

# THE MURDER OF MANORAMA

Not only the man on the street, but even judges have been arbitrarily picked up, detained and tortured by the men in uniform deriving unlimited and unaccounted powers from the Armed Forces (Special Powers) Act, 1958. If the judiciary cannot protect itself, how can it do justice to the people of Manipur, asks **Colin Gonsalves**

**T**he Guwahati High Court has disposed of a writ petition of the Assam Rifles seeking a restraining order on the publication of the report of the Commission of Inquiry set up by the state of Manipur to enquire into the circumstances surrounding the killing of Manorama. The High Court directed that the report be handed over to the Union Home Ministry. The ball is now squarely in the court of the Prime Minister. The whole of Manipur watches to see what decision he will take.

In the early hours of the morning, on July 11, 2004, 29-year-old Manorama was picked up from her house in Imphal and taken away by the Assam Rifles. Three hours later her body was found with eight bullet injuries in a field. The Assam Rifles says she wanted to relieve herself and while doing so attempted to escape. She was, therefore, shot and killed. To the public, however, it appeared incredible that a four-foot eleven inch girl, weighting 50 kgs., should escape from eight highly trained jawans in an open field with nobody around. Public unrest engulfed the whole of the state. A man immolated himself. Women stripped naked outside the headquarters of the Assam Rifles inviting rape and executions.

In the inquiry set up under the provisions of the Commission of Inquiry Act, Manorama's brother testified that he saw a jawan pull up Manorama's T-shirt and insert a kitchen knife into her underwear prior to arresting her. The former police surgeon and the Chief Medical Officer of the Manipur Health Service and

another doctor deposed that she was killed at close range while in a lying down position. She had bullet injuries in her vagina. Apart from the bullet wounds, there were other injuries caused by a blunt object. The Central Forensic Science Laboratory reported semen stains on her petticoat. A resident of the area, who was in the field at that time, contradicted the Assam Rifles version saying that she saw the jawans alight from the vehicle with the lifeless body of Manorama and placed her in the field and then she heard the sound of gunshots. Policeman deposed saying that they did not find spent cartridges in the area and there was not a drop of blood on the ground.

The army did nothing except to start its own inquiry which has lingered on till today with no result. It remains oblivious of the mood of the people. As a result, the entire force is tainted. Had General J.J. Singh acted promptly and punished the guilty jawans, the army would not have been in the miserable position that it is today. But years of colonial type oppression has made it impossible for the armed forces to discard the rotten apples in their ranks.

In Naga People's Movement for Human Rights versus Union of India, the Supreme Court clarified that the role of the army as defined by the Armed Forces (Special Powers) Act, requires the army to come only to the 'aid of the civil power' and not 'to supplant or act as a substitute for the civil power in the State', to 'invariably consult the state government', to hand over the arrested persons to the nearest police station 'with least possible delay', to open fire only if 'it is essential for maintenance of public order', not to interrogate accused persons, and



Women Protesting Outside Army HQ in Imphal

**IS TORTURE THE RESULT OF MILITANCY OR THE OTHER WAY AROUND? IN MANIPUR, AS INDEED IN MANY STATES OF INDIA, YOUNG PEOPLE WHO ARE MERE SYMPATHISERS AND WELLWISHERS OF A MOVEMENT HAVE NO CHOICE BUT TO JOIN THE RANKS OF THE UNDERGROUND TO ESCAPE TORTURE. THE STATE BY ITS CRUDE AND VULGAR METHODS CREATES TERRORISTS!**

Chhattisgarh High Court, had his house ransacked by jawans allegedly looking for a gun! If the judiciary cannot protect itself, how can it do justice to the people of Manipur?

In all the states affected by militancy, from Jammu and Kashmir to the

them in a cursory and routine fashion. In Jammu and Kashmir today, as in the Punjab during the height of militancy, the judiciary was frozen into inaction by what it perceived as its duty in the face of armed militancy. As a result, it lost the love and the faith of the people. This is a dangerous alienation. It is when times are most difficult that the judges are required to stand firm and take a stand to uphold the Constitution come what may. For, when constitutional protection disappears, the end of democracy becomes an immediate possibility.

