

LAW

Supreme Court Upholds Order Against Use of Excessive Force by Army in Manipur

The Centre had asked the apex court to recall its order saying that the judgment had hampered the army's ability to respond to insurgent and terrorist situations.



Supreme Court is pictured through a gate in New Delhi, India May 26, 2016. REUTERS/Anindito Mukherjee

V. Shivshankar



LAW 27/APR/2017

The Centre Had Asked The Apex Court To Recall Its Order Saying That The Judgment Had Hampered The Army's Ability To Respond To Insurgent And Terrorist Situations.



Supreme Court is pictured through a gate in New Delhi. Credit: Reuters/Anindito Mukherjee

New Delhi: In a huge setback to the Centre, the Supreme Court has re-affirmed its **July 2016 order** which said that the army and Manipur police had killed innocent people in the guise of encounters with militants.

The court in its order had held that the army cannot use excessive force under the provisions of the **Armed Forces (Special Powers) Act (AFSPA)** or the **Unlawful Activities Prevention Act (UAPA)** to deal with militants or insurgency.

While upholding this order, a five-judge constitution bench comprising Chief Justice J.S. Khehar and Justices Dipak Misra, J. Chelameswar, Madan B. Lokur and Uday Lalit dismissed as ‘no merits’ the **curative petition filed by the Centre** to re-open the case that held the army responsible for the killings in the guise of self-defence and insurgency.

Generally, curative petitions are filed after the court dismisses the review petition and though the Centre wanted a fresh

hearing in open court, this curative petition was heard by the judges in the CJI's chamber and dismissed.

On July 8, 2016, the top court had given this ruling on a PIL filed by the Extra Judicial Execution Victim Families Association **alleging 1,528 fake encounter deaths in Manipur** in the last decade. The court had pulled up the army for human rights violations in the fake encounters. Last week, the same bench reserved its verdict on the issue of setting up a special investigation team to probe specific instances of excesses including murder and rape. A judgment on the same is expected shortly.

In its judgment, the apex court had said that if members of the armed forces are deployed and employed to kill citizens of the country on the mere allegation or suspicion that they are 'enemy,' then not only the rule of law but also democracy would be in grave danger. It said that the use of excessive force or retaliatory force by the Manipur police or the armed forces of the Union is not permissible. It had directed that the Indian army and other paramilitary forces cannot use "excessive and retaliatory force" in Manipur and that all allegations of such excessive use of force must be probed.

Seeking to recall this order, the Centre said the findings and conclusions have far reaching ramifications on the security and integrity of the territory of India, especially in certain parts of the country. The protections available to the armed forces under statutes such as AFSPA and UAPA have been completely negated or bypassed. If the position maintained by the order continues, it may, one day, be well-nigh impossible to maintain peace and security, it argued.

The Centre maintained that the Indian army, in the given circumstances, has to take quick decisions which cannot be dissected later on, like an ordinary murder appeal. The action taken by the army during operations cannot be put to judicial

scrutiny. It submitted that the principle of judicial scrutiny cannot be applied in insurgency operations in the state of Manipur by the security forces.

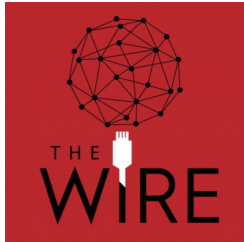
The curative petition noted that it is a well-known fact that the northeastern region has also been, post-independence, prone to the activities of insurgent and militant groups from the China and Myanmar region. There is a constant threat from armed militant groups and, therefore, there is need for counter insurgency operations through the armed forces in conjunction with the Manipur police. These anti-insurgency/militant operations also hold out a threat to the lives of the armed forces personnel since the insurgents/militants wield deadly weapons inclusive of the latest automatic fire weapons.

Disagreeing with the court's far reaching findings, the Centre said the order failed to take into account the peculiar facts and circumstances and did not take into account the express contents of statutory provisions and their interpretation, especially in consonance with the ground realities under which the forces are posted in the Manipur region. The government had held that no army action against such suspected insurgents in frontiers and difficult terrain can be equated to a "public order" or a "law and order" situation. It cannot be expected that the army during the currency of such operations – which generally last two-five minutes – must consider the possibility that the army officer concerned might one day be tried for participating in the operation.

The government said the immediate effect of the impugned judgment is that it has hampered the army's ability to respond to insurgent and terrorist situations. Denying the violation of human rights in these encounters, the government said "human rights and respect for the life of a human being are kept on the highest pedestal" as reflected by the data showing

that only 10% of insurgents died in army operations between 1990 and 2015.

In the end, however, none of these arguments cut any ice with the Supreme Court, which let its original order stand.



Support The Wire

₹200

₹1000

₹2400

[T & C](#) [Privacy](#)

ALSO READ

9 HOURS AGO

Gujarat Information Officer Demands Citizenship Proof to Provide Documents Under RTI Act

11 HOURS AGO

What 'Hate Speech' Really Means, and How the Term Is Being Misused

TODAY

Adityanath Govt Says HC Can't Rule on Hoardings on Anti-CAA Protesters, Verdict Tomorrow

07 MAR

Bidar Court Says Play on CAA by School Students Was Not Seditious

MORE 

[TERMS & CONDITIONS](#) | [PRIVACY POLICY](#) | [REFUND POLICY](#)