

Elevate Human Rights as the Core Organising Principle in Counter Insurgency

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Summary

The Indian Army's Doctrine for Sub Conventional Operations does an admirable job in balancing human rights protection with operational demands. However, there is a degree of dissonance in the approach to human rights brought about by the perspective that protecting human rights is a means to an end. This dissonance can be removed by viewing human rights as ends in themselves or as a 'categorical imperative and elevating the principle of protecting human rights as the core organizing principle in counter insurgency.

'You must remember that all the people of the area in which you are operating are fellow Indians. They may have different religions, pursue a different way of life, but they are Indians and the very fact, that they are different and yet part of India is a reflection of India's greatness. Some of these people are misguided and have taken up arms against their own people and are disrupting peace of this area. You are to protect the mass of the people in the area from these disruptive elements. You are not to fight the people in the area but to protect them.' - COAS Special Order of the Day 1955¹

Introduction

The Indian Army's *Doctrine for Sub Conventional Operations* (DSCO)² comes up for review next month, five years after its publication. When it was written, it had the section on Low Intensity Conflict in the *Indian Army Doctrine* as guide and half a century of counter insurgency experience to inform it.³ The iteration this time has the *Joint Doctrine for Sub Conventional Operations*⁴ (JDSCO) to inform the reappraisal along with the past half decade in putting the doctrine, dubbed 'iron fist in velvet glove', into practice.⁵ The reappraisal will no doubt benefit from the introspective input provided by the internal environment, as mandated by the procedure for doctrine revision. The forthcoming publication may also find useful the sometimes critical commentary from outside the military.⁶ This Brief is to constructively help inform the doctrinal revision underway.⁷

The Brief advocates centring of the doctrine around the human rights imperative. This is largely the case since 'Upholding Human Rights' is acknowledged in the JDSCO as one of the 'Principles of SCO (Sub Conventional operations)'.⁸ Arriving at a 'reasonable and pragmatic balance between the demands of military necessity and humanity'⁹ is

¹ Rajesh Rajagopalan, *Fighting Like a Guerrilla: The Indian Army and Counter Insurgency*, New Delhi: Routledge, 2007, p. 147. The Order was in wake of the army being called upon for counter insurgency operations in Nagaland.

² HQ ARTRAC, *Doctrine for Sub Conventional Operations*, Shimla: ARTRAC, 2007.

³ Section 14 of Chapter 5 in HQ ARTRAC, *Indian Army Doctrine*, Shimla: ATRAC, 2004.

⁴ HQ Integrated Defence Staff, *Joint Doctrine for Sub Conventional Operations*, New Delhi: HQ IDS, 2010.

⁵ Foreword by General JJ Singh, *Doctrine for Sub Conventional Operations (DSCO)*, p. i. He states: 'I have emphasised the concept of 'Iron Fist with Velvet Glove', which implies a humane approach towards the populace at large in the combat zone.'

⁶ Gautam Naulakha, 'Doctrine for Sub-Conventional Operations: A Critique', *Economic and Political Weekly*, 7 April 2007; and Ali Ahmed, 'Revision of the DSCO: Human Rights to the Fore', *IDSA Policy Brief*, March 2011.

⁷ Also see Vivek Chadha, 'Heart as a Weapon - A Fresh Approach to the Concept of Hearts and Minds', *IDSA Policy Brief*, November 2011 [forthcoming].

⁸ *Joint Doctrine for Sub Conventional Operations (JDSCO)*, p. 22.

⁹ 'Statement by the ICRC on the Status of the Protocols to the 1949 Geneva Conventions Relating to the Protection of Victims of Armed Conflicts, 2008', October 24, 2008.

admittedly a difficult proposition. This is borne out in the tension reflected in the doctrine between the necessity of kinetic force and the equally compelling need for its restriction. The Brief highlights doctrinal tenets that could potentially cause dissonance. Ironing these out in the process of doctrinal revision will lead to an internally consistent output. The proposal here is to elevate human rights from one among several principles to being the core principle.¹⁰

This Brief first discusses the competing perspectives on human rights to substantiate the point that protection of human rights is more than just a strategic necessity or a force multiplier. Thereafter it brings out the dissonance in the doctrine that arises from viewing human rights protection instrumentally, or as a means to an end. The recommendation is to take human rights protection as an end in itself, or as the 'categorical imperative'. Additionally, since the application of military force inevitably has consequences for human rights, the political prong of strategy must be equally in evidence.

