

The Indian Army and Human Rights

*“You are **not** there to fight the people in the area, but to protect them. You are fighting only those who threaten the people and who are a danger to the lives and properties of the people[1]”*. The Indian Army has always been committed to this Special Order of the Day issued by the Chief of the Army Staff (COAS) in 1955. For over 60 years, the Indian Army has participated in Counter Insurgency and Counter Terrorism (CI/CT) operations in different parts of the country including Punjab, Jammu and Kashmir and the Northeastern States. While functioning in civilian areas the forces encounter numerous complexities ranging from gruesome acts of violence carried out by militants and insurgents to unprecedented attacks by some unruly and violent crowd. In such circumstances, the Indian Army is under immense pressure to not only safeguard the territorial integrity of the nation but also to abide by their duty to protect the Human Rights of the innocent civilian population.

Irrespective of the difficult CI/CT environment, the Indian Security Forces follow the twin ethics of ‘minimum use of force’ and ‘good faith’ while conducting such operations[2]. In fact, all Indian Army personnel abide by the COAS Ten Commandments for Troops in Counter Insurgency which underscores the need to ‘Respect Human Rights’ and condemns ‘Rape’, ‘Molestation, and ‘Torture’[3]. Actions of soldiers deployed to fight insurgency and terrorism are regulated by three tenets. First, respecting the elders, women and children is of utmost importance. Second, any inconvenience to the public must always be avoided. Finally, since the cordon and search operations might cause inconvenience to the public, these must be conducted only where necessary.

This was reinforced by the Doctrine for Sub Conventional Operations 2006 which states that: *“Remember that the people you are dealing with are your own countrymen; your behaviour must be dictated by this single most consideration. The violation of Human Rights, therefore, must be avoided under all circumstances even at the cost of operational success. The operations must be people-friendly, and it must be ensured that minimum force is used and there are no collateral damages.[4]”* This basic principle in accordance with which the Indian Army operates in insurgency and terrorism hit areas is often ignored by certain sections of society in their bid to propagate false narratives and propaganda.

This is not to deny that the Indian Army personnel have never committed any Human Rights violation. Amidst the perilous circumstances that prevail in insurgency and terrorism affected areas, cases of soldiers having committed Human Rights violation have come to light. Such cases are however, addressed in a timely manner by both the military and the civilian judicial systems. The Indian Army has a strong and transparent mechanism to ensure that all soldiers function within the parameters of Human Rights. There is a Human Rights Cell at the Army Headquarters headed by a Major General rank officer and similar set up at the Command and Corps Headquarters headed by a Brigadier or Colonel rank officer respectively. Moreover, right from their training days, Human Rights is an essential part of the syllabi of the soldiers and the rules of engagement are people-friendly. In a CI/CT environment, soldiers are open to accusations of Human Rights violations, serious as well as frivolous, genuine as well as motivated[5]. But all cases involving accusations against the Indian Army personnel have been legally taken up at the appropriate levels and necessary action has been taken.

Human Rights of the Indian Army Personnel

Notwithstanding Indian Army’s commitment to protect Human Rights of civilians, different Human Rights Organisations have released numerous reports time and again on the Human Rights Record of the Indian

Army. Most parts of these reports are false and motivated, and some sections underline only the Human Rights concerns of the local population. What is of great concern is the manner in which these reports conveniently neglect and downgrade the Human Rights challenges encountered by the Indian Security Forces.

Forming the foundation of International Human Rights, the Right to Life has been guaranteed in India by Article 21 of the Indian Constitution. It extends equally to the Armed Forces of the country as much as it applies to the other citizens. Article 33 of the Constitution confers powers on the Parliament to modify the rights guaranteed by Part III (Fundamental Rights) while applying to men in the forces including the Army, Navy, Air Force, Paramilitary Forces and Intelligence Services. However, this extends only so far as necessary for maintaining discipline and ensuring proper discharge of duties by the armed forces personnel^[6]. In accordance with this, the Army Act 1950, Air Force Act 1950 and the Navy Act 1957 were promulgated. Though these legislations have regulated certain fundamental rights of the Indian Army, but none of the Army Act 1950, Army Rules 1954, Armed Forces Special Powers Act (1958 and 1990), or any other legislation in the country restricts an Indian Army personnel's right to life and self-preservation as guaranteed under Article 21 of the Indian Constitution.

