

International Commission of Jurist
Eminent Jurists Panel: Terrorism, Counter-Terrorism and Human Rights
Sub Regional Hearing: South Asia
27 and 28 February 2007

Session 5

Counter-terrorism in North East India, Jammu & Kashmir, Gujarat, Chattisgarh and Jarkhand

North-east India Experience

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Pre-2001 Experience

September 11 is a significant day in the discourse on Terrorism. For the world it could be the crumbling of the twin tower in the terrorist attack in 2001, but for the 40 million people of the North-east India their democratic aspirations had also crumbled on the same day but almost half a century ago, when the President of India put his signature to the *Armed Forces Special Powers (Assam and Manipur) Act* (AFSPA) on September 11, 19581.

Half-a-century Reign of Terror

While introducing AFSPA in the Parliament, authorizing martial law in the North-east region, the then Union Home Minister justified the Act as a temporary measure to contain the uprising in the Naga Hills. But five decades later, large part of the North-east is still declared 'disturbed' under the Act and the civilian population is still under grip of the military rule. Thousands of lives have been extinguished in enforced disappearances and extrajudicial executions. Torture, rape, arbitrary detention, forced migration and displacement has become part of life.

Constitutional validity of AFSPA was challenged in the Supreme Court of India since 1980². But the apex court maintained a stoic silence on AFSPA during its most humane phase in the 80s. It did come out with a judgment in 1997. But this was only after the UN Human Rights Committee issued strong concluding observations after examining Government of India (GOI)'s 3rd periodic report under the International Covenant on Civil and Political Rights.

The Committee observed that in applying AFSPA, the GoI is in effect exercising emergency powers without resorting to Article 4, clause 3 of the Covenant³. The Committee expresses its concern that continuing reliance on these special powers and violations of non-derogable human rights including right to life, right against torture, right against arbitrary detention, right to fair trial etc. and requested the Supreme Court of India to examine the covenant compatibility of the Act⁴. But the Supreme Court

¹ Bimol Akoijam. Another 9/11, Another Act of Terror, www.sarai.net/publications/readers/sarai-reader-05-bare-acts/02_bimol.pdf -

² The Public Interest Litigation of the Manipur Human Rights Forum was filed in the Supreme Court on 10 October 1980

³ Para 19 of UN document CCPR/C/79/Add.81 of 4 August 1997

⁴ para 18 of UN document CCPR/C/79/Add.81 of 4 August 1997

ignores the request and upheld the Act *in toto*. The judgment did take cognizance of the “Do’s and Don’t” issued by the Army Head Quarter to its soldier, but offer no mechanism to enforce the safeguards⁵. To the victims of AFSPA, the judgment offers some rights but no remedy to enforce the right.

Not satisfied, by the Judgment the Army authorities obtained an order from the Supreme Court in August 2001, explicitly empowering themselves with the authority to detain and interrogate suspects in the name of collection “operational intelligence” if not “substantive intelligence”⁶. On 12 January 2007 the Indian Army proudly announces it has become the first armed force in the world to come out with a doctrine of “Sub Conventional Warfare”⁷. Today, military operations such as “Operation All Clear”, “Operation Dragnet”, “Operation Tornado” etc. continue to cut into the life of the ordinary civilians of the hills and valley of Manipur. It is no longer a national enterprise but has become an international one as the Indian Authorities are roping in its neighbors like Myanmar Army⁸ to jointly pound on the hideouts of the armed opposition groups.

But as the flexing of military muscles continues, the phenomenon of insurgency is also simultaneously witnessing an upswing. What started as an isolated armed resistance of the Naga people demanding self-determination, has slowly but surely embroiled the entire region into a million mutinies now. Unfortunately the government seems to be stuck with the law and order paradigm and military option. To understand the phenomena of the cycle of violence one need to see above and beyond this frame. Insurgency in the North-east is rooted in historical injustices and deeply felt discriminatory treatments meted out on a racially and culturally distinct group of people. It is essentially the fall out of the exclusion of a cultural and civilizational essence encapsulated by the North-east from ‘the idea of India’. The AFSPA-approach of dealing with the issue addresses the symptoms but ends up aggravating the every source of the problem and thereby continually fuels up the cycle of violence.

