Army in Nagaland

findings of an enquiry commision on killings, rape and arson

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On 3 April 1995, the Government of Nagaland constituted a one-man Commission of Enquiry with Justice D.M.Sen, retired judge of the Guwahati High Court, to probe into incidents of shooting, arson and rape by various paramilitary forces in Akhulato, Kohima and Mokokchung (all in Nagaland). The scope of each enquiry was to:

1. discover the circumstances leading to the firing;
2. ascertain whether firing could have been averted;
3. find out the persons responsible; and
4. suggest measures to prevent recurrence of such incidents.

The reports were submitted to the government on 16 March 1996. Even as the state government was examining the recommendations of the Commission, the Supreme Court passed a stay order to maintain status quo, at the request of the Ministry of Defence.

The Armed Forces (Special Powers) Act, in force in the north-eastern states since 1958, has provided the basis in law for the virtually permanent presence of army and paramilitary forces in the region. The findings of the D.M.Sen Commission reveal how the continued presence of paramilitary forces on a long-term basis undermines civil administration, the powers of the judiciary and the importance of the legislature, thus bringing the situation as close to army rule as could be imagined.

Kohima

On 5 March 1995, a convoy of 16 Rashtriya Rifles (RR) was going from Bishnupur in Manipur to Dimapur in Nagaland. The convoy had 63 vehicles with five officers, 15 JCOs and 400 jawans, and streched over five kilometres. According to the RR, its convoy came under sustained attack over that distance at several places, and hand grenades were lobbed at them at three places. They had to fire in self-defence. Seven civilians were killed and 20 injured, including 16 in mortar attack. These, the army claims, were victims of crossfire that continued for 20 minutes.

Six civilian eyewitnesses, including havaldars of the Nagaland police, have a different story to tell. They said that a tyre of one of the convoy's Shaktiman trucks burst, and the RR personnel started shooting immediately, thinking that they were being attacked. They also fired mortar shells in a town with civilian population. It also appears that sustained firing by RR personnel continued from 1:30 p.m. until after 3:30 p.m. The firing included 1,207 rounds of gunfire and five rounds of mortar fire. All six witnesses were absolutely certain that there was no attack by, or exchange of fire with, supposed insurgents. Besides attacks on residents, it appears that RR personnel delib-

erately attacked property, damaging buildings and houses. They then prevented the injured from being treated. One deponent in his affidavit before the Commission tells how a two-inch mortar bomb fell on his doorstep, killing one of his family members instantly and injuring eight others. Later he was stopped by RR personnel while taking the injured to hospital, as a result of which another member of his family died on the way to hospital.

The version of the civilian eyewitnesses is corroborated by two state officials. Then then Superintendent of Police (SP), Kohima, who went around the area with army officials, revealed how no bullets or blank cartridges were found in the places from which insurgents were supposed to have fired at the convoy. He did however find pieces from mortar shells and splinters from grenades.

Justice Sen is in no doubt whatsoever that the RR personnel, including officers, "acted in a most irresponsible manner", that the firing was "accompanied by cold-blooded murder of innocent civilians, some within their residential houses", and that "mortar shelling in one of the most thickly populated areas of Kohima township was completely unjustified _ almost amounting to barbarity." He also finds that some RR personnel "showed utter disregard for civil authority," and asserts that the 16 Rashtriya Rifles personnel were solely responsible for the casualties and damage to property.

Akhulato

On 23 January 1995, at around 3:50 in the morning, some insurgents fired upon a post of the 15 Assam Rifles stationed in Akhulato, Nagaland. Exchange of fire carried on until five o'clock in the morning. Then Subedar Khelaram and 15 jawans of Assam Rifles went in pursuit of the insurgents. Unable to find them, the armymen encircled some houses, got people out, poured kerosene on the houses and burnt them. They had suspected the residents of being sympathetic to the militants and harbouring them.

Hozheto Sema, a farmer, and his wife were asked to put down their children and come out of their house. They refused. A jawan fired at Mrs. Sema. She died and the hand of her three-month-old child was blown off. Subedar Khelaram was tried by General Court Martial. He was awarded 45 days rigorous imprisonment, eight years loss of seniority and four years loss of pension. Five others were also awarded rigorous imprisonment.

Justice Sen found this action to be inadequate. He deemed the initial firing by the Assam Rifles "legitimate, preventive and defensive," but asserted that "once the insurgents had broken contact, there was no need for further firing" by the Assam Rifles. The arson was "unjustified" and the killing of Mrs. Sema "cold-blooded murder." He recommended two lakhs ex-gratia

compensation to Hozheto Sema, and adequate treatment for the child by the state government. He further notes that there was "no state government official entrusted with maintenance of law and order in the near vicinity," and that the conduct of the Assam Rifles personnel in this particular case "was a sheer act of criminality with no nexus to any legitimate operation in aid of civil authority."

