



Revision of the DSCO: Human Rights to the Fore



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Summary

The Doctrine for Sub Conventional Operations (DSCO) is due for review this year. This Brief suggests directions in which the Doctrine can better address the Human Rights factor. It brings out that certain doctrinal formulations lend themselves to a permissive understanding of the use of force. This impinges on the HR factor, rightly taken in the doctrine as central to counter insurgency. The Brief recommends measures to reconcile use of force and the HR factor, which is imperative in light of the idea of India that the nation is working towards.

Introduction

The International Committee of the Red Cross (ICRC) which is authorized by the international community with overseeing International Humanitarian Law (IHL) has arrived at a useful formulation of its aim. It is to bring about a “reasonable and pragmatic balance between the demands of military necessity and humanity.”¹ This has lessons for the protection of Human Rights (HR) in subconventional operations for India. This Policy Brief will attempt to balance the inescapable application of force with its HR implications for people in the affected area. This is not to imply that such a ‘balance’ is missing, but that improvement is possible in every human endeavour. Since this quest can best be pursued in the realm of doctrine, this Brief studies the Indian Army’s *Doctrine for Subconventional Operations (DSCO)* (2006).² The doctrine’s second edition is under consideration this year at the Doctrine Branch of the Army Training Command.³ The intention here is to inform this review.

The aim of this Policy Brief is to suggest that the sub conventional operations doctrine be unambiguous in its protection of HR as a strategic factor. This is laid out in three sections. The first recapitulates the HR-related tenets of doctrine. The second brings out concepts and gaps that could have an adverse bearing on the HR factor, and thus identify the scope for improvement. Lastly, the Brief puts forward recommendations so that the doctrinal intent of HR primacy is furthered even in operations with higher violence content.

HR in Doctrinal Tenets

Doctrine is a written document that encapsulates thinking on an issue to serve as guidance for all members of the organisation. The *Indian Army Doctrine* (2004) is the foundational document.⁴ It lays down the broad approach to counter insurgency (CI) and Low Intensity Conflict (LIC) operations in Section 14 of Chapter V.⁵ It restricts the military aim to ‘conflict management’ rather than ‘conflict resolution’,⁶ the latter being the larger political objective requiring a concerted national effort integrating all prongs of strategy. It makes clear that

¹ ‘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, <http://www.cfr.org/wars-and-warfare/statement-icrc-status-protocols-1949-geneva-conventions-relating-protection-victims-armed-conflicts-2008/p22309>

² Army Training Command (ARTRAC), *Doctrine for Sub Conventional Operations*, Shimla: ARTRAC, 2006. Available at HQ Integrated Defence Staff website - <http://ids.nic.in/Indian%20Army%20Doctrine/doctrine%20sub%20conv%20w.pdf>

³ See K.S. Jamwal, ‘Promulgation’, *DSCO*.

⁴ ARTRAC, *Indian Army Doctrine*, Shimla: ARTRAC, 2004. It is available in two parts on HQ IDS website - <http://ids.nic.in/doctrine.htm>.

⁵ *Ibid.*, pp. 23-31.

⁶ *Indian Army Doctrine*, p. 23.

the foremost principle is winning the hearts and minds (WHAM) of the population through low profile and people-friendly operations.⁷ Echoing the COAS Commandments, it states: “Remember that the people you are dealing with are your own countrymen; your behaviour must be dictated by this single most important consideration. Violation of Human Rights, therefore, must be avoided under all circumstances, even at the cost of operational success.”⁸ This respect for HR must persist despite the Army’s prolonged deployment in CI operations and “notwithstanding the tense, stressful and turbulent situations at the grass roots level.”⁹ This is a tacit acknowledgement that HR could be compromised if positive measures are not firmly in place.

Flowing from the Army doctrine is the *DSCO* of 2006. It encapsulates collective wisdom and philosophy gained over half-a-century of such operations.¹⁰ It demands ‘scrupulous respect for human rights’ and ‘upholding the laws of the land’ since the ‘center of gravity’ is identified as the populace.¹¹ To enable this, it recommends that imaginative rules of engagement be formulated against the backdrop of political, legal and moral parameters.¹² Its emphasis on the humane and people-centric approach has led to the doctrine being dubbed ‘Iron fist in velvet glove’.¹³ It must, therefore, be acknowledged that the doctrine establishes HR protection as the foremost doctrinal principle.

