

**SILENCE OF THE JUSTICE: THE JUDGMENT THAT  
CAME FRUSTRATED*****BRAJAKANTA SINGH, NAMEIRAKPAM****Ph.D. SCHOLAR**DEPARTMENT OF LAW, MANIPUR UNIVERSITY***ABSTRACT**

*The issue of human rights violations in the North East states of India has been problems for all the organs of state. The Judiciary in the country has faced stupendous tasks to deliver justice to the victims of human rights violation by the agencies of the state. Sometimes, higher judiciary has to come to a conclusion which has frustrated justice. The present article examines a judgment, in which High Courts abdicating their responsibility to protect human rights of hapless victims and prosecution of human rights violators. The judgment under this study was delivered in the Naga People for Human Rights & another versus Union of India & others which seen two different High Courts of several benches. It is argued that sometimes our judges missed to deliver justice to the victims of human rights violation when it was committed by state actors.*

**INTRODUCTION**

Law, it is said, is a notorious laggard. It does not reach out as science does. It follows social consensus which is itself behind the needs of time. Lord Hewart<sup>1</sup> pronounced that justice should not only be done, but should manifestly and undoubtedly to be done. However, judicial restraint seems to be the order of the day. While judicial law-making is now universally acknowledged, some judgments related with human right violations becoming mere constitutional papers and justice seems to be entangled in the mist of national security and arm-conflict. The present article examines a judgment in which high courts abdicating their responsibility to protect human rights of hapless victims and prosecution of human rights violators. The judgment under study was delivered in the Naga People for Human Rights &

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<sup>1</sup> R. v. Sussex Justices, Ex p Mc Carthy (1923)

another versus Union of India & others<sup>2</sup>, which started in the Gauhati High Court<sup>3</sup> culminated in the High Court of Manipur<sup>4</sup>. It was the oldest case pending before the High Court of Manipur and a division bench of the High Court of Manipur finally heard it<sup>5</sup>. This article portrays how our judges missed to deliver justice to the victims of human rights violation committed by state actors who are not only essential protectors but also the principal violators of human rights of the people.

## **THE GENESIS OF THE CASE**

The case relates to infamous incident happened at Oinam situated in Senapati District where a military post of the Assam Rifles, a paramilitary force of the Union of India, was attacked killing nine soldiers, injuring three others and 124 weapons and a large quantity of ammunitions were looted by suspected NSCN rebels on July 9, 1987. The infamous 'Operation Bluebird' was launched for recovering the arms looted and in the name of counter insurgency the armed forces unleashed a reign of untold terror on the innocent villagers residing in and around the place of incident. Untold atrocities were meted out to womenfolk. Several villagers were brutally tortured, a number houses were looted and destroyed. Women were assaulted and raped. Forced labour system was a common feature adopted by the security forces. As per the NPMHR, around thirty villages were affected, 125 houses were allegedly burnt, 112 houses, 6 schools and 10 Churches were dismantled, properties worth of Rs. 50, 75,000 were looted from seven villages and people belonging to five villages were forced to work, 27 persons were alleged to have been killed on different dates in Senapati district, three women were allegedly raped and five women were sexually molested while 300 persons were allegedly tortured. In those three months they committed large-scale human rights violation, including forcing two pregnant women to give birth to their babies in full view of the jawans.

## **ARDUOUS ROAD TO JUSTICE**

The journey of the case started on October 5, 1987 when the case being Civil Rule No. 1047 of 1987 was filed in the Gauhati High Court by the petitioner, the Naga People Movement for Human Rights with the help of some lawyers, led by G. Mukhoty, Nandita Haksar, Hrishikesh Roy<sup>6</sup> and B.C.Das assisted by human rights activists. The Union of India (read Assam Rifles)

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<sup>2</sup> CR No. 337 of 1991 with CR No. 338 of 1991 delivered on 13.6.2019

