

ENDLESS WAR

People's Union for Democratic Rights 1983

In recent years the national media has been reporting, with regular frequency, about the violation of democratic rights of the people of North Eastern India, particularly in Nagaland, Mizoram and Manipur. The reports implicate a section of law enforcing agencies of the state of these violations. They give instances of harrowing tales of rape, torture and murder of innocent citizens by the armed forces. The back drop of their operations has been the continued armed insurgency in some part of the region, which has history of its own dating back to the nineteenth century. Irrespective of the objectives and operations of the insurgency and the causes the sustained it for decades, *it is necessary for the democratic section of our society to examine the role of state agencies in the violation of constitutionally guaranteed rights of the people in this region.* For the attempt to win over the recalcitrant citizen's loyalty of the constitution of India cannot be made at the cost of its very constitution.

North Eastern India consists of five states – Assam, Manipur, Meghalaya, Nagaland, and Tripura – as well as two *Union Territories* – Arunachal Pradesh and Mizoram. A population of 26,500,000 inhabits an area, overall, 255,000 sq. kms. This predominantly tribal region (Assam, 11 percent; Manipur, 90 percent; Meghalaya, 85 percent; Nagaland, 91 percent; Tripura, 29 percent; Arunachal Pradesh, 87 percent; and Mizoram, 70 percent) is characterised by its ethnic, linguistic and cultural distinction. As a region it is also marked by economic backwardness. Except parts of Brahmaputra valley in Assam (22.6 percent of the area of that state), the entire North-East has been declared as industrially backward in Sixth Five year Plan. It is within this kind of locale that armed insurgency, led by secessionist forces, is going on in some parts of the region.

The government, to deal with the insurgency, has armed itself with extra ordinary powers under an act that is now called “The Armed Forces (Assam and Manipur) Special Powers (Amendment) Act. 1972.” Popularly known as Disturbed Area Act, it has a unique character in that not only are the armed forces deployed under its provision, but they also reign supreme over the civil powers.

In the context of regular reports about the violation of the rights of the people by the army, it is necessary to examine the source of the latter's legitimacy; the Act, its enforcement and its constitutional validity.

The Act

On 26 January 1950 the Constitution of India came into force. Three years later the government began to acquire additional powers in the North-Eastern region with the "Assam Maintenance of Public Order (Autonomous District) Regulation Act, 1953." The Act was applicable to what was known as the Naga Unit, consisting of autonomous district of Naga Hills and Tuensang (presently part of Nagaland). The Act empowers the Governor to impose collective fines on the population (Section 7), to prohibit public meetings and processions (Section 10) and to detain anybody without a warrant (Section 17).

Later in 1958, the government brought forth "The Armed Force (Assam and Manipur) Special Power act, 1958." The act first came in to force in the form of an ordinance, 22 May 1958, twelve days after the budget session of parliament was over. It was introduced in the monsoon session of parliament for ratification. At the time of its introduction, the then deputy chairman of Rajya Sabha, Shri P.N. Saprú, pointed out that the Act had appeared in the form of an ordinance barely twelve days after the end of previous session of Parliament and there had been no need of such urgency. Several member of Parliament opposed it on the ground that the blanket power being conferred on the army by this act would lead to the violation of the Fundamental Rights of the people, that this act would circumvent the Constitution by effectively imposing an Emergency in these areas without actually declaring one and that it abrogated the powers of the civil powers in favour of the armed forces. Notwithstanding this prophetic voices of dissent, the Act was passed after a brief discussion that lasted for three hours in the Lok Sabha and for four hours in the Rajya Sabha. Parliament then approved it with retrospective effect from 22 May 1958.

In the words of the then Home Minister, Shri Gobind Ballabh Pant, the Act "virtually extended to the disturbed areas of Assam and Manipurthe regulation that was imposed in the Naga Unit", in essence, the act empowered the Governor to declare any

area covered by it as disturbed and in any area declared to be disturbed the army authorities were given special powers.