Mokokchung

On 27 December 1994, a patrol of the Maratha Light Infantry (MLI) was moving near the Police Point in Mokokchung, Nagaland. It was fired upon by some insurgents. One jawan of the MLI was killed. One insurgent died in the return fire. Another was chased and shot dead. The JCO of the patrol died while attempting to charge a house with insurgents inside. The Commission notes that the firing on 27 December 1994 was "started by the insurgents," and that "the preventive and punitive action taken by the Task Force of 16 MLI" was "fully justified and in no way excessive." What followed after the initial encounter was however "completely indefensible."

According to the accounts of several civilian eyewitnesses, the MLI doused woollen balls and other inflammable material with petrol and set houses and shops on fire, while civilians were still trapped inside. Five civilians were burnt alive inside their houses. Three others died despite being able to come out of their houses. Four women were raped at gunpoint. These women were medically examined by the Honorary Secretary of the Red Cross in Mokokchung, and had the courage to depose before the Commission. Several people were beaten badly. The Red Cross official deposed: "I saw army people beating innocent public until they were unconscious _ I heard army jawans shouting and encouraging each other to torch buildings and shops."

The army claimed that the houses caught fire as a consequence of the initial grenade attack and the snapping of high tension wires. They said that the fire then spread naturally in the wind. On the basis of the topography, the distance of the houses, and eyewitness accounts, Justice Sen refuses to accept this version of the army's, and finds the arson deliberate. He also finds the complaints of rape and molestation "fully substantiated."

In these three incidents, the Commission recommended that:

1. Ex-gratia compensation of two lakh rupees be given in each incident of murder and rape;
2. The alleged crimes be investigated and tried under the Army Act; and
3. A technical commission be set up to assess damage to property.

In each of the three incidents above, the army directly prevented civil administration from discharging its official duties and ensuring the safety of citizens. In Mokokchung the SP was threatened by army personnel when he tried to arrange for a fire brigade. In Kohima while the SP was surveying the area, one of the RR personnel threatened to shoot him, despite his having identified himself. The Director-General of Police (DGP) also made an extraordinary deposition before the Commission—that Rashtriya Rifles fired on Assam Rifles personnel, injuring three of them! Hospital staff were not allowed to treat those injured in the firing.

Justice Sen emphasizes that the legitimacy of an army operation under the Armed Forces (Special Powers) Act, derives from its being in aid of civil power, and not in superseding it. On the basis of Section 3 of the Act and its findings in these three incidents, the Commission indicts the army for bypassing the civil administration completely, and recommends that:

1. The army should not search or raid any premises or detain any person without the prior consent of the local police, and that it should ordinarily be accompanied by the local police;
2. Any person arrested by the army should be handed over immediately to the police; and
3. Interrogation should be carried out only by local police.

The civil administration in the three towns had no prior knowledge of army movements in the area. The Armed Forces Act allows the army to act on its own initiative. Section 5 of the Act merely stipulates that the army shall hand over any person arrested to the nearest police station "with the least possible delay, together with a report of the circumstances occasioning the arrest." The Act therefore does not specify a deadline within which the army has to hand over arrested persons to local police, and submit a report on its operations. In effect, the army is given licence to detain persons indefinitely, and not inform the civil administration at all. This directly contradicts the provisions of the Criminal Procedure Code (Cr.PC). S.130 of the Cr.PC allows only an Executive Magistrate "of the highest rank" to summon the army if necessary, to disperse an assembly "likely to disturb the public peace" (S.129, Cr.PC). Thus, under ordinary law, the army acts under the direction of the civil administration; it can act independently only in exceptional circumstances, and then only for a limited period of time.

Besides undermining civil administration, the Armed Forces Act also allows for wide, virtually unlimited use of force. Ordinarily under the Cr.PC, a magistrate's warrant is needed to make an arrest. Even when the army is summoned, the Cr.PC also enjoins minimum use of force, to "do as little injury

as possible to person and property" as possible (S.130(3)). It allows only commissioned and gazetted officers to decide the degree of force necessary in each situation. In sharp contrast, Section 4 of the Armed Forces Act gives the power to act independently, to personnel down to the rank of havaldar. The degree of force allowed is also extraordinary: powers to open fire to the extent of causing death, destroy any structure, arrest and search without a warrant. The sweeping powers granted by Section 4 of the Act therefore effectively make Section 3—calling the army in aid of civil power—redundant.