Placing Human Rights at the Core

In counter insurgency campaigns, it is critical to understand the nature of violence and the nature of the military instrument. Its inescapable limitations are such that Clausewitz once observed, 'War in general...is entitled to require that the trend and designs of policy shall not be inconsistent with these means.'¹¹ Extension of politics by the means of violence must respect the nature of the means. The nature of violence is such that the impossible cannot be demanded of it. Equally, militaries *qua* organizations are blunt instruments. Given this, there is no escaping the tension between the application of violence and human rights. This obviously means that the tension needs to be reconciled. Clearly, this cannot be done at the expense of human rights. Therefore restriction can only be, firstly, in the resort to force, and, secondly, in the manner of the use of force. The former places an onus on the political prong of strategy and the latter lies more narrowly in the domain of the military.

The existence of laws such as the Armed Forces Special Powers Act (AFSPA) suggests that force application entails imposing on the rights of citizens. The doctrinal understanding is that, within the ambit of these rights, the endeavour must be to have as light a footprint as possible. Alongside, a strict human rights protection regime must be in place, termed 'zero tolerance'.¹² The strategic fallout is in gaining support of the people, deemed the

¹⁰ The JDSCO has it as one among 11 principles. Even though these are not ranked by priority, it bears noting that it figures seventh in the list.

¹¹ Carl von Clausewitz, *On War*, Translated by Michael Howard, Peter Paret and edited by Beatrice Heuser, OUP, 2007, pp. 28-29.

¹² DSCO, p. 55.

'center of gravity'.¹³ Valuing the human rights of citizens is thus consequential, though it is a means to an end.

This perspective, reflected in the Indian Army's doctrine, is that respecting the human rights factor is a strategic necessity. The problem with such a perspective is that the converse is equally implicit, that is, if required by strategy, human rights can be neglected. The JDSCO says that, 'It is our constitutional obligation to honour the HR of our people and any disregard to this obligation *will only enable* the terrorist/insurgents to discredit the state's legitimacy and influence. (emphasis added).¹⁴ Further, it states, 'Upholding of HR is a constitutional obligation *and is also necessary* to establish the credibility of the government in the eyes of the people' (emphasis added).¹⁵ The qualifications, emphasised here, make it apparent that the constitutional obligation is not enough on its own merits. Instead, the strategic fallout makes it necessary to honour human rights.

This understanding is compounded by a perspective that takes human rights protection as a 'force multiplier'. A force multiplier is defined as, 'a capability that, when added to and employed by a combat force, significantly increases the combat potential of that force and thus enhances the probability of successful mission accomplishment.'¹⁶ This is jargon that does not find mention in the DSCO in respect of human rights. However, the JDSCO alludes to it, stating, 'Popular support is the Force Multiplier in SCW for either side *and hence* the centrality of the population' (emphasis added). The understanding is that popular support is the 'force multiplier' that makes for the centrality of the demographic terrain. Such support is gained by respecting human rights. It thus makes instrumental use of human rights as a means to an end. The population is not central for its own sake but is only incidentally so; instead gaining popular support is the core objective.

This understanding owes to other significant imperatives that the state and the military are required to consider. These are territorial integrity and the state's monopoly over the use of force. The warrior ethos of the service that privileges prevailing in a military contest, both externally and internally, also impels taking human rights as a means to an end. Lastly, it is not always that grievance impels insurgency; greed does so too.¹⁷ For righteousness to prevail there has to be a reluctant resort to force that leads to a regrettable impact on human rights.

¹³ Ibid., p. 15.

¹⁴ JDSCO, p. 25.

¹⁵ Ibid., p. 44.

¹⁶ 'Dictionary of Military and Associated Terms', Joint Publication 1-02, US Department of Defense, 2005.

¹⁷ Paul Collier and Anke Hoeffler, 'Greed and Grievance', *Oxford Economic Papers* 56(4): 563-595, 2004.

These interpretations – human rights as a strategic necessity and a force multiplier – bring to the fore a need to privilege human rights unambiguously. This can best be done by moving to an understanding that human rights are instead a *categorical imperative*. A categorical imperative denotes an ‘absolute, unconditional requirement that asserts its authority in all circumstances, both required and justified as an end in itself’.¹⁸ The term itself is Kantian, the philosophy behind which is not covered here. Elevating human rights protection conceptually to a categorical imperative ensures that it becomes the organizing principle for both doctrine and strategy.

