitarized. The state government of Kashmir and the local people have emphasized that they should be able to secure the urban areas – Srinagar for the starters. The government should propose a timetable sooner to relocate the troops and deploy them at the border areas to secure the infiltration prone areas\(^1\). With the declining statistics of infiltration in the state of Jammu and Kashmir the government should strongly think of relocating the troops elsewhere. The military and paramilitary isn’t required in the main towns and cities as of now and is a hindrance in the society as it is.

The approach centrality of a hypothetical point is that as monetary modernization returns, developing levels of ability, higher instruction, and media introduction will help expanded

\(^1\) S. Suba Chandran. (2010). Strategic Thinking. Epilogue. 4 (2).
political activation. This increased political mindfulness will inexorably help more stupendous political requests. As Samuel Huntington aptly contended, the techniques of financial modernization create expanding requests for political support by opening up new open doors for physical, social, and budgetary mobility. Furthermore, as Myron Weiner has exhibited, quickening versatility in the setting of rare assets in a poly-ethnic culture can prompt activation along ethnic lines and bring about between ethnic tensions. Faced with such expanded requests and other ethnic strains, states can depend on coercive procedures, which are, unavoidably, fleeting palliatives. Over the more extended pull, states, particularly poly-ethnic states, have minimal decision however to create institutional limits for obliging climbing requests for political cooperation.

3. Need to withdraw the Armed Forces (Special Powers) Act, 1958 (AFSPA)

It is important that these draconian laws ought to be withdrawn forthwith. These laws together with militarization exude from the thought that the utilization of energy is fundamental for the viable decision of a population. Comparable is the conviction that Terrorism can't be dispensed with, without a barbarous law like TADA, POTA, and so forth. Notwithstanding, it is our all-inclusive encounter that no place on the planet have pitiless laws finished terrorism, nor has any militarization succeeded in smothering revolt, unless taken to the amazing, forming into a circumstance of genocide, as in Sri Lanka. It is true that all these laws have been maintained by the Supreme Court of India.
That does not mean (as Justice B.P. Jeevan Reddy's Committee for Review of AFSPA says) that the Supreme Court has proclaimed "upon the shrewdness or the need of such an order". Section 3 of AFSPA empowers central administration to declare an area as ‘disturbed’ and armed forces can be called in ‘in aid to civil administration’. Point to be noted here that the special power of using lethal forces under section 4 (a) is granted to the armed forces deployed to ‘aid the civil authority’.

Such an arrangement clearly proves that armed forces are allowed to commit extrajudicial execution. This is inconsistent with Article 246 of the Constitution of India to be read with the 7th Schedule of the Constitution of India which places Law and order’ under the State’s list. NPMHR 1997 ruled that while exercising the powers conferred under section 4 (a) of the Central Act [AFSPA], the officer in the armed forces shall use minimal force. Section 4(a) violates core principles of criminal justice like presumption of innocence, guilt proved beyond reasonable doubt, ‘use of minimal force’ criteria, a fair trial and article 20, 22 of the Indian constitution. AFSPA violates Article 4 (a) of ICCPR on declaration of ‘States of Emergency’ since de facto emergency has been imposed through declaration of disturbed area’ without formal promulgation of any form of public emergency. Under section 5 of AFSPA, army authority shall make over the arrested person to the officer in charge of the nearest police station with least possible delay. This violates article 22 of the constitution which makes it mandatory to present the arrested person before a magistrate within 24 hours. The procedure followed in Indian military courts under Army Act, 1950 falls far short of an
'equitable, impartial and independent administration of justice’, which is the internationally accepted standard under Article 14 of the ICCPR. It is to be noted here that section 15 of the Police Act 1861 empowers a State Government to declare an ‘area disturbed’ or in ‘a dangerous state’ and to deploy any police force for a fixed period.

