

Editorial

Friday, June 14, 2019

Taming the traffic

One of the most prominent albeit inconvenient indications of development and economic progress in the state would have to be the increasing congestions on the streets. And now, things have come to such a state that it has become impossible for the public to find proper parking space anywhere in the city. The problem has been felt for quite some time now, and the irresponsible nature of parking by many of the vehicle owners and drivers have added to the woes. On the other hand, we have yet to see any positive changes by way of development of dedicated parking spaces in strategic points in the city, as every and all measures to regulate traffic and parking has been evidently temporary in nature. The recent measures taken up by the state traffic police have yet again evoked mixed response from the public.

Setting aside the perceived inconveniences and drawbacks, the traffic control authority must have to be applauded for its efforts to streamline and ease the increasing problem. It is true that a lot needs to be done and adjustments made to make the system as perfect as humanly possible, given the not so insignificant limitations in terms of space and resources being faced by the department, but the enthusiasm and professionalism with which the personnel are going about their duties cannot be mistaken.

But streamlining and regulating the flow of traffic and parking norms is just a part of the larger problem plaguing the state. With the manifold increase in vehicular traffic, accidents and injuries due to distractions resulting from use of mobile phones while driving is another concern that needs to be addressed at the earliest. Using hands free accessories or pulling up by the side to attend to important calls, while enforcing strict observation of the law against using phones while driving with fines and other applicable penalties could reduce the danger significantly. Another aspect that could improve the scenario is the strict regulation and enforcement of emission rules. The state Pollution Control Board at present exists only on paper as emission checks have all but become redundant. It would be an understatement to say that the small capital has already begun to be choked by the grime and toxic fumes from the vehicles, some of which have posed serious pollution problems while nothing has been done so far in this regard. Reintroducing the use of signal lights instead of deploying traffic personnel amongst the speeding traffic could definitely help in improving the regulation of traffic and would go a long way in educating and familiarizing the hereto ignorant public to the universally accepted traffic norms and rules.

The problem of traffic congestion and pressure on parking spaces is bound to increase with time. The state government should waste no time to set up dedicated parking spaces and make provisions to provide an enduring solution to the problem. For now, the most positive outcome is perhaps the unexpected opportunity for the public to take that much needed walk.

2 members of BJP's social media team arrested over 'derogatory' remarks against CM

Agency Guwahati, June 14.

The Assam Police has arrested two members of the ruling BJP's social media team who had been vocal against the state government, and particularly Chief Minister Sarbananda Sonowal, over some issues, leading to allegations of "intolerance" from their colleagues. While Nitumoni Bora and Nani Gopal Dutta were arrested in the last 24 hours, the house of another member, Hemanta Baruah, was also raided by the police on Wednesday night. While Bora hails from Morigaon district of central Assam, Dutta and Baruah hail from Majuli, the district and constituency represented by Sonowal.

"There was an FIR lodged against Nitumoni Bora by Raju Mahanta on Wednesday night based on which we have arrested him. It was stated in the FIR that he had posted a derogatory comment against the Chief Minister," said Morigaon's Superintendent of Police Swapnil Deka. The social media team has now questioned the existence of internal democracy in the party. "We have been working very hard since 2014 to popularize the party (BJP) in Assam because we love the party

and its ideals. We had launched an aggressive social media campaign against the then ruling Congress, exposing the party and its misuse to the people which in fact paved way for a change of guard in Assam. However, our members were not arrested by the then Congress government," said a member of the BJP's social media team on condition of anonymity. "How can they stop us from exercising our right to freedom of speech? This is intolerance if I cannot speak my mind on social media. None of the members have made any derogatory comment. However, some of the members only expressed their unhappiness when the government fails to protect the indigenous people of the state. There is nothing wrong in it," he said. In January this year, a police station in Guwahati had registered a case of sedition against some speakers at a meeting held on December 7 against the controversial citizenship bill. Police filed the case under sedition charges against scholar and intellectual Hiren Gohain, rights activist and journalist Manjit Mahanta and RTI activist Akhil Gogoi, who spoke in one particular meeting organized by the citizens' forum.

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United Nations Human Rights: The Manipur Experience

The Government of India has extended a standing invitation to any of these mandate holders to visit India in 2011 and thereafter a number thematic mandate holders made official visited India.

SR on the Situation of Human Rights Defenders

Ms. Sekaggya visited India from 10 to 21 January 2011. She did not come to Manipur but she came out to Guwahati and HRD from Manipur organized a whole delegation from the civil society of NE and organized a briefing meeting with her at Don Bosco Institute, Kharguli.

When the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya submitted to the General Assembly and Human Rights Council, contained in document number A/HRC/19/55/Add.1 dated 6 February 2012 she stated:

At the time of the visit, Manipur was reportedly the state worst affected by militarization with more than half a dozen human rights groups having been banned as terrorist due to their self-determination advocacy. Since 2000, Irom Sharmila, who has been on a hunger strike to demand the repeal of Armed Forces (Special Powers) Act, has been forcibly detained and forced in a hospital in Imphal. For 10 years, NHRC reportedly never visited Ms. Sharmila, despite repeated request by defenders. The Special Rapporteur thank Ms. Sharmila for her letter, read by her brother, during her visit to Guwahati.