Political will alone determines the direction India takes. Absence of this amounts to proscribe torture, and the police and armed forces will grow unchecked into awesome bodies of organised crime. South Africa in this regard can well be a model to follow. Under the apartheid regime, torture was a routine forensic tool. Today, it has been institutionally banished though individual cases may figure as exceptions.

Violence leads to more violence until it becomes a bloody trail. We must stop torture now.

to 'get the permission from the magistrate and use as little force and do as little injury to persons' as possible. In Manorama's case all these rules were flouted.

Ordinary people are not the only victims of this savage power. Max Phazan, a Sessions Judge, was picked up from his court by a brigadier of the Assam Rifles after he had granted bail to a Naga boy and was taken to the barracks and given electric shocks. His complaint to the High Court resulted in an inquiry being conducted which lay in sealed cover for many years. It now seems that the report is missing! Another Naga judge, Justice Shishak, later on the Chief Justice of

North East, and from Bihar through Maharashtra to Andhra, a clear picture emerges of an executive that openly supports torture and of a judiciary incapable of acting decisively. The existence of insurgency is seen as justifying torture. But is torture the result of militancy or the other way around? In Manipur, as indeed in many states of India, young people who are mere sympathisers and wellwishers of a movement have no choice but to join the ranks of the underground to escape torture. The state by its crude and vulgar methods creates terrorists!

And in the High Courts, the habeas corpus petitions languish, with the judiciary dealing with

# The Judgment

Following are the excerpts from the judgment of the Guwahati High Court on the writ petition of the Assam Rifles.

## **IN THE GUWAHATI HIGH COURT**

(The High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh)

**WRIT PETITION (C) No. 5817 OF 2004 AND WRIT PETITION (C) NO. 6187 OF 2004  
IN WRIT PETITION NO. 6187 OF 2004**

**JC-172262f Nb Digambar Dutta & ors.**

**Vs.**

**The State of Manipur & ors.**

**D. Biswas, J.**

## **JUDGMENT AND ORDER(CAV)**

THE controversy in both the writ petitions relate to the competence of the Government of Manipur in appointing the Commission of Inquiry headed by Shri C. Upendra Singh, a retired District and Sessions Judge to make "an enquiry into a definite matter of public importance, namely the alleged killing of Km. Th. Manorama Devi."...

8. Mr. N. Dutta, learned senior counsel appearing for the Commission submitted that the Commission appointed by the State Government was allowed by this Court by the order dated 28.8.2004 to proceed with the enquiry and not to publish the report without leave of this Court. Accordingly, the Commission proceeded with the enquiry and submitted its report to the State of Manipur. The report of the Commission is a property of the Court as the Commission proceeded with the enquiry under orders of this Court passed under Article 226 of the Constitution, and the facts unearth are materials before the Court for consideration and direction for initiation of appropriate action against those who have been found responsible for causing death of Km. Th. Manorama Devi.

...

10. Mr. Colin Gonsalves, learned senior counsel appearing for the Respondents No. 4 and 5, brother and mother of the deceased, argued that the forces of the Union deployed in a disturbed area to act in aid of civil power have to perform its duties within the parameters of Section 4 and 5 of the

