
Human Rights in Counter-Terrorism Strategy

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One desires freedom so long as one does not possess power. Once one does possess it, one desires to overpower.

— Paul Nietzsche

An effective international strategy to counter terrorism should use human rights as its unifying framework.

— Mary Robinson, UN High Commissioner for Human Rights

Introduction

India faces the challenge of terrorism in myriad forms, in a geographic spread of over 30 per cent of the country. The security forces have an experience bank of over 50 years in combating terrorism and insurgency. Acceptance of human rights as a primary principle of counter-terrorism (CT) has been universally acknowledged by the military in India. A key issue in human rights (HR) implementation is total commitment of the state and the armed forces hierarchy to fully respect and regard the rights of the people, which cannot be said even of many developed states. A Guantanamo Bay or Gitmo in the Indian context may be unimaginable. The Indian Army, fortunately, has no reason to establish special prisons.

Despite this high awareness, human rights has been regarded as an operative principle rather than a strategy. This has resulted in a defensive approach, providing terrorists an advantage of portraying themselves as fighting for the rights of the people. Many liberals deem a terrorist as a freedom fighter essentially due to this perception wherein ironically the miscreant is seen as representing the

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people's aspirations against the state's injustice. There is, therefore, an underlying need to employ human rights as a strategy in counter-terrorism operations rather than a working principle to provide unstinted benefits of winning the battle for the hearts and minds of the populace. Implementation of such a strategy which is beyond the beaten path may necessitate some discussion.

Vicious Circle of Rights Restrictions in a Terrorism Environment

Free and democratic countries such as India have assured every citizen full freedom through the Constitution. The Indian Constitution is an embodiment of security of the rights of the people through its Preamble which states that the people have resolved "to secure to all its citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation."¹

Ironically, the roots of terrorism lie in deprivation, real or perceived, of some or many of these rights. It is a stratagem employed by the terrorist purportedly to air genuine grievances of the people. In many situations, the disempowered elite successfully utilise a perceived injustice to raise the banner of revolt, exemplified by the Detonator or Foco Theory. In some cases, it could also be the failure of the state to proactively address grievances that is shrewdly exploited by the elite to advantage. This would be amply evident from examples of militancy in India. In Kashmir, a seemingly flawed election in 1987 is considered as the primary cause for the current phase of rebellion.² In central India, it is denial of the right of development which has been flaunted by the Maoists to advantage, while in other areas such as Assam, militancy has become just another way of making a living by the gun. This is a worldwide phenomenon wherein civil wars assume an economic function and the participants see it not as much to win the confrontation but to make maximum money out of it.³

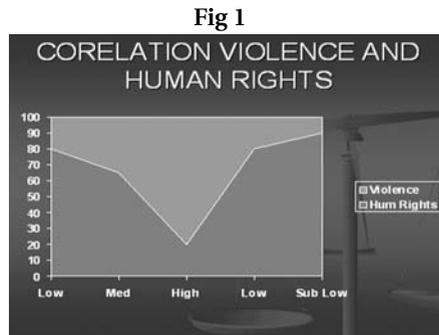
The Weberian model denotes the state as the only and ultimate authority which is authorised to use violence as there is an inherent understanding that the government will use controlled hostility. Besides this implicit endorsement, in India adequate provisions have been made to legalise deployment of armed forces for counter-terrorism. These also replicate conventions provided for in international law and are supplemented by provisions in the Constitution. Some of the statutes are as given below:

- (a) Constitution of India, Articles 352 and 355.
- (b) Code of Criminal Procedure, Section 127 to 131.

- (c) Armed Forces (Special Powers) Acts, 1958 and 1990.
- (d) Regulations for the Army, 1987 Edition, Paragraphs 301 to 307.
- (e) Pamphlet on Aid to Civil Authority, 1970.

In addition, many local statutes such as the Jammu and Kashmir Public Safety Act (1978); Assam Preventive Detention Act (1980); National Security Act (1980, amended 1984 and 1987), and so on, provide legal sanction for use of force by a state.⁴ The armed forces have also been granted protection from direct intervention by the National Human Rights Commission vide Section 19 of the Human Rights Act, 1993.

