

People's Union for Democratic Rights

newsletter

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This newsletter is part of an initiative by PUDR to keep those interested in the organisation's work and issues of civil liberties and democratic rights informed of some of the issues that we are working on. A more comprehensive account of the issues and organisation's work can be found on <https://www.pudr.org/>.

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AFSPA

On March 31 the Union Home Ministry announced the government's intention to "reduce disturbed areas under Armed Forces Special Powers Act (AFSPA) in the states of Nagaland, Assam and Manipur", removing some areas of the three states from the de facto control of the army after several decades.

Fresh notifications were issued the same day (for Manipur and Assam) and on April 1 (for Nagaland and Arunachal Pradesh). The disturbed areas notification, which allows for the area to be brought under the AFSPA, was withdrawn entirely from 23 districts in Assam and partially from seven districts in Nagaland, six districts in Manipur and one district in Assam. There was no change in the status of Arunachal Pradesh where three districts and the area under two police stations continue to be declared disturbed areas. AFSPA also continues in the entire area of Kashmir without any change.

While the March 31 decision will restore the primacy of civilian rule in parts of these three states where several generations have grown up under the shadow of the gun, the decision to reduce the areas under the remit of the disturbed areas notification falls far short of the long-standing demand for justice as [PUDR has pointed out](#). Despite promises – during elections rallies – of a further reduction of areas under AFSPA, there has been no move to consider the demand for repealing this draconian Act altogether or for sanction for prosecution in hundreds of cases of killing and torture which have taken place under the protection of this Act.

In Manipur victims have waged a legal struggle for decades. On May 12 the Supreme Court asked the Central Government to file a status report with regard to the investigation into the killings in Manipur. As discussed in the [last newsletter](#), the Extra Judicial Execution

Victim Families Association had filed a writ in 2012 seeking investigations into 1,528 cases. Preliminary enquiry by a committee appointed by the court led to the court directing investigation into the cases in 2017. Till now 39 cases have been investigated.

No sanction has been given for prosecution in the killings in Oting, Nagaland, despite damning evidence of culpability in the chargesheet filed by the SIT (Special Investigation Team) following its investigations. The charges filed by the state government appointed SIT include murder, criminal conspiracy and disappearance of evidence amongst others. The chargesheet, filed on May 30 against army personnel, names 30 personnel including a major and nine paratroopers with charges under Section 120B/302/307/326/201/34 IPC. Initial reports quoted the SIT as having come to the conclusion that the “Op team had not followed the Standard Operating Procedure and the Rules of Engagement and resorted to indiscriminate and disproportionate firing”. PUDR has demanded that the SIT findings be made public and that sanction be given for prosecution in the light of a news report which shows that the SIT investigations had concluded that: “the team commander of an army major rank – who led the operation in the Tiru-Oting area of Nagaland on December 4, 2021 – allegedly knew that the ambush laid by his team was on the wrong route. The officer, however, allegedly ‘wilfully suppressed’ this crucial information and instead, knowingly directed the 30 army personnel of the sophisticated Alpha team of 21 Para Special Forces in the wrong direction. He then ordered his team to carry out an operation in Nagaland’s Mon district, which claimed six civilian lives and seriously injured two more.”

Despite these findings of the SIT, the Central Government has not yet replied to the state government request (in early April) and subsequent reminder (in May) for permission to prosecute.

Though it was the widespread outrage over the Oting killings that had led to the review of AFSPA in many areas of the North-East, the Act remains in place in Oting, Nagaland, making prior sanction necessary for prosecution. As discussed in the [last newsletter](#), the Centre has routinely denied sanction for prosecution in past cases.

In short, the prosecution in the present instance also seems to have entered the same labyrinth that has ensured the lack of any effective action in innumerable cases of alleged atrocities by army personnel in areas declared disturbed under AFSPA, despite the findings of investigations ordered by the government and the judiciary.

Hyderabad encounter killings

The findings of the Sirpurkar Commission of Inquiry into the killing of four deceased in December 2019 are significant for the Commission's indictment of 10 policemen and the exposé of the staged encounter and subsequent cover-up. The first of its kind to be appointed by the Supreme Court to probe an "encounter", the Commission was charged with looking into the "circumstances" and the "alleged incident that resulted in the death of four persons on 6th December 2019". Its final report shows that all four deceased – Jollu Shiva, Jollu Naveen, Chintakunta Chennakeshavalu and Mohammad Arif – were "deliberately fired upon with an intent to cause their death".