If such a police force is not sufficient, Sections 130 and 131 of Criminal Procedure Code permit the civil authorities to deploy the Army. These provisions were never applied in the context of North East India. Instead the state has resorted to the AFSPA. Thus the state is permitting direct Army rule though the Constitution allows it only in aid of civil power to maintain law and order situation. Since legal provisions for deployment of armed forces are already there, additional ‘special law’ like AFSPA is not required to deal with the situation of law and order.

The Act has turned into "an image of persecution, an object of contempt, and an instrument of separation and overbearing". Subsequently (as the Committee has proposed) the act ought to be withdrawn forthwith.It ought to be noted that India has been over and over condemned in the UN Human Rights Committee for the presence of the Armed Forces Special Powers Act. Human Rights Committee on the Report of India (Extracts).the other Act - the JKPSA, which accommodates self-assertive confinement is similarly violative of ICCPR.
4. Requirement to minimize the amount of army men
There is an urgent requirement to minimize the amount of army men keeping in view the vast convergence of military and paramilitary compels in the state of Jammu & Kashmir, which is unbalanced to the citizen populace and is additionally making civil administration ineffective in numerous matters, the Government of India ought to take quick steps.

5. Necessity for a Special Judicial Authority
A Special Judicial Authority will prescribe the station of an uncommon legal power making an autonomous and exhaustive investigation into all claims of human rights violations, including vanishings, custodial killings, assault, torture, including torture of detainees, fake experiences, and all different cases identified with abundances by security powers. Regardless the NHRC and or the SHRC be commissioned to examine all affirmations of savagery by the executors of the State, which incorporates the Army and the security powers (as proposed by the UN Human Rights Committee).

6. No permit to murder
Each instance of murdering by police and security constrains in circumstances like challenges, shows, riots, and so on ought to be trailed by a legal investigation into the police/security strengths terminating/activities, took after by fitting, time-bound' authoritative activity. It is made clear that the police have no permit to slaughter anybody in any circumstance, unless they can advocate this activity under Section 100 of the IPC, which must be carried out in a legal technique.
7. Need for rehabilitation
Give legitimate recovery to groups of expired, harmed, and traumatized exploited people, particularly the assaulted. Remuneration as interval alleviation ought to be given promptly. Compensation ought to be sufficient and intentional. Recompense ought to be for both harm to individual and additionally for harm to property, i.e., houses, and so forth.

8. Requisite for establishment of Fast Track Courts.
The State ought to quickly create Fast Track Courts for the purpose of attempting the vast number of cases which are pending. The Courts ought to call for records from each police headquarters and give suitable headings to examine and record charge-sheets inside a period bound skeleton.

9. Must release of all prisoners
Both state and also central governments ought to take quick steps. The requirement for dialog with the people from the confirmation put before other human rights writes about J&k it is clear that the guideline of law does not work as set down in the statute books. Talks between Kashmiri pioneers including the separatists, the Central Government have not prompted any positive result. Indeed no doubt the genuine mass talk is an impression of Report of Free People’s Tribunal on Human Rights Violations in Kashmir the mass distance in the Kashmir Valley.
The Government's center is on holding the armed militants yet not on having a maintained dialog with the population and its leaders. The amounts of terrorists murdered as records of peace in the Valley are deceiving. The pivotal pointer of mass estrangement is not the penetration of activists yet safety by the individuals. Any way for an answer of the J&K issue should decisively and frontally manage this mass distance of the individuals and specifically defy its causes. As a certainty building measure, the Government ought to hold talks with the J&k agents, associations of men and ladies, in Srinagar. The people of Kashmir end up out of the dialog prepare as no discussions are held. In practice, the ‘Do’s and Don’ts’ guidelines as formulated by the army head quarter and added to the judgment are ineffective and redundant. These guidelines are often violated with knowledge and access to justice is denied due to section 6 of the Act.