<sup>3</sup> Common high court for NE States

<sup>4</sup> A separate High court of Manipur was established on 23.3.2013

<sup>5</sup> The judgment was authored by the Chief Justice

<sup>6</sup> Now a Judge of the Supreme Court of India

denied all allegations. The petitioner's prayer, made in a Misc. Case<sup>7</sup>, for enquiry into the incident by an independent agency was rejected by the High Court. The Guahati High Court, however, passed an order on July 6, 1988 directing the Court of Sessions Judge, Manipur, Imphal to record the evidence of the victims of torture. It observed that all those examined will be tendered for cross examination by the Union of India and also by the State of Manipur. Sessions Judge C Upendra Singh began recording evidence of the victims in August 1988. The petitioner organisation was represented by advocates N. Haksar, N.Koteshwar Singh<sup>8</sup> and S. Risom. The Assam Rifles had their own counsel from Manipur, namely, T Bhubon Singh and T Nandakumar Singh. The villagers were often intimidated and sometimes picked up on their way to court by the Assam Rifles. Despite this they showed extraordinary courage and determination and gave evidence standing in the witness box with the officers of the Assam Rifles sitting at the back in their uniforms.

Witness after witness spoke in clear and measured tone giving the details of the torture they had seen; and more the cross-examination the greater the details of the horror came out. Not a single witness was broken by days of cross-examination by lawyers for the Manipur Government and the lawyer for the Assam Rifles. Several witnesses were reportedly arrested after they gave their testimonies and the lawyers for the petitioners had to run around to get them out. That New year's Eve was tense and the lawyers were sitting in the Manipur Baptist Church where one Sub-Deputy Commissioner namely N. Surendra Singh came in. He had brought all the files containing the inner correspondence between the district authorities throughout the Operation Bluebird. One of human rights activists involved told Surendra that he would get killed if we produced the files in court but the man insisted the activists summon him to court. Surendra was killed later in a mysterious accident under suspicious circumstances. The Sessions Judge submitted his report before the High Court in July 1990.

### **TRANSFER OF THE CASE TO IMPHAL**

Finally, the case was transferred from Gauhati High Court, Principal Bench to Imphal Bench by order dated 9.7.1991 by an order of the Gauhati High Court<sup>9</sup>. It stated: "This case is transferred to Imphal Bench as prayed for by the learned counsel N.Hakser, on behalf of the

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<sup>7</sup> No.1127 of 1987 decided on 15.12.1987

<sup>8</sup> He is now the Acting Chief Justice of Gauhati High Court

<sup>9</sup> Para 12 of the judgment

petitioner... office to transmit the records to Imphal Bench through special messenger within a week.”

The entire records in 12 volumes running into some thousand pages were indeed transferred and it was on the basis of these that the final hearing was conducted before the bench of Justice Phukan and Justice Shishak in March 1992. The two judges failed to give their judgement; and they were subsequently transferred to different High Courts and Justice Phukan retired as a Supreme Court Judge. There could not have been a final hearing without a complete brief. N. Haksar in her published statement boldly stated that she can testify that the entire records in 12 volumes running into some thousand pages were indeed transferred and it was on the basis of these that the final hearing was conducted before the Bench of Justice Phukan and Justice Shishak in March 1992.

### **LOSS OF BRIEF**

However, the latest judgment<sup>10</sup> states: “Despite several orders of this Court in the recent times, it appears that the entire records could not be identified or located. There is no final or interim report from the District Judge, Imphal. Registrar (Judicial) informed the court that in spite of several enquiries, he is unable to identify any relevant file except pleadings. Smt R K Memcha, the then Registrar (Judl) submitted a letter dated 21.2.2019 enclosing certain documents. To our dismay, we found that some of the records referred to in the above said letter are totally unconnected to the present case. The letter dated 21.02.2019 also does not in any way help us adjudication of the present case.”