This intuitively appeals to soldierly sensibilities because it is in keeping with India’s warrior and civilisational ethic. This is acknowledged as such when the DSCO views human rights as, ‘the very essence of human behaviour and interaction.’¹⁹ Institutionally, the military places the ‘country’ first ‘always and every time’.²⁰ By definition, the term country is beyond mere territory; it is essentially about people. Lastly, loyalty of the soldiers is first to the Indian Constitution, rightly brought out in the DSCO as: ‘Indian Constitution, Indian Army, regiment, unit and colleagues.’²¹ Therefore, doctrinal acknowledgement of human rights as a ‘categorical imperative’ will negate the instrumental interpretation of the HR factor.

Significantly, that it is a constitutional obligation makes it an over-riding imperative. There need be no other reason, *period*.²² The DSCO acknowledges as much noting that the ‘Indian Army...holds these Fundamental Rights as one of its most cherished values’ and wishes to ‘keep the environment sensitised about this constitutional obligation.’²³

The Way Forward

It bears reiteration that the application of force against those resorting to violence is legitimate and often inescapable. The level of force application is a professional military decision. However, organisational theory and social psychology point out that such decisions are influenced, sometimes negatively, by institutional and personal level factors. Better known are corrupting factors at the personal level such as the overweening desire for awards, ‘Rambo’ sub-culture, etc. But institutional interests, such as the need of the military to project a certain image and the self-image it maintains also sometimes influence

¹⁸ <http://www.categoricalimperative.org/>

¹⁹ DSCO, p. 53.

²⁰ This is the Chetwodian motto adopted for the officer corps by the Indian Military Academy.

²¹ DSCO, p. 55.

²² This is reminiscent of the proposition in Tennyson’s ‘Charge of the Light Brigade’, specifically, ‘Theirs’ not to reason why’.

²³ DSCO, p. 54.

military action. For instance, the application of force can sometimes be influenced by the demonstration effect intended, over and above the due demands of the operation underway. Therefore, the military decision must have limiting parameters in keeping with one of the oldest questions in political science: 'Who guards the guardians?'²⁴ The well regarded parameters are discrimination, proportionality, military necessity and increasingly, legality.²⁵

This is fairly well appreciated. The *Indian Army Doctrine* demands that the COAS Commandments be respected 'notwithstanding the tense, stressful and turbulent situations at the grass roots level.'²⁶ Incidentally, it advocates, 'low profile and people-friendly operations rather than high intensity operations related only to body and weapon counts.'²⁷ Consequently, it maintains that, 'Violation of Human Rights, therefore, must be avoided under all circumstances, *even at the cost of operational success*' (emphasis added).²⁸

A tendency towards permissiveness is brought about by the competing, instrumental, perspective on human rights. The 2006 DSCO talks of a need for kinetic operations dominant attrition warfare leading to the 'elimination' of terrorists in the early phase of deployment.²⁹ A shift to non-kinetic manoeuvre warfare in which terrorists are neutralized is to take place in the later stage.³⁰ The understanding seems to be that the Army will be called out only when the situation is bad enough to warrant it. Upgrading of the central armed police forces for tackling lower order insurgency, as witnessed in Central India, is being done. Once the situation escapes their control, military deployment could take place. The military would require appropriate force application to wrest the initiative and stabilize the situation. Thereafter, the shift is to be made to a manoeuvrist approach.³¹

The problem is that kinetic force application makes the army seem an alien imposition, since in the early stages the likelihood of peoples' support for the insurgent is higher.³²

²⁴ The phrase 'Quis custodiet ipsos custodes?' is attributed to the Roman poet Juvenal, *Satires* (Satire VI, lines 347-8), http://en.wikipedia.org/wiki/Quis_custodiet_ipsos_custodes%3F

²⁵ There is a separate set of considerations that could be dwelt on in doctrine too on the very deployment of the military. These would include legitimacy, constitutional provisions etc. In effect, a distinction can be made domestically on the parameters attending military deployment and employment, in the tradition of *jus ad bellum* and *jus in bello* in international law of armed conflict.

²⁶ *Indian Army Doctrine*, pp. 23, 30.

²⁷ *Ibid.*, p. 23.

²⁸ *Ibid.*, p. 26.

²⁹ The heuristic (*DSCO*, p. 22) uses the term 'elimination'. The Foreword uses the term 'neutralization', p. ii. The reconciliation is in favour of 'neutralization' (p. 33).

³⁰ *Ibid.*, p. 21.

³¹ *DSCO*, p. 22.

³² *JDSCO*, p. 39.