The doctrine has it that the end state sought by the national counter insurgency campaign is ‘conflict resolution’, which, to it, generally succeeds ‘conflict termination’. The military aim is to create a secure environment for the government to discharge its functions. This involves neutralization of hostile elements in the combat zone including terrorists and their support base. Towards this end it reiterates the principle of minimum force to neutralize rather than eliminate. It is cognizant of the constitutional obligation to respect HR. It outlines a pragmatic response to HR issues within the service to include sensitization of all members, reacting to violations and negating unwarranted allegations. A ‘zero tolerance’ regime is to be in place regarding violations.¹⁴

Doctrinal dissonance

The very deployment of the Army in Aid to Civil Authority and under the Armed Forces Special Powers Act suggests that potential and extant violence levels entail application of

⁷ Ibid., p. 25.

⁸ Ibid., p. 26.

⁹ Ibid., p. 29.

¹⁰ Foreword by General JJ Singh, *DSCO*, p. i.

¹¹ Ibid., p. 16.

¹² Ibid., p. 33.

¹³ Ibid., p. 3.

¹⁴ Chapter 7 (*DSCO*, pp. 53-55) is devoted to HR.

military force to bring the situation under control. Such application of force has the added advantage of establishing psychological ascendancy over the terrorists. In a proxy war situation it also conveys the message of resolve to the external benefactors of the terrorists. Internally, it reassures the public in the area and elsewhere in the country that the government is acting with due firmness. Advantages apart, what are the lines along which the doctrine can be improved?

The *DSCO* expresses a preference for the manoeuvre warfare template so as to place the terrorist in a reactive mode and to influence his 'mind' and that of other antagonists. It believes, however, that "Such application (maneuver) cannot by itself produce results so recourse to attritional warfare (elimination of terrorists) in the initial stages of the campaign cannot be avoided."¹⁵ It is at a later stage that both concepts - attrition and manoeuvre - are to be applied. The timeline of operations requires application of kinetic means in the initial stages for attrition. Thereafter, a switch to non-kinetic means, suggestive of manoeuvre warfare, is to be made at the stage when conflict resolution is in sight. How does this doctrinal conceptualization fare from an HR point of view and in terms of CI strategy?

Even while there are strictures in the manner force is required to be applied, such as minimum force, no collateral damage, after due warning, etc., reliance on force for attrition in the early stage can lead to alienation among the people. Such alienation can only translate as heightened support for the terrorists, including additional recruitment into their ranks. This is likely to worsen the situation before, over the long haul, it gets any better. The initial period is also one in which the populace forms its attitude towards military deployment. In case the military is concentrating on neutralizing, if not eliminating, terrorists through 'kinetic' means, then impositions on the population can only be higher, though briefly, during the period. While here again there are measures for amelioration such as ensuring professional conduct, delivering basic needs, etc., a hardening of attitudes can indeed take place. Such an attitude has been described in one publication as 'insolence'.¹⁶ The effect on the soldiery on ground can be expected to be negative in terms of increasing stress levels, provoking unseemly reaction and making for the perception of a hostile environment. It will take extensive WHAM efforts to retrieve this lost ground over an extended period later. Lastly, judging when to make the transition is a challenging leadership responsibility. Inability to make the transition at the right time can result in continuing disaffection and unending deployment. Responsibility for the latter cannot solely be attributed to lack of governance and political strategy.

¹⁵ Ibid., pp. 22-23.

¹⁶ K.S. Sheoran, *Human Rights and Armed Forces in Low Intensity Conflict*, Centre for Land Warfare Studies, New Delhi: Knowledge World, 2010, p. 4.

