

IN THE SUPREME COURT OF INDIA

Writ Petition (Crl.) No. 129 of 2012

Extra-judicial Execution Victims

Families Association

...Petitioners

Versus

1. Union of India

2. State of Manipur

...Respondents

INTERIM SUBMISSIONS MADE BY THE PETITIONERS

1. For too long have the cries of the people of Manipur, that they have lost their loved ones by fake encounters committed by the army and the central paramilitary forces (hereinafter 'forces') and the Manipur police, been ignored on the stock excuse put forth that those executed were terrorists and deserved to die for the sake of national security. This was like a magic mantra that seemed to work wonders for the last decade since independence and there were very few who were inclined not to take this parrot like repetition at face value and to probe deeper. This failure not only of the criminal justice system but of the rule of the Constitution itself naturally gave rise to a feeling of absolute impunity on the part of the forces and the police leading to utter lawlessness culminating ultimately in the most heinous of all crimes – the killing of the citizens of India in cold blood.

2. There are at least over one hundred investigative reports of fake encounters in Manipur and over 250 press reports alleging fake encounters including articles and reports appearing in the national newspapers, prestigious journals such as Outlook, Tehelka, Frontline, Economic and Political Weekly and others. Many of these fake encounters have been investigated comprehensively by reputed reporters. Over 20 films have been made on the issue. The landmark film "AFSPA 1958" won national and international awards including *Swarna Kamal* for best non feature film in 2009 and International Critic and Jury Award in the Mumbai International Film Festival in 2006. The film, "Tales from the Margin" likewise won many awards. And yet if one were to make account of the officers prosecuted one would find it difficult to identify a single personnel of the forces or a single policeman who has suffered imprisonment. The magic mantra was truly so powerful that it operated as an invincible shield protecting delinquent officers from the reach of the Constitution of India. No wonder then, that many Manipuri's feel alienated, isolated and discriminated against.
3. In this case as well, the magic mantra was repeated at a hearing when it was insinuated that the petitioners themselves were associated with terrorists. Perhaps the respondents had not seen that the report titled "Manipur; Memorandum on Extra-judicial, Arbitrary or Summary Executions" was signed by Mr. Justice W.A. Shishak (retd), resident of Manipur, and former Chief Justice, Chhattisgarh High Court and former Chairperson, Manipur Human Rights Commission as well as 23 other prominent individuals and

organizations from the state. Mercifully this Hon'ble Court repelled that attempt by its order dated 4.1.13 where this Court said :

“the life of a policeman or a member of the security forces is a no less precious and valuable than any other person. The lives lost in the fight against terrorism and insurgency are indeed the most grievous loss. But to the state it is not open to cite the numbers of policemen and security forces killed to justify custodial death, fake encounter or what this Court had called “Administrative liquidation”. It is simply not permitted by the Constitution. And in a situation where the Court finds a person’s rights, specially the right to life under assault by the state or the agencies of the state, it must step-in and stand with the individual and prohibit the state or its agencies from violating the rights guaranteed under the Constitution. That is the role of this Court and it would perform it under all circumstances.”

4. This is not to say that militancy does not exist in the state of Manipur. It does and must be handled by constitutional means. What the petitioners question is a framework of the forces and the police promoting extra-judicial executions and torture as a method of tackling terrorism. One only has to study the history of AFSPA ever since its introduction in 1958 when there existed one underground organization and a few hundred militants to the

situation today where government claims that there are multiple underground organizations and several thousand militants, to understand that perhaps this policy of extra judicial executions, enforced disappearances and rape instead of curtailing militancy actually fuels greater unrest and the expansion of armed conflict.

5. There is a historical and intellectual basis for this view, widely held not only in Manipur but by academics and others throughout India. The ancient kingdom of Manipur resisted colonial (British) subjugation in the Anglo-Manipur War 1891, and the first (1904) and second (1939) Nupilan (women's war) and the Kuki rebellion (1917). After that the feudal system gave way to a constitutional monarchy in accordance with the provisions of the Manipur Constitution Act, 1947 where the Maharaja of Manipur was only a titular head. Elections with universal adult franchise was held in 1948 and a democratically elected Assembly and Council of Ministers started functioning. The merger with the Dominion of India was characterized by many as "coercion" and the "Merger Agreement" was denounced in some quarters. The Indian army arrived in Manipur just before the dissolution of the democratically elected Assembly and the Merger Agreement and the Armed Forces Special Power Ordinance was imposed in April 1950. Thus the imposition of the Ordinance had nothing to do with terrorism but was connected to the repression of the independence movement in Manipur.