The' fundamental occupation of a leader is to convey to the people bargains that must be made to reach an answer, and both pioneers and devotees will maintain a strategic distance from this for whatever length of time that conceivable, therefore dragging out the length of generally clashes. The ground must be set up for bargains, and that procedure is regularly long. Each step ought to be moored in steady general supposition furthermore, in common society exercises. Political Leaders main occupation is to help their adversaries to offer the bargains they should make. To this end, one must understand that contention is useful and gives

---

2 Murlidhar, 1997-98.
importance and option intending to those included. Societal coordination for both state and non-state on-screen characters must be found. In any case, there is normally no reason for good contentions; what are frequently required are political motivations.

The Supreme Court in NPMHR 1997 judgment did not give any criteria for target evaluation of the circumstance before statement as 'exasperates zone'. In this way, by and by, the survey is a routine bureaucratic exercise. Additionally the meaning of 'exasperates region' is missing in the enactment.

It is likewise prescribed that Government of India ought to guarantee that it doesn't present arrangements taken from the AFSPA into whatever other enactment.

Culture of exemption damages individuals' entitlement to equity and consequently all resistance provisions must be canceled and those blamed for violations of right to life must be acquired before a trial a straightforward way before the free legal.

All reports of Commission of Inquiry, set up under Commissions of Inquiry Act, 1952 must be formally distributed regarding casualty's entitlement to equity and individuals' entitlement to data.

Insurance of the regular citizen populace from rough wrongdoings, including acts perpetrated by equipped gatherings is the prime obligation of the state and henceforth arraignment of
those in charge of such assaults must be completed inside the system of criminal law and in congruity with worldwide human rights law and norms.

Measure must be taken to guarantee that law authorization work force, including military conveyed for law implementation purposes, regard the benchmarks set out in the UN Code of Conduct for Law Enforcement Officials, and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

India ought to approve the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the two Optional Protocols to the ICCPR and Geneva Conventions 1949. India is likewise to sign the Rome Statute of the International Criminal Court.

The Right to life is hold to be 'the preeminent right " (General remark No.1 on Article 6 of ICCPR, 1982) in worldwide law and is revered in various global instruments which put a positive commitment on the states to maintain it. The State has a strict obligation to 'anticipate discretionary killings by their own security administrations'. All security work forces must watch the "Arrangement" rule that is Proportionality, Legality, Accountability and Necessity. This standard is gotten from the Principles of the Code of Conduct and United Nations Basic Principles on the utilization of Force and Firearms. Compel must be utilized on the off chance that it is 'entirely vital' and drive must be practiced with limitation and in proportionate to the
target considering the point of the operation, the threat of the circumstance and how much the constrain may hazard life.

Corrections ought to be made to section 19 of the Protection of Human Rights Act which denies the NHRC and state Human Rights Commissions from freely researching claims of human rights violation by individuals from the equipped or paramilitary strengths.

Examination and trial of the cases pending under AFSPA must be finished so as to meet closures of equity. National law for execution of worldwide human rights settlements must be established where Government of India is a gathering and a national activity plan of human rights must be received. Internal security obligation by military for delayed period has been an issue for both military and for the states where they are sent. This worry must be tended to and military ought not to be utilized for internal clashes as they are prepared to battle against external aggression.

"Both the Government of India and the Government of Jammu and Kashmir must find a way to guarantee that every single human right violation and wrongdoings under global law affirmed to have been submitted by Indian security forces, including the police, in Jammu and Kashmir are researched by autonomous and unbiased experts, and where there is adequate allowable proof, those charged are arraigned in procedures which meet universal reasonable trial guidelines and don't force capital punishment.
10. Suggestions by Amnesty International India

10.1 Examination and prosecution

Remove all requirements of sanction or any prior executive permission for the prosecution of security force personnel from all relevant legislation including the Armed Forces Special Powers Act and the Code of Criminal Procedure.

Limit purview of military courts in India [by amending all applicable enactment, including administration acts (e.g. Armed Forces Act and Rules, Border Security Force Act and Rules, and Central Reserve Police Force Act and Rules)] just to offenses of an entirely military nature conferred by military staff. In the meantime, instantly guarantee that victims and their families stay educated, in composing, of the status of any progressing military and security constrain procedures at all phases of the procedure, from examination to indictment, at consistent interims; guarantee that where adequate acceptable proof has as of now been gathered through past criminal examinations concerning human rights violation by individuals from security constrains, the arraignments happen in normal courts, including, where important, by allowing endorse from the Ministry of Defense or Ministry of Home Affairs.