In Geneva when she presented her report to the UN Human Rights Council, the Government of India strongly reacted as been biased and sub-standard and being informed by "ideological extremist".

In Manipur, follow the experience of the travelling together to Guwahati and to systematically engaged with the UN mandate holder, the human rights defenders and other civil society groups of Manipur organized themselves under CSCHR to stream line the work of the civil society engaging with the UN human rights procedures.

SR on Summary, Arbitrary or Extrajudicial Executions

Prof. Christof Heyns, UN Special Rapporteur on extra-judicial execution made an official mission to India from 19 to 30 March 2012. Despite of an invitation from the Extrajudicial Execution Victim Families Association, Manipur (EEVFAM) he could not make it to Manipur. But he did meet with a busload of families of victim of extrajudicial executions and other HRDs from Manipur at hotel Bramhaputra in Guwahati. CSCHR prepared a detailed memorandum listing 1528 cases of extrajudicial executions in Manipur from 1979 to 2012 under shadow of AFSPA.

In his report after his official visit to India in 2012 he observed:

(...)The NHRC shared with the Special Rapporteur its views in support of AFSPA's repeal... The Supreme Court of India ruled, however, in 1997 that AFSPA did not violate the Constitution. The Special Rapporteur is unclear about how the Supreme Court reached such a conclusion... the powers granted under AFSPA are in reality broader than that allowable under the state of emergency as the right to life may effectively be suspended under the Act and the safe guards applicable in a state of emergency are absent. The full text of his analysis on AFSPA and related legislation is reproduced herein below:

21. The situation regarding the use of force in India is exacerbated by what in effect though not in law could constitute emergency measures. In this regard, AFSPA, enacted in 1958, regulates instances of use of special powers by the Armed Forces in so-called "disturbed areas" of the country. In order for AFSPA to be applied in an area, the area must be defined disturbed or dangerous to the extent that the use of armed force is deemed necessary. AFSPA first found application in the north-eastern States

of Manipur and Assam as a way to address the continued unrest in the area, and was also extended to other areas, including in Arunachal Pradesh, Meghalaya, Mizoram, Nagaland and Tripura. In 1990, the Jammu and Kashmir Armed Forces (Special Powers) Act, containing nearly identical provisions to those stipulated in AFSPA, was enacted in Jammu and Kashmir.

22. AFSPA provides wide-ranging powers to the Indian armed forces in respect of using lethal force in various instances, and fails to provide safeguards in case of excessive use of such powers, which eventually leads to numerous accounts of violations committed in areas where AFSPA is applied. The Special Rapporteur wishes to draw attention to two main concerns to which he was constantly alerted. Firstly, concerns were raised regarding AFSPA provisions regulating the use of lethal force. Section 4 of AFSPA provides: "Any commissioned officer, warrant officer, non-commissioned officer... may, in a disturbed area, (a) if he is of opinion that it is necessary to do so for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area..." Such provisions clearly violate the international standards on use of force, including lethal force, and the related principles of proportionality and necessity.

23. Secondly, Section 6 of AFSPA and 7 of the Jammu and Kashmir AFSPA, grant protection to the officers acting under these Acts and stipulate that prosecution of members of the armed forces is prohibited unless sanction to prosecute is granted by the central Government. Sanction is rarely granted in practice. In this context, the Special Rapporteur was informed of an application submitted in India under the Right to Information (RTI) Act in November 2011, requesting information on the number of sanctions for prosecution granted from 1989 to 2011 in the State of Jammu and Kashmir. The response received from the authorities revealed that in none of the 44 applications brought was sanction granted. In addition to AFSPA, the CPC also protects members of the armed forces from being prosecuted without prior sanction being granted, which will be examined in chapter V.

24. The Special Rapporteur notes that the Supreme Court of India held that the declaration of a "disturbed area" under AFSPA must be "for a limited duration and there should be periodic review of the declaration before the expiry of six months". He found, however, that this procedure is not followed in practice, and AFSPA remains effective for prolonged periods without a review of the context in the respective area.

25. The Special Rapporteur wishes to underline that several international bodies have called for the repeal or reform of AFSPA, including the former United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions. Furthermore, Indian authorities at various levels have also expressed their support for the repeal of AFSPA. In this context, the Indian Government set up a special committee in 2004, tasked with examining the provisions of AFSPA and advising the Government on whether to amend or repeal the Act. The special committee found that AFSPA should be repealed—that it was "quite inadequate in several particulars" and had "become a symbol of oppression, an object of

hate and an instrument of discrimination". The need to repeal AFSPA was reiterated by the Second Administrative Reforms Commission in its fifth report, published in June 2007. Finally, the NHRC shared with the Special Rapporteur its views in support of AFSPA's repeal during a meeting held in New Delhi.

