
Human Rights Challenge for Security Forces: Diagnosis and Prescriptions

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Introduction

Human rights consist of those minimal rights that every individual must have by virtue of being a member of the human family¹. Just like each member of an elite club is entitled to certain inherent rights and members expect from each other a degree of inherent dignity and courtesy, the whole of humanity is nothing but a tiny club in our vast universe. In the theory of evolution, if you believe in reincarnation, it is no mean achievement to be born as a human being, as one must have done a lot of good things in one's numerous earlier lives to reach this stage. Even as humans, we take several births, depending upon our deeds. It is believed that people who are greedy, selfish, violent and full of animosity are probably in a low stage of evolution, from wild animal to human being, whereas people who are saintly, well-meaning, compassionate, cool and large-hearted are in an advanced stage. Respect for human rights is nothing but a manifestation of oneself as a true, noble member of this large family. Our former Prime Minister, Mr Atal Vihari Vajpayee said, "The all round well being of mankind (*Vasudhaiva Kutumbakam*) has always been the basic tenet of Indian culture from times immemorial. Our scriptures bear eloquent testimony to this truth. Recognition of human rights is an extension of this philosophy. However, at times, the issue of human rights is used as a peg to malign the state in general and the armed forces in particular. This is not to deny that individual excesses and aberrations may have occurred, but it is not fair to generalise on the basis of these." Whether by terrorists or the security forces, human rights, when denied, can be a source of internal conflict.

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Challenges and Dilemmas

The army can officially kill, but only the enemy; but then, who is the enemy? The nature of the enemy is changing because the gullible citizens of a particular area can be influenced by the enemy. How does one deal with a citizen who is collaborating with the enemy? Terrorists could be citizens of own country, or they could be foreigners. People talk about winning the hearts and minds of the people — but which people? Are we winning the hearts and minds of the terrorists, the potential terrorists or the larger section of people from whom the terrorists are recruited? Are we sure that a portion of the money spent in Operation Sadbhavna/Border Area Development Projects does not go to terrorists, directly or indirectly? It is not easy to flush out the invisible terrorists from the innocuous population.

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The aim is to help to civil administration in restoring normalcy. This would imply the following :

- Identifying the terrorist.
- Thwarting anti-national designs.
- Providing security to the local public/property.
- Causing attrition to foreign terrorists/local terrorists.
- Winning hearts and minds.
- Creating a conducive atmosphere and building confidence.

However, it is easier said than done. Human rights and terrorism are the key issues, which together form the focus of the world today. Some countries support the barbarous form of warfare in the name of *jihad*, with utter disregard for human rights. It puts a sudden stop to the happy lives of many in a flash, as happened to 35 police officers in Kabul recently and hundreds of innocent victims in Jammu & Kashmir, the northeast and Naxalite-affected regions. Every one, including the media and civil administration must cooperate with the security forces (SF) to fight it together. What are the dilemmas that the jawan faces in this warfare? How do we train him for this? Today, in a globalising world, human rights are no longer confined to the territorial borders of any country. People across the border and people in distant America can raise these issues and cause problems for the SF in our country. In such a situation, should we or should we not think about the ways and means to bring about a change? Coming to the dilemma again, there is talk about proportional response. The

problem is, we are talking of it in connection with the SF — how do you account for the disproportionate activities of the terrorists ? You are dealing with an enemy which is not fighting on the basis of rules, regulations and laws or the conventions of the society, Who is going to decide as to what is proportionate and what is not proportionate and when are you going to decide it, *post facto* and debate thereafter ? How do you train a soldier who has to take a decision on the spot? Have you devised any means ? Or is just raising the issue enough? Look at 9/11: 14 or 15 people hijacked civil aeroplanes, made them into missiles, and used fuel tanks as the explosive, attacked the United States' centre of prosperity, the World Trade Centre, and the centre of power, the Pentagon. Fourteen or fifteen people, none of whom were from Afganistan which the United States had bombarded left and right, up and down. Was it a proportionate response ? Was the American attack proportional in Iraq now that no weapons of mass destruction have been found?

