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# Examining Justice and Human Rights Violations: A Case study of Manipur

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## ABSTRACT

*An extrajudicial execution is the unlawful and deliberate killing of a person carried out by Government forces, or by people acting with the authorization, support or acquiescence of those forces. These killings are violation of the most cherished right to life enshrined in Article 21 of the Constitution of India. It is often alleged that extrajudicial executions are used as an alternative to arrest and lengthy criminal proceedings by on and off-duty law enforcement officers. It is also widely believed that this is a strategy sanctioned by the state to “get rid of militants”. Under the shadow of the Armed Forces (Special Powers) Act, 1958, having enforced in the whole of the State in 1980, large number of suspected militants had been killed in fake encounters by police and armed forces personnel in Manipur during the peak of insurgency. The Extra Judicial Execution Victims’ Families Association filed a PIL in the year 2012, before the Supreme Court of India as a last resort to obtain justice, alleging that no action was taken against any security personnel in respect of those unlawful killings in Manipur and the Supreme Court had directed the CBI to complete investigation in a time bound manner. This paper examines the state of human rights cases in the State of Manipur in the light of the judgment passed by the Apex Court and also suggests measures for delivering justice to families of victims of human right violations.*

## I. BACKGROUND

Manipur, once an independent nation-state, merged with Indian republic on October 15, 1949 as a part C state governed by a Chief - Commissioner appointed by the Government of India. It achieved a Union-Territory status in 1957 and finally, it became the 19<sup>th</sup> State of the Union of India<sup>3</sup> on January 21, 1972, after a prolonged statehood movement. The State has been witnessing militarization since late sixties. The intense militarization started during last part of seventies when insurgent activities intensified in the hill and valley areas of the State. The British colonial legacy used to neutralize Quit India Movement was followed in the State to

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<sup>3</sup> Vide the North-Eastern Areas (Reorganisation) Act, 1971.

suppress insurgency/militancy activities. The most dreaded Armed Forces (Special Powers) Act, 1958 (hereinafter AFSPA), amended in 1972, was invoked in the State as early in 1958. The AFSPA, comprising only seven sections, was enacted to suppress insurgency and demands for self-determination in the northeast.<sup>4</sup> Later in 1980, the whole state of Manipur was declared a disturbed area under section 3 of the AFSPA. Section 4 empowers the members of the armed forces to fire upon or kill any person on the mere suspicion of being a member of outlawed militant organization. The licence to kill is the most draconian provision of the AFSPA. Section 6 of the AFSPA debars the victims or their families from making any legal action against the perpetrators without previous sanction for prosecution from the Central Government, thereby the basic right to take legal recourse against the state forces<sup>5</sup> is unavailable to them. In short, AFSPA creates a state of exception<sup>6</sup>. Under the shadow of the AFSPA, about 1528 suspected militants<sup>7</sup> had been killed in fake encounters by police and armed forces personnel in Manipur during the peak of insurgency. The present paper examines the status of human rights cases in the State of Manipur and also explores the cases of extra-judicial killings in the light of judgment passed by the Supreme Court of India for upholding the rule of law and protection of human rights. It also suggests measures for delivering justice to families of victims of human right violations in the state.

## **II. OBJECT OF JUSTICE**

An independent, efficient and speedy justice delivery system is an important facet of a modern democratic system based on rule of law. The Constitution of India, in its preamble, aims to secure to all its citizens justice – social, economic and political as one of its prime objectives. The Indian legal system also fosters a well-functioning and efficient judicial system for the protection of the fundamental rights of its people and expeditious resolution of disputes. The efficacy of courts lies not only in its ability to dispense justice but also in the timely delivery of it to the people. The greatest strength of the judiciary is the faith people repose in it. A sense of confidence in the Courts is essential to maintain a fabric of order and liberty for a free people. Delay in disposal of cases would destroy that confidence and do incalculable damage to the society; that people would come to believe that courts cannot vindicate their legal rights. Insuring an efficient, accessible and qualitative justice represents a legitimate expectation of citizens in a society founded on the tenets of the rule of law. An

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<sup>4</sup> CHINTAN CHANDRACHUD, *THE CASES THAT INDIA FORGOT* 166 (2019).

<sup>5</sup> It includes the military, the paramilitary and the police.

<sup>6</sup> PATRIC HOEING & NAVSHARAN SINGH, *LANDSCAPES OF FEAR: UNDERSTANDING IMPUNITY IN INDIA* 129 (2014).