Who is responsible for the loss of the brief, the 12 volumes of evidence of large-scale human rights violations of the people of nearly 30 villages in Senapati district? Where has all this evidence disappeared? No one seems to have asked where the 12 volumes of evidence have disappeared.

### **ISSUES BEFORE THE NEW JUDGES**

The chief justice observed that in view of the nature of allegations made against the Assam Rifles and the grievances expressed by the people of the Senapati District in relation to the incident, namely Operation Blue Bird and also taking note of the new development that has taken place, namely, the affidavit prepared by the victims, the issue that needs consideration is

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<sup>10</sup> Ibid Para 13

that the claim has to be considered by the competent authority as to who are the victims of Operation Blue Bird and if found true thereafter, the question of compensation will arise for determination. The learned counsel appearing for the Union Government denied allegations against the Assam Rifles. He averred that the Assam Rifles authorities should be given an opportunity to place their version on facts. The Government advocate for the State has no objection in so far as constitution of a Committee of officers of the Government to look into the allegation and complaints of the victims. He submitted that the issue of compensation will be decided by the Government based on the report of the Committee. The new counsels for the petitioners stated that the details of victims will be submitted to a committee of officers of the Senapati District if the same is constituted, that too for proper inquiry. It seems that the new lawyers did not have the real brief.

### **JUSTICE FRUSTRATED**

These developments make the court to come to an easy task of directing to constitute a Committee. It was observed that in order to end the agony of the victims and for early conclusion of the lis, the State Home Secretary to constitute a Committee consisting of Superintendent of Police, Senapati District, Deputy Commissioner, Senapati District and any other competent officer to hold an enquiry into the incident of Operation Blue Bird. The Committee was required to receive all the complaints along with affidavit and hold an enquiry on the merits of the allegations made out by the petitioner. It was ordered that the Committee will submit an impartial report to the Government and on that basis Government will have to decide the issue of appropriate relief or payment of compensation and for such other remedial measures as suggested by the Committee.<sup>11</sup> The Judges observed that the officers of the district along with officers of the State alone go into details of the grievances of the alleged victims and also assess the damages alleged to have been caused by the personnel of Assam Rifles at that point of time. It was also observed that it may not be possible for a judicial officer to determine the quantum of compensation on the ground that there is an acute shortage of judicial officers, the varied claims have to be assessed by competent officers and above all, more than 300 claims have to be enquired and the merits considered after examination and cross-examination, which need to be undertaken by a special forum of competent officers who are

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<sup>11</sup> Ibid Para 19

people friendly<sup>12</sup>. One failed to understand why competent retired judicial officials are not considered for the purpose, even if serving judicial officers are not to be engaged in the enquiry.

## CONCLUSION

The saga of the fight for justice for victims of Operation Bluebird is too long to recount. It was recorded in a book<sup>13</sup> published after 25 years of waiting. The acts of the soldiers were never been an act of bravery or patriotism. The judges disposed of the case, relating to such serious charges, without having the brief before them. Assam Rifles, the main accused, have been given the right to give their version of the story – but they denied all the allegations in affidavits and on oath. The long wait for justice by the victims of Operation Blue Bird slipped in the currency of injustice. It had become a lost cause. Thus, justice for victims of Operation Blue Bird has become frustrated. The judgment was just a disposal of one of the 53 lakh cases pending before the High Courts in India. It is respectfully submitted that the court had lost the rare opportunity to deliver justice in tune with the right to life guaranteed by Article 21 of the Constitution of India. The judgment showed that in the prevailing system, particularly the criminal justice system, the writ courts are also sometimes unable to deliver justice to the victims. After reading the judgment and the court battles it had gone through one is compelled to think that judges are not superhuman who can deliver the ultimate justice to the victims. Justice delayed is justice frustrated and denied.

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<sup>12</sup> Ibid Para 18

<sup>13</sup> NANDITA HASKAR & SEBATHIAN M. HONGRAY, THE JUDGMENT THAT NEVER CAME: ARMY RULE IN NORTH EAST INDIA (2011)