The people of Manipur have moved heaven and earth to do away with the Act. From sustained public protest to disrobing of elderly women in front the Army head quarters, self immolation of student leaders to the ongoing six years *satyagraha* of Miss. Irom Sharmila. In response to an unprecedented public protest in Manipur in 2004 the Union Home Ministry set up a Committee, headed by Justice Jeevan Reddy former judge of the Supreme Court of India to review the provisions of the Act, “Keeping in mind the legitimate concerns of the people of the North Eastern Region, the need to foster Human Rights, maintenance of public order”⁹. The Committee submitted its report to the Government in June 2005 and unanimously recommends the repeal of the Act. The Government, we are told, is still studying the report.

Most recently, the UN Committee on the Elimination of Racial Discrimination in its concluding observation issued in March 2007 after discussing India’s 15th to 19th

⁵ Naga People’s Movement for Human Rights v/s Union of India, AIR 1998 Feb.

⁶ Order dated 17-8-2001 of the Supreme Court of India, Criminal Original Jurisdiction, Criminal Miscellaneous Petition no. 4198 of 1999 in Writ Petition (Crl.) No. 550 of 1982, Naga People’s Movement for Human Rights V/s Union of India

⁷ Source: <http://www.india-defence.com/reports/2803>

⁸ A similar exercise was carried out with the Royal Bhutan Army in 2003.

⁹ Para 3, Report of the Committee to Review the Armed Forces (Special Powers) Act, 1958, Government of India, Ministry of Home Affairs 2005, printed by Human Rights Alert from www.hindu.com

periodic under the International Convention of Elimination of all forms of Racial Discrimination urged GoI to repeal AFSPA¹⁰. GoI is also requested to report on the implementation of its recommendation within one year¹¹.

Other Counter Insurgency Legislations used in Manipur

Even though AFSPA is the most widely known ‘counter terrorism laws’ / ‘national security’ law there are also a plethora of other less know laws enacted for the same purpose in Manipur:

1. Unlawful Activities Prevention Act, 1967

The Act confers power upon the State authorities to deal with activates directed against the integrity and sovereignty of India. In 2004, the Parliament incorporated many provisions / chapter from the Prevention of Terrorism Act, 2002 to curb terrorist activities. Many groups in Manipur are proscribed as unlawful organizations under this Act since the 60s but of late 6 of them have also been listed as Terrorist organizations. Its provisions are regularly invoked while arresting and booking suspected activist of the political organizations demanding the restoration of Manipur’s independence.

2. The Prevention of Seditious Meetings Act, 1911

Under this act, the district administration is authorized to stop public meetings ‘which are likely to promote sedition or to cause a disturbance of public tranquility in the proclaimed areas.’ Imphal East, Imphal West, Thoubal and Bishnupur Districts were declared proclaimed area’ under the Prevention of Seditious Meetings Act, 1911 vide Government of Manipur Notification 2/8(6)/2K-H dated 26 April 2000. A subsequent order declared the entire state of Manipur as proclaimed area under this Act.

3. The Punjab Security of State Act, 1953

Certain parts of Manipur valley are declared as ‘dangerously disturbed’ under the Punjab Security of State Act. Once declared as such, Section 10 of the Act enables the Government to impose collective fines on the civilian populations. HRA has documents two instances where the District Magistrates imposed collective fines on the villagers for militant activities done in the vicinity of their villages.

4. Foreigner’s Protected Areas Order, 1958

Foreign nationals with a valid visa to India are prevented from entering Manipur unless a special permission is obtained from either the Union Home Ministry. The requirement has been reported relaxed recently and tourist can now obtain the permission to go to Manipur from the Home Department of Government of Manipur.

5. The National Security Act, 1980

Under this law, a person suspected to indulging in ‘anti-national activities’ can be detained without charges (preventive or administrative detention) for a period of up to one year. Routinely used for booking alleged insurgents or ‘anti-nationals’. For example in the year 2005, 151 people are detained under this act in Manipur.

6. The Code of Criminal Procedure (Manipur Amendment) Act, 1983:

In Manipur, the normal criminal procedure code of India is modified to the following effect:¹²

¹⁰ Paragraph 12, UN document no. CERD/C/IND/CI/19 of March 2007

¹¹ Paragraph 34, UN document no. CERD/C/IND/CI/19 of March 2007

- (a) Extending the period of Police investigation thereby extending the time of administrative detention;
- (b) Provide more impunity to law enforcement officials;
- (c) More stringent requirement for bail application.