There is a lot of resentment against small inconveniences to the civil public due to restricted timings, check posts, mobile check posts/vehicle check posts(MCPs/VCPs), etc. These are small sacrifices one has to make to prevent brutal human right violations by the terrorists. Some of the unlawful human right violations imposed by terrorists on the freedom of citizens are listed below:

- Dress code.
- Curbing spread of modern education: *Madrassa* culture (which has been criticised by President Musharraf too).
- Fear psychosis : Rule by intimidation.
- Forced marriages.
- Extortion.
- Subverting the positive political process.
- Sabotaging development of infrastructure.
- Blocking the will to work.
- Covert censorship of the local media.
- Fomenting a divisive mindset.
- Sabotaging the economy: subvert tourism.
- Spread of AIDS.
- Killing of innocents.
- Torture of children/elders.
- Rape/molestation.
- Collapse of civil administration.

One can safely say that almost 95 per cent of human rights violations are carried out by terrorists. These include the cruellest of torture, slitting of throats,

peeling of the skin and cold blooded murders. In order to prevent this, the government employs the army as under:

- The army is an instrument of the Government of India.
- Enforcement of the 'reasonable restrictions.'
- Enforcement of the provisions of the Armed Forces Special Powers Act (AFSPA).
- At times, allegedly painted as a "monstrous institution of the state."
- Allegations fuelled by large scale media coverage.

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Certain restrictions have to be imposed on the fundamental rights of citizens to induce normalcy. This is because unrestricted individual right do not, and cannot, exist in any modern state which is facing terrorism. Reasonable restrictions are, thus, in the interest of the nation. However, restraint and empathy are the key. Someone has said, "Nearly all men can stand adversity but if you want to test a man's character, give him power." For the SF to function efficiently and fearlessly, the government has enacted AFSPA 58/90. Power brings in responsibilities. The code of conduct of a soldier demand ethics in action. The responsibilities are enormous. It envisages prohibition of:

- Murder.
- Torture.
- Corporal punishment.
- Outrage of personal dignity.
- Rape/molestation.
- Hostage taking.
- Extortion.
- Collective/degrading punishment.

Allegations fly in all directions in case of slight aberrations as under:

- Absence of representatives of civil administration.
- Manhandling/inhuman treatment.
- Custodial death.
- Disposal of dead body without proper documentation/procedure.
- Non-reporting of untoward incidents.
- Discourteous behaviour/high-handedness.

- Lack of respect/compassion towards elders/women/children.
- Collateral damage.

For every action like apprehension, confinement, interrogation, curfew, search and even winning hearts and minds (WHAM) by the security forces, the vested elements keep ready their concocted allegations like arrest of innocent person, wrongful confinement, rape/molestation, torture, murder, harassment, extortion and discrimination, etc.

To defend against these allegations, we must have certain safeguards in place as under:

- Impartial and professional handling.
- Maintain meticulous records of events.
- Presence of a representative of the civil administration. Presence of a lady constable in case it involves women.
- Graduated response.
- Warning prior to escalation.
- Use of minimum force.
- Medical aid to victims of violence on priority, without discrimination.
- Fatal cases : scrupulously follow legal procedure.
- Record live footage, if possible.
- Honesty is the best policy.

Human Rights Training: Service Team Concept

Human rights specific training should be imparted at each stage of training for a jawan/officer. At the unit level, we should follow the services teams concept as under:

- Concept. Training of a group of individuals in a unit that has greater local interaction with the population.
- Desired Characteristics.
 - ❖ Speak local language and know local customs.
 - ❖ For J&K, speak Kashmiri language and know the religions/cultural customs.
 - ❖ Assist in minor human and animal ailments.
 - ❖ Teach games to children.
 - ❖ Knowledge of agriculture/horticulture.
 - ❖ Grasp of all arguments in favour of the government's position.
 - ❖ Ability to convey the idealism of our Constitution.

One can remain firm without being rude. The security forces must be compassionate, courteous and patient in their dealings, without fear or favour

or prejudice to the rights of others. The typical army soldier still remains truthful, honest, courteous, obedient, respectful, hard working, brave and utterly loyal to the organisation as well as the country. That is why they are in great demand by the citizens of all countries where United Nations peace-keeping is in progress. One should endeavour to maintain a clean image always. The SF should operate on three fronts as under:

The security forces must be compassionate, courteous and patient in their dealings, without fear or favour or prejudice to the rights of others.

- Win genuine respect of local populace.
- Make the population realise their dependency on the SF — Operation Sadbhavna/economy/security.
- Create job opportunities for the locals –Territorial Army (home and hearth)/porters.