This is further complicated by external support and proxy war. The compulsion to gain military ascendance increases, making it difficult to identify when to shift from one approach to the other.³³

Instead, the intensity of the insurgency should dictate the levels of military force applied with professional innovation in tactics preventing the compromise of effectiveness. There is therefore no need for the timeline positing the kinetic-non-kinetic distinction. The wait to reach a position of strength for enabling political initiatives can be undercut by proactive peacemaking and peace-building subsumed in the political prong of strategy. This often awaits the non-kinetic, later phase, resulting in the prolongation of the insurgency, with avoidable consequences for the human rights of citizens.

Next, consistency can be built in to eliminate expansive interpretations. For instance, the DSCO highlights 'minimum force'.³⁴ But an element of dissonance is brought in by the JDSCO, which rules in favour of 'optimal rather than minimal or maximal'.³⁵ This shift calls for explanation especially since the Supreme Court has used the term 'minimal' in its 1997 judgment in the Nagaland case.³⁶ The Supreme Court judgment does not say 'minimum', leaving the military to judge what is considered minimal in the context of the situation.³⁷ The principal criterion of the level of force to be used is effectiveness. There is no cause for the military to endanger either its own soldiers or innocent people in preserving the life of terrorists unwilling to lay down their arms. Therefore, doctrinal rhetoric such as 'punitive', 'overwhelming', etc. provides avoidable loopholes leading to expansive interpretations of the tenet of minimal force.

Another example of dissonance in the JDSCO is in its simultaneous enumeration of human rights as a 'principle' along with the principle of 'balance between people friendliness and punitive actions'.³⁸ The term 'punitive action' of the JDSCO suggests that people friendly operations may indicate 'lack of strength or resolve for dealing with culprits'. It seeks to compensate for this by calling for 'punitive action' using 'optimal as against minimal' force. This is untenable since punishment is beyond the scope of military authority and can be seen as evidence of institutional interest.

³³ Ali Ahmed, 'Revision of the DSCO: Human Rights to the Fore', *IDSA Policy Brief*, March 2011.

³⁴ *DSCO*, p. 33.

³⁵ *JDSCO*, p. 27.

³⁶ The Supreme Court bench comprising Chief Justice, M.M. Punchhi and Justices, S.C. Agarwal, A.S. Anand and S.P. Bharucha considered the Naga People's Movement Of Human Rights Vs. Union Of India case on 27 November 1997.

³⁷ The judgment stated: 'The laying down of these conditions gives an indication that while exercising the powers the officer shall use *minimal force required* for effective action against the person/ persons acting in contravention of the prohibitory order' (emphasis added).

³⁸ *JDSCO*, p. 27.

Silence is as much a give away of thinking as words. A conspicuous area of silence is the absence of reference to international obligations. This ignores the National Human Rights Commission's (NHRC) definition of human rights as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the *International Covenants* and enforceable by courts in India' (emphasis added).³⁹ India's international obligations are specifically the four Geneva Conventions, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁴⁰ While the first has been enacted into law,⁴¹ the latter are incorporated in the Constitution. At a minimum, a discussion on Common Article 3 of the Geneva Conventions is mandatory. Since torture is ruled out by this provision, the slovenly passage of the right against torture through the parliament is not of consequence. The DSCO has merely one paragraph on legal matters.⁴² The JDSCO does not have any mention of human rights related law in its coverage of international law in its Chapter 3.⁴³ In effect, the meagre discussion of the legal dimension amounts to a doctrinal blind-spot.

The much-in-the-news AFSPA finds mention in a reference to respecting Do's and Don'ts.⁴⁴ At a minimum, a guide on how to ascertain the ripeness of an area for disturbed areas status and when to revoke such status needs to be discussed. This would be useful in the arriving at the military's input into the decision.⁴⁵ This would be in keeping with the Supreme Court's requirement that the disturbed areas status needs to be under constant review, along with every extension of the Act. The Supreme Court had mandated:

It is, therefore, necessary that the authority exercising the power under Section 3 to make a declaration so exercises the said power that the extent of the disturbed area is confined to the area in which the situation is such that it cannot be handled without

³⁹ The Protection Of Human Rights Act, 1993, No. 10 of 1994, (8th January, 1994), p. 1, <http://www.nhrc.nic.in/>

⁴⁰ For the text, see UN Treaty Collection, http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en.

⁴¹ For the full text, see <http://www.indiankanoon.org/doc/1954823/>

⁴² DSCO, p. 15.