The incidents at Kohima, Akhulato and Mokokchung are not isolated events of killing and excesses by the army. There have been and continue to be, other attacks on lives. Over the last year, at least 10 people have died in custody alone, of forces which include 12 Assam Rifles, 132 Battalion CRPF, 15 Maratha Light Infantry, 3 Artillery Brigade and 3 Parachute Regiment. At least 77 others were tortured in camps. People have disappeared and women have been raped, sometimes in the presence of their family members. On 20 May 1995 an MLA T.Khongo was blindfolded and taken to Mokokchung by army personnel, in spite of identifying himself. He was released only after the intervention of the DIG and Additional SP, Mokokchung. And these figures represent the picture only partially, since in many parts of Nagaland as well as other states in the north-east, it is not even possible to get information except sporadically.

Since the enactment of the Armed Forces Act in 1958, the army and paramilitary have been present in the north-eastern states for four decades. In certain areas such as Akhulato for example, they even used to administer the area. Their continued presence undermines civil and legislative authority over the area. In 1987, the Chief Minister of Manipur and his Council of Ministers sent an extraordinary memorandum to the Union Home Minister, which said: "Civil law has ceased to operate in Senapati district of Manipur due to excesses committed by Assam Rifles with complete disregard shown to civil administration. The Assam Rifles are running a parallel administration in the area."

The Centre's imposition of extraordinary laws on regions by declaring them as "disturbed," also has serious implications for the federal nature of our polity. The Centre operates under the logic of "national security", while local bodies and legislative representatives are exposed to local pressures that oppose autocratic laws. Thus in 1972, the CPI(M) government in Tripura opposed the Centre's declaration of parts of the state as "disturbed" so as to bring the Armed Forces Act into operation in those areas. And widespread public protests impel state governments to appoint Commissions of Enquiry to investigate excesses by the army in the course of its operations. The Armed Forces Act not only denies such democratic opposition any legitimate avenues

of protest, it also makes it extremely difficult to punish any excesses of authority. Under Section 6 of the Act, the state government is denied the power to prosecute army personnel guilty of crimes, without the prior permission of the central government. This is in keeping with the Commissions of Enquiry Act as well, (S.2a(1)), read in tandem with Items 1 and 2, List 1 of the Seventh Schedule of the Constitution, which decrees that in any enquiry relating to the armed forces and defence of India, the "appropriate government" empowered to conduct an enquiry is the central government.

Put simply, this means that only the Centre can sanction or conduct an enquiry into crimes committed by the Army. It is in this context that the army's as well as the Ministry of Defence's responses to the D.M.Sen Commission need to be seen. As is the regular practice of most authorities whose conduct is being probed, the army attempted to delay and even halt the Commission's proceedings. They challenged the competence of the State Government to appoint a Commission that would probe army action. This was rejected by the Commission. The army then got hearings adjourned to move the High Court. Rejected there as well, they again got hearings adjourned to move the Supreme Court. In the meantime, since the Commission was no longer informed of proceedings in the case, it commenced hearing the evidence on 15 December 1995, and submitted its findings in March 1996. On 27 March, as the State Government was examining these findings, the Ministry of Defence applied to the Supreme Court to pass a stay order and maintain status quo.

The incidents of killing, arson and rape by personnel of Assam Rifles, Rashtriya Rifles and Maratha Light Infantry occurred over a year ago. They were widely reported in the local press, demonstrations were held in Delhi, and the National Human Rights Commission was approached to conduct their own enquiry into the incidents. Through this entire sequence of events, the Central government has been inactive. They have not even instituted an enquiry. Instead, they moved the Supreme Court to effectively halt action on the findings of the D.M.Sen Commission of Enquiry. Meanwhile, the Nagaland State Assembly has accepted the findings of the Commission. The state government and legislature are therefore pitted in direct confrontation with the central government and the army.

Perhaps this is inevitable when the only authority empowered to investigate and prosecute armed forces personnel guilty of crimes, is the very one which has sent them there in the first place. Rule of law demands that an independent body or institution must enquire into an infringement of law. That no agency or persons can sit in judgement over their own acts. In these incidents, the state government and state judiciary were prevented from prosecuting army personnel. The central government's inaction thus renders

the army accountable to none.

In 1982, PUDR together with the Naga People's Movement for Human Rights (NPMHR) petitioned the Supreme court for the repeal of the Armed Forces (Special Powers) Act. The case has moved very little over the last fourteen years. The findings of the D.M.Sen Enquiry Commission point to excessive use of force by the army. These powers are given to the army by the Armed Forces Act. The deadlock over further action on the findings of the Commission, is also an outcome of the provisions of the Act itself. We reiterate our demand that the Armed Forces (Special Powers) Act (1958) be repealed, that the armed forces be removed from regular postings in the north-eastern states, and that the use of armed forces be restricted to specific emergency situations directly under the control of the civil administration.

Epilogue: As we were going to press, the Supreme Court vacated its stay on the State Government's action on the Commission Report. What course events will take now, remains to be seen.

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