26. The Supreme Court of India ruled, however, in 1997 that AFSPA did not violate the Constitution. The Special Rapporteur is unclear about how the Supreme Court reached such a conclusion. The Special Rapporteur, however, notes that in the same case the Supreme Court declared as binding the list of "Dos and Don'ts" elaborated by the Armed Forces, and containing a series of specifications on the manner of applying AFSPA in practice. Although the list contains more precise guidelines on the use of lethal force under AFSPA, the Special Rapporteur believes that they still fail to bring AFSPA in compliance with the international standards in this regard.

27. In the Special Rapporteur's view, the powers granted under AFSPA are in reality broader than that allowable under a state of emergency as the right to life may effectively be suspended under the Act and the safeguards applicable in a state of emergency are absent. Moreover, the widespread deployment of the military creates an environment in which the exception becomes the rule, and the use of lethal force is seen as the primary response to conflict. This situation is also difficult to reconcile in the long term with India's insistence that it is not engaged in an internal armed conflict. The Special Rapporteur is therefore of the opinion that retaining a law such as AFSPA runs counter to the principles of democracy and human rights. Its repeal will bring domestic law more in line with international standards, and send a strong message that the Government is committed to respect the right to life of all people in the country.

28. The Special Rapporteur was encouraged to hear from several Government officials that AFSPA is in the process of being amended, which will lead to reduced powers provided to the armed forces acting under this Act. This is a welcomed first step. In Geneva, when the Special Rapporteur presented his report of his mission to India, Government of India blasted Prof. Heyns for disrespecting the Supreme Court in his report for his comments on how he could not understand how the Court upheld the constitutionality of AFSPA. But the Rapporteur responded by quoting GA resolutions that his mandate requires him to examine every organ of the government and the society including the judiciary pertaining to his mandate and the Supreme Court is not exception.

Two years later the Special Rapporteur did a follow up report of his mission to India contained in document A/HRC/29/37/Add.3 dated 6 May 2015. In the follow-up report he has the following to say about AFSPA and related legislation:

15. In his country visit report, the Special Rapporteur noted that the situation concerning the use of force in India was exacerbated by the implementation of the Armed Forces (Special Powers) Act. The Act is applied in areas that have been declared "disturbed" or "dangerous" to the extent that the use of armed force is deemed necessary. These have included areas of Manipur, Assam, Arunachal Pradesh, Meghalaya, Mizoram, Nagaland and Tripura, while in Jammu and Kashmir, a nearly identical piece of legislation known as the Jammu and Kashmir Armed Forces (Special Powers) Act is applied.

16. Particular concern was expressed in the report over the provisions in the Act regulating the use of lethal force, in violation of the international standards on the

use of force, and the related principles of proportionality and necessity. The Special Rapporteur also expressed his concern at the protection granted to officers under the Armed Forces (Special Powers) Act and the Jammu and Kashmir Act, where the prosecution of such officers is prohibited unless sanction to prosecute is granted by the central Government. This rarely occurs in practice. Thus, accountability for extrajudicial or arbitrary killings committed by armed forces members is frequently made practically impossible. The Indian Supreme Court upheld the constitutionality of the Act and provided several conditions on the use of the special powers conferred on the Armed Forces by section 4 thereof. This part of the country visit report in particular was strenuously opposed by the Government in its comments thereto, on the basis that the State viewed it as a gross disregard for the Supreme Court (see A/HRC/23/47/Add.7, para. 1). This approach seems not to take into account the fact that the special procedures of the Human Rights Council regularly pronounce on the rulings of domestic courts from all over the world, in line with the established principle of international law that States are internationally responsible for the actions of all their organs (see General Assembly resolution 65/19).

17. Several international bodies and Indian authorities have subsequently also expressed concern over the provisions of the Armed Forces (Special Powers) Act. The Justice Verma Committee, constituted in December 2012 as a result and within a few days of the brutal gang rape and murder committed in New Delhi on 16 December 2012, recommended the continuation of the Armed Forces (Special Powers) Act and similar legal protocols in internal conflict areas be immediately reviewed. The Committee found that the review was necessary in order to determine the propriety of resorting to such legislation in the areas concerned. In July 2014, the Committee on the Elimination of Discrimination against Women called upon India to implement the recommendations of the Justice Verma Committee and to promptly review the continued application of Act and related legal protocols (see CEDAW/C/IND/CO/4-5, para. 13 (a)). The Committee also urged India to amend and/or repeal the Act, so that sexual violence against women perpetrated by members of the armed forces could be brought under the purview of ordinary criminal law and, pending such amendment or repeal, to remove the requirement for government permission to prosecute members of the armed forces accused of crimes of violence against women or other human rights abuses of women, and to grant permission to enable prosecution in all pending cases.

18. In part V, paragraph 5.4 of its report, a commission appointed by the Supreme Court stated that it was time to progressively de-notify areas of the State under the Act, and to withdraw section 144 of the Code of Criminal Procedure. That commission agreed with the Jeevan Reddy Committee created to review the Act. The Committee's report has not been made public, but determined that the Act had become a symbol of oppression, an object of hate and an instrument of discrimination and high-handedness, and that it was highly desirable and advisable to repeal it altogether. In part IV, paragraph 3.10 of its report, the commission found that the conditions laid down by the Supreme Court had remained largely on paper only and were mostly followed in violation.

(To be Continued)