<sup>7</sup> Although exact figure of casualties have not been recorded, but it is believed that more than 10,000 people have been killed in the conflict.

efficient judicial system acquires legitimacy and respect from the citizens through an excellent functioning which results in impartial, clear and well-reasoned judgments. Therefore, raising the level of public trust in justice, as a fundamental element of the legitimacy of any judicial system, and its efficient functioning at the service of citizens, is based on the transparency and accountability of this system. The judicial reach and plural range of the judicial process to remove injustice in a given society is an index of law-in-action. It is well accepted that Law seeks to give justice. Justice is the end of law and also the ultimate goal of the society. Again, justice is functionally outraged not only when an innocent person is punished but also when a guilty criminal gets away with it stultifying the legal system. The deep concern of the law is to track down, try and punish the culprit, and if found not guilty, to acquit the accused. It is widely believed that in contemporary India the Supreme Court is the only protector of victims of human rights violations allegedly committed by the military and paramilitary personnel in some of the militancy affected states.

### **III. CASES THAT CHANGED HUMAN RIGHTS SCENARIO IN MANIPUR**

It was at the initiative of few young widows whose innocent husbands were also killed by security forces in anti-militancy actions in Manipur, gathered the courage to form an association called the “Extra Judicial Execution Victims’ Families Association Manipur”(EEVFAM) which filed a PIL in the year 2012, before the Supreme Court of India as a last resort to obtain justice, alleging that 1528 persons had been killed in fake encounters by police and armed forces personnel in Manipur and no action was taken against any security personnel in respect of those unlawful killings in Manipur. The Supreme Court took up the case very seriously and delivered a landmark order on 8th July 2016<sup>8</sup> in which it had issued directions for complete information to be collected as regards each individual case and also for information as to whether a judicial inquiry, an inquiry by the National Human Rights Commission or an inquiry under the Commission of Inquiry Act had been held and the results thereof. Later, in *Extra Judicial Execution Victims’ Families Association v. Union of India*<sup>9</sup>, the Supreme Court noted the extraordinary circumstances in which, for many years, no action had been taken by the State. The Apex Court of the country rejected the submissions of the Attorney General of India that “some of the incidents are of considerable vintage and at this point of time, it may not be appropriate to re-open the issues for investigation”. The Court also observed that merely because the State has not taken any action and has allowed time to go by, it cannot take advantage of the delay to scuttle an

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<sup>8</sup> *Extra Judicial Execution Victims’ Families Association v. Union of India*, AIR 2016 SC 340

<sup>9</sup> (2017) 8SCC 417

inquiry. Accepting the PIL filed by the EEVFAM, the Supreme Court, observed: “The history of public interest litigation over the years has settled that the deprived sections of society and the downtrodden such as bonded labourers, trafficked women, homeless persons, victims of natural disasters and others can knock on the doors of our constitutional courts and pray for justice. This is precisely what has happened in the present petitions where the next of kin could not access justice even in the local courts and the petitioners have taken up their cause in public interest. Our constitutional jurisprudence does not permit us to shut the door on such persons and our constitutional obligation requires us to give justice and succour to the next of kin of the deceased”. It was also submitted therein that since the compensation had been paid to the next of kin, it would be advisable not to proceed further in the matter. This argument too was rejected by the Supreme Court observing that “compensation has been awarded to the next of kin for the agony they have suffered and enable them to immediately tide over their loss and for their rehabilitation. This cannot override the law of the land otherwise all heinous crimes would get settled through payment of monetary compensation. Our constitutional jurisprudence does not permit this and we certainly cannot encourage or countenance such a view”. The learned counsel of the NHRC rightly contended that there was "no accountability" in case of human rights violations. It was also averred that "in Manipur, it took three years to get information regarding a case of alleged human rights violation. NHRC is a responsible fact-finding body. No government can say it is not accountable for violation of human rights." The attorney General, on the other hand, strongly averred that the security personnel have to act "in a particular way" on the Line of Control or during an insurgent operation. It was also contended by the Attorney General: "Truth of human rights violations if any can be found through criminal trials. It is a serious situation. Security personnel at a Line of Control or during an insurgent operation have to act in a particular way. How else we do it." Rejecting the contention of the Attorney General, a bench of Justices Madan B Lokur and Uday Umesh Lalit observed: "It is not the Line of Control but the heart of the cities like Imphal, is what we are concerned. Public order needs to be followed." The bench ruled that though an internal disturbance is a cause for concern, it does not threaten the security of the country. It, thus, held: “Having considered the issues in their entirety, we are of the opinion that it would be appropriate if the Central Bureau of Investigation is required to look into these fake encounters or use of excessive or retaliatory force. Accordingly, the Director of CBI is directed to nominate a group of five officers to go through the records of the cases, lodge necessary FIRs and to complete the investigations into the same by 31-12-2017 and prepare charge-sheets, wherever necessary”. The Justices did not think it appropriate to

associate any officer of the Manipur Police particularly since in some of the cases the role of the Manipur Police itself has been adversely commented upon. The Supreme Court has monitored the investigation conducted by the CBI and several orders were passed by way of a continuing mandamus. The purpose of a continuing mandamus is only to ensure that there is no interference during the course of investigations from anybody, whether due to political pressure or executive pressure or any other pressure that could compromise the investigations.