The doctrine allows for 'overwhelming' force against 'hard core' terrorists and foreign mercenaries.¹⁷ This gives rise to the understanding that 'Where there is terrorism, there cannot be human rights.'¹⁸ 'Hard core' terrorists do not lose their humanity and citizenship. Even foreign terrorists - though admittedly they forsake their humanity through brutality - are covered by international obligations that India is signatory to, such as, at a minimum, Common Article 3 of the Geneva Conventions. While the levels of force are for the military to judge, 'appropriate' force levels is a better term, since, if warranted, overwhelming force can still be used. The word 'overwhelming' brings about dissonance in the minds of counter insurgents and unnecessarily makes for avoidable permissiveness in the use of force. The distinction between hard core, soft core and foreign terrorists is difficult to make for want of intelligence. This leads to a bracketing between the two and, by extension, leads to supporters being mistaken as foreign agents. This aggravates the divide between the counter insurgent and the people, playing into the hands of external sponsors of proxy war. The DSCO would do well to heed the Indian Army Doctrine, which states: "Additionally, any tendency to resort to quick and seemingly efficient military-like actions which may appear to resolve an immediate local issue but, in all probability, may seriously hurt long-term objectives and future stability should be curbed without exception."¹⁹

The DSCO equates HR with fundamental rights.²⁰ This is correct but insufficient. The Protection of Human Rights Act of 1993 defines the term thus: "'human rights' means 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."²¹ In other words, international obligations count. The problem with fundamental rights being taken as the yardstick is that they are amenable to abridgement in times of emergency. International Human Rights Law (IHRL) countenances abridgement of HR only in the case of emergency. Certain provisions like right to life, right against torture, etc. cannot be infringed even then. In India's case, extensive use of the Armed Forces Special Powers Act (AFSPA) has been critiqued as resort to emergency provisions by the backdoor.²² The AFSPA gives the security forces (SF) extensive powers (Section 4), including of protection against prosecution (Section 6).²³ While the Army rightly exerts to

¹⁷ DSCO, p. 3.

¹⁸ K S Sheoran, *Human Rights and Armed Forces in Low Intensity Conflict*, p. 4.

¹⁹ *Indian Army Doctrine*, p. 24.

²⁰ DSCO, p. 53.

²¹ The Protection of HR Act, 1993 (As amended in 2006), p. 1. Available at National Human Rights Commission website - <http://www.nhrc.nic.in/>

²² Office of the UN Commissioner for Human Rights, 'Concluding observations of the Human Rights Committee: India. 08/04/1997', Paras 18, 19. [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.79.Add.81.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.79.Add.81.En?OpenDocument)

²³ Available at http://www.mha.nic.in/pdfs/Armed%20forces%20_J&K_%20Spl.%20powers%20act,%201990.pdf

prevent misuse of powers, keeping doctrine apace with international norms and the legal order is useful, particularly in retaining the moral high ground in any face-off with state sponsors of terrorism.

A problematic idea that finds mention is that, “the orchestration of operations must be such that they induce the desired degree of agitational fatigue amongst supporters of the cause.”²⁴ This is simplistic in its assumption that politically motivated agitators will give up if they are continually inconvenienced. State action to them will constitute suppression and thereby legitimize their fight. Since in the initial stage, terrorists have the support of the population, a distinction, difficult to arrive at, will have to be made between over ground workers and the population. The doctrine does maintain that action against over ground workers must be in keeping with the law of the land. However, measures taken to distance supporters from terrorists by inducing a realization that they cannot ‘win’ against the government implies an intention to exhaust them. This may end the problem, but does not resolve it. It helps with ‘conflict management’ and not ‘conflict resolution’. In other words, the narrower military aim can be met, but this does not help with achieving national aims. It also goes against the democratic ideal of tolerance of dissent. There is danger of the Army ending up as a political actor. That these measures are not elaborated upon, and possibly including large scale cordon and search operations – appropriately dubbed ‘crackdowns’ - indicates the possibility of trespassing HR. Again tactical level problems arise, such as identification of the targets, methods to be used and when to cease applying such pressure. To its credit, the doctrine concedes that ‘this lever works both ways’ and could prove ‘counter productive’. This begs the question as to why must the loophole figure in the doctrine in the first place.