Certain “must do” points from a practical point of view are as under:

- Train all persons on human right values.
- Use minimum restriction and firepower.
- Don't suspect a local unless he proves to be a terrorist/sympathiser.
- Understand the helplessness of the local population due to coercion/inhuman violence by terrorists.
- Focus on goodwill of your own countrymen.
- Never distinguish between religious communities.
- Ensure that enhanced powers are not misused against innocents. Maintain human rights monitoring and education system down to unit level.
- Deal firmly with cases of human rights violations.
- Remain transparent and report cases immediately on occurrence.
- Be accessible to the media which, in turn, should do truthful reporting.
- Immediate medical aid.
- Handling of dead bodies.
- Avoid operations in inhabited areas.
- If operating in built-up areas, operate only on specific intelligence and surgically.
- Curb retaliatory measures.

Contingencies of various types of situations should be handled as under:

- Fabricated Allegations.

- ❖ Joint operations/presence of neutral observer.
- ❖ Employment of women police.
- ❖ Presence of village elders.
- ❖ Unedited and live footage.
- False Propaganda/Allegation.
 - ❖ Professional media dealings/briefs without compromising security.
 - ❖ Professional and more interactive PR management.
 - ❖ Exemplary code of conduct.
 - ❖ Rebuttal at appropriate level.
- Arrest of a Person.
 - ❖ Handing over to civil police within 24 hours.
 - ❖ Justification of any delay.
 - ❖ Recoveries handing over to police correctly, as per procedure.
 - ❖ Receipt obtained from police.
 - ❖ Medical status to be ascertained and documented.
 - ❖ Diligent recording.
- Interrogation.
 - ❖ Presence of police representative.
 - ❖ No use of force.
 - ❖ No third degree methods.
 - ❖ Release only through civil administration.
 - ❖ Provide medical care if required.

Certain legal issues relevant only in Kashmir are:

- All India cadre in magisterial hierarchy.
- IEA to permit “In Camera” trial of terrorists – avoid witnesses being subjected to reprisals.
- Law to facilitate detention for interrogation.
- Special courts to deal with human rights cases involving the army in addition to human rights courts presently functioning.

Generally, critics have a tendency to see the empty half of the glass and ignore that portion of the glass which is filled. The army has done so many good things in Kashmir, which have contributed to protection or promotion of human rights. But a few adverse cases reported spoil the impression. We have to ensure that the media does not get manipulated — that it does not do a cut and paste job to fabricate a story, maligning the SF: 30 seconds of the Baramulla incident, 10 seconds of the Sopore incidents, 05 seconds of the Kupwara incidents, 01 minute of the Anantnag incident are pasted together to

make a story. The national media is doing a sterling job. It is the vernacular media which needs to act responsibly. The SF must respond positively to well founded criticism, with willingness to change. Certain hard realities about the media as they exist in the Valley are as under:

- Problem of plenty - with little credibility.
- Source of finance controls the ethos.
- Schools of journalism headed by hardliners.
- Variety and frequency of events, vast area of reporting, dependence on stringers — truth becomes a casualty.
- Cable operators controlled by militant organisation or separatists.
- Lack of focus by State Information Department.
- Army's own PR set-up needs to be further revitalised/proactive.

The army has its own human rights cells active at each headquarters. It had established its Human Rights Cell at Integrated Headquarters of the Ministry of Defence (MoD) (Army) nearly six months prior to the setting up of the National Human Rights Commission.

Indian soldiers are natural lovers of peace and village culture, and respect elders and women. Yet 0.0001 per cent of the force deployed doing something opposed to the ethos cannot be ruled out and should be viewed as such without making a mountain out of a molehill. The Indian Army has issued detailed Dos and Don'ts apart from Chief of the Army Staff's ten commandments.

A decade and a half back, shops in J&K used to remain closed in the day time. Now they are open till late at night. The local youth getting recruited by the *tanzeems* has almost become a thing of the past. The winds of change are here and we are pretty close to normalcy. Today, the perception of the locals of a terrorist is of a cruel, monstrous exploiter who blocks development, whereas the army is seen as the harbinger of peace, prosperity and development. Certain public undercurrents are palpable. Some of these are as under:

- Yearning for peace.
- Urge for development and employment.
- Need to spread literacy.
- Communal harmony.
- Improve public distribution system.

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- Effective law and order.
- Eradicate corruption.
- Presence of army — harbingers of peace and development in close proximity.

Conclusion

Respect for basic human dignity should come naturally. We as a nation are proud of our heritage of tolerance, restraint and non-violence. Our armed forces, which epitomise sacrifice, valour, devotion and fair play, should set an example in respecting human rights and never misuse their special powers that should only be used selectively.