

# Of power and its extents

Despite decades-long ceasefire agreements between insurgent groups and the Indian State in the North-east, 'extra-judicial killings' continue unabated



Representational photo

## TRONGKHOLAL HAOKIP

Article 21 of the Indian Constitution affirms that "No person shall be deprived of his life or personal liberty except according to procedure established by law". The protection of life is the most important component of all fundamental rights and constitutes the core of human rights. Without life one cannot feel the necessity for other rights at all, and the right to life is often considered the heart of the Constitution. In the course of India's Constitutional development, the right to life has been defined to include "the right to live with human dignity", which departs from mere "animal existence".

The right to life, however, has often been violated in the North-east -- the once turbulent and secluded corner of the country -- without undergoing the "procedure established by law". The Armed Forces (Special Powers) Act, 1958 was especially made for and has been applied to people who are believed to "have no established loyalty or devotion to India", as the Union's first home minister Sardar Vallabhbhai Patel would call it, before it became law under then Union home minister Govind Ballabh Pant. The AF(SPA) gives security forces enormous power to deal with insurrections and to shoot and kill on mere suspicion with impunity.

This immense power has often been misused leading to not only the loss of lives but also increasing the alienation of people in the North-east. "Extra-judicial killings", referred to as "encounter killings" in India, were common occurrences in the insurgency-prone states of the North-east and Jammu and Kashmir in the recent past.

## The Chalwa incident

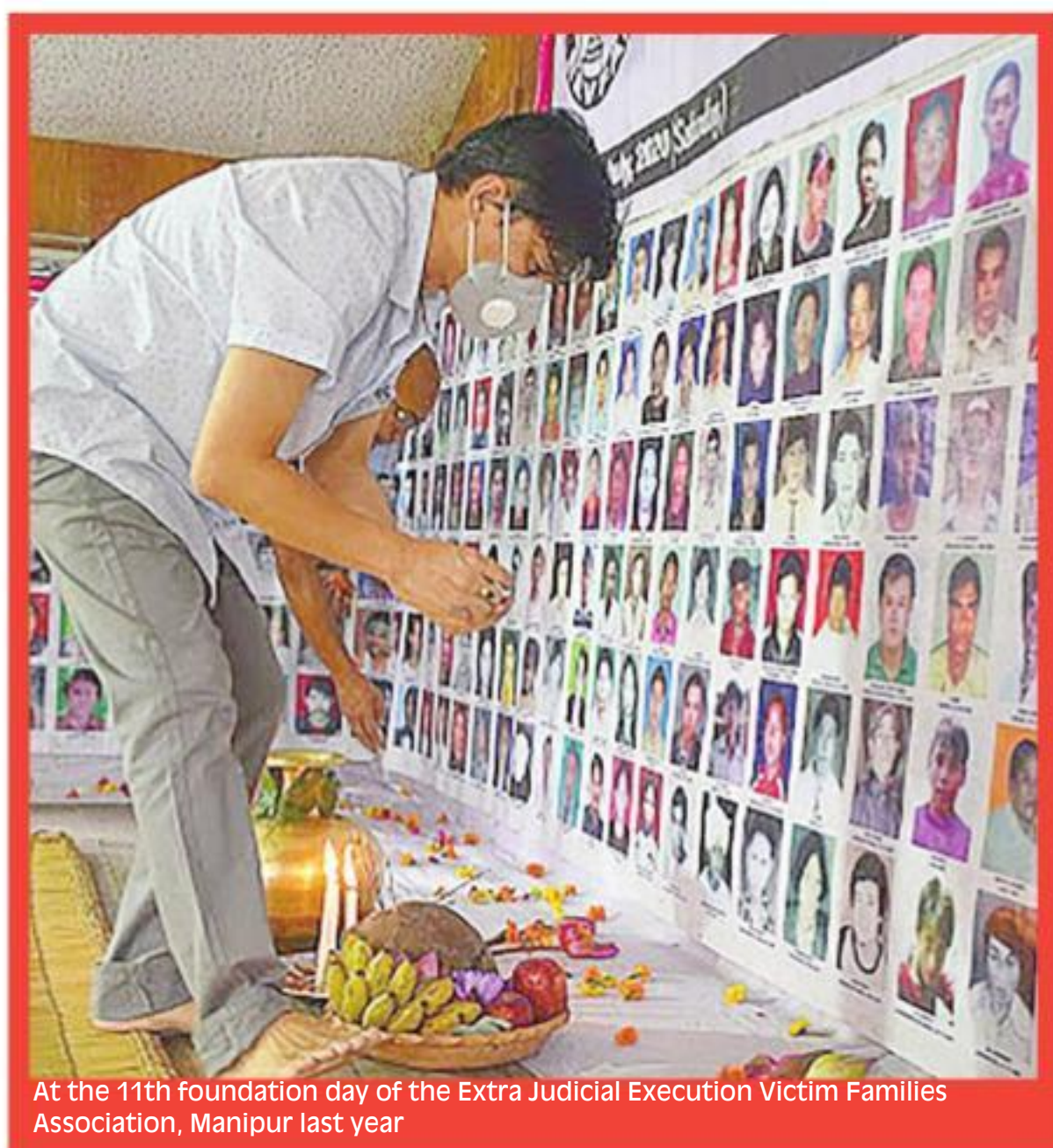
Chalwa village is located 50 kilometres from Kangpokpi's district headquarters on the Imphal-Tamei Road in Manipur. On the night of 4 June this year, a civilian from Chalwa was allegedly shot by a post commander of the 44th Battalion Assam Rifles E Company outpost at Banglabung, adjoining Gelnel village, in Kangpokpi district. Hearing the gunshot, villagers rushed to the spot to find 29-year-old Mangboilal Lhouvum with a bullet wound in his abdomen.