6. Thereafter while there was resistance to merger with India a series of organizations formed on a non violent basis to oppose the merger. The Manipur Krishak Sabha had elected members even in the first Assembly. Thereafter in the 1950's the Manipur Nationalist Party was formed. In the 1960's the Pan Manipuri Youth League, All Manipur Student's Union, and the Manipur People's Party gained some prominence. The United National Liberation Front started in 1964 originally as a non violent political movement fighting for self determination. All these organizations started either on the principle of non violence opposition to Manipur's merger with India or on the basis of the nationalist aspirations of the people of Manipur. It was only later that a transition took place to armed struggle. Though this is not the right time to go into the reasons for this transition, it is impossible to understand the compulsions that caused the transition from democratic dissent to militancy without a comprehension of the weaknesses and failures of the Indian state to accommodate democratic dissent and regional aspirations.
7. In the 1980s there emerged the Meira Paibis which is an organization of Manipuri women resisting atrocities committed by security forces under the cover of AFSPA.
8. In 1997, the ceasefire with a prominent Naga group changed the dynamics of insurgency in the region.
9. Thus the situation prevailing today is that though there may be differences between the Naga organizations and the other

underground groups, there has not been any significant law and order situation leading to loss of life. The clashes between the Meitei and Meitei Pangals are a thing of the past. Thus it can confidently be said that the inter-se clashes between sections of civil society is not the reason for the continued presence of the Army in Manipur.

10. Much disinformation has been disseminated by the State about the growth of violence in Manipur. It would be hazardous to go by these presentations as there has been no independent academic verification of the data and no authentic study of the shifting levels of violence and the changing nature and trends of violence in different parts of Manipur. There has also been no independent academic research of the terror emanating from rogue elements within the establishment although there are numerous newspaper articles and reports documenting unjustified violence by State forces. In the perception of civil society organizations in Manipur, it could be said that violent attacks on the security forces have declined. So too violent attacks on civilians. Therefore according to civil society groups such violence is not the real reason for the continuation of AFSPA and for the increasing militarization of the State. Even if it is presumed that militant activities are increasing, the answer to that is not greater militarization and state repression but police reform and the establishment of a professional police force.

11. Continued presence of the Army for decades in the state, case after case reported of repression and fake encounters, refusal to accept or acknowledge the cry of the people of Manipur for justice – all this is not compatible with democratic functioning and is destructive of democracy.

12. Academics, informed individuals, professionals and civil society organizations would argue that the increasing criminalization of important sections of the State apparatus and the identification of State personnel with criminal elements, surrendered militants, drug traffickers, smugglers, individuals and fractions of banned organizations and armed groups is a serious development leading to the disintegration of the democratic system guaranteed under the Constitution in the state of Manipur. In our perception, that democratic system exists today only in form and not substance. The rule of the State by the Constitution has almost come to an end. Military and police rule is the order of the day. Democratic redressal of grievances is nigh impossible. It is this criminalization of significant and important parts of the State apparatus and of its personnel that is the biggest threat to democracy today. This is why, despite the decline in violent attacks by militants on the State, the overall level of violence may perhaps remain the same or even increase as a large spectrum of criminal elements operating with State support engage in a range of criminal activities of which the extortion of money is the most widespread but hardly the most serious.

13. There are many enlightened individuals and officers who have served in Manipur at senior levels who agree with the above assessment. There are others who may see the logic in the argument but nevertheless wish to continue with the present status quo as it brings enormous uncountable power and tremendous resources. One thing, however, is certain. To break this cycle of disinformation emanating from the State it is necessary to have a high powered commission of independent persons – like the present Commission – to make a study and an assessment of the situation in Manipur in a transparent and open manner and thereafter make recommendations for the radical overhaul of the administrative and military structure and presence in the State, address the historical wrongs done to the people of Manipur and resolve the present political deadlock with the vision for a brighter future for the people of Manipur. Only this will save democracy.

