

No Farewell to Arms?

You may call off an experiment when you realise that it has failed or you may continue it, hoping for the best. But what do you make of an experiment that sees only failures and sees no end?

The presence of the armed forces in Manipur, a “disturbed area” under the notorious Armed Forces Special Powers Act, 1958 (AFSPA) to assist the State in restoring normalcy is one such experiment undertaken by the Centre which has lasted six decades.

So it came as no surprise when the Supreme Court in a much awaited judgment in *Extra Judicial Execution Victim Families Association (EEVFAM) & Another vs. Union of India & Another* held that:

“... normalcy not being restored cannot be a fig leaf for prolonged, permanent or indefinite deployment of the armed forces (particularly for public order or law and order purposes) as it would mock at our democratic process ...”

Absolute power has never been known to have a good influence on the minds of those who possess such power. A similar apprehension is expressed by the Supreme Court in its judgment when it observed that *“If the members of our armed forces are deployed and employed to kill citizens of our country on the mere allegation or suspicion that they are an ‘enemy’ not only the rule of law but our democracy would be in grave danger”*

The Court was considering a writ petition under Article 32 seeking constitution of a special investigative team of police officers from outside the State of Manipur to investigate 1528 incidents of extra-judicial killings, allegedly carried out by the Manipur Police, the Assam Rifles and the Army.

The Centre and the State sought to justify these killings as the result of counter insurgency operations carried out by *“uniformed personnel in the lawful exercise of powers ...”*

Manipur was declared a “disturbed area” on 15.10.1970 under section 3 of AFSPA and this status has continued till date. So has the “efforts” of the armed forces and the civil administration to restore normalcy in the region. In August, 2004 the Imphal municipal area was de-notified as a “disturbed area” after the State saw unprecedented mass protests following allegations of rape, torture and death of a young woman, Thangjam Manorama while in the custody of Assam Rifles personnel on 11.07.2004.

Reiterating the observations of a Constitution Bench of the Court in the case of *Naga Peoples Movement of Human Rights*, (which had upheld the validity of AFSPA) that the armed forces deployed in the State should operate in cooperation with the civil administration until normalcy is restored, Justice Madan Lokur who wrote the judgment noted that if normalcy is not restored for a prolonged or indeterminate period, *it would be indicative of the failure of the civil administration to take effective aid of the armed forces in restoring normalcy or would be indicative of the failure of the armed forces in effectively aiding the civil administration in restoring normalcy or both.*

These are very strong views of the Court on the legitimacy of the continuing presence of armed forces in a state for a prolonged period. These views deserve serious consideration by the Governments at the Centre and the State, particularly since the Court has also agreed to hear another writ petition challenging the declaration of areas in Manipur as “disturbed areas”.

Rejecting the argument of the centre that a war-like situation existed in Manipur, the Court expressed that non-invocation of any of the emergency provisions in the Constitution which are supposed to deal with situations of war, external aggression or an armed rebellion indicates that the situation in Manipur is only that of an “internal disturbance” and not that of a War. The argument of the Centre highlights a rather peculiar situation where the Army is fighting a war against their own countrymen for six decades with no sign of any end.

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On the question whether the allegations of fake encounters of 1528 persons in the writ petition called for an investigation, the Court again fell back on observations made by the Court in the *Naga Peoples Movement for Human Rights* case and held that deaths resulting from the use of excessive or retaliatory force “akin to using a sledgehammer to kill a fly” cannot escape scrutiny by Courts. Reiterating the Constitution Bench’s observation, Justice Lokur held that any allegation of abuse or misuse of power by the armed forces while causing even a single death calls for a “thorough enquiry”.

Taking a cue from the Ten Commandments issued by the Chief of Army Staff to armed forces, the Court pointed out that caution and use of minimal force is encouraged by the Army even while it engages terrorists, militants and insurgents.

After expressing displeasure about the presence of the armed forces in the State for six decades to restore normalcy in a crisis relating to internal disturbance, the Court finally directed the Amicus Curiae and the Petitioners to compile and furnish more information to the Court about all the 1528 persons who are allegedly victims of extra judicial killings.

There appears to be no doubt in the mind of the Court that the allegations of the extra-judicial killings in the writ petition certainly calls for an investigation. The manner of such investigation is to be determined by the Court after more details about the alleged “extra-judicial killings” are placed before it. The Court has also sought details regarding the outcome of any judicial enquiries or inquiry by the National Human Rights Commission or under the Commissions of Inquiry Act, 1952 into these killings.

However, for the time being, the message has gone out loud and clear to all stakeholders that the time has come to consider ending the blanket immunity and legitimacy that AFSPA has provided for six decades to those who kill on mere suspicion.

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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.