Through the Press Information Bureau's Defence Wing, the Director General of Assam Rifles stated that an operation took place at Chalwa to apprehend the secretary of the Kuki Revolutionary Army and some of its other members. Despite their clarification that the Chalwa incident was an official operation, sources did not support the claim. The DGAR said that besides the deceased, there were three other members of the militant group there. However, none were caught, neither by the Assam Rifles nor the police. Local sources also claimed that the paramilitary forces were in plain clothes, which raised eyebrows about the real intention or veracity of the operation itself.

The victim was rushed to the nearby Primary Health Centre at Tujang Waichong, to be later referred to the district hospital at Kangpokpi. He died of the injuries after three hours, on the way to the district hospital. The deceased was a father of four children, the sole breadwinner of his family and worked as a helper to a truck driver. Sources claim that



Villagers clash with Assam Rifles personnel after the incident



At the 11th foundation day of the Extra Judicial Execution Victim Families Association, Manipur last year

the last words of the deceased were "the Major shot me". The next morning, villagers gathered at the outpost and civil society organisations of Kangpokpi district demanded that the "culprit" be arrested. He was "reluctantly" handed over to the police.

## Armed groups and the peace process

The National Socialist Council of Nagaland (Isak-Muivah) signed a ceasefire agreement with the Government of India in 1997 and is in the final stage of peace talks for a negotiated settlement. The Kuki insurgent groups, under the banner of the Kuki National Organisation and United Peoples' Front, also signed a Suspension of Operations with both the Central and Manipur governments in 2008, and tripartite talks were started in June 2016. Some Meitei insurgent groups such as the Kanglei Yawol Kanna Lup and Kangleipak Communist Party also signed the Suspension of Operations later. Since then, the law and order situation has slowly improved in Manipur.

In August 2004, the Manipur government had withdrawn the

AF(SPA) from seven Assembly constituencies in the Imphal area, mainly the Imphal municipal areas. During a discussion in the state Assembly in February this year, chief minister N Biren Singh informed the House about the efforts being made to convince the Central government to withdraw the AF(SPA) from the remaining areas of Manipur.

