

Glimpse of Extra Judicial Killings in Manipur

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Authored by:

Ronica Vungmuankim

Program Officer,

Centre for Criminology and Justice,

Centre for Criminology and Justice,

TISS, Mumbai

ronica.vungmuakim@tiss.edu

+918452868517

Abstract:

A necessary ingredient for a fair and just society is democracy. India is the largest democracy in the world which is protected in a written constitution. Article 21 of the Constitution guarantees the Right to Life and Personal Liberty except according to procedures established by law. Contrary to this, State Forces often violate this Fundamental right by arbitrary killing of its citizens. Extra Judicial Killing (EJK) is the term coined for killings by the State Agencies which happens outside the judicial process. In the name of securing the integrity and security of the nation, thousands of innocent civilians are executed, tortured and detained. The Rule of Law emphasize for supremacy of law and that due process in Criminal Justice System exists to determine innocence or guilt of the accused. However, this is not the case of EJK where the security forces who are in a position of power take the law into their hands and convert themselves into prosecutor, judge and executioner. Prolonged occurrence has resulted in normalisation of violence, helplessness and acceptance of menaces thereby threatening human security. Constantly living in an environment of fear, hostile system and powers that lies with the gun and failure of the State to safeguard rights of its citizens has made Justice a farfetched idea. This has weakened faith in the Criminal Justice System thereby deteriorating the very essence of it.

In a document compiled by Civil societies of Manipur there were 1528 cases of EJK between 1978-2012 in Manipur. The paper will explore some of the cases of EJK in Manipur and implications on the idea of Justice through qualitative analysis of data. Data for the study is gathered through observation, case studies and in depth interviews of the Victims' families.

Keywords: Extra Judicial Execution, Manipur, Victims, Violence, Justice

INTRODUCTION

Any act of killing that happens outside the judicial process is called Extra Judicial Killing. It has not been defined explicitly by the international law. Section 3 (a) of the United States Torture Victim Protection Act, extra judicial killing is defined as

“a deliberate killing not authorized by a previous judgement pronounced by a regular constituted court affording all the judicial guarantees which are recognized as indispensable

by civilized peoples. Such term, however, does not include any such killing that, under international law, is carefully carried under the authority of a foreign nation”

Brute force is an instrument of power which is not the best means to achieving a goal. In a democratic set up, not all means are acceptable. Sometimes democracy must fight with one hand tied behind its back (Barak, 2009). Preserving the rule of law and recognition of individual liberties constitute an important component of understanding security. EJKs are phenomenon not particular to India but also in other parts of the world. Arbitrary killings are the highest form of violation of human rights specifically Right to Life which is considered obsolete and inalienable. In third world countries, human rights are understood in the context of basic needs such as food and shelter, safeguard of life and often human security (O.Ojo, 2010). What is common about such arbitrary killings across the globe is often excessive power which arises out of immunity from prosecution granted to the perpetrator. In the case of India, Extra Judicial Killings are common in the states of Jammu and Kashmir, Manipur, Chhattisgarh, etc. The paper focuses specifically on Extra Judicial Killings in Manipur. Manipur has been declared a disturbed area since 1980 and occurrence of instances of EJKs has been as old as this declaration.

The first section of the paper aims to explore the various contingencies that barred the aggrieved from accessing justice based largely on field studies and analysed in conjunction with statutory provisions. The paper then gives an insight into three case studies of alleged EJKs in Churachandpur, one of the hill districts of Manipur. Some of these cases are identified through the document compiled by CSCHR¹ while some of the cases are known through local NGOs² In its later part gives a critical analysis of the claims made with regard to the justification for the use of excessive force. The paper also discusses the various factors that played a role in hampering access to justice and touches upon how violence induced by those who are supposed to be guardians of justice implicates on the victims’ understanding of the criminal justice system.

Initiatives towards Justice

The cases of occurrence of EJK in Manipur has been a topic of contention for the past many years since the declaration of Manipur as ‘disturbed’ in 1980. There have been initiatives taken by victim’s family in pursuance of justice. However, these were met with denial to