Armed Forces (Special Powers) Act, 1958 as interpreted by the Apex Court in Naga People's Movement of Human Rights - vs. - Union of India, reported in (1998) 2 SCC 109 and various other judgments. Relying upon the decisions in Naosam Ningol Chandam Ongbi Nungshitombi Devi - Vs. - Rishang Keishing, Chief Minister of Manipur and others, reported in 1983 Cri. L.J. 574; the Civil Liberties & Human Rights Organisation (CLAHRO) - Vs. - P.L. Kukrety, G.O.C. 'M' Sector, Assam Rifles and others, reported in (1988) 2 GLR 137; Smti. Luithukla Vs. Rishang Keishing and others, reported in (1988) 2 GLR 159; Raj Kishor Roy - Vs. - Kamaleshwar Pandey and another, reported in 2002 (5) SCALE 471 and in Shri S.K. Zutshi and another - Vs. - Shri Bimal Debnath and another, reported in 2004 (6) SCALE 550, Mr. Gonsalves argued at length to show that the dispute relates to maintenance of public order in the State of Manipur and, therefore, the State having legislative competence in relation to 'public order' was competent to appoint the Commission. Mr. Gonsalves pointed out that the house of the deceased Km. Th. Monorama Devi was raided at night without informing the local people and without the presence of any lady constable. No effort was at all made by the raiding party to obtain the services of a lady constable. She was taken to custody at gun point and moved from one place to other, raped and murdered by shooting from a close range. Recalling the aftermath turmoil that followed engulfing the entire State of Manipur, Mr. Gonsalves submitted that the State Government being responsible for maintenance of 'public order' could not be a mute spectator to the happenings and had to appoint the Commission of Inquiry in exercise of powers conferred under Section 3 of the Commission of Inquiry Act, 1952. Mr. Gonsalves submitted that the terms of reference are inseparably connected with the 'maintenance of public order' and, therefore, any incidental encroachment into the functioning of the members of the armed forces by the Commission during the course of enquiry cannot take away the matter out of the jurisdiction of the State Government vested in it under Section 2 (a) (ii) of the Act of 1952.

12. Before the above question is addressed, we may refer to the facts and circumstances which led to the arrest and death of Km. Th. Manorama Devi as enumerated in Writ Petition (C) No. 5817 of 2004.

Mr. Gonsalves pointed out that the house of the deceased Km. Th. Manorama Devi was raided at night without informing the local people and without the presence of any lady constable. No effort was at all made by the raiding party to obtain the services of a lady constable. She was taken to custody at gun point and moved from one place to other, raped and murdered by shooting from a close range. Recalling the aftermath turmoil that followed engulfing the entire State of Manipur, Mr. Gonsalves submitted that the State Government being responsible for maintenance of 'public order' could not be a mute spectator to the happenings and had to appoint the Commission of Inquiry in exercise of powers conferred under Section 3 of the Commission of Inquiry Act, 1952

On the night of 10th July, 2004, in pursuance of intelligence report that the deceased, a member of the banned organization PLA, having PLA No. 1262 and a self-styled Corporal was in the vicinity of the area of Baman Kampu Mayie Leikai of Imphal. One of the arrested members of the PLA also revealed during the course of interrogation that the deceased has been working for the banned organization having assigned code sign B-82. A series of information and intelligence report revealed that Km. Th. Manorama Devi was involved in heinous crimes against the people of the State of Manipur. The Company Commander of the Assam Rifles columns stationed at Sinjamei mounted an operation to pre-empt any threat that might emanate from terrorist activities. The operation was undertaken in pursuance of the specific information that the deceased was in regular radio contact and in possession of valuable intelligence materials. At about 12.15 A.M. of 11th July, 2004, a mobile vehicle check post was informed by an intelligence source that the deceased was at her residence at Baman Kampu Mayie Leikai. Immediately, an operation was launched and at about 3 A.M., the house of the deceased was cordoned, and after being satisfied about her identity, Km. Th. Manorama Devi was arrested for the purpose of being handed over to the nearest police station along with incriminating documents. A call was made to the police control room to arrange a lady constable. The S. I. of Imphal West Police Station, on being contacted, told that some paper works are required to be completed, and further

told that a lady constable could be provided by the Superintendent of Police only. During the raid, the deceased produced a radio set and a hand grenade from her possession which were seized by the Assam Rifles personnel. The deceased also informed that there was an AK - 47 Rifle in the possession of another lady cadre, namely SS Lt. Ruby living in the general area of Sinjamei. The patrol party immediately made a hot chase and arrived at Singamei at about 3: 20 AM when the deceased informed that the lady cadre was infact staying at Nambol. The patrol party proceeded to Nambol where the deceased again told that there was a mistake and SS Lt. Ruby would be available at Tulihal. Thereafter, the patrol party proceeded to Tulihal where the deceased informed that she was not sure about the exact location. By then, it was about 4:45 A.M. and day light broke-in. The deceased told the patrol party that Lt. Ruby would be available at a separate location away from her house in the direction of Yaripok about 4 km away. On their way to Yaripok, the deceased requested to allow her to respond to the call of nature. The vehicle was stopped and the patrol party took position at a distance of 30 - 35 meters away from her. By then it was 5:30 A.M. All of a sudden the deceased started to flee through the nearby hedge. The guard commander commanded her to stop and fired a shot in the air as a warning. The other members of the guard fired towards her legs. In consequence, she sustained bullet injuries and died.