---

With a specific end goal to guarantee the right to truth for victims, their families and influenced groups and guarantee that they have admittance to full revelation about human rights violation, the Government of India ought to make data relating to the procedures, decisions and sentences of courts military and security drive courts openly available including through the Right to Information Act, 2005 and by different means including an online database.

Acknowledge and encourage a demand from the Working Group on Enforced or Involuntary Disappearance to visit India and welcome the Special Rapporteur on the advancement of truth, equity, reparation and assurances of non-repeat to visit; guarantee that both are conceded unrestricted access to Jammu and Kashmir and all other pertinent areas and can meet uninhibitedly with an extensive variety of partners, including victims and their families, common society associations, government authorities and individuals from the security powers;

**10.2 Enactment and ratification**

Repeal the Armed Forces Special Powers Act and guarantee that all other national security enactment goes along completely with India's worldwide legitimate commitments and is in accordance with global gauges including the UN Principles for the Prevention of Extra-lawful, Arbitrary and Summary Executions; • Define all wrongdoings under universal law and standards of criminal duty in Indian law as per worldwide law and guidelines,
Guarantee that torture is characterized in Indian law in a way acceptable with the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Guarantee that upheld vanishings are characterized in Indian law in a way predictable with the International Convention on Protection of All Persons from Enforced Disappearance.

Moved toward becoming gathering to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, and the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, without reserving any spot or revelation adding up to a reservation, and actualize the Convention adequately into national law.

Progressed toward becoming gathering to the International Convention for the Protection of All Persons from Enforced Disappearance, without reserving any spot or announcement adding up to a reservation, perceive the ability of the Committee on Enforced Disappearances to get and consider correspondences from or for the benefit of victims and different states gatherings, and execute the Convention viably into national law.

Agree to the Rome Statute of the International Criminal Court without making any revelation adding up to a reservation and actualize it adequately into national law.
11. To the Government of Jammu and Kashmir

 Guarantee the right to truth by keeping victims and their families educated of the status and consequences of examinations and indictment by all experts, as required under global human rights law, when exploring and arraigning claims of genuine human rights violation, and at least as set around the measures to enhance open police relations issued by the National Human Rights Commission in 1999.

 Make openly accessible the discoveries of all past request of human rights violation in Jammu and Kashmir. Where reports contain the names and other individual identifiers of victims, witnesses and suspects, these ought to be evacuated before production to ensure all victims, relatives and witnesses.

 Survey and autonomously assess past pay components, including the ex gratia standards, to guarantee that victims and their relatives get suitable remuneration, free from dangers, provocation and separation. Specific consideration ought to be paid to victims and their relatives who live in hard to get to ranges (remote, country, rocky, and so forth.) or may languish shame over the violations perpetrated against them, just like the case for survivors of wrongdoings of sexual brutality.

 Set up a free police protests specialist to guarantee the enlistment of all dissensions brought against police staff and guarantee that such objections are researched in an unbiased, powerful and provoke way. There is one all the more captivating inquiry in regards to the eventual fate of the military in a superbly fair
world, where wars have progressed toward becoming repetitive, which ought not be left unanswered. On it might for sure rely on the responses to a large number of our most quick and vexed issues. The military and the common society, however some portion of a typical social framework, best exists together in totally unrelated areas. They met up in difficulty and work through it—regularly receiving unconventional techniques to succeed. Indeed, even as the achievement progresses toward becoming a reality, a feeling of unease sets in among both with regards to their behavioral ethos.

Common society looks to recover its regular flexibility and, space while the military are still during the time spent solidifying the increases. At this break, the initiative needs to take deft and down to business choices in view of statesmanship to let the common society advantage from the peace profit without surrendering the advantage picked up at a significant cost.