1 Civil Societies Coalition on Human Rights

2 Non-Governmental Organizations.

register FIR, failure to conduct investigation and victim blaming and stigma around the “encounter-deaths”. This is an issue of human rights concern and requires attention in bringing about necessary changes. For as long as half a century, the occurrence of extra judicial executions had been covered as encounters. Gallantry awards had been presented to the Police Officers for killing a number of the alleged enemy. In 2009 for the first time in national media, Tehelka published photos of instances of cold blooded murder in Manipur *Murder in Plain Sight*, 8th August 2009 and *Life in a Shadow Land*, 15th August 2009 (Tehelka, 2010). These pictures had exposed the cold blooded murders by the Police and security personnel which contradicted the official version. This was able to draw widespread response which enabled the questioning of the alleged cases of encounters and put a lot of pressure on the system. A number of committees were formed such as the Justice Hedge Committee which conducts fact finding into the cases of fake encounters. Institutions like NHRC are also asked to look into the cases and award compensation as deemed. There were also huge movements from civil societies where the victims’ families came together under the banner Extra Judicial Execution Victims’ Families Association Manipur (EEVFAM)³. There was also coalition of civil societies which documented 1528 cases of EJK in Manipur between 1979 and 2012. In 2012, EEVFAM petitioned the Supreme Court demanding that the cases of killings be looked into and the truth of the matter found. After 5 years of petitioning the Supreme Court, a hearing for the case will be conducted in April 2017. Although this is not a conclusion to justice, it is a small yet major step towards achieving justice which came about after years of demanding justice and effort from civil societies, victims’ families, media and other institutions.

STATUTORY PROVISIONS

Article 355 of the Constitution has laid down that it is the duty of the Union to protect the State from external aggression and internal disturbances. Manipur is a witness to ethnic conflict and plagued by militancy since its inception into the union of India in 1978. There are about 48 backlisted militant groups that are active in the State indulging in violence by killing innocent civilians and creating an environment of fear by indulging in extortion. Violence has become a way of life in Manipur and the state government does not possess the capacity nor resources to handle the situation. The already existing laws and the new ones often fail to deliver what it intends to, to curb disturbance. Rather, it results in massive human

3 EEVFAM was established by families of the deceased victims of extra judicial killings. Its members comprised mostly of the mother or wife of the victim.

rights violations and in turn hamper the access to justice for the aggrieved persons. Some of the statutory provisions will be discussed which often acts as a leverage to the brutal actions and unconstitutional measures adopted to carry out operations.

Armed Forces Special Power Act (AFSPA), 1958: With the declaration of Manipur under the jurisdiction of AFSPA since 1958, the postulates for this declaration are that a public order situation exist in Manipur and as result the assistance of armed forces is required in aid of civil power. The result of implementation of such an act is that the personnel could use excessive force to maintain law and order even to the point of causing death.⁴

The Act has also granted immunity to the security personnel which shields them from prosecution therefore, allowing the use of brute force at their whims and fancies.⁵

Unlawful Activities Prevention Act, (UAPA) 1967: The act has provided definition for what can be called an unlawful activity⁶ or who can be branded as a terrorist⁷. In view of such definition, a number of groups fighting for indigenous rights or otherwise in Manipur can be categorised as unlawful or terrorist activity acting in contravention against law and order. This immediately allows for the exercise of indefinite powers against a member of such group irrespective of his activity.

Code of Criminal Procedure (Cr.P.C), 1973: The Cr.P.C lays down procedures to be followed in criminal cases during the process of prosecution, enquiry, investigation, trial, etc according to what is defined in Section 4 and 5. It also justifies the use of force to disperse an

4 Section 4 of AFSPA-Personnel could use excessive force to maintain law and order even to the point of causing death against a person who is acting in contravention of any law or order in a disturbed area prohibiting assembly of five or more persons and use of weapon or any object which is capable of being used as a weapon or of fire arms explosives or ammunition.

5 Section 6 of AFSPA-No prosecution, suit or other legal proceeding shall be instituted exceptwith 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.

6 Section 2 of UAPA-Unlawful Activity is one which intends to or support any claim of cession or secession of a part of the territory of India from the Union

7 Section 15 of UAPA-Terrorist Activity is one that threatens the unity, security, integrity and sovereignty of a nation, intends to or is likely to strike terror by using bombs, explosives and other lethal weapons that can cause death or injury.

unlawful assembly and also the use of force to the point of causing death.⁸ The provisions under CrPC has also allowed for causing death of a person arrested under conditions that the accused is punishable with death or life imprisonment⁹. Such provisions have often been used to justify custodial torture and deaths.

Army Act, 1950: The Army Act of 1950 has defined an ‘enemy’ as armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of any person subject to military law to act. A necessary criterion for enemy is that he/she must be armed. This Act also aided to the notion of impunity enjoyed by the armed forces because it gives the army the liberty to decide if an offence committed by the army personnel should be carried out by the criminal court or court martial for cases can be tried in both the courts (J, 2012).

