a sharper focus than is conventionally the case to political strategic perceptions that are guiding the policies of the Defence Ministry. It sets out a wider approach than a strictly professional-military one. Some striking postulates presented in the report deserve close attention.

One such postulate is that in addition to military threats from foreign powers, especially Pakistan and China, the security forces have now to reckon with the interaction of external forces with "internal forces of dissent in the political and socio-economic spheres". It is, therefore, argued that utilisation of organised subversion as a weapon by external agencies adds to the nature and ambit of India's security problem. The case has thus been made for strengthening the role and responsibility of the armed forces in dealing with "internal forces of dissent in the political and socio-economic spheres[1]. This may not appear to be something wholly novel. The armed forces have been always used fairly freely to put down civil disturbances in the country. What is novel is the rationalisation of this position and its frank exposition as the security philosophy. It amounts to an affirmation of the need to train and equip the armed forces on this basis. It cannot be altogether fortuitous, in this context, that the top brass of the armed forces do not hesitate to make public statements that their role is not confined merely to the organisation of the defence of the country from external aggression but that they have also to perform the duties of gendarmes as well to quell "internal forces of dissent".

The implications of Operation Bluestar are indeed beginning to unfold and cast their shadows on a wider front. It also comes easy in this context to make demands on resources for the armed forces without conventional reservations about the priority that should be given to socio-economic development in the allocation of available resources.

'Encounters' and the Supreme Court

K Balagopal

THE Arwal killing in Bihar has once again focused attention on State-sponsored murders of the agrarian poor and their activists. The Director General of Police, Bihar, has said that nobody would be allowed to go around agitating and organising people 'in the name of non-implementation of land Reform and Minimum Wages Acts: Such attempts, he said, would be crushed ruthlessly. This fantastic statement, whose underlying presumption is that welfare laws are made by the State and it is the State's business alone whether it chooses to implement them or not, is symptomatic of two basic changes that have taken shape over the last few years. One is that it is no longer felt to be necessary to pretend that agrarian reforms are being implemented; the other is that police officers, instead of merely being used to put down political opponents, are allowed an autonomous domain *of* functioning, within which they are everything from legislators and political theorists to the dispensers of what they believe to be justice.

It always takes a new personality, a new individual, to reflect a sharp change unambiguously. An old personality which runs into the change in the middle of its life finds its cognition and expression blocked by fear, habit and inertia. No Congress leader to this day has made vocal comments against agrarian reforms but N T Rama Rao can, and docs, say that land reforms have been a disaster for the farmer'. And his actions echo the Bihar DGP's assertion: agrarian reform legislation being *our* legislation, merely because we have chosen not to implement it, you have no cause for agitating and organising people. Such attempts will be suppressed ruthlessly.

It will serve no purpose to yet once more list out ihe crimes committed by the State in the course of this suppression. But it does serve a useful purpose—in these days when judicial activism is among the most widely hailed social phenomena—to know what the highest Court of the land has to say about the matter. The Supreme Court was approached through a writ petition in connection with the 'encounter' killings in Andhra Pradesh. The Court admitted the petition in September 1985, and threw it out in April 1986, with the remarkable piece of advice that the aggrieved parties, if any, should file private complaints with the local munsif magistrates against the police. Of all the dubious judgment given by the Supreme Court in recent times this one by Justices Venkataramaiah and Sabyasachi Mukherjee is the most disappointing to put it mildly.