Moreover, prohibitory orders under section 144 of CrPC are perpetually placed in Imphal East and Imphal West Districts, thereby banning the gathering of five or more persons, which is likely to turn unlawful, and also carrying of sticks, stones, firearms or other weapons, or objects that can be used as weapons. People intending to take out processions for marriages or funerals are required to obtain prior permission from the D.C. The District Magistrates of the concerned Districts routinely issues an order to this effect every two months.

7. The Terrorist and Disruptive Activities (Prevention) Act, 1985

The Act was allowed to lapse by the Parliament in 1995 but cases are still pending in Manipur under this act.

Post 2001 Experience

The 2001 tragedy in the US brought the world into new security angst. Governments of the world came together to join the US led 'War Against Terrorism'. But as there is no universal understanding of the term 'terrorism'¹³, some governments are using this as a pretext to aggressively push their own agenda in a highly self-serving and politically motivated fashion.

In India the heightened national security mania finds its expression in the enactment of the dreaded Prevention of Terrorism Act, 2002 (POTA)¹⁴. In this increasingly belligerent mood of the state, an assessment of its impact on the human rights of the small ethnic communities in the Northeast—which have been historically experiencing, for most part, only the brute side of the Indian state—would be a worthwhile exercise. In this context, we take a closer look at Manipur, arguably the most volatile state of the region.

Politicization of 'Terrorism'

Informed sources observed that the real intent of enacting the POTA, was not to address the act of terrorism per se but to neutralize the assertion of the ethnic, national and religious minorities which opposed the dominant Hindutva ideology of the then ruling

¹² Under the Manipur Gazette, Extraordinary no. 502 dated March 22, 1983 of the Government of Manipur.

¹³ UN Special Rapporteur on terrorism, who noted that the issue of 'terrorism' has been 'approached from different perspectives and in such different context that it has been impossible for the international community to arrive at a generally accepted definition to this very day.' The special Rapporteur also pointed out that 'the term terrorism is emotive and highly loaded politically' (UN Special Rapporteur on terrorism report contained in UN document no. E/CN.4/Sub.2/2001.31)

¹⁴ POTA has been repealed in 2004, but its essential elements, including the list of 'terrorist organizations' have been retained in its new incarnation as the amended Unlawful Activities Prevention Act, 2004.

Bharatya Janata Party¹⁵. What gives credence to such a viewpoint is that not only are there existing laws to deal with the problem, but the stated objective of this new draconian Act and the way it defines terrorist act. The objective and reason for passing the Prevention of Terrorism Act, 2002 (POTA) was

... to control terrorist activity in the Northeast which witnessed insurgency since India's independence and Jammu and Kashmir and the rise of religious fundamentalist militancy.

The political overtone of the Act was obvious in the way it defined terrorist act in Section 3 (1) (a), which states,

Whoever with the intent to threaten the unity, integrity, security or sovereignty of India ... do or abstain from doing anything ... commits a terrorist act.

In the case of Manipur, where the juridical questions of the cohesive merger of an independent kingdom into the Indian Union is not only unresolved but actively challenged by a large section of the population, this political definition can hold any peaceful political dissident as terrorist. The politically motivated overarching definition of a terrorist act includes 'attempts to harbour or conceal' 'terrorist' as a terrorist crime. This had given ample scope for the law enforcement agencies to harass innocent civilians. In fact many people organizing and participating in peaceful public meeting to discuss Manipur-India politico-military conflict and proposing Plebiscite as a possible way out are booked as unlawful terrorist activists¹⁶.

Ethnization of 'Terrorism'

A list of 'terrorist organizations' is appended under the POTA's schedule. The Union Home Ministry provides the original list of terrorist organizations and the Central Government reserved the right to add or remove an organization from the list. The list contained twenty-eight organizations, out of which ten organizations were from the Northeast region. Out of these six—PLA, UNLF, PREPAK, KCP, KYKL and MPLF – are from Manipur.