Unfortunately, these rights of the Indian Soldiers is a neglected subject of discussion in the country. When *Lieutenant Ummer Fayaz, a 22-year-old officer of the Indian Army was home to attend a relative's wedding in the Shopian district, he was kidnapped, tortured and killed. Even in the year 1991, Lieutenant Colonel GS Bali was kidnapped and killed along with his cousin in Badgam where they had gone to attend a funeral*^[7]. None of the Human Rights Organisations and Activists condemned these attacks on the soldiers. Again, *"Sepoy Rajendra Singh was part of a Quick Reaction Team (QRT) which was providing security to a Border Roads Organisation (BRO) convoy on 25 September 2018. At around 1800 hours, when the convoy was passing through the Anantnag bypass tri-junction near NH-44, few youths hurled stones at the vehicle and Sepoy Rajendra was injured after being hit by a stone directly on the head*^[8]. *The concerned Indian Army Jawan later succumbed to his injuries at the hospital."* Cases like these fail to find mention in the reports released by the Human Rights Organisations.

This draws attention to the fact that when our soldiers in volatile CI/CT environment are indiscriminately attacked by terrorists, unruly protesters and stone pelters, causing casualties amongst the soldiers, these incidents do not amount to Human Rights violations for the so-called defenders of Human Rights. On the contrary, soldiers are accused of grave Human Rights violations when in such jeopardised environment they are left with no option but to open fire in self-defence. At a public event on 29 September 2019, the Union Home Minister rightly said that, "While 41,800 people have lost their lives in the decades-old militancy in Jammu and Kashmir, but no one has raised the issue of Human Rights violation of Jawans, their widows or the children who were orphaned" ^[9].

Conclusion

As a signatory to the Universal Declaration of Human Rights (UDHR), 1948, India accepts that 'recognition of the inherent dignity and the equal and inalienable rights to all members of the human family is the foundation of freedom, justice and peace in the world'^[10]. Hence, upholding the Human Rights of the Indian soldiers in CI/CT environment is a necessity both with respect to international declarations as well as national legislations. All CI/CT operations are conducted based on three principles- maximum restraint, minimum force and minimum collateral damage. Moreover, there exist strong legal mechanisms in the

country that address the allegations of Human Rights abuses by the Armed Forces personnel while on official duties.

However, the country lacks a similar mechanism that protects or deals with cases wherein the Human Rights and Fundamental Rights of an Indian soldier is violated. With a petition filed in the Supreme Court seeking the intervention of the Apex Court to protect the dignity and Human Right of the soldiers facing the stone pelters in Jammu and Kashmir^[11], one can hope that soon with the meaningful intervention of the Supreme Court, even the Human Rights of the Indian Soldiers will receive appropriate attention and will no longer be overlooked by certain sections of the society.

References

- [1] Vivek Chadha, "Indian Army's Approach to Counter Insurgency book", (IDSA: New Delhi, 2016), pp. 6.
- [2] K S Sheoran, *Human Rights and Armed Forces in Low-intensity Conflicts* (New Delhi: KW Publishers, 2010), pp.1.
- [3] Indian Army, COAS TEN COMMANDMENTS FOR TROOPS IN COUNTER INSURGENCY OPERATIONS. <https://indianarmy.nic.in/Site/FormTemplate/frmTemp1PTC2C.aspx?MnId=4mKbCUjNm76U9u2GsrQW1w==&ParentID=iQsgx4KwHeW7Ug/qalzbpQ==>
- [4] Headquarters Army Training Command, Doctrine for Sub Conventional Operations (Shimla, 2006). <http://indianstrategicknowledgeonline.com/web/doctrine%20sub%20conv%20w.pdf>
- [5] S G Vombatkere, 'Do Soldiers Have Human Right? Far-reaching Implications', *Countercurrents*, 5 July 2017. <https://countercurrents.org/2017/07/do-soldiers-have-human-right-far-reaching-implications>.
- [6] *Ram Swarup v. Union of India* (AIR 1965 SC 247). <https://indiankanoon.org/doc/234020/>
- [7] Prabhas K Dutta, 'Why Hizbul Mujahideen is rattled after murder of Army officer Ummer Fayaz', *India Today*, 13 May 2017. <https://www.indiatoday.in/india/story/ummeer-fayaz-indian-army-officer-hizbul-mujahideen-kashmir-976846-2017-05-13>
- [8] PTI, 'J&K: Army jawan injured in stone-pelting dies', *Times of India*, 26 October 2018. <https://timesofindia.indiatimes.com/india/army-jawan-injured-in-stone-pelting-dies/articleshow/66381176.cms>
- [9] PTI, 'No restrictions in Kashmir, only misinformation about it being spread, says Amit Shah', 29 September 2019. <https://theprint.in/india/no-restrictions-in-kashmir-only-misinformation-about-it-being-spread-says-amit-shah/298657/>
- [10] Malcolm N. Shaw, *International Law*, (New York: Cambridge University Press. 2008), pp. 265.
- [11] Samanwaya Rautray, 'Protect dignity, human rights of personnel facing stone pelters', 26 February 2019. <https://economictimes.indiatimes.com/news/politics-and-nation/protect-dignity-human-rights-of-personnel-facing-stone-pelters/articleshow/68164295.cms?from=mdr>