In addition, another act, meant specially for Nagaland, came in to force in 1962. It was called "The Nagaland Security Regulation Act of 1962." This act required the prior consent of the concerned authority to enable the armed forces to enter or leave any village covered by it (Section 3). It empowered the concerned authority to move the entire population, or a section of the population, of a village, the total animal population or a section of it, from the village to the another (Section 5). Further, it prohibited any legal proceedings to be instituted against any person who had acted in accordance with the provisions of this act (Section 36).

In November 1970, the government, by the use of a notification from the Home Ministry extended the area covered by the 1958 act to then existing Union Territory of Tripura.

Finally, in September 1972, the government brought forth fresh amendments to the 1958 act, repealing some of the previous acts and regulations. The objectives of the amendments, as stated by the incumbent Home Minister, Shri K. C. Pant, were threefold: "Firstly, it is proposed that the Armed forces (Assam and Manipur) Special Power Act, 1958 may have uniform application in all the five states and the two Union Territories in the North Eastern region." Secondly, it sought to state clearly that the Governor of these states and the administrators of the two Union Territories would have the power to declare an area as disturbed. Thirdly, "It is proposed to take that power also for the central government." It is this act in its amended form and called "The Armed Force (Assam and Manipur) Special Powers (Amendment) Act, 1972" which is on the statutes today.

In its present form the Act has seven Sections. Section 1 give its title and specified the area covered by the Act. Section 2 defines the armed forces as "the military force and air forces of the Union" It defines a "disturbed area" as any "area which is for the time being declared by notification under Section 3 to be a disturbed area."

Section 3 empowers “the Governor...or the Administrator...or the central government” to “declare the whole or such part of such state or Union Territory to be a disturbed area “ if he or she “is of the opinion that the whole or any part ...as the case may be, is in such a disturbed or dangerous condition that the use of armed force in aid to the civil power is necessary.” Once the area is declared disturbed, Section 4, 5 and 6 comes on to force.

Section 4: Any commissioned officer, warrant officer or any other person of equivalent rank in the armed forces may, in a disturbed area:

- (a) if he is of the opinion that it is necessary to do so for the maintenance for public order, after giving such due warning as he may consider necessary, *Fire upon or otherwise* use force, even to the causing of death, against any person who is acting in contravention of any law and order for the time being in force in the disturbed area, prohibiting the assembly of five or more person or carrying weapons or of firearm, ammunition or explosive substances;
- (b) if he is of the opinion that it is necessary to do so, to destroy any arms dump, prepared to fortified position or shelter from which armed attacks are made or *are likely to be made* or are attempted to be made or any structure used as a training camp for armed volunteers or utilised as a hideout by armed gangs or absconders *for any offence;*.
- (c) arrest, without warrant any person who has committed a cognisable offence or against whom a reasonable suspicion exists that he has committed or about to commit a cognisable offence and may use *force as may be necessary* to effect the arrest;
- (d) enter and search without a warrant any premises to make any such arrest as aforesaid or to recover any person believed to be wrongfully restrained or confined or any property reasonable suspected to be stolen or any arms, ammunition, explosive substances believed to be unlawfully kept in such premises, and may for that purpose use such force as may be necessary.

Section 5: Any person arrested and taken into custody under the act shall be made over to the officer-in-charge of the nearest police station with *the least possible delay*, together a report of circumstances occasioning the arrest.

Section 6: No prosecution, suit or other legal proceedings shall be instituted, except with previous sanction of the central government, against any person in respect of anything done or purported to be done in exercise of powers conferred by this act.

Section 7: the act deals with the repeal of various acts and regulations hitherto in force in the area. (Emphasis added in all cases)

The account of the act provided above, and particularly the parts we have emphasised bring certain distinctive features of the act. They are:

1. The act merely requires the subjective satisfaction of the concerned authority to declare an area as disturbed; as such no objective criterion for such a declaration has been laid down in the act. Likewise, there is no place for review of the notification once the area has been declared as disturbed and no role is assigned to the Legislature.
2. The central government can declare any area to be disturbed even if the state government is not favour of it.
3. The act empowers the concerned authority to deploy armed forces only in aid of civil power. Yet, the role of civil authorities has nowhere been demarcated in the Act. On the contrary, Section 4 makes the armed forces virtually replace the civil authority.
4. The Act endows even low ranking army personnel, such as Lance Naik, with extraordinary powers.
5. The act contains no stipulation on any reasonable limitations of the use of force when it is considered necessary to do so.
6. All kinds of institutions, without any qualification or reservation, are within the purview of the Act.
7. It makes it possible for women suspects to be searched, arrested and detained by the male officers and give scope for such searches to be undertaken during the day and night.
8. It makes it possible to arrest or search without warrant for any alleged offence that is necessarily related to the basic objective of the Act, i.e, maintenance of public order, and thus gives blanket powers to the armed forces.

9. No specific duration of time is given within which the arrested person has to be handed over to the police. The Act merely recommends the “least possible delay”

10. Any aggrieved citizen, or for that matter, even a state government, has no channel of Redressal against any erring official.

The implication of each of these distinctive features will be clear once we review the enforcement of the Act over all these years.

Enforcement

In January 1955, Mengungchungung area of Nagaland was brought under the Assam maintenance of Public Order (Autonomous District) Regulation Act, 1953. Since then the area has continued to be under declaration of disturbed area. Other areas that have been progressively been declared to be disturbed can be noted from the following chronology.

Declaration as Disturbed Area	Notified Area
January 1955	Mengungchungung, Nagaland
January 1956	The entire Naga Hill District
July 1956	Naga area of Manipur
January 1965	Entire Mizoram
August 1978	Manipur Valley
January 1980	North Kamrup, Assam*
April 1980	All Assam (except Cachar district)*
June 1980	South, West Hill areas, Tripura
September 1982	Jampur Hill district, Tripura

(*These two notifications were withdrawn on 2 August 1980)

Following the declaration of areas to be disturbed, one by one, the strength of the military and para-military forces in the region has increased manifold. In 1976 according to the Bureau of Police Research and Development, Government of India, the entire North-East

had a total of 34,500 civil police 20,000 armed police; the ratio of the police force per thousand of the population was found to be much higher than the average for the rest of India. According to recent estimates, there are, at present, 17 battalions each of Assam Rifles and CRPF (with each battalion consisting of 2000 personnel) and eight battalion of Border Security Force (with each battalion consisting of 10,000 men) in the region. They are backed by the state forces, such as Manipur Rifles, seven battalions of Nagaland Armed Police and the Rajasthan Armed Constabulary. This is backed by the army forces, whose precise strength could not be ascertained. (Nor can it be automatically related to this Act since it is a border area.) In fact, ten out of seventeen battalions of Assam Rifles, three out of eight battalion of the BSF and three out of seventeen battalions of the CRPF are under the direct command of the army. (Source *Indian Express*, 14 December 1982)

With this background, the Act was enforced in these areas from the early '50s. During the period of its operation many affected citizens and concerned human right organisations have gone to court for Redressal. Apart from individual cases of habeas corpus moved from time to time, there are three specific petitions that are directly related to the provisions of the Act.

In April 1980 Shri Indarjeet Barua moved the Gauhati High Court challenging the Act, when parts of Assam were notified as disturbed. On 17 April the Gauhati High Court ordered an interim stay on the operative Section 4 and 5 of the Act and this was upheld by the Supreme Court two days later. This case is now pending before Supreme Court.

In November 1980, the Human Rights Forum of Manipur challenged the Act as being ultra vires of the Constitution and prayed the Supreme Court to quash the order of September 1980 declaring parts of Manipur as disturbed area. The petition is pending before the Supreme Court.

In April 1982 the Naga People's Movement for Human Rights (NPMHR) filed the petition in the form of a letter. This petition is also pending before the Supreme Court.

A review of all these petitions and the counter affidavits filed by the government gives us specific instances concerning the enforcement of this Act, especially in relation to the distinctive features of the act identified above.