Earlier, in *Naga People's Movement of Human Rights v. Union of India*<sup>10</sup>, while upholding the constitutional validity of the AFSPA, a Constitution Bench of the Supreme Court held that an allegation of use of excessive force or retaliatory force by uniformed personnel resulting in the death of any person necessitates a thorough enquiry into the incident. It was also held that even the “Dos and Don'ts” and the “Ten Commandments” of the Chief of Army Staff believe in this ethos and accept this principle. However, the Apex Court made no reference to the fundamental rights to equality, freedom and life based on which the AFSPA was challenged or for that matter the legal tests to be applied to determine whether those rights had been violated<sup>11</sup>. The Court had missed an opportunity to test the controversial section 4 which authorizes use of lethal force on the touchstone of right to life under Article 21 of the Constitution<sup>12</sup>.

In *Sebastian M. Hongray v. Union of India*,<sup>13</sup> the Supreme Court issued a writ of habeas corpus for the production of two missing persons from the state of Manipur, alleged to have been picked up by the army and believed to be killed in custody. When the army failed to produce the individuals, the Court directed the State to pay Rs. 100,000 to each of the families.

It is pertinent to mention that in *D.K. Basu v. State of West Bengal*,<sup>14</sup> the Supreme Court held: “for the violation of the fundamental right to life or the basic human rights... this Court has taken the view that the defense of sovereign immunity is not available to the State... for the established violation of the rights guaranteed by Article 21 of the Constitution of India.” The Supreme Court reiterated the ratio of the *D.K. Basu* case in *Sube Singh v. State of Haryana*,<sup>15</sup> and held that an independent investigating agency, preferably the respective Human Rights Commission or the Central Bureau of Investigation, may be entrusted with

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<sup>10</sup> (1998) 2SCC 109

<sup>11</sup> *Supra* 2 at p. 179.

<sup>12</sup> *Id* at p. 179.

<sup>13</sup> (1984) 3 SCC 82

<sup>14</sup> (1997) 1 SCC 416

<sup>15</sup> (2006) 3SCC 178

adequate power to investigate complaints of torture.

Thus award for compensation and determination that a case involves a violation of a fundamental right and therefore, sovereign immunity is inapplicable are well settled. De facto and de jure immunity must not remain an additional barrier for monetary compensation to the victims, which helps reparation for victims of human rights abuses in the country.

#### **IV. PRACTICAL REALITY**

An extrajudicial execution is the unlawful and deliberate killing of a person carried out by state forces, or by people acting with the authorization, support or acquiescence of state forces. These killings are violation of the most cherished right to life enshrined in Article 21 of the Constitution of India. In this context, it is often alleged that extrajudicial executions are used as an alternative to arrest and lengthy criminal proceedings by on and off-duty law enforcement officers. It is also widely believed that this is a strategy sanctioned by the state to “get rid of militants”. It is a fact that the Government of India has used a two-pronged strategy to deal with militancy activities in the State. On the one hand, it has chosen to respond to the dissenting voices militarily and, on the other, it pursued administrative and political interventions. The state not only asserts violence, but also employs extrajudicial methods to clear itself of all accountability. Enacting draconian laws like the AFSPA means sustaining impunity vis-à-vis the extrajudicial means employed by the state. The impunity enjoyed by the state forces encourages them to indulge in unaccountable violence<sup>16</sup>. The government’s policy of awarding rewards and incentives to the security forces and police for sustained performance in the form of killed insurgents has only encouraged fake encounters and extrajudicial killings in the state. The AFSPA survived a series of committees and commissions of inquiry that recommended its repeal. The Justice Jeevan Reddy Committee was constituted in 2005 to review the operation of the AFSPA after the brutal rape and murder of one Thangjam Manorama, a thirty two year old woman alleged to be a militant, in the custody of Assam Rifles. This unfortunate incident led to widespread protests across the state, including an iconic nude protests by twelve ‘imas’(mothers) with banners reading ‘Indian Army Rape Us’. The Committee, observing that the AFSPA had become a symbol of oppression, an object of hate and an instrument of discrimination and highhandedness<sup>17</sup>, recommended repealing the AFSPA. The Second Administrative Reforms Commission of the central government, chaired by Veerappa Moily, also recommended the repeal of the AFSPA

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<sup>16</sup> Supra 3 at p. 136.