The tenor of the civil argument has made various 'impressions'. The prevailing being that armed force has built up a personal stake in working without agonizing over legal examination and there are groupings that urge the military to keep up the status quo bet. Another observation is that the armed force is unfeeling to civil society yearnings and is discouraging the endeavors being made to move back the Act. The contentions on occasion have been founded on past encounters and, convictions that don't consider changed substances, similar to the armed force having refined its usual way of doing things and the way that there have been insignificant affirmations of human right violation over the
past couple of years. Motivated holes and endeavors by sentiment producers to utilize media to either score political indicates or make weight on the two conditions that are important for the armed force to viably work in a revolt or psychological oppressor circumstance are: the imperative flexibility of activity and second, be defended against inspired examinations and being indicted for the true blue activities embraced in compliance with common decency, while directing operations. Flexibility of activity includes permitting it certain police powers, for example, seek, seizure, capture and the direct of follow up operations.

These forces accessible to the armed force under the AFSPA are as yet constrained when contrasted with more extensive forces of the neighborhood police under CrPC or the Ranbir Penal Code (RPC pertinent in J and K) that incorporate preventive detention, summoning of witnesses, hunt, seizure and capture.

12. **To the National Human Rights Commission and the Jammu and Kashmir Human Rights Commission**

Ensure the victims and their families' entitlement to truth by including the casualty and their families at each phase of a Commission-drove enquiry, especially if the dissension was documented by an outsider and not the casualty or their close family. Save the right of the family to pick whether to continue with an enquiry and what data is set in the general population area at all circumstances.

Establish a program to give full and successful reparation (counting compensation, pay, restoration, fulfillment and assurances of non-reiteration) to all victims of past human rights violation in Jammu and Kashmir. This ought to incorporate, in conference with common society associations and victims' gatherings, ventures to openly recognize the event of human rights violation in Jammu and Kashmir and obstacle of equity for victims;

Keeping in mind the end goal to guarantee non-reiteration of human rights violation, briefly expel or suspend from dynamic obligation any individual from the security strengths or other government organization against whom there is dependable proof of human rights violation, pending fruition of a free examination.

Ensure that law implementation staff, including security drives that do law authorization obligations, are prepared in maintaining global norms, including the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.4

There is a propensity among the debilitated administration to empower local people and media, to highlight the apparent wrong doings of the security strengths (SF) to demonstrate that

regardless it has some speck of control. Amid the insurrection stage, weight is applied on the masses by the extremists to extend the security constrains in an awful light by highlighting created charges.

Non-attendance of powerful administration and frail foundations don't permit the cases to be researched. As the revolt decreases, the inclination of highlighting the apparent abundances by security strengths reemerges among government officials, conclusion creators and common experts to recover political space. The quantity of claims and decibel levels increment exponentially with change of the circumstance with no reference to actuality, to score focuses and misuse feelings.

A few columnists have explored the pending cases in a couple police headquarters in profoundly psychological oppressor invaded ranges. As indicated by their discoveries, the FIRs held up in a solitary police headquarters protecting the armed force in instances of harm to property or death toll or offense amid counter uprising operations over the two decades may indeed, even keep running into hundreds. These were stopped either to stop the militants or some other personal stakes or at times by victims to claim remuneration for the harm to their property amid an honest to goodness activity against the psychological militants. Most were not sought after, as the concerned persons after starting request knew that they needed substance and in all cases remuneration, where due, was taken up all required funds.
Given the high mindfulness levels and dynamic media that was not exceptionally thoughtful towards the armed force even at the pinnacle of counter-insurrection operations, it is exceptionally improbable that even a solitary authentic case was left unexplored either by the police or the armed force itself. Regardless of the possibility that a rate of those that are as yet pending are taken after up at considerably later date, these would include countless also, resigned officers noting inquiries concerning occasions, that either never occurred or on the off chance that they took put, the whole arrangement of occasions and the realities were other than those recorded.