1. In all these areas, except in case of Assam, no area which is notified as disturbed at any time has been denotified, despite other government claims that the situation has been improving. The absence of any objective criterion about declaring an area as disturbed as well as absence for any provisions for review of the notification has led to the Act becoming a permanent enforcement in these parts of the North-East.
2. In September 1982, in Tripura the Army, according to a report in the *Indian Express*, requested the state government to declare Jampui Hill district as disturbed. But the state government declines as it felt there was no need for such extra ordinary powers. Yet, by the middle of September, the central government had unilaterally declared the area as disturbed. Thus, the act makes it possible for the centre to overrule the wishes of a legally elected state government.
3. In July 1978, the SDO of East District, Manipur, submitted before an enquiry commission about the how army forced him to clamp curfew in the district in October 1976. The army, in the absence of District Commissioner (DC) attempted to force the SDO to sign the curfew order, which the latter refused to do. Subsequently, the military authority got an official of Tehsildar rank, who is wholly incompetent in law, to sign the same order, after which they attempted to backdate it.

The counter affidavit filed by the Union Government in the NPMHR case includes a certificate by an army officer: "It is certified that DC of Ukhrul, Mr. G.P. Joshi visited the village Huinig Aching on 07 Mach 82 from 0700 hrs. to 1100 hrs. and instigated the villagers against security force ..." This was signed by the five village officials and one Captain Sumet Singh of 21 Sikh Regiment.

The report of the All-Women's Fact Finding Team (which included a PUDR representative) the investigated the aftermath of an ambush in Naga villages of Manipur, mentions an instance of detention and interrogation of District Commissioner of East District in February 1982.

In all these instances what is evident is the conflict between the civil and the military authorities with the latter enjoying a superior position by the virtue of the Act.

In January 1981 Mrs Nungshitombi Devi moved the court in a habeas corpus petition in an attempt to trace her husband.

Her husband Chaoba Singh, the 43-year-old father of seven children, had been taken away by the Security Forces from his home at Imphal thirteen days earlier. The petition was dismissed but Choaba Singh still remains untraced.

The Human Rights Forum Manipur, in its writ petition quotes an instance of CRPF jawan killing a pregnant woman in the market place of Imphal. The government, in its counter affidavit, admitted that, "on the 27th April 1980, while a CRPF vehicle was passing through a main market in Imphal town, on round got accidentally fired from the rifle of a CRPF jawan resulting in the death of a woman vendor and injuries of two others." But exactly how a single round killed one person and injured two others is not explained in the counter-affidavit.

In the petition filed by NPMHR, atrocities by the security forces are listed under six heads: Sexual assault on woman, mass torture, desecration of religious institutions, forced labour and collective fines and abduction. In each case, it documents systematically, the cases of reported atrocities over a long period of time. In addition, it cited more than 30 cases of torture from the medical registrar of a local hospital.

On March 3, 1982, Pastor P. Mashangva of Huishu village and Pastor Mahangthei of Chingai were abducted and tortured in the army camp for a week without food. They were subjected to electrocution of soft and private parts, hanged upside down, made to dig their own graves, according to a NPMHR petition.

An old lady, Dzuviu, of Kohima village, narrated to NPMHR fact finding team in 1978 of how a girl from Lotha Naga area was first raped then hanged upside down by the army; she also told them how a pregnant woman was shot in legs, after which a rope was tied under her neck and she was dragged around in public. Four girls were tortured and raped

in Yankeli Baptist Christian Church on 11 July 1971 by the army. They were all less than 18 years in age.

The report of the All-Women's team gives specific instances of molestation and rape of young girls in Paprei, Phungcham and Kairai village. It gives the general method of interrogation by the army as electric shock (in the private parts), brutal beating and general humiliation, giving specific instances of arrest and torture of village headmen, pastors, students, ex-servicemen, teachers, businessmen and government servants. It also provides specific instances of looting by the jawans.

In April 1992, two alleged extremist, Md. Tayeb Ali and Ahmed Ali were killed in a reported encounter with the Army in Kwatka Khunon, Manipur. A little later, the Chief Minister of Manipur, Keishing, announced in the Assembly that the police investigation had revealed nothing against them. The government paid an ex-gratia payment of Rs. 10,000 to each of the families of the deceased.

All these scattered segment of evidence, all culled from petitions filed either at the uahati High Court or at the Supreme Court, establish the implication of the working of the Act described in the preceding section.