Having empowered the last man, the armed forces can take emergency action to restore the sanctity of state authority. Being the last resort of the government, the focus is on suppressing militancy by a range of options available to use state sanctioned force to include population control, vicarious deterrence through punitive actions, cordon and search, detention, and so on. Many of these activities deny rights to the citizen in certain circumstances which can be denoted by the principle of proportionality or inversely proportional hierarchy. When the situation is extremely violent, people are willing to sacrifice their smaller liberties to save lives, hopeful that these will be restored once the level of hostilities goes down. This phenomenon is denoted by a graph (Fig 1).



It would be noticed that when violence is high, aspirations for the rights of the people are limited but will rise continuously as the fighting decreases. The normal strategy followed to straighten the convex cone is eviction of a number of militants from the system rather than restoration of rights. The bane of such a strategy is two-fold; firstly, all citizens are treated equally. Thus, the law abiding, non-violent individual next door is at par with the overground worker or even the militant. The other aspect is over empowering of the soldier due to the phenomenon of “desire to overpower” so aptly put across by Nietzsche. This combination of effects, when unchecked, can lead to what is commonly referred to by liberal activists as state terrorism, thereby, directly playing into the hands of the terrorists.

On the other hand, while the state in its attempt to do well, spends extensive resources on development, the theme played out by terrorist propaganda is not so much development as denial of the rights of identity, ethnic salience or livelihood,

thereby, forcing the masses to disown the Constitution. The terrorist becomes a, ‘freedom fighter’ and successfully establishes a vicious cycle of violence through planting improvised explosive devices (IEDs) on roads and tracks used by the common people, grenade attacks in busy market places, and provoking cross-fire in crowded areas targeted at the security forces but in actual fact restricting the rights of the people, leading to a domino effect of snowballing grievances which affect day to day activities. Thus ,a vicious circle of rights denial is established which is difficult to break, thereby, forcing the state onto the back foot, while the terrorists, despite their heinous acts, are able to survive.

Focus of the state on restoration of human rights rather than elimination of terrorists or even development would pay better dividends. Strategising implementation is an issue which needs deliberation.

Virtuous Circle of Rights Enforcement Through Human Rights Strategy

Rights Identification

Breaking any circle to penetrate the inner core is extremely difficult. Breaching the circle of rights denial is all the more complex as it entails human emotions which are manipulated by wily perception managers, the terrorist leaders. In an insurgency or terrorism, the population is the centre of gravity and elimination

Table 1

Location	Ideology Used	Underlying Causes	People's Aspirations
Kashmir	Religious distinction.	Denial of rights of identity and governance.	Self-governance
Punjab	Religious distinction	Economic marginalisation	Economic equity
Assam	Separatism	Economic marginalisation. Perceived exploitation by aliens.	Economic equity and self-governance.
Naxalism	Communist–Marxist	Economic marginalisation due to poor governance.	Economic equity.
Northeast	Ethnic distinction	Threat of losing unique ethnic identity	Rights to distinctive ethnic identity.

of the terrorist is generally the mission. However, if the mission is changed to restoration of human rights, a different perspective will be obtained. In a democracy, it entails providing people an environment for personal and social development which, in turn, is linked to their aspirations.

The aspirations in a multi-ethnic, multi-religious society such as India cannot be common — they vary from people to people. The first stage of the human rights strategy is accurate identification of people’s hopes. Frequently, there is a mismatch between the ideology used by the terrorists, underlying the grievances and aspirations of the people which leads to focus on the subsidiary rather than the main factors. In the Indian context, a possible framework to explain the same has been provided as per Table 1.

Possible Focus of Human Rights Strategy

The focus of the human rights strategy in the paradigm indicated above needs to be evolved based on an analysis of the factors of ideology, causes and aspirations. This will be situation specific and a suggested model is provided at Table 2.

Table 2

Location	Focus of Human Rights Strategy
Kashmir	<ul style="list-style-type: none"> ● Providing the rights and instruments for self-governance, implying reach to masses. ● Right of movement, access, speech, assembly and protest. ● Right of education and employment.
Assam	<ul style="list-style-type: none"> ● Providing rights and instruments for self-governance. ● Right of education and employment.
Naxalism	<ul style="list-style-type: none"> ● Right of education, employment, development and participation in the processes of local growth and economy.
Northeast	<ul style="list-style-type: none"> ● Respect for unique ethnicity, identity, freedom for self-governance and movement.