Out of some fifteen active armed insurgent groups¹⁷ only six are listed as 'terrorist organization'. Discerning the politics behind this naming process will be interesting. The indigenous population of Manipur may be roughly grouped into Meitei, Nagas and Kukis communities. All the six proscribed organizations are predominantly Meitei based organizations. GoI is having a cease-fire agreement with two Naga armed groups. Indian Army also has a 'suspension of operation' arrangement with seven Kuki armed outfits and has even issued identity cards to carryout their illegal armed activities without the knowledge of the lawfully established Government of Manipur¹⁸. The act of singling out one particular ethnic group and branding them as 'terrorist organizations' leaves many

¹⁵ Dr. Balagopal. 2002. *The POTA Politics, National Workshop on Security Law*. New Delhi. The fact that this Act was passed by a government led by a political party whose government's role in the recent carnage in Gujarat gives credence to such a viewpoint.

¹⁶ HRA fact sheets, Ugent Appeals by the Asain Human Rights Commission and newspaper reports

¹⁷ http://www.satp.org/satporgtp/countries/india/states/manipur/terrorist_outfits/index.html

¹⁸ Many cadres killed in encounter with Manipur police are found to be carrying identity cards issued by the Indian Army authorities

observers guessing whether the Act was another ploy to ethnically polarize the fragile ethnic equilibrium of Manipur.

Such act of ethnization of 'terrorism' may or may not serve the immediate military goal, but such insidious divide and rule tactics certainly leaves long lasting ethnic enmity and tensions, which could be highly detrimental to achieving sustainable peace. The role of the Government in the Naga-Kuki ethnic clash in the early 90s is still being questioned. The biggest concern today is that unless the situation is handled with due care the possibilities of eruption of another ethnic violence of the scale not for seen before in the region cannot be ruled out.

Contemporary Issues of Concern

Rendering Human Rights Institutions Dysfunctional

The Manipur Human Rights Commission (MHRC), established in 1997, provided a forum where victims of gross human rights violations could come to petition their grievances. Even though the Commission has not power to deal with violations by the armed forces¹⁹, it could at least see that the civil police register cases of the atrocities.

The authorities were perhaps displeased with the Commission; they failed to nominate new members once the term of the first set of members expired. As the Commission remained suspended for almost a year, human rights activist moved the High Court with a Public Interest Litigation. The Government did reconstitute the Commission in 2005. None of the earlier members were re-nominated but this time they have put a retired Lt. Col. as one of the member, purportedly to improve the Army-MHRC relations.

HRA have evidence that the ex-army member threatened and intimidate human rights activist from carrying out their legitimate human rights work calling it as indulging in 'anti-army activities'.

Flaunting International Human Rights and Humanitarian Law Standards

Even though the GoI is a member of the UN Human Rights Council and has pledged to promote and protect human right all over the world, when it comes issue of Manipur and North-east it regularly flaunt international human rights and humanitarian laws.

For example on 6 July 2005 four Manipuris asylum seeker Romen Thounaojam, Sharatchandra Thingujam, Ibomcha Meitei Lichongbam and Kesho Kumar Meitei Urembem were forcibly returned from Thailand to the Indian while pending their status determination by the UN High Commissioner of Refugee. Amnesty International called this act a clear contravention of the principle of non-refoulement²⁰.

Whenever the demand for the repeal of AFSPA is raised, the Army always objects tooth and nail justifying the need for the special powers as they are engaging in a "war like situation" fighting terrorist/insurgents in the North-east.

¹⁹ Clause 19 of the Protection of Human Rights Act, 1992 barred the state human rights commission to take up cases against the armed forces of the Union.

²⁰ AI Index: ASA 20/015/2006 of 7 July 2006, UA 192/06

HRA submits that if the problem in Manipur is simply a 'law and order' or a 'public order' problem as the GoI would like to define, then Armed Forces Special Powers Act have no place what-so-ever; but if the situation as so grave as the military authorities would like to define as 'war-like' and retain the Act, GoI is obliged to formally declare a state of emergency following the procedure of the ICCPR. It is also obliged to follow certain international humanitarian laws including the common article 3 of the Geneva Conventions of 1948 and it Additional Protocol II of 1977 as well as the Security Council Resolution 1325. International agencies such as the ICRC should be invited to offer its humanitarian services in Manipur. The reign of terror can no longer be hidden.