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13. The features available from above statements made in the writ petition are of great significance. It is evident that the raid was conducted without presence of a lady constable; though the house was cordoned off, no attempt was made to contact the Superintendent of Police to provide the services of a lady constable; the arrested person was not handed over to the nearest police station; she was interrogated after arrest and moved from place to place in search of another lady cadre and there was no FIR pending against Km. Th. Manorama Devi at the time of her arrest.

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19. The Special features emerging from the statements made in the writ petition noted in paragraph - 13 of this Judgment clearly indicate that the members of the 17th Assam Rifles might be within their right to go for search and arrest within the limits of Section 4 of the Act of 1958. However, the manner and method adopted were contrary to the provisions of law. There was gross violation of the provisions of Section 5 which provide that any person arrested and taken into custody under this Act shall be made over to the officer in charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest. Had the provisions of Section 5 of the Act of 1958 were complied with by the mem-

**Sharmila, who has been on a fast for five years in protest against Indian army's reign of terror in Manipur, under arrest and being nasally force-fed at a hospital in Imphal**

bers of the Assam Rifles after arrest to Km. Thangjam Manorama Devi, the unfortunate incident leading to her death could have been averted. The 17th Assam Rifles personnel acted beyond their competence in not handing over of the arrested person to the nearest police station without least possible delay, which is a must, and instead they proceeded to interrogate Km. Th. Manorama Devi and detained her for a longer time than necessary. This observation is based on the three judgments delivered by the Division Bench of this Court, discussed hereinbelow.

20. In *Naosam Ningol Chandam Ongbi Nungshitombi Devi (supra)* held that there is no ambiguity in Section 5 of the Act which requires in clear terms that any person arrested under the Act of 1958 has to be made over to the nearest police station without delay. The Division Bench further held that the Section does not permit the arresting armed force to keep the arrested person in custody for the purpose of interrogation, or to be fully satisfied whether the concerned person was really involved in the matter which had led to his (her) arrest. This satisfaction, according to the Division Bench, has to precede the arrest, and not to follow it. The Division Bench, further opined that after a person is arrested on the requirements of Clause (c) of Section 4 being fulfilled, no necessity of his further interrogation to find out his probable involvement is left. It is because of this that Section 5 requires his immediate handing over to the police with a report of the circumstances occasioning the arrest. Any power given beyond the provisions of Section 5 would amount to giving untrammelled power of arrest to the armed force beyond what is permitted by Section 4 (c).
21. In *Civil Liberties and Human Rights Organization (supra)*, a Division Bench of this Court while dealing with the question relating to delay in handing over of the arrested person by the Assam Rifles personnel, observed that Section 5 contemplates that any person arrested and taken into custody shall be made over to the nearest police station with least possible delay together with the report of the circumstances occasioning the arrest. Taking exceptions to the delay of 5 days in handing over the arrested person, the Division Bench relying upon the Apex Court's Judgment in *People's Union for Democratic Rights Vs. State of Bihar*, reported in AIR 1987 SC 355 directed payment of compensation to the persons who were kept in custody for five days or more after their arrest. The direction was given taking into consideration the argument that detention for a period of five days was in violation of Articles 21 and 22(2) of the Constitution.
22. In *Smt. Luithukla (supra)*, a Division Bench of this court relying upon the decision of the Apex Court in *Sebastian M. Hongray Vs. Union of India*, reported in AIR 1984 SC 1026 directed payment of compensation to the wife of the person missing after arrest. The Division Bench clarified that the civil authorities and the armed forces on deployment in aid of civil powers have to work hand in glove and the armed forces deployed in a disturbed area do not really supplant the ordinary machinery for maintaining law and order or for that matter public order, but they supplement the ordinary law enforcing machinery.
23. The Hon'ble Supreme Court dealt with extensively the provisions of the Armed Forces (Special Powers) Act, 1958 and other provisions of law rel-