## Judiciary's observations

The Naga Hills and Imphal Valley were known for separatist insurgency from the early decades after Independence. Cases of "extra-judicial killings" were rampant during counter-insurgency operations. The rise of Kuki insurgency movements during the late 1980s also brought the Kuki-dominated districts into the map of "extra-judicial killings". In the last three decades, Kangpokpi district, or the erstwhile Sadar Hills areas of Senapati district, has seen some of the worst "extra-judicial killings" in the state, which is, however, relatively unknown due to under-reporting in the mainstream media.

In a major incident on 13 September 2003, Assam Rifles personnel allegedly killed at least 10 Kuki Nation-



Mangboilal Lhouvum

al Front-Military Council cadres at Songtum village. The South Asia Terrorism Portal recorded it as "encounter killings". Nevertheless, different sources claimed that the militant group was close to the commanding officer of the paramilitary forces and he allegedly staged the encounter just before his transfer for the prospect of a quick promotion. A cursory glance at the SATP website indicates several so-called encounter killings in the Kangpokpi-Senapati area.

Families of people executed in such a way, allegedly by the police and security forces in Manipur, formed the Extra Judicial Execution Victim Families Association, Manipur in 2009. Along with the Imphal-based Human Rights Alert, it filed a public interest litigation in the Supreme Court of India against the Union of India and others in 2012. The PIL alleged "that 1,528 persons had been killed in fake encounters by police personnel and personnel in uniform of the armed forces of the Union" between 1980 and 2011 of which the "petitioners have been able to gather information with regard to 655 deaths out of the 1,528 alleged in the writ petitions".

In a landmark judgement, the Supreme Court observed on 13 July 2016 that "there is no blanket immunity available to the perpetrator(s) of the offence. No one can act with impunity particularly when there is a loss of an innocent life". With respect to the writ petition alleging gross violations of human rights, the Supreme Court reiterated the view expressed by the Constitution Bench in the Naga People's Movement of Human Rights "that the use of excessive force or retaliatory force by the Manipur Police or the armed forces of the Union is not permissible".

In India, the rule of law is one of the basic structures of the Constitution. It seeks to protect, promote and preserve all human rights. Furthermore, India is a party to the International Covenant on Civil and Political Rights adopted by the General Assembly of the United Nations on 16 December 1966. Thus, the Indian State is also obliged to protect the life of not only its citizens, but also that of foreigners, and "no one shall be arbitrarily deprived of his life".

Accordingly, the Protection of Human Rights Act, 1993 was passed in 1994 "for better protection of human rights and for matters connected therewith or incidental thereto". To ensure that, it provides for the constitution of a National Human Rights Commission, State Human Rights Commissions in states and human rights courts.

The Supreme Court in Extra Judicial Execution Victim... versus Union of India and others on 14 July 2017, gave an opinion that "the provisions of Part III of our Constitution, particularly the essence of Article 21 of the Constitution, does require every State to constitute a State Human Rights Commission". They are not only mandated to inquire into complaints of violation of human rights or negligence in the prevention of such violations, but also take up *suo moto* cognisance of the case of human rights abuses and make recommendations to the government.

What has become conspicuous during these times, however, is the silence of the State Human Rights Commission on the issue. It is not only a "toothless tiger" as claimed by petitioners in the PIL but has turned out to be a "stooge" of the government and its agencies.

## Deeds of agreement

According to the "Deeds of agreement between CSOs, Assam Rifles and State Government" reached on 5 June this year regarding the Chalwa incident, the police agreed to immediately initiate "investigation of incident on the night of 4 June at Chalwa involving alleged person(s) of 44 AR E Company", and the "present company of 44 AR at Banglabung outpost will be removed or replaced by the same company as in Kangpokpi district headquarter at the earliest". Apart from financial compensation by the Assam Rifles for the loss of life to the deceased family, it was agreed that "a fully functional armed police station in the area, with 40 strength minimum, will be set up at the earliest".

Some human rights activists have aversive views on the "deeds of agreement" regarding the "extra-judicial killing" at Chalwa, particularly the financial compensation for the loss of life. Their main concern was to ensure that adequate legal action is taken on the "perpetrator" for such a heinous crime. In the Supreme Court verdict of Extra Judicial Execution Victim... versus Union of India and others on 14 July 2017, it clearly noted that "Compensation has been awarded to the next of kin for the agony they have suffered and to enable them to immediately tide over their loss and for their rehabilitation. This cannot override the law of the land, otherwise all heinous crimes would get settled through payment of monetary compensation. Our constitutional jurisprudence does not permit this, and we certainly cannot encourage or countenance such a view".