14. Civil society organizations are distressed by the continuing stream of atrocities committed by certain sections of the Armed Forces and the Manipur Police. We believe that the Indian Army best serves the nation when it is utilized for the protection of national sovereignty. It was never meant to be used and manipulated by politicians to train its guns against civilians. We believe that it is in the interest of the Indian Army itself that the State not involve the Armed Forces for operations for which it is not suited and for which most professional army officers, if given the choice, would not agree to get involved in.

15. At the end of the day, it would be obvious to all including the officers of the State that there is no alternative to the setting up of a professional police force that respects human rights and is accountable to the people at all times. The police in the UK originally had a paramilitary structure – the one that India inherited and preserved till this day – but this was radically transformed through the enactment of 3 Police Acts modernizing the Force and making it suitable for the requirements of the modern democratic State. The attitude of the former colonial power to militancy also changed with the times and there came a recognition that militancy which has social roots and thrives on historical injustices must be dealt with differently from indiscriminate acts of violence. The State successfully negotiated with the Irish Republican Army with whom they were locked in mortal combat. As a result, today, the political wing of the IRA sits in Parliament. No such reform took place in India. There must, therefore, be a short time frame within which such a professional force that is respectful of the people, is established by demolishing the existing colonial paramilitary structure. There must be a short time frame within which the Armed Forces should withdraw to perform its true function elsewhere of protecting the nation state.
16. Two events must be noted at this stage. The first is the rape and murder of Manorama. The second is the Justice Jeevan Reddy Report and third is the continuing hunger fast of Irom Sharmila now it's 12th year.

17. Manorama was a young single woman without any criminal past who was, in 2004, picked up from her house at night by 17 Jawans of the Assam Rifles and despite the do's and don'ts laid down by the Supreme Court ,she was kept in their custody for hours , raped and shot dead. The Commission of Inquiry made a report which has never been made public. There was an outcry in Manipur and the now famous demonstration - where women stripped before the Assam Rifles headquarters at Kangla Fort with a banner saying "Indian Army Rape Us" – took place. The Prime Minister visited Manipur in the background of this outrage and promised change. As usual, this came in the appointment of a Commission - the Justice Jeevan Reddy Commission. The people of Manipur initially had much hope that fundamental change would be suggested but these hopes were belied when, on perusal of the report, it was found that though it had a trenchant criticism of AFSPA, the report ultimately concluded that the provisions of AFSPA should be lifted bodily and put into UAPA by way of an amendment. This recommendation was a remedy worse than the disease.

18. Irom Sharmila is the spiritual and political symbol of the resistance of the people of Manipur to this draconian legislation and to this dark period where those who are supposed to protect lives take lives. It is a social movement for fundamental change based on the principles of non violence. The writ petition was filed in the Supreme Court in this spirit to preserve the values of democracy in a state that has now got used to military rule.

19. Finally, it is important for this Hon'ble Court to understand the fine but definite distinction between cases of genuine encounters and those where human rights atrocities are alleged.
20. Manipur society has a sense of dignity and honesty. They have a finely tuned and well informed understanding of the underground movements. They would be loath to make a false or hasty claim of a fake encounter. They would not approach any court with a non-genuine case based on views that are not held bonafide. It is only when family member and the community are completely convinced after considerable investigation that a fake encounter has occurred, that a complaint will be made or a case filed. Thus petitioners are never interested in "maligning" or "bringing into disrepute" the forces or the police. They are simply not interested in petty politics of that kind. However, if they come to know of a fake encounter they would make extensive inquiries and only after being fully convinced of their facts would they make such a claim for the sole purpose of ensuring that justice is done.

With this background, we now make the following suggestions:

1. Special investigation teams consisting of 33 senior investigation officers from outside the state of Manipur should be appointed to take up the investigation and prosecution of the serious cases listed at annexure 'A' hereto where it is alleged that fake encounters have taken place. They should be given the liberty to appoint officers to assist them.

2. That it be declared that custodial killings and other human rights atrocities when committed require no sanction for prosecution either under the CrPC or UAPA or AFSPA as the commission of a human rights atrocity has nothing to do with the performance of public duty.
3. In all other cases, where sanction is necessary, the State should communicate its order granting sanction within 30 days of the application for sanction.
4. The National and State Legal Aid Services Authorities should provide competent lawyers with a fair practice at the Bar and with at least 5 years experience for all the victims of human rights atrocities and such lawyers will be paid by the State at rates not inconsistent with the normal commercial rates for legal practitioners.
5. A system of registering FIRs through email, registered post and other convenient methods and at public places other than police stations such as public hospitals should be put in place so that aggrieved individuals can have their FIRs registered forthwith and acknowledged by the police.
6. Every complaint in respect of fake encounters shall be registered as separate FIR, inter alia, u/s 302 IPC, notwithstanding the registration of an FIR against the deceased alleged militant, inter alia, u/s 307 IPC.