CASE STUDIES¹⁰

Case 1

Victim: Haulun¹¹ (47, M)

Perpetrator:(Com-CCP Pol and IRB)¹²

Informant: Niangnou (wife of victim)

Charges: 149/447/436/307/326 120-B IPC &3 of PPD Act¹³

8 Section 129-132 of Cr.P.C. allows for the use of force to disperse an unlawful assembly and in extreme situations, the use of force is justifiable even if it cause grievous harm or death.

9 Section 46 Cr.P.C

10 The source of case studies are largely the interviews and interactions with the informants along with data provided in documents like FIR, post mortem and CSCHR report

11 Names of victims and informants have been changed

12 Combined Police and Indian Reserve Batallion

13 As given in FIR

Details: Mr Haulun lived with wife and children in their ancestral home at Mualtam Village in Churachandpur District of Manipur. Due to the government plan of constructing a multi-purpose development project 'Khuga Dam', numerous villages in the neighbouring area of Mata will be submerged in water resulting in loss of property, livelihood and displacement. The residents of the villages came together collectively protesting against the construction of the dam. On the evening of 15th December 2005, Mr Haulun along with others were part of the protest at the dam site. The mob turned violent where they burnt Police Vehicle . To dispel, the security personnel started shooting at the mob of protestors. Mr Halun along with two others succumbed to bullet injuries while 28 persons were injured in firing. Ex-gratia of Rs 1 lakh was given to the families by the local MLA¹⁴ of the village.

Case 2

Victim: Mr Vincent Singson (18)

Perpetrators: Assam Rifles

Informant: Mawi (Mother)

Details of the incident: Mr Vincent was 18 when he joined the military faction KNF-MC¹⁵. In the year 1997 there was an ethnic conflict between the Kukis and the Paites because of which there was a lot of pressure on young boys to join the military groups in their fight against the enemies and protect their identity and community. Vincent joined the KNF-MC¹⁶ with the intention of contributing and protecting the community he belongs to. On the day of 19th March 1998, while taking their lunch in the open of the forest, Vincent was attacked from behind and shot in his head by a personnel of the Assam Rifles.

Case 3

Victim: Mr Holkhomang (37)

Informant: Niengnu (Wife)

Perpetrators: 44 AR and 10 (PARA) SF¹⁷

14 Member of Legislative Assembly

15 Kuki National Front-Military Council

16 Kuki National Front- Military Council

Charges: 121/121-A/307/34 IPC/ 25 (I-B) Arms Act & 20 UA(P)A Act

Details: Mr Holkhomang lived with wife and 5 children in Salbung Village in Churachandpur District. His native village was at Ukhrul District of Manipur. His family had shifted to Churachandpur after the Naga-Kuki Conflict threatening their safety as Kuki's living in a place dominated by Nagas. On the 30th June 2012, he was forcefully pulled out from his house and forced to accompany the armed militant groups in their venture into the jungles of Ukhrul, as Mr Holkhomang was well acquainted with the terrain. They were ambushed by the Assam Rifles where everyone including Holkhomang was shot dead. The post mortem report shows bruises and cuts indicating torture before death.

ANALYSIS

The above cases are those that have not had any form of investigation done under any circumstance. In all three cases, there were counter FIR filled by the Police spelling out versions contradicting the informant's version of the incident. It can be clearly seen that in the case 1 where the victim was killed during a protest against a development project, the FIR shows that the charges against the victim was that of an unlawful assembly, criminal trespass, attempt to murder, public property damage, etc. IPC defines that unlawful assembly and other offences like destruction of public property are punishable. However, a group of people coming together to fight for their rights and protection of land is not an unlawful activity. It is very much within the realm of the constitution to demand justice Even if it is true that the protest had turned violent and caused damage to public property, it is not in the right of the security personnel to open fire and shoot at the protestors. If it is to be true from the details given by the informant, eye witness and media reports, the mob were only staging protest unarmed and in no way attacking the security personnel. Hence the argument of self defence cannot be applied in this case. Use of excessive force is a power granted to the armed forces under AFSPA considering Manipur is a disturbed area. However, the case of people staging a protest against construction of dam is a phenomena that is common irrespective of the area declared disturbed or not. In this situation, for the security personnel to execute

17 Paramilitary Special Forces or Para (SF) are a special unit of the Indian Army's Parachute Regiment. Their training is focused on special operations, direct action, counter insurgency, etc

powers derived from laws that are applicable in situation where there is an element of unlawful activity or internal disturbance is irrelevant and unconstitutional.