Nobody expects the Court to punish the officers who have committed the killings. When the State decides to kill certain people and even goes to the extent of rewarding the killers with substantial amounts of cash (as the AP government is doing) there is no court on earth that can punish them. But the courts should at least affirm certain basic principles of law, tor what they are worth. This applies to all of what is being called social action litigation. But instead the courts are often taking refuge in administrative technicalities even when they decide to issue a direction to the government. In the matter of police killings the Supreme Court is acting as an enforcer of the Criminal Procedure Code and not the Constitution. When the court is approached with a petition that somebody has been killed by the police inside a lockup or in a staged 'encounter', what is important is not that the policemen concerned should be punished; that is anyhow an unlikely eventuality even with the best of all intentions. It is more important that certain basic principles should be affirmed—as some of them have sporadically been in the past: (a) that if a person dies in police custody that should be treated *prima facie* as a consequence of torture and therefore a case of murder committed by the police officer in charge of the station; (b) that a policeman who commits a killing in proclaimed self-defence must be prosecuted for murder and should prove the existence of conditions justifying the plea of self-defence, just like any citizen who takes the plea; (c) that when a police officer commits a crime and claims that he did it in the 'execution of his duty' he should be prosecuted for the crime and the burden of providing that it happened in the course of performing his duty should lie on him; and so on. Instead of affirming such principles the courts are asking the CBI or the State CIDs to enquire into the alleged killing, or the District Magistrate to conduct an enquiry; the first the governments could do, and the second is obligatory under the Criminal Procedure Code anyway. It certainly cannot be that people should go all the way to the Supreme Court to get the Criminal Procedure Code activated. And neither of these is a substitute for immediate arrest and prosecution, which any citizen other than a police officer would face the moment an FIR is registered against him, and which police officers too should be subjected to, if Articles 21 and 14 of the Constitution are to have any meaning. 'Judicial activism' cannot have lasting meaning if it is confined to ordering an occasional release of bonded quarry labourers (who will anyhow get bonded the next day again, since quarrying is the only job they can do, and all quarrying in our country is done with bonded labour). If it is to have lasting worth it should work to build into executive practice the values that everybody says our Constitution cherishes.

To get back to the judgment (if it can be *called* that) *on* the Andhra 'encounters' petition, it was even more disappointing than the usual direction to some intelligence agency to enquire into the killings. Perhaps a resume of what transpired will make the matter clear. The petition concerned the first nine of the series of 'encounters' that started in January 1985. The nine encounters accounted for 17 deaths. (The total number to date is 42.) The petitioners' interim prayer was that the reports of the executive magistrates concerning these killings should be called for, seen by the Court and shown to the petitioners. The State's reply was typical. It started with the claim that the magisterial enquiry reports were 'privileged documents', and ended with virulent abuse of the petitioners who were called every name from terrorists to opportunists. The State admitted that eight of the nine magisterial enquiry reports had either been received or were being prepared. Regarding the ninth, it said the enquiry was 'improperly done' and therefore a *de novo* enquiry had been ordered.

If the Court had had the curiosity to find out what was 'improper' about the enquiry, it would have discovered the remarkable coincidence that it was only in this one case that the report went against the police. The incident that formed the subject of this report was an 'encounter' in Warangal

district in which two young men were killed on the night of May 26, 1985. They were picked up from their advocate's house in the town, and taken 54 kms in a jeep to the village of Narsapur and killed there. The magisterial enquiry indicted the police sharply. The police reacted by getting the District Collector (who is also the District Magistrate) transferred within one week. They achieved this by filing a slanderous intelligence report against him. Hut what is noteworthy is that the government felt con strained to accept their report and transfer him.

It was thought that even if he is transferred the report would continue to be operative, and indeed that was the reason for the petitioners' request that the magisterial enquiry reports should be called for and perused by the Supreme Court. However, this optimism had not reckoned with the capacity of our governments to tell any number of lies on oath. In the event, the State government replied that the enquiry had been improperly done because no public notification was given by the District Magistrate.

If, once again, the Court had exhibited some curiosity it would have discovered one more remarkable coincidence, as well as one falsehood. The falsehood relates to the assertion that a public notification is obligatory, which it is not. under sec 176 of CrPC, which only says that the relatives of the victims should be informed, as far as practicable. The remarkable coincidence is that it was only in this one case, where a public notification was *not* given, that witnesses deposed against the police; in the other eight enquiries, where proper public notifications were duly given, there were no witnesses to depose against the police. The reason is that a public notification is in reality a notice to the police; it is a notice that they should abduct the witnesses and surround the place of enquiry on the notified day to prevent any contrary evidence from being recorded. In the case of the Warangal enquiry, a public notification was not given but the victims' relatives were informed and therefore evidence against the police could get recorded. Thus, in protesting primly that a proper public notification was not given, the Devil was first inventing scripture and then quoting it. The Court, unfortunately, was not willing to call the bluff Instead it advised the petitioners to read the Criminal Procedure Code.