7. This FIR registered with the relatives of the accused as complaint ought to be investigated and the accused ought to be prosecuted by an independent agency. Appointing the CBI would be an exercise in futility not only because the Manipur government is of the same political persuasion as the Centre but also because personnel of the Central forces will be arraigned as the accused. This is why it is necessary to set up an SIT or several SITs comprising of police officers from outside the State of Manipur for the cases set out herein below:

Proposed Cases for SIT and Prosecution

Cases Inquired by the Hon'ble Supreme Court appointed Commission and found to be fake-encounters:

1. N. Nobo Meitei (27) and his cousin N. Gobin Meitei (25), killing on 04.04.2009
2. Akoijam Priyoborto alias Bochou (25) killing on 15.03.2009
3. Azad Khan (12) killing on 4.03.2009
4. Elangbam Kiranjit Singh (26), killing on 24.04.2009
5. Chongtham Umakanta Singh (24) killing on 05.05.2009
6. Khumbongmayum Orsonjit (19) killing on 16.03.2010

Cases Inquired by the District Judge on the instruction of the High Court and Supreme Court of India and found to be fake-encounters:

7. Loken and Lokendro 'disappeared' after being abducted by the Army on 23.12.1980
8. C. Paul and C. Daniel 'disappeared' after being abducted by the Army on 10.03.1982
9. Operation Blue Bird where not less than 13 villager of Oinam, Senapati District, were killed by the Assam Rifles in July-August 1987 (only collection of evidence)
10. Laishram Bijoy Kumar disappeared after being abducted by suspected Army on 05.06.1996
11. Yumlembam Sanamacha disappeared after being abducted by Indian Army on 14.02.1998

12. Tayab Ali, 'disappeared' after being abducted by Assam Rifle personnel on 25.07.1999 (charge-sheet framed by CBI, awaiting prosecution sanction from MHA)
13. Kumari Yumnam Robita Devi and Angom Romajit Singh killed on 09.04.2002
14. Kuhmallambam Debeshwar Singh killed on 10.03.2004
15. Longbam Uttamkumar Singh (34) killed on 29.03.2008
16. Kabrambam Premjit Singh and Elangbam Kanto Singh killed on 24.04.2008
17. Mutum Herojit Singh (28) and Mutum Rajen (22), killed on 04.10.2008
18. Mr. Nongmaithem Michael Singh (32), killed on 04.11.2008
19. Ningombam Gopal Singh (39) killed on 23.12.2008
20. Salam Gurung @ Gingo (24) and Soubam Baocha @ Shachinta (24) killed on 28.12.2008
21. Loitongbam Satish @ Tomba Singh (34) killed on 18.05.2009
22. Ngangbam Naouba @ Phulchand Singh (27) killed on 07.05.2009
23. Sapam Geetchandra Singh (22) killed on 25.5.2009

Cases inquired by a Judicial Officers under the Commission of Inquiry Act, 1952 under the order of the Government of Manipur and *prima facie* established unlawful killings:

24. Heirangoithong Massacre where 13 spectators of a volleyball match were killed and 31 injured when CRPF fired into the crowd after extremist assaulted them on 14.03.1984
25. Miss Amina Devi killed in Naorem village by 127 Bn. CRPF posted at Langjing in 1996
26. Thoudam Muhindro Singh and Mayengbam Ibotombi Singh (Forest Officers) killed at Kakching Wabagai Road on 26.12.1996
27. Major Saiza, Rukoshele, Tusovehu Chakesang, Kikheto Sema and Hidham Buddha Singh killed and Thenucho, (former Speaker of Nagaland State Assembly) injured at Kwakeithel by Manipur Police Commando on 29.08.1998.
28. The 18 June incident where CRPF fired into angry protestor in Imphal, 14 persons were killed on 18 June 2001
29. Inquiry into the dead of Kumari Sanjita Devi of Jiribam after allegedly raped by 2 personnel of 12 Grenadiar Regiment of Indian Army on 04.10.2003
30. A. Bimol killed at Nongren Chinglak with 37 bullet injuries by Imphal East Police Commando on 29.10.2004
31. E.D. Rentuiwan, killed and injury of his wife Thanguicha as a result of firing by 28 Assam Rifles on 16.11.2004 (When the inquiry was almost complete, on the Admission of Assam Rifles, the inquiry was dropped by the Government by issuing a notice under section 7 of the Commission of Inquiry Act)