In the case of Vincent Singson, he was a member of the KNF-MC who joined the outfit during the Ethnic Conflict between the Kukis and the Paites¹⁸. The KNF-MC is a banned militant outfit by the government of India. A part from striving to carve a separate state for the Kuki's, another objective of the said military group is to protect and safeguard the identity and culture of the Kuki community. Vincent joined the group during the Ethnic Conflict to protect and safeguard his identity and not with the purpose of waging war against the state. The conflict was political in nature and an internal issue. The communities were in conflict with one another and not against the state. In this process, even acts of disrupting public order and peace irrespective of their magnitude and repercussions cannot be termed as acts of waging war against the Government. Even in case of an attack, it might be true that the victim was an enemy and an unprovoked aggressor and was killed in exchange of fire. But the bigger question remains whether excessive or retaliatory force was used to kill the enemy. A reference can be drawn from the order held by the Court in Darshan Singh v. State of Punjab¹⁹ which states that

“A mere reasonable apprehension is enough to put the right of self defence into operation, but it is also a settled position of law that a right of self defence is only a right to defend oneself and not to retaliate. It is not a right to take revenge” (Darshan Singh vs State of Punjab , 2010)

In the case of Mr Holkhomang who was caught in an ambush and killed by the Assam Rifles ,causing killing cannot be a justificatilon. As claimed by the Informant, the victim worked as a carpenter and was abducted from his house by the militants to aid them in their work. He was not a member however but obliged to the demands for fear of losing his life. However, the armed security personnel made no distinction of a civilian from a militant and was killed indiscriminately. It is the task of the judiciary and not the security persons to determine his innocence or guilt. Even if the FIR reports were held to be true mere membership of a banned organization does not incriminate a person. He might be a passive

18 Kuki Paite Ethnic conflict took place in Churacahndpur town of Manipur. The conflict spanned between 1997 and 1998.

19 (2010)2 SCC 333

member and not an active one and so it is necessary to prove he has indulged in some act of violence or imminent violence. (Arup Bhuyan vs State Of Assam, 2011)²⁰

CONCLUSION

The cases of EJK in Manipur are no ordinary cases of Police as it involves allegations against the State agencies. It is a matter of grave concern because the law enforcement agencies are themselves the perpetrators. Many factors play a role in hampering their access to justice starting from failure to register an FIR where the system had forced them believe that irrespective of the manner in which their children were killed, association with the militant group is sufficient for a blanket denial to justice. These killings have remained where they are without any form of legal apparatus for justice. It has left hundreds of children fatherless, widows, loss of a loved one and the loss of bread winner in the family. The killings are instrumentally designed knowing that the targets are people who do not possess the capital nor influence to activate the Justice system

Another matter of grave concern is the use of armed forces to kill its own country men and women. A reference can be drawn from the paragraph 39 of the report on Naga People's Movement of Human Rights which states

“The primary task of the armed forces is to defend the country in the event of war or when it is faced with external aggression. Their training and orientation is to defeat the hostile forces. A situation of internal disturbance involving the local population requires a different approach. Involvement of armed forces in handling such situation brings them in confrontation with their countrymen. Prolonged or too frequent deployment of armed forces for handling such situation is likely to generate a feeling of alienation among people against the armed forces...” (Agrawal, 1997)

Beginning from the lethal powers conferred to the security personnel through statutory provisions which is often abused and misused, training of armed forces to fight against its own citizens, initiative to activate the legal justice system through filing FIR which is often dismissed, false accusations in FIR's filed by the Police has put our democracy and rule of law in grave danger. Not only that, prolonged occurrence of such incidents and denial to

justice has caused a feeling of alienation among certain sections of citizen and also disrupts the morale and faith in criminal justice system.

Recommendations

In response to the research findings and study of what happens to the family left behind, the writer would make three major recommendations

- 1) The draconian law Armed Forces Special Powers Act should be repealed immediately. Allowing for the rule AFSPA is a grave violation to Human Rights, Right to Life and Right to Live life with Dignity, Right to Peaceful Assembly, etc which are enshrined in the constitution.
- 2) India should establish in alignment with international human rights standards, the Right to Compensation, Restitution, Repatriation and Rehabilitation for the families of the victim of Extra Judicial Killings and other victims of State Crimes
- 3) Special Investigation Team should be engaged to find out the facts of the cases of Extra Judicial Killings. The cases should be investigated into and the truth found. Justice should go beyond monetary compensation.

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