## Return to the past?

After relative peace in the last decade or so, the Chalwa incident has once again reminded everyone in the region of its grim past, and how it can easily relapse to a near Hobbesian state. What is needed now is not a settlement of the case as a compoundable offence, and payment of blood money to the deceased's family should not spell the end of the "process of justice". The case must be non-compoundable, and an exemplary judgement must be made to prevent such atrocities in future and further loss of innocent civilian lives.

Many areas in the North-eastern region are still under the AF(SPA) due to ongoing peace talks between militant groups and the government, and the latter's reluctance to withdraw the Act due to insecurity and perceived danger. But in view of the strong expectations for peace and to keep the faith of people, a "criminal offence" should not be left unpunished. Impunity to the "offence" will bring back the fear psychosis and anxiety -- a condition that gripped people in the North-east for too long in the past.

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## PLUS POINTS

### Rice for jobs



Free rice in return for a Covid-19 job, and as much as 20 kg. The prospect turned out to be lucrative enough to dispel rumours around vaccination among villagers of an administrative circle in Arunachal Pradesh, as more than 80 of them turned up for inoculation within days of announcement of the sop. The offer of free rice for those getting vaccinated in the 45-plus age group was the brainchild of Circle Officer Tashi Wangchuk Thongdok of Yazali in Lower Subansiri district.

There are 1,399 people above the age of 45 in the Yazali Circle, officials said. Many of those who got themselves vaccinated came on foot from far-flung villages, braving inclement weather, Thongdok said. "We are planning door-to-door visits to administer vaccines to people above 45 years of age. Our offer will continue but the quantity of rice will be 10 kg instead of 20 kg in that case," he said. Two former students of Vivekananda Kendra Vidyalaya have donated the rice for distribution among beneficiaries, he added.

### Boxer felicitated



Shiva Thapa, internationally acclaimed boxer from Assam, recently called on chief minister Himanta Biswa Sarma who felicitated him on behalf of the government. Seasoned boxer Thapa (27), who hails from Guwahati, apprised Sarma about his recent success at the ASBC Asian Boxing Championship where he won a silver medal in the 64-kg category.

Thapa won his fifth successive medal at the recent Asian-level championship in Dubai. The spirited Assamese pugilist had earlier won a gold in 2013, a bronze in 2015, a silver in 2017, and another bronze in the 2019 championship.

In the presence of state sports minister Bimal Bora, legislators Mrinal Saikia and Manab Deka, senior sports officials and others, the CM handed over a cheque worth Rs three lakh under the state sports policy.

### Foresters on strike

More than 200 part-time workers of the Pakke Tiger Reserve in Arunachal Pradesh launched an indefinite strike last week for non-payment of their wages for more than six months.

With the agitation of the 202 contingency workers at the office of the Divisional Forest Officer, the Reserve has been left unguarded. Accompanied by eight elephants, the workers, some of them in their uniforms, threatened to continue their agitation until their wages are paid. The National Tiger Conservation Authority, headed by Union environment, forest and climate change minister Prakash Javadekar, provides funding for wages of the contingency staff of PTR through the state government.

PTR workers' union general secretary Nikum Nabam said that the strike was to begin from 2 May, but it was suspended after state environment and forest minister Mama Natung assured them that their wages would be released soon. "We have families to take care of with a meagre monthly wage of Rs 11,000. Since December, we have been in great distress," he said.

Besides the payment of wages, the agitating workers also demanded regularisation of the Special Tiger Protection Force. Nabam said that they have learnt that the government had released funds for their wages but the money has been lying in the treasury instead of being transferred to the DFO.

Natung said that due to the Covid situation and non-availability of officials, disbursement of wages has been delayed, but the workers should have waited for two or three days before launching the agitation.

- IANS

