

Nagaland civilian killings: By refusing sanction for prosecution of army personnel, government promotes a culture of impunity

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The vehicle that came under fire in Oting. (Express File Photo)

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State-sponsored terrorism is what happens when men in uniform kill defenceless, innocent civilians while leaving the victims with no way to seek justice from the criminal justice system. The Centre's refusal to grant sanction to prosecute 30 army personnel charged with killing 14 young unarmed men in a failed counter-insurgency operation in Nagaland in December 2021 amounts to the state sanctioning heinous acts of violence against its own people.

This refusal of prosecution sanction demonstrates how few rights, if any, the surviving family members of innocent civilians who were killed by the armed forces actually have.

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The Supreme Court ruled in 2016 that if an offence is committed by army personnel, there is no concept of absolute immunity from trial by the criminal court constituted under ordinary law. (para 163, Extra Judicial Execution Victim Families Association v Union of

India). “The decision to try a person who has committed an offence punishable under the Army Act and who is subject to the provisions of the Army Act does not always or necessarily lie only with the Army – the criminal court under the CrPC could also try the alleged offender in certain circumstances,” the Court ruled. The Court held that every instance of the use of excessive or retaliatory force by army personnel needs to be probed. If there is a *prima facie* case against army personnel, strict penal action needs to follow.

In 1997, in a case called Naga People’s Movement of Human Rights, a constitution bench mandated a thorough inquiry into every serious complaint of misuse or abuse of powers under the Armed Forces Special Powers Act (AFSPA), 1958. The Court held, “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 instruction of prosecution and/or a civil suit or other proceedings against the person/persons responsible for such violation.” (paragraph 61)

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Six local coal miners travelling in a pick-up truck were killed by army personnel from the 21 Para Special Forces unit of the Indian Army on December 4, 2021, in the Tiru-Oting area of the Mon district. The Centre claims that the army para commandos were lying in wait for militants, and the killing of miners was an instance of mistaken identity. Immediately after the event, enraged locals set fire to two security vehicles, prompting another round of forceful gunfire that resulted in the deaths of at least seven villagers and one member of the security forces. Another Naga youth was killed by security forces in Mon town the following day during protests and tension.

A special investigation team (SIT), under the supervision of the chief of the Nagaland police, investigated the incident and filed a detailed chargesheet naming 30 army personnel, including a major, charging them with offences under Sections 302 (murder), 307 (attempt to murder), 326 (grievous hurt), 201 (disappearance of evidence), 34 (common intention) read with Section 120-B (conspiracy) of the Indian Penal Code, 1860 (IPC).

On March 24, 2022, the State of Nagaland requested permission from the Union Defence Ministry to bring charges against the soldiers.

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None of the victims had any prior criminal history or connections to any illegal or prohibited groups. They were not armed nor could they be considered even remotely as “enemies” under Section 3(x) of the Army Act, 1950.

The Army has an exhaustive list of “Dos and Don’ts” and “Ten Commandments” as binding instructions that are to be followed by armed forces members exercising powers under AFSPA. Great stress was laid on these codes of conduct by the Supreme Court in its 1997 ruling that upheld the validity of AFSPA, 1958. The presumption was that the Army is a highly disciplined, trained, and accountable force, and any violation of its code or violation of human rights is investigated and punished.

The Court had also ruled that the contentious Section 4 of AFSPA, which gives the Army the power to shoot even if it kills, necessarily entails an objective assessment of the ground situation and a due warning to the opposite side before opening fire. Every action taken under Section 4 must be appropriate, proportional, and warranted.

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In this case from Nagaland, the army ethos and principles and statutory requirements of Section 4, AFSPA, were flagrantly violated. The police investigation concluded that the 21 Para Special Forces operations team had not followed the Standard Operating Procedure and the Rules of Engagement and resorted to indiscriminate and disproportionate firing. Two of the survivors who were travelling on the truck contradicted the explanation offered by the Army that the truck was asked to stop, and that it was fired upon only after it tried to flee.

In 2016, while hearing a petition filed by the families of over 1,500 people killed by armed forces in Manipur, a bench of justices Madan B Lokur and Uday Umesh Lalit held that the safeguard of prior sanction for prosecution under Section 6 of AFSPA does not mean blanket immunity to the armed forces. “No one can act with impunity particularly when there is a loss of an innocent life,” the bench had ruled.



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The two rulings in the Manipur Victims Family Association case (2016 and 2017 rulings) documented in detail the ingrained systemic resistance and institutional lethargy when it comes to bringing the army soldiers responsible for human rights violations or extrajudicial killings to justice. Either no FIR is filed, or if the victim's family is successful in getting an offence reported, no investigation is done, or if, as a result of intense public pressure, an investigation is conducted and army members are found guilty, the central government refuses to grant permission to prosecute. Court of inquiries instituted by the Army rarely result in any penal action against the guilty army personnel.

The National Human Rights Commission, which is supposed to protect human rights, is a toothless tiger at best and the government's pawn at worst. State Human Rights Commissions in the northeast region of India have either not been constituted or are lying defunct.

The Nagaland episode shows that the guidelines and recommendations laid down in judgments like Naga People's Movement and Manipur Victims Family Association are honoured more in the breach than in the observance.

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It serves as a vivid reminder of the reasons why, for the people of Northeast, AFSPA is synonymous with state oppression and despotism.

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