Strategic Direction

The higher commander’s mission in a counter-terrorism campaign is to devise strategies to restore the rights of the people. The armed forces are a hierarchical organisation which succeeds through effective strategic direction. Personalities do make a difference even in the supposedly non-feudal armed forces such as the US armed forces. Thus, strategic direction in the

implementation of human rights as a strategy is important. There may be a strategic risk involved in this approach and given the high stakes in competence assessment of commanders in a highly professional environment in the army, it requires men with vision beyond their own tenures to implement the same.

The higher commander will determine three basic issues before providing direction. The first is the people's actual and perceived aspirations; second, the focus of the human rights strategy; and, finally, proportionality. The first two issues have already been covered in the tables above and each commander will have to make his own assessment. Proportionality would be clear when applied to civil rights protests in the Valley or the northeast recently. It would be evident that the rights movement has become shriller as violence has reduced. Recognition of the appropriate level of tolerance on restriction of rights should enable the higher commander to give specific instructions to subordinates on calibration of operations, incorporation of civil elements with the army, and ensure strict implementation.

Other directions would entail clear instructions to use minimum force, limited use of hard core search and destroy operations in populated areas, avoiding speculative operations, reliance on hard core intelligence, and prioritising full freedom of rights to civilians. Specific orders for limiting retaliatory operations, giving right of way to the non-uniformed, and even safe passages would also form a part of this strategy. Personal, unit or institutional egos have no place in such an environment.

In the Valley, for instance, the famous, "lathi and seeti" drill by convoys wherein security forces sought right of way through fast moving civil traffic to avoid being attacked by terrorists was a major denial of rights to the citizen. No doubt, in some ways this reduced casualties during vulnerable periods of convoy movement yet the ill will earned had a highly negative impact. It necessitated firm strategic direction by a corps commander to stop this despicable practice which had been carrying on for many years, thereby, providing much relief to the citizens.

Internalisation of human rights through the "iron fist in velvet glove" fostered by the Chief of the Army Staff General J. J. Singh and strict implementation of the code of the soldier provided in the Sub-Conventional Operations Doctrine as given below,⁵ will also support the higher commander in the mission of restoration of rights.

- (a) Honour – Living up to the honour values of the army.
- (b) Integrity - Do what is right morally and legally.

- (c) Loyalty – Bear true faith to the Constitution, army, regiment, unit and colleagues.

Grassroots Implementation

Suggestions for Implementation

Human rights are frequently seen at the sub-unit and unit level as a constraint rather than an advantage in the conduct of CT operations. Restrictions imposed through the clause of minimum force are particularly galling at the operative level and there is limited appreciation of employment of human rights as a strategy for establishment of peace and order. Successful application of this has been evident in the Valley in some rare cases, particularly in one of the sectors in the North Kashmir areas of Kangan-Ganderbal-Safapora-Sumbal. Once considered hotbeds of militancy, there was peace and tranquillity during the tenure of a sector commander who had the courage to focus on human rights. Peace continued for a long time after he left. The only frustration was felt by the unit and sub-unit commanders who could not show “kills”.

Adoption of human rights as a strategy is a fine-tuned, nuanced approach of protection of basic rights of the general populace, while denial of the same to the malcontents. It is based on the principle of proportionality. It is certainly not giving a free way to the militant or his supporter, but involves calibrated removal of restrictions for the normal law abiding citizen by establishing a differential. This would entail the following steps:

- (a) **Intelligence and Information.** The key facet of implementation is intelligence and information. The aim is not to surrender the initiative to the terrorists but to base operations on detailed population, overground worker (OGW), black, white and grey profiles.
- (b) **Organisational Focus.** The organisational focus would be on establishing peace and tranquillity rather than number of kills. This essential principle has to permeate down the chain and may also require acceptance by the higher authorities. The aim, however, is not to create gaps for exploitation by the terrorists but to avoid harm to innocents.
- (c) **Implementation.** A strategy employing human rights is not demilitarisation or abdication of military responsibility towards security. It implies graded

The higher commander will determine three basic issues before providing direction: the people’s actual and perceived aspirations; the focus of the human rights strategy; and, proportionality.