The way ahead

That application of force is to be tempered with human rights concerns, best practices and ‘lessons learnt’ is well acknowledged by the military. Both doctrine and theatre-specific strategy acclaim centrality for the HR factor. Violating HR proves counter protective in the long run. Sensitivity to HR norms, rules and practices has consequently been developed in the leadership and soldiery. While in the context of current day CI preoccupations it is clear that the HR factor is to the forefront, it bears reminding that the security situation is much better. The real test for HR sensitivity is, therefore, not so much when the going is good, but when the going gets tough. To ensure that the HR factor remains fore-grounded even when under severe test, more work may be needed in terms of internalizing it. This is especially so in light of CI practices elsewhere, which are more permissive of use of force and firepower, and act as influence on doctrine revision.²⁵

²⁴ DSCO, p. 21.

²⁵ Such examples include that of Sri Lanka against the Tamil Tigers, the US in AfPak and in Iraq, Israel in Gaza, Libyan and Saudi Arabian troops against protestors, etc.

Firstly, given the considerable autonomy given to the military under the AFSPA, there is a premium on self-regulation. It, however, has its limits and it needs to be reinforced by the force of sanctions, which presumes a superior authority – either the state government and/or the Ministries of Defence (MoD) and Home Affairs (MHA). But lines of authority are indistinct. While the MHA is responsible for internal security, the military, when deployed on such duty, continues to answer to the MoD. The state government does not have power over the military and is dependent on its ‘cooperation’. This arrangement between the military and the state government has sanction of the Supreme Court.²⁶ While the National Human Rights Commission (NHRC) and the state human rights commissions exist, the military is outside their purview except as mediated by the central government.²⁷ At best theirs’ is a reporting function, rather than a watch-dog one. There is, therefore, additional need for oversight, over and above internal oversight mechanisms of the military such as Human Rights cells, functioning of the chain of command, etc.

The five suggested measures here will obviate any sense of impunity, act as a deterrent, ensure accountability and serve the ends of justice. Eventually, this is the call of the political leadership at the MoD.

- Multi-level ‘grievance cells’, as mooted by the Jeevan Reddy committee, should be established.²⁸
- Within the military, ‘staff courts of enquiry’ must investigate any incident involving loss of life or excesses.²⁹
- Section 6 of the AFSPA must be reframed to read: ‘No prosecution ... shall be instituted against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act where the Central government provides reasons in writing and the competent court upholds the legal validity of these reasons.’³⁰
- The Centre must be more liberal in granting permission to proceed with prosecution, where warranted. And parliamentary standing committees on defence and home could have theatre commanders depose before them to field questions on strategy and HR.

²⁶ See judgement of the Supreme Court in the Nagaland case of 1997. Text available at <http://judis.nic.in/supremecourt/helddis.aspx>

²⁷ The Protection of HR Act, 1993, Para 19, pp. 14-15.

²⁸ Text of recommendations is at <http://www.hinduonnet.com/nic/afa/afa-part-iv.pdf/> See for ‘Grievance cell’, p. 79.

²⁹ Nilendra Kumar, ‘Finding a way out of the AFSPA conundrum,’ *Business Standard*, 19 September 2010.

³⁰ S. Varadarajan, ‘A modest proposal on AFSPA,’ *The Hindu*, 5 September 2010.

- Standing committees of the parliament and of state assemblies must be formed to oversee the handling of 'disturbed areas'. The fear that this will lead to politicization is offset by the sense of democratic participation and checks and balances that such a system will make possible.

Secondly, the *DSCO* does not contain any discussion of the AFSPA. At the time of writing of the doctrine, the Act was under scrutiny by the Jeevan Reddy committee.³¹ The Act has been under review since and the Army Chief has opined on its necessity.³² Given that it is likely to stay, amending it as suggested by the Supreme Court by making violations of the Chief's Do's and Don'ts punishable, is a way to ensure the domestication of the AFSPA.³³ Also, the parameters in the discussion on end state and exit policy³⁴ can include guidance on when the Act can be withdrawn from areas that are returning to normalcy. In the absence of this, the military carries the onus of appearing as yet another vested interest in the insurgency economy.