4. Even low ranking army personnel like a Lance Naik has been conferred extraordinary powers by this Act, which makes it possible for individual Jawans to indulge in the harassment of villagers at all hours including a midnight.
5. The absence of any stipulation concerning the use of force makes it possible for the Army Jawans to indulge in the indiscriminate beating-up of innocent.
6. By covering I its purview all manner of structures the Act makes it possible for the army to enter houses, educational institutions and churches. While the law permits them to demolish the structures, they, however, choose to convert them in to interrogation camps.
7. The absence of any safeguard in the Act regarding treatment of women make them, as well as children, vulnerable, particular at night.

8. By giving blanket powers to arrest anybody for any offence without a warrant, the Act makes it possible for the Army to detain innumerable ordinary citizens ranging from poor peasant to pastors.
9. By not specifying any time period by which the army can hold a detainee under its control, the Act makes it possible for the armed forces to detain any person indefinitely and torture him during detention.
10. The incident cited above reveal a series of act of omission and commission by the armed forces, ranging from petty offences like stealing of household property to the murder of innocent citizens. The Act prohibits the people from any remedy in law whatsoever. Citizens can and have, however, approached the courts but all the habeas corpus petitions discussed above were dismissed despite the fact that the persons they concerned still remain untraced.

The account given above the enforcement of the Act makes two things strikingly clear. Firstly, the violation of the Fundamental Rights of the people in the disturbed areas cannot be dismissed as occasional instances involving stray deviant only. Secondly, almost all the instances stem from the salient features of the Act outlined above. This has to be viewed in the context of the fact that this act is a source of legitimacy of the powers conferred on the armed forces, in the existence of which constitutional rights are violated. Hence there is need to test the constitutional validity of the Act itself.

Thus, the People's Union for Democratic Rights (PUDR) came to file a writ petition challenging the constitutional validity of The Armed Forces (Assam and Amnipur) Special Powers (Amendment) Act, 1972.

Validity

From the account given above it is clear that the Act abrogates or take away the protection from the laws which pertains to the Fundamental Rights (Article 13), Freedom of Speech and Expression, Freedom of Peaceful Assembly (article 19), the Protection of Life and Liberty (Article 21) and Freedom of Religion (Article 25). PUDR petition argues that the act is unconstitutional precisely because it takes away these forms of protection.

According to the Constitution, Parliament does not have the power, except during the period of an Emergency, to enact legislation that falls within the list of state's power exclusively (List II, Seventh Schedule) and this division powers includes the realm of public order. The Forty-Second Amendment of the Constitution, effected during Emergency, inserted a provision in the Constitution that enabled the Union Government to deploy its armed forces in any state of the country without the prior agreement of that state (Article 257 A). Correspondingly, a new entry was made in the Union List which brings the deployment of the armed forces, in aid of the civil power, under the competence of the Union government (entry 2A, List I, Seventh Schedule). The Janata Government moved the Forty-Forth Amendment which repealed article 257 A but it could not repeal entry 2A since it lacked requisite number in Rajya Sabha. This is ho the Constitution today empowers the central government to pas laws relating to the deployment of armed forces in any state in aid of the civil power. This was something that the Union government lacked in 1958 as well as in 1972. Nevertheless, the specific provision enables the Union government to deploy the armed forces only as an *aid to civil power*. As the forgoing account has revealed, the provisions of this Act virtually subordinate the civil power to that of armed forces. On another plane, the Constitution empowers the Union government to declare an area as disturbed only in an even of its already being under an Emergency; this is vastly extended by the real operation of the Act. On these grounds, the PUDR petition has argued that parliament does not have the legislative competence to pass such an Act.

The Criminal Procedure Code of the land has certain institutional safeguard against arbitrary action by the state that affects the rights of its citizens. Such safeguards include the presence of an Executive Magistrate or a Commissioned or Gazetted Officer as a pre-condition for the dispersal of an unlawful assembly, the requirement that any arrested person be produced before a Magistrate within 24 hours of arrest that women be arrested or searched only by women official and the like. None of these safeguards are recognised in the act.