application, with the active involvement of the local leadership. This will take the form of nuanced enforcement of rights as follows:

- (i) Areas and personnel graded as black would envisage total restriction of the rights of citizens to the extent permitted by the rules of engagement.
 - (ii) Grey areas would have greater freedom.
 - (iii) White areas will see only limited fraternisation operations by own forces, granting full freedom to citizens.
 - (iv) Soft policy towards women and children. Deliberate consideration before the launch of operations which will affect this section of society is essential. Even abandoning operations to prevent indignity to the weaker section of society will earn goodwill.
 - (v) Targeted conduct of operations based on hard intelligence.
 - (vi) Limited use of sweep, search and destroy or large scale cordon and search.
- (d) Rights profiling of individuals based on reliability established over a period should lead to grant of greater freedom. For example, an individual who has been consistently declared as white should have the liberty of walking through check posts without being searched, earning credits each time he has not been part of a violent incident. This will build up his rights credit, motivating more and more people to join the exclusive club through peer pressure. To avoid militant retribution on such individuals, such profiling can be discreet but actionable.

To many this may appear to be an idealistic strategy which would provide space for militants to operate with immunity. However, successful implementation of the same, as indicated above, provides validity. Replacing the dots of kills on a map in the operations room by appropriate shading indicating the rights profile of an area could be the start point for implementation of the strategy. Similarly, the number of people with maximum rights credits in a locality or a village would also denote the limited susceptibility of the people to allurements by militants. Once a critical mass of such people is built up in an area, penetration by terrorists would be well nigh impossible.

Strengthening Perception Management

Perception management is an important facet of the human rights strategy in counter-terrorism. This is not public relations or effective projection of the unit image in the media but building favourable opinion through sound human oriented actions, be it a ban on "seeti and lathi" or respect for women, the elderly and children. A common refrain heard in many circles is that despite

extensive development activities, the state has not benefited by a change in the perception of the masses towards the security forces. This bane will go away through the adoption of a human rights-based strategy for it will enable placing all actions of the security forces in the interest of the people.

Similarly, this will also enable targeting human rights violations by terrorists in a structured manner to build up public perception of wrongdoing. The North Atlantic

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Treaty Organisation (NATO) and US forces have successfully employed non-governmental organisations (NGOs) such as Human Rights Watch and Amnesty International to propagate widespread violations of human rights in Afghanistan and Iraq. While the media has been reporting many abuses by terrorist organisations such as a recent report on outsourcing of grenade throwing and planting of IEDs to innocents, this has not been effectively weaved into the counter-terrorism (CT) strategy by the armed forces.⁶ Thus, it does not make a decisive impact. Building public opinion through rights protection should, therefore, form an important component of the human resources (HR) strategy

Conclusion

The Indian armed forces have the privilege of legal protection in the conduct of CT operations. This has been very judiciously utilised over the years and the record of human violations is limited. While zero tolerance is ideal, in a human environment, errors of judgement will always occur. The reaction of the army has been prompt in bringing to book those who have been guilty of operating outside the law or have violated human rights. However, these are primarily reactive actions forced upon the security forces by the processes of law or civil society. A human rights-based strategy, on the other hand, will be a proactive, forward looking measure to wrest the rights initiative from the terrorists and establish the genuine concern of the government. Detractors may claim that this would prove time consuming, yet all counter-terrorism actions are extended campaigns, spread over decades rather than months and years. A fresh approach may reduce the daily ignominy of search, questioning and fear that the common citizen undergoes in the affected areas.

Notes

1. Constitution of India.
2. Sumantra Bose, *Kashmir: Roots of Conflict, Paths to Peace* (New Delhi: Vistaar Publications, 2003), p. 51.
3. D. Keen "When War Itself is Privatised," *Times Literary Supplement*, December 29, 2005. Quoted in Christopher Croker, *Human Warfare* (London: Routledge 2001)
4. Based on inputs provided at http://www.sscnet.ucla.edu/southasia/History/Independent/anti_terr.html
5. ARTRAC, Sub-Conventional Operations Doctrine. 2006.
6. Muzammil Jaleel, "Militant's New Strategy: Outsource," *Indian Express* Report, April 11, 2007.