As a matter of fact, the Director General of Police of AP would have found the advice more useful. When it was alleged by the petitioners that in all the 'encounters' the police were forcing the doctors to conduct the postmortem examination of the body at the spot of the killing—in the fields, under trees or in the forest, where there could be neither the appropriate facilities nor equipment—the DGP contended in his reply that 'it is always legal and advisable to hold the postmortem on the spot'; this is entirely contrary to sec 174(3) of CrPC which says that the 'police officer should ... forward the body, with a view to its being examined, to the nearest Civil Surgeon', except where the setting in of putrefaction is imminent. And" a Civil Surgeon is a Civil Surgeon only when he is properly equipped to be one—the term includes the man and his equipment. The Covin, unfortunately, had no advice to offei to the DGP

These are technicalities, however. The main point is that the wife or children of a person killed by the police are never in a position to file criminal complaints and conduct a prosecution against the police. The judges of the Supreme Court are surely not so far diverced from reality as to think otherwise. Secondly, one killing by a policeman is a murder, but a series of killings rewarded by the State are not just multiple murders, they are a policy of the State. The magistrate can do nothing about such a policy, but the Supreme Court is expected to at least try to do something. That is what Article 32 of the Constitution is meant for.

National Policy on Education
A Non-negotiable Promissory Note

Dinesh Mohan

THE National Policy on Education was introduced in the Parliament a few days ago, a 15,000-word policy presentation that contains just about 200 words of *real* policy. The rest is a string of platitudes, cliches and good intentions. It is worth recounting some of these, if only to give the feeling of what it is like to plough through the document.

The document opens with "Education is a continuum. But there are moments in a nation's history when a new direction has to be given to an age old process. That moment is today . . ", and ends with "given our tradition which has almost always put a big premium on intellectual and spiritual attainment, we are bound to succeed". Now a few gems from the middle: "In the Indian way of thinking, a human being is seen as a positive asset and a precious national resource ... from the womb to the tomb. Our scholastic tradition has astounded the whole world .. . Man is on the threshold of the great unknown . .. The National Education System will therefore play a positive, interventionist role in the empowerment of women .. . The new generation must become aware of the unity of the biosphere .., creation of appropriate management structures, suited to software planning, will have to be undertaken ... Children will be enabled to develop sensitivity to beauty, harmony and refinement . ., The heads [of schools] will have to be specially selected ... It is obvious that these and many other new tasks of education cannot be performed in a state of disorder ,.. Corporal punishment would be firmly excluded from the educational system . .. conscious internalisation of a healthy work ethos and of the values of humane and composite culture will be brought about through appropriately formulated curricula ... Higher education opens up the world of knowledge ... Our ancient scriptures define education as that which liberates ... Higher education has therefore to become dynamic as never before, constantly entering uncharted areas ... All posts of Readers and Professors would be filled entirely on the basis of merit ... value education has a profound positive content ... Computers are fast becoming important and ubiquitous tools!'

This, after hundres of conferences, lakhs spent on travel costs for establishment educationists to preside over conferences, and a computer analysis of all incoming resolutions and suggestions! It is a national shame that there is *not a single new idea* in the new policy. The main thrust is based on what was announced by the Prime Minister in January 1985—before the publication of "Challenge of Education" by the Ministry of Education. The Prime Minister had announced the establishment of District Model Schools and an Open University, delinking of jobs from degrees, and the introduction of "modern" methods and technology in education. If there is any *policy* in the document, it is this. But because the concept of District Model Schools was attacked by a very large number of non-establishment educationists and child development specialists, now District Model Schools will be called *Navodaya Vidyalays*—but the concept will remain.

Model schools are justified on the excuse that the "brightest" children must go to the "best" schools. This is the worst kind of populism. There is no justification for separating children on the basis of "brightness" at an early age. Mainly because it is difficult to define what a "bright" child is and also because it is very important for all kind of children to study together in their formative years. If the "best" schools were reserved for the "brightest" children only, many *of* our present rulers and bureaucrats may have never risen to the level of literacy. The fact that they are doing well today is ample evidence against early streaming in education.

It is amazing that there are almost no definite goals mentioned in the document in terms of finances, time, numbers of students, etc. For all its talk of "Scientific Temper", it is itself quite devoid of any such thing. There is not a single graph, table or futuristic projection. It appears that policy, in this document, means mostly the setting up of new committees and bureaucracies. For example:

* A Central Advistory Board of Education.
* Indian Education Service.
* State Advisory Board of Education.
* District Institutes of Education and Training.
* Councils of Higher Education
* National Testing Service.
* All India Council of Technical Education with more powers.