

Open Letter to the President

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The author responds to the President's address to the nation on 25 January, 2014.

Dear Mr President,

In your address to the nation on 25 January, 2014 among other things you opined that “(o)ur security and armed forces backed by the steel of popular support, have proved that they can crush an enemy within, with as much felicity as they guard our frontiers. Mavericks who question the integrity of the armed services are irresponsible and should find no place in public life”.

Allow me to disagree.

Only a day before your speech on 24 January the GOC-in-C of 15th Corps, (Srinagar) Lt General D S Hooda wrote to the chief judicial magistrate (Srinagar) that in the Pathribal fake encounter of 25 March 2000, in which five civilians were killed and their bodies mutilated, the “evidence on record does not ...establish a prima facie case” against four senior army officers and a jawan. This when state police had found that the five killed in Pathribal were not “foreign militants” as the army claimed in its first information report (FIR), and that this was a fake encounter with local civilians. The Central Bureau of Investigation after a three-year-long investigation filed a charge sheet charging the army personnel for abductions, homicide and destruction/fabrication of evidence etc. With the army filing a closure report nearly 15 years later it is back to square one.

Now, the Pathribal case was an exception to the rule. Rarely do victims' complaints against personnel of the armed forces result in a filing of an FIR. It did in the case of Pathribal because on 3 April 2000 civilian protestors demanding justice were fired upon by the central reserve police force (CRPF) and the special operations group, resulting in the death of eight civilians. This compelled the CJM to order the police to investigate the matter. Ordinarily, matters relating to the armed forces seldom reach the stage of trial because the central government does not provide sanction. A right to information application filed by me found

that in J&K not even a single case where armed forces personnel were implicated received sanction for prosecution. And the same holds true for Manipur, Nagaland, and Assam.

Indeed both the Army Act and the laws governing each central paramilitary force mandate that for any transgression or crime committed by their personnel against civilians it is the prerogative of the force concerned to decide whether the matter would be referred to the criminal court or to their respective courts. As a result there is one law for the unarmed civilians and another for government combatants. Indeed Article 14 (Equality before Law) is hit because a civilian has no locus-standi before the courts of the armed forces. And the criminal court cannot try personnel of the armed forces without government sanction. So even when rape, torture or killings occur and the victims are civilians from 'Disturbed Areas', *the law* as it operates today, provides presumption of 'good faith' as a shield to the personnel.

Thus impunity enjoyed by the armed forces flows from multiple sources: the Armed forces (Special Powers) Act, Sections 45 and 197 of the Criminal Procedure Code, which mandates sanction by the Government for trial of service personnel. But also out of non-recognition of crimes of torture, enforced disappearance and genocide. Thus many a crime documented from armed conflict areas never even get registered as a complaint i.e. as an FIR. No wonder India ranks among the worst where legal remedy is *unavailable* to the victims of armed forces crimes which take place in war zones. Does this not call for introspection and interrogation, indeed public debate?

Either the State honestly accepts that there are wars being waged within the borders of India against our own people or we continue to pretend that these are only "police action". Both carry consequences. If, the fact of war is accepted then Geneva Convention and Protocol II come into play as do a number of international laws and covenants and obligations which follow. Crimes committed during war/armed conflict invite greater scrutiny. If deniability remains the main prop and wars are passed off as "police action" then there is no need for AFSPA nor for persisting with an antiquated two glass system. In other words when civilians are the aggrieved party in conflict zones, the criminal court's jurisdiction as well as non-requirement of government sanction should come into play. To deny war and simultaneously indemnify personnel of the armed forces mocks at the constitutional guarantee provided under Article 14, equality before law.

Therefore, I believe, there is a flaw in your stance which stems from giving internal security such a premium that no one should interrogate its rationale or the premise. The definition of "internal security" is a subjective and arbitrary decision. Indeed what ought to inform our thoughts is the fact that since 1947 the Indian state has mainly chosen to militarily suppress demand for resolution of problem through right of self-determination. If this had been attempted in the 1950s Naga people would have been spared bloodletting. Kashmir would have been spared barbaric suppression and continued irresolution of the dispute, which saps people's productive energies.

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This makes your reference to the “enemy” within disconcerting. How do people, at least some of them, get transformed into enemies of the state accused of treason and sedition, whereas right-wing majoritarianism, led by alleged mass murderers, gets molycoddled despite unspeakable acts of savagery against minorities and feted notwithstanding its intrinsically divisive politics?

I mean no dis-respect. But as an Indian I believe what ought to be shunned in our public life is the view that asks us to close our eyes to harsh truths about ourselves.