Thirdly, the Army believes that it is lead agency in situations where it is deployed in Aid to Civil Authority under AFSPA. The doctrine expresses a preference for control over operations.³⁵ This means that the Army has a say in the observation of HR by other security forces (SF) and the intelligence agencies. The former are notably wanting in observing HR strictures and intelligence agencies control covert operations that have HR implications. Since it is in charge of operations, and with HR being central to operations, the Army must prevail on the apex body to ensure that a uniform HR policy is adopted and practised by all deployed forces and agencies. In this context, not only do operations of 'friendly insurgents' (an oxymoron)³⁶ require rethinking, but also their very utility and existence.

Fourthly, the understanding is that conflict termination precedes conflict resolution.³⁷ But as in the peacekeeping heuristic, peace making can proceed apace with peace enforcement and peacekeeping.³⁸ In other words, conflict resolution efforts can be co-extensive with conflict management, in which case conflict termination would be co-terminus with conflict resolution. As the doctrine notes, the military can at best create the conditions conducive to a peace agreement. However, usually the unending search for

³¹ The Jeevan Reddy committee was set up to review the AFSPA pursuant to the agitations in Manipur over the alleged rape and killing of Th. Manorama Devi by Assam Rifles in 2004-05.

³² 'AFSPA an enabling provision, not arbitrary: Army Chief,' *Times of India*, 18 September 2010.

³³ See Supreme Court judgment, Note 26.

³⁴ *DSCO*, p. 38-39.

³⁵ *DSCO*, pp. 23, 30.

³⁶ *Indian Army Doctrine*, p. 28.

³⁷ *DSCO*, pp. 17, 20.

³⁸ See UN 'Capstone Doctrine', p. 19, available at http://pbpu.unlb.org/pbps/Library/Capstone_Doctrine_ENG.pdf

the position of strength from which to engage with the insurgent group holds up conflict resolution. This has HR implications in terms of soft core rights of the innocent population being curtailed for as long as 'decades' as blithely mentioned in the *DSCO*.³⁹

Lastly, the Army, by taking ownership of HR, can become the foremost human rights defender. This can be done in redefining 'AOR' – area of operations – away from its territorial connotation to focusing on the population in its boundaries. This will shift the focus to 'population' from 'area'.⁴⁰ The resulting sense of ownership will help fend off institutional pressures that are sometimes known to develop in light of the 'command culture' prevalent at the spear end.

Conclusion

Scepticism on the HR record of security forces (SF) increases with proximity to the affected site, usually in India's geographic and societal periphery. The mainstream HR debate is between the conservative-realist and the liberal-rationalist perspectives and also between 'marginalized' and 'mainstream' India. The two perspectives place differing emphases on the roles of political and military instruments of strategy. These divergences indicate that the HR issue serves as a prospective ideological and political battle ground. The democratic contest can be expected to continue and possibly accounts for the absence of an overarching internal security doctrine articulated by the nodal ministry, the MHA.

However, in light of reticence in the written word being a well known facet of Indian strategic culture, the Army will have to plough a lonely furrow. As the *Indian Army Doctrine* ruefully acknowledges, "As distinct from conventional war, clear-cut directions in a LIC scenario may not always be available."⁴¹ The recently released Joint Doctrine for Sub Conventional Operations is a fair starting point for the revision of that *DSCO* that is underway.⁴²

In the ongoing revision, of primary doctrinal consequence are the instrumental and normative values of the HR factor. At the instrumental level, respecting HR can potentially yield political dividends. The normative value lies in helping to create the liberal-democratic idea of India. The *DSCO*, in its next edition, must reckon with both. However, doctrine is only the initial, perhaps easier, step. The more consequential one is in internalizing its tenets, which can best be done by appreciating the normative value of HR.

³⁹ *DSCO*, p. 22.

⁴⁰ Ali Ahmed, 'AOR: The CT Ops Version', *War College Journal*, 2005.

⁴¹ *Indian Army Doctrine*, p. 24.

⁴² HQ Integrated Defence Staff website - <http://ids.nic.in/whatnew.htm>. However, the link does not open. Nevertheless, the doctrinal *glasnost* is compliment worthy.