32. Linkhogen Baite, L.S. Thangopai Paite and Thenmithang (tribal students) killed at K.R. Lane at Checkon, Imphal by Manipur Police Commando on 25.10.2005

Special Case

33. Thangjam Manorama killed after arrest from her house by 17 Assam Rifle on 11.07.2004
(Inquiry report ordered by the Government of Manipur under the Commission of Inquiry Act, 1952 suppressed on the appeal of the Assam Rifles)

8. That in all cases, right from the reporting of the human rights atrocity, the victims and their families and concerned witnesses shall be taken under the care and protection of the a special State Unit for Victim and Witness Protection, and this unit shall be responsible to protect these persons from victimization and further harm, ensure that substantial financial assistance is provided to them, ensure that generous compensation is paid and generally ensure that the lives of the persons is restored to the same level and standard as compared to the situation prevailing prior to the atrocity.
9. To help the victims and their families reconstruct their lives, the State should extend the existing social welfare schemes to such persons by amending the schemes if necessary and also create new and specific schemes with generous benefits covering education, pension, employment, health care, housing and other social benefits. In particular, such persons ought not to be stigmatized or discriminated against on the ground that they are the widows or relatives of "alleged" terrorists.

10. In all cases where it is alleged by the family or friends of the deceased that a fake encounter has taken place, a district judge or a retired district judge should conduct an inquiry expeditiously to come to a *prima facie* conclusion as to whether a fake encounter has taken place or not.
11. On the district judge coming to a prima facie conclusion that the encounter was not genuine, the case shall be referred to a Commission headed by a retired Supreme Court who shall constitute an SIT consisting of police officers taken from any part of India and this SIT shall be responsible for the investigation of the case and the prosecution of the accused.
12. In all cases where, under the orders of the High Court, or as Commissions of Inquiries, inquiries have been done in respect of allegations of fake encounters, all such reports should be made public and copies given to the families of the victims and in cases where the findings are that the encounter was fake, criminal prosecution of the personnel concerned should immediately begin in accordance with the above paragraph and fast tracked to finish within 6 months.
13. The constitution of such a Commission as set out in paragraph 11 is consistent with the recommendation made by the Justice Verma Committee where the following observations and recommendations are made (and it is only necessary to substitute torture, enforced

disappearances and extrajudicial executions for crimes against women):

There should be special commissioners – who are either judicially or legislatively appointed – for women’s safety (replace by torture, enforced disappearances and extrajudicial executions) and security in all areas of conflict in the country. These commissioners must be chosen from those who have experience with women’s issues (replace by human rights issues), preferably in conflict areas. In addition, such commissioners must be vested with adequate powers to monitor and initiate action for redress and criminal prosecution in all cases of sexual violence against women (replace by human rights atrocities) by armed personnel.

Amendment to the Armed Forces Special Powers Act, 1958

1. The following amendment shall be made to Section 6 of the armed Forces (Special Powers) Act, 1958

No prosecution, suit or the legal proceeding shall be instituted, except with the previous sanction of the Central Government against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.

Provided that, no sanction shall be required if the person has been accused of committing an offence under Section 354, Section 354A, Section 354B, Section 354C, Section 376(1),

Section 379(1), Section 376(2), Section 376(3), Section 376A, Section 376B, Section 376C, Section 376D or Section 376E of the Indian Penal Code, 1860. (replace by committing a fake encounter, or an enforced disappearance or torture)

14. That another Commission be formed – along the lines of the present Commission – to meet with all sections of society, study the situation and make recommendations for the restoration of democracy in Manipur, the withdrawal of the Army and for peace to be restored.
15. That the report of the Commission be given to the petitioners and be made public in accordance with Article 17 the “UN Principle on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions” which is as under:

A written report shall be made a reasonable period of time on the methods and findings of such investigations. **The report shall be made public immediately** and shall include the scope of the inquiry, procedures and methods use to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law...

16. That the petitioners be permitted to file further submission and seek further directions after receiving the report of the commission.