<sup>17</sup> Supra 1 at p. 181.

in 2007<sup>18</sup>. In 2013, the Justice Verma Committee, chaired by the same judge who was on the bench that decided the Naga People Movement case, stressed the need to review the continuance of the AFSPA as soon as possible<sup>19</sup>. In the same vein, the Justice Hegde Commission<sup>20</sup> in 2013 also observed that the AFSPA had little or no effect on insurgency in Manipur. However, the AFSPA still remains on the statute book.

On the other hand, the subordinate judiciary of the country has been facing criticism about the long pendency of cases before it. Statistics on the National Judicial Data Grid (NJDG), as on December 23, 2020, show that subordinate courts across India are reeling under an exhausting case load of about 34.62 million of pending cases. Manipur has approximately 10300 cases including 3846 criminal cases pending in the subordinate courts. Of all the pending cases in the subordinate courts in Manipur, 22.27 per cent cases have been pending for 1-3 years, 12.1 per cent of cases have been pending for 3-5 years, 8.83 per cent of the cases have been pending for 5-10 years, and about 1.52 per cent of cases have been pending over 10 years. The state has 9 judicial districts with 18 court complexes and 30 court establishments as on December 23, 2020. There has been consistent demand for appointment of more judges so as to render timely justice. However, one can't say convincingly that more judges would lessen the pendency and backlog of cases.

According to the Extra Judicial Execution Victims' Families Association<sup>21</sup>, the petitioner organization spearheading for justice to the families of victims of extrajudicial killings in Manipur, the Supreme Court had directed the CBI to complete investigation of 39 cases for which the agency had lodged FIRs. So far the CBI had submitted 14 charge sheets. Last hearing of only one case was held by the subordinate Sessions Court, Imphal West, as on March 7, 2020 and thereafter no hearing takes place due to covid-19 lockdown. Thus, establishment of a special CBI court to be manned by experienced senior judges for trial of every CBI investigated cases as mandated by the Supreme Court of India is call for. If a new special CBI court is established, it will not only ensure timely disposal of CBI investigated cases of extrajudicial killings but also can repose faith in the judiciary by the families who have been demanding justice for long.

## V. CONCLUSION

It is undeniable that the EEVFAM case pertains to allegations of serious violations of the

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<sup>18</sup> Fifth Report: *Public Order, Second Administrative Reforms Commission Report*, 1 June 2007, p. 242.

<sup>19</sup> Justice J.S. Verma, Justice Leila Seth, Gopal Subramaniam, *Report of the Committee on Amendments to Criminal Law*, 23 January 2013, p. 151.

<sup>20</sup> Justice Santosh Hegde, *Report of the Supreme Court Appointed Commission*, 30 March 2013, para. 4.7.

<sup>21</sup> Statement released on the occasion of its 11th foundation day organised on July 11, 2020

human rights of persons described as insurgents. A large number of such persons were killed in operations carried out by the Army, the paramilitary forces and the Manipur Police. Whether the death/killing of such persons was justified or not is a matter of investigation by the special investigation team and the trials will prove it. The AFSPA should be withdrawn. It will dissuade armed personnel from unnecessarily and unmindfully resorting to violence in dealing with innocent civilians. Opening legal avenues to the victims will ensure proper investigation of human right violations and prosecution of errant armed personnel where deemed necessary. It is high time that the High Court of Manipur as harbinger of justice should endeavour to set up a special CBI court to deliver timely justice to the victim families to subserve the larger interest of the society and the majesty of rule of law. It may be reiterated that the purpose of the criminal trial is to dispense fair and impartial justice, uninfluenced by extraneous considerations. Expeditious disposal of the trial is also a facet of fairness of a trial and speedy trial is in fact a fundamental right. The accused persons responsible for the extrajudicial killings in the state must be brought to justice. Bringing such offenders to justice will not pose serious challenge to law and order situation in the state. It rather would bring an atmosphere making people to believe that ours is a state governed by rule of law and not by trigger happy people. Years have passed by before they can be made answerable for the illegal acts committed by them. All must be made to understand that deprivation of life without due process is not permissible in our legal system. Let there be fair trials in all the cases investigated by the CBI for which establishment of a special CBI court is imperative for the ends of justice and such a move would be in the interest of the state. It will not only ensure the rule of law, which is the basic foundation of every democratic government but also preserve faith of the people in criminal justice system of the country.

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