⁴³ The focus is on terrorism related agreements at the international and regional level (JDSCO, pp. 17-20)

⁴⁴ DSCO, p. 68. The DSCO incorporates the Supreme Court judgment in this regard: 'The instructions in the form of "Do's and Don'ts" to which reference has been made by the learned Attorney General have to be treated as binding instructions which are required to be followed by the members of the armed forces exercising powers under the Central Act and a serious note should be taken of violation of the instructions and the persons found responsible for such violation should be suitably punished under the Army Act, 1950.'

⁴⁵ This is the case currently in Jammu & Kashmir.

seeking the aid of the armed forces and by making a periodic assessment of the situation after the deployment of the armed forces the said authority should decide whether the declaration should be continued and, in case the declaration is required to be continued, whether the extent of the disturbed area should be reduced.⁴⁶

Policy Recommendations

India's counter insurgency policy is people-friendly in keeping with its credentials as a liberal democracy. The tone and tenor of doctrine reflects this. Doctrine bravely deals with the tension between application of force and the impact on human terrain. Evidence from the ground lately suggests that this is a largely successful exercise. Yet, some policy recommendations to help improve doctrine are as under:

- The Ministry of Home, in consultation with the Ministry of Defence, the National Security Council Secretariat and the NHRC, needs to spell out an overarching national approach. This would help in formulating strategy at the next lower level in each of the areas where the AFSPA is applicable.⁴⁷ This will bring in accountability and a 'whole of government' approach. It would ensure that the counter insurgency strategy orchestrates the twin prongs, political and military, at the two levels, centre and province, in sync. This could be part of the national security doctrine or done independently. These foundational documents must make clear that human rights are sacrosanct.
- Institutionally, at the level of the military, the nation-institution distinction must be maintained. There is potential for the 'fair name' of the institution being mistaken for the 'good' of the nation. This leads to departures from the straight and narrow on human rights. Even as the military leadership is sensitive to this, political level oversight of the military in such situations needs to be intimate. Currently, the problem lies in the fact that the military answers to the Ministry of Defence whereas the problem in the areas in question comes under the domain of the Ministry of Home. There is an additional political authority by way of elected democratic provincial governments in place. But the horizontal relationship of the military with the provincial government is to be one of 'cooperation', as per the Supreme Court judgment. The Unified Headquarters is useful, but is subject to structural limitations. In effect, the military is answerable not so much to the provincial government, but to the Union government through the Ministry of Defence. This

⁴⁶ Supreme Court ruling in the Nagaland case, 1997.

⁴⁷ For instance it would help the Central Armed Police Forces, on the frontline ever since the earlier default resort to military deployment, has been considerably curtailed after the Group of Ministers report of the early 2000s, to arrive at respective doctrinal documents.

increases the onus of coordination and oversight on the two central ministries, home and defence, and, in particular, the political appointments within these.

- Internalisation of human rights through revision of the Army doctrine by placing human rights at its core is recommended. Areas of dissonance pointed out need reconsideration. A strict adherence to the guidelines of the Supreme Court, specifically its order on 'minimal' force, is a must. The current human rights record has been arrived at in a situation of relative military ascendancy in Jammu & Kashmir and the culmination of political processes in Nagaland and Assam. The test of the Army's sensitivity could arise in more challenging circumstances in future. This necessarily means going beyond training and pedagogy⁴⁸ to internalization through socialisation into reinforced norms.
- In matching strategy with the legal domain, the next iteration of doctrine must extend to dwelling on conditions that entail declaration of an area as 'disturbed' under section 3; the exit indicators for such status as well as repeal of the Act; parameters for governmental permission under section 6/7 of the relevant AFSPA for prosecutions; and clear endorsement that Do's and Don'ts amount to law. The government could consider amending the Army Act 1950 for making violations punishable under law as was desired by the Supreme Court.

Conclusion

The nature of violence and of military force is such that the acceptance of impositions on human rights in counter insurgency is only realistic. Limiting its affects on the hapless citizenry therefore acquires urgency. The first step is to ensure against doctrinal justification or rationale for imposition beyond that warranted by the very nature of force. Building in internal consistency in the doctrine is necessary. Towards this end, elevating human rights as the central pillar of doctrine to the status of 'categorical imperative' must be considered. Since insurgency and its counter is less about the visible military contest and more about the competition of ideas, this will ensure that the 'idea of India' prevails over insurgent alternatives on offer.

Note: The author is grateful for the comments of Brig Rumel Dahiya (Retd) on an earlier draft.

⁴⁸ DSCO, p. 49.