

alumnus Justice Madan B Lokur and Justice UU Lalit rationalize AFSPA immunity shield
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AFSPA no immunity for excessive force causing death: SC

New Delhi: The Supreme Court on Friday 08.7.2016 **blew apart the AFSPA immunity cover of armed forces personnel and said they could be tried by normal criminal courts** for use of unwarranted and excessive force to kill a person even in a disturbed area.

"The law is 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 Criminal Procedure Code," a bench of Justices **Madan B Lokur** and **U U Lalit** said in its 85-page judgment on alleged extra-judicial killings of 1,528 persons in Manipur.

Writing the judgment for the Bench, **Lokur** said: "To contend that this (putting Army personnel to trial under CrPC) would have deleterious and demoralising impact on 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 demoralising, particularly in a Constitutional democracy like ours.

"The result of the interplay between Sections 4 and 5 of the CrPC and Sections 125 and 126 of the Army Act makes it quite clear that the decision to try a person who has committed an offence punishable under the Army Act and who is subject to the provisions of the Army Act does not always or necessarily lie only with the Army - the criminal court under CrPC could also try the alleged offender in certain circumstances in accordance with the procedure laid down in CrPC."

The court said whenever the judiciary took up for scrutiny cases pertaining to extra-judicial killings by armed forces, it was argued that any restriction on use of firepower by the personnel would lead to tying one of their hands while battling insurgents and militants.

"This is not a valid criticism and this is important, in such cases it is not the encounter or the operation that is under scrutiny but the smoking gun that is under scrutiny. There is qualitative difference between use of force in an operation and use of such deadly force that is akin to using a sledgehammer to kill a fly; one is an act of self-defence while the other is an act of retaliation," it said.

source: 9 July 2016 Times of India New Delhi *adapted*

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