The Criminal Procedure Code was amended in 1973 and a crucial innovation was added to Chapter X whereby "if necessary for the public security that it (any unlawful assembly) should be dispersed, the Executive Magistrate of the highest rank who is

present may cause it to be dispersed by the armed forces” (Section 130(1)). Similarly, the armed forces may arrest or confine a person or an assembly under the direction of a Magistrate (Section 130 (2)). In such cases, the armed forces, “shall use as little force and do as little injury to person and property” (Section 130 (3)) The armed forces can themselves disperse an assembly without the presence of Executive Magistrate, with the proviso that they communicate with him as soon as possible and “thenceforward to obey the Magistrate’s instruction” (Section 131). In other words, by this amendment, the normal law of the land can be used to deal with extra-ordinary situation in which the armed forces are called in. But such deployment is, nevertheless, subject to the usual safeguard laid down in the code, whereby armed forces remain in the direction of the civil administration.

The Criminal Procedure Code is not applicable to the whole country. In some tribal area of the North-East, covered under the Sixth Schedule of the Constitution, Criminal Procedure Code is not applicable in its entirety but is left to the discretion of the state government (Section 5, Sixth Schedule). It must however be noted that in an earlier judgment of the Supreme Court had observed that even the Code is not applicable in letter, it is so in spirit in these areas.

It is in the context of all these factors that the PUDR argues in its petition that there is no need for the Act after the introduction of Chapter X to the Criminal Procedure Code in 1973. The petition asks the Supreme Court to declare the act as unconstitutional and invalid. In addition, it asks for interim direction, to extend the Criminal Procedure Code in its entirety, but particularly Chapter X to the North-East as a whole, to give orders restraining the army from camping in churches, from using churches as public places and from similarly using the educational institutions as public places.

The PUDR filed its writ petition in November 1982. The one hundred and thirty-two page petition named nine respondents. In addition to the five States and two Union territories of the North-East, it also includes the Ministries of Home and Defence of the Union Government.

Conclusion

In terms of sheer numbers, the people living in the disturbed areas increased from 62,000 in 1955 to 2,672,000 in 1982. The disturbed areas grew in area from 2,000 sq. kms. to 60,000 sq. kms. Over the same period. Given the restriction on the mobility of the people and given the atmosphere of the terror that pervades the region, it is not possible to conduct an independent and thorough investigation and to document the state of civil and democratic rights of the people resident of the disturbed areas. It was in 1977 that the activists of the Naga People's Movement for Human Rights made their courageous breakthrough in bringing some facts to public attention. Since then reports have been coming in from very many quarters, chiefly investigative ones published in the national dailies and news magazines. In the last five years, every major daily and news magazines, without a single exception, has published such reports at one time or another. In addition, human rights organisations located in or connected with the region, such as NPMHR, the Human Rights Forum, Manipur or the Women's Rights Association, Easr District, Manipur have been bringing out reports against all odds, regularly. Recently, an all women's fact-finding team from Delhi made an investigation in Manipur. Since 1980 there has been a concerted attempt to approach the courts at various level for redressal. These petitions and counters filed by the government constitute a valuable source of information in themselves.

As a whole, the growing body of evidence that has accumulated is sketchy, unsystematic, sometime unreliable and always incomplete. Yet it remains a kind of evidence that cannot be ignored. One cannot remain insensitive to persistent report to sexual torture, cold-blooded murder, the burning of villages and persecution of whole community. The use of the armed forces by the state against its own citizen is not good either for the armed forces or for the people. This is exceptionally so because the intervention by the armed forces in this region, to mediate the conflict and maintain public order, is not a brief or temporary intervention directed to the handling of an extra ordinary situation. The armed forces have been camping in some parts of North-East for the past quarter century, to the extent of having become permanent fixtures of social life.

Hence the democratic public can no longer remain silent spectators. Irrespective of inherent dilemmas involved in the political problem, we must face the facts and take a

stand. For, in the ultimate analysis, neither legal safeguard nor judicial intervention can replace individual consciences and collective wisdom.