evant for the issue at hand in Naga People's Movement of Human Rights (supra). The Attorney General of India placed before the Apex Court in the form of lists of "Dos and Don'ts" issued by the Army Headquarters from time to time. The list provides amongst others the following instructions that " before launching any raid/ search, definite information about the activity to be obtained from the local civil authorities; as far as possible co-opt representative of local civil administration during the raid; before opening fire against any suspect or person to ascertain that it is essential for maintenance of public order; to hand over the arrested persons to the nearest police station with least possible delay." The list of don'ts inter alia provide that "no person be kept under custody for any period longer than the bare necessity for handing over to the nearest police station; not to use any force after having arrested a person except when he is trying to escape; not to interrogate the person arrested by the members of the armed force; to act in closest possible communication with civil authorities; maintain inter-communication if possible by telephone/ radio; avoid indiscriminate firing."

Considering the above list which is quoted in brief, the Supreme Court in para - 58 of the Judgment observed that the instructions given by the Army Headquarters have to be treated as binding instructions which are required to be followed by the members of the armed forces exercising powers under the Central Act and a serious note should be taken of any violation of the instructions, and the persons found responsible for such violation should be suitably punished under the Army Act, 1950. In para - 61 of the Judgment, the Supreme Court held as follows:

"61. In order that the people may feel assured that there is an effective check against misuse or abuse of powers by the members of the armed forces it is necessary that a complaint containing an allegation about misuse or abuse of the powers conferred under the Central Act should be thoroughly inquired into and, if it is found that there is substance in the allegation, the victim should be suitably compensated by the State and the requisite sanction under Section 6 of the Central Act should be granted for institution of prosecution and/or a civil suit or other proceedings against the person/ persons responsible for such violation."

25.... orders to bring the offenders to book. This would, according to Shri Gonsalves, restore the faith of the people of the State of Manipur as a whole. Mr. Mishra, the learned senior counsel for the State of Manipur also supported the views expressed by Shri Dutta and Shri Gonsalves, the learned senior counsels.

26. I have considered in depth the submissions made above. In my considered opinion, the report submitted by the Commission cannot be treated as a report within the meaning of Section 3 of the Act of 1952. This does not mean that the materials collected and the report prepared on consideration thereof would go in vain. The report may be treated as a report by a fact - finding Committee/ Body appointed by the State of Manipur. However, the interim directions given by the learned Judges of this Court under Article 226 permitting the Commission to proceed with the enquiry attributes some amount of legality to the report in as much as the report can be assumed to have been prepared under direction of the Court. Therefore, it is a valuable document available for consideration and initiation of appropriate action against those found guilty.
27. The Commission in the given situation is obviously a fact-finding body. It has collected facts through evidence and on consideration thereof submitted its report. The recommendations are to be taken care of by the appropriate Government. The State of Manipur is not the appropriate Government having any administrative control over the armed forces deployed in the State. On the other hand, the members of the Armed Forces are entitled to protections as per provisions of Section 6 of the Act of 1958 which provide that no prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government. The Central Government being the appropriate Government and having absolute control over the armed forces deployed in a disturbed area has to deal with the report and take follow - up action as may be necessary in accordance with the provisions of law. Since the subject matter of dispute is a definite matter of public importance, the Union Government is required to take appropriate decision without least possible delay.
28. In the result, both the writ petitions are disposed of with direction to the State of Manipur to hand over the report to the Union Government in the Ministry of Home Affairs without delay. The Union Home Ministry, represented by the Secretary, will examine the report and pass orders/take appropriate action against the 17th Assam Rifles personnel, if any, indicated in the report without loss of time. The Union Home Ministry shall also take an immediate decision about publication of the report in tune with the citizens' right to information. The people of Manipur seek justice and it should be done forthwith to restore their confidence in the Constitution and the laws.