The Commission has recommended murder charges be filed against all 10 policemen and has noted that the three policemen who fired on the deceased "cannot take shelter under S 76 IPC and Exception 3 of S 300 IPC as their contention that they fired in good faith at the deceased suspects has to be disbelieved". Apart from listing a series of violation of the rights of the deceased, the Commission has

highlighted the fact that the police were aware of the juvenile status of at least two of the deceased who were aged 15 years.

The findings are also important in that they emphasise the significance of the 16-point guidelines issued by the Supreme Court in 2014 in the context of encounter killings. They also recall the 2009 judgment of the Andhra Pradesh High Court which had mandated the filing of murder charges against policemen implicated in an encounter killing as well as the 1997 NHRC guidelines for investigating encounter deaths. The court rulings were a result of long concerted struggles by rights activists including the PUCL in the 2014 case and the APCLC in the 2009 case. PUDR has for long been campaigning against encounter killings with several reports and statements. (See [joint position paper with APCLC](#).)

Given the historic importance of the stature of the Commission and its extensive proceedings, it is curious to note that the findings do not indict senior officers up the chain of command. By not including senior officers and other state functionaries whose roles are dwelt on in its report, the Commission has chosen to only indict those who were present at the site of murder. Thus, those who may have ordered, assisted and colluded in the brazen murder of four young men, including two juveniles, (whose involvement in the gang rape and murder of the young girl was never proven), have escaped, as always.

Sedition

The last month saw significant developments on the sedition law, the widespread and indiscriminate use of which has been discussed in earlier newsletters ([May 2021](#), [August 2021](#) and [March 2022](#)). On May 11, the Supreme Court of India passed an order that puts on hold Section 124A of the IPC. The order was passed following

the Central Government's decision to "reexamine and reconsider the provisions of Section 124A of the Indian Penal Code". The government was responding to a notice issued by the Supreme Court in an ongoing case, *SG Vombatkere vs. Union of India*, challenging the constitutional validity of the law.

The Supreme Court order states that "all pending trials, appeals and proceedings with respect to the charge framed under Section 124A of IPC be kept in abeyance" and that the court "hope and expect that the State and Central Governments will restrain from registering any FIR, continuing any investigation or taking any coercive measures by invoking Section 124A of IPC while the aforesaid provision of law is under consideration."

While the immediate response to the interim order by journalists, many activists and some legal scholars was one of celebration, perceiving the order as a stay or suspension of the sedition law, a more critical assessment views the order as a missed opportunity to judicially review sedition on constitutional grounds. The law will now be reviewed by the Centre, whereas the petitioners (several petitions have been clubbed together) had sought a judicial review of the law's constitutionality.

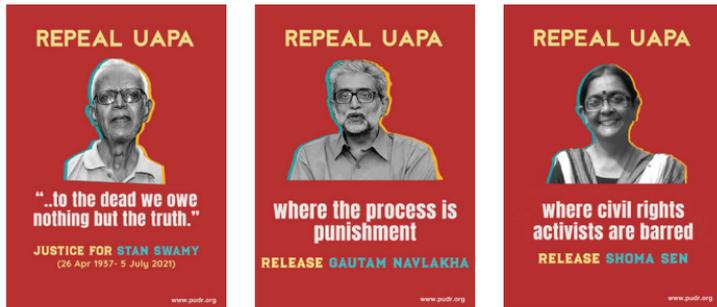
The government decision was also a quick turnabout in its earlier stance. On May 5 the Attorney General upheld the validity of the sedition law as a good law, while on May 7 the Solicitor General submitted a written argument stating that there was no need to reconsider the law. On May 9, however, a Home Ministry affidavit asked the court to "not invest time in examining the validity of the provisions" but wait for the Executive which would reconsider the law which, it stated, "can be done only before the competent forum".

While seemingly agreeing that the law was colonial in nature, this turnaround has allowed the government to wrest back the review process, though it has provided no clarity on the basis for the review, the forum of the review or how long it would take. An [editorial](#) in the *Indian Express* expressed the opinion that the comments of Union Minister for Law and Justice Kiren Rijju “in the immediate aftermath of the interim order, on a ‘laxman rekha’ between the judiciary and the executive, and the government’s imperative to respect not just the Constitution but also other laws, signal a discomfort with the Court’s directives”.

The next date of hearing is expected in the third week of July.

Poster campaign

As part of its campaign for the release of activists incarcerated in the Bhima Koregaon case, PUDR is in the process of creating posters in English and Hindi which portray the draconian features of UAPA along with portraits of the activists.



*Ring the bells that still can ring,
Forget your perfect offering
There is a crack, a crack in everything
That’s how the light gets in
– Leonard Cohen*