

NOREF Policy Brief

Capacity with responsibility: India's position on the protection of civilians

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Executive summary

Two of the major planks of India's approach to the issue of the protection of civilians are sovereign capacity and the carrying out of the responsibility to protect civilians. It seeks to combine the two by arguing that the enhancement of sovereign capacity is the prerequisite for the effective discharge of this responsibility. While capacity is necessary for carrying out such a responsibility, is it a sufficient condition for ensuring that civilians are properly protected in situations of conflict?

It is paradoxical that although India continues to be known as the world's largest democracy, it does not have a very impressive record of discharging

the responsibility to protect civilians. This may be explained by the fact that India has been successful in keeping insurgency and violence confined to a limited number of zones such that their effects do not spill over into the rest of the country, while the institutions of formal democracy survive in the rest of India.

Given India's sensitivity to the issue of sovereignty, the strengthening of the country's civil society institutions and popular movements is perhaps the only way to increase its willingness to carry out the responsibility to protect civilians.

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India's position on the issue of the protection of civilians is articulated through a body of statements issued and resolutions proposed by it in the United Nations (UN) and other international and global forums, in its Constitution, the law of the land, various investigative reports on incidents of violence conducted by official and statutory agencies (like the National Human Rights Commission in India), and the human rights practices developed over the years. Two of the statements made by India's permanent representatives to the UN on May 10th 2011 and June 25th 2012 aptly sum up what may be called the country's five-point agenda on civilian protection:

1. India harbours a deep commitment to peace. Being the largest contributor to UN peacekeeping forces, India claims to have gathered extensive and wide-ranging experience in this regard that remains hitherto unheeded by the international community.
2. India's rich experience prompts it to make a distinction between two distinct modes of making peace: intervention and negotiation. India critiques intervention as a mode insofar as it violates what it calls "the fundamental aspects" of the UN Charter, including the sovereignty and integrity of member states. Besides, it opens peacekeeping missions to the risk of being abused for political purposes and expediency (like regime change). In more positive terms, India maintains that the approach to peacekeeping must be anchored in the principle of national sovereignty.
3. From the above, national capacity needs to be strengthened so that a country can effectively tackle the security threats it faces while carrying out its responsibility of protecting civilians at the same time.
4. Negotiation as a mode recognises the paramount importance of an "inclusive approach" to conflict resolution, thus making room for the involvement of all warring parties and stakeholders.
5. Uniform standards need to be applied in peacekeeping. The international community must allow the free flow of information from all stakeholders and appreciate the importance of understanding the viewpoints of others.

In sum, two of the major planks of India's approach are sovereign capacity and responsible action. It seeks to combine the two by arguing that the enhancement of sovereign capacity is the prerequisite for the effective discharge of any responsibility.

Sovereign capacity

While India's position seems to have changed from the 1970s and 1980s, when it became directly involved in military operations in the then-East Pakistan and Sri Lanka, it is now reluctant to be involved in any direct military operation without a UN mandate. India refrained from any direct involvement in Sri Lanka's recently conducted military operation against Tamil militants, although it is reported to have generously contributed to the enhancement of its neighbour's capacity to effectively end the civil war even at the cost of massacring thousands of Tamil civilians.

Much in the same way, India is opposed to any form of intervention in what it considers as its "internal affairs" – its sovereign domain. For example, until very recently, it refused to allow even UN human rights agencies to visit Kashmir.

The dilemma of responsibility

While capacity is necessary for carrying out any responsibility, is it a sufficient condition for ensuring responsible action? In terms of the protection of civilians, the challenge is, what remedies should civilians have in case where such responsibilities and obligations are not fulfilled by a state?

Since colonial times, India has had a long history of obliterating the distinction between civilians and combatants, and in the post-independence period innocent civilians continue to be killed in "fake encounters". Most of the 19 people killed in Odisha on June 29th 2012 were officially claimed to be "Maoists", while newspaper reports describe them as innocent civilians who were forced to attend a meeting convened by Maoists.

The induction of civilians into ragtag armed groups reportedly sponsored by the state as part of its counter-insurgency measures has triggered off a national debate in India. The village defence

committees in Kashmir and special police officers (SPOs) in the Maoist-affected state of Chattisgarh are cited as examples of how civilians are armed – with the effect of militarising the entire society – how already existing inter-tribal differences are utilised while raising these groups, and how counter-insurgency operations are alleged to have taken on an ethnic and racist character. The Supreme Court of India in one of its landmark verdicts delivered in 2011 scrapped the order that enabled the deployment of SPOs in direct combat operations on the grounds that it violates the constitutional right to equality insofar as it exposes them *unequally* to the same risk that the regular security forces also face, while equipping them with old and outdated weapons, and paying them less.

The predominantly Naga-dominated *jawans* (troops) of the Indian Reserve Battalion were deployed in the violence-affected Dantewada area in Chattisgarh. The *jawans* were reported to have unleashed brutalities against the local people of tribal origin and acted “in complicity” with the government (of Chattisgarh)-raised Salwa Judum armed group in 2006. The Naga People's Movement for Human Rights described this as “a serious agenda to further divide the society”.

Non-state actors are equally infamous for transgressing the distinction between civilians and combatants. Extortion, abduction, the killing of schoolchildren and the employment of cheap migrant labour are only some of the means of violating the rights of civilians, particularly in Manipur. The indiscriminate killing of tourists by militants was rampant in the Kashmir Valley particularly between 1985 and 2006, although it has currently subsided.

Reports prepared by various human rights organisations show how the state-run armed groups are involved in vendetta killing by deliberately targeting the family and kinsmen of insurgents. The Saikia Commission instituted by the government of Assam unearthed the “secret killings” in the state during 1996-2001 by state forces with the help of surrendered rebels in order to exterminate the families of militants, while the Association of Parents of Disappeared Persons brought to light the alleged “disappearance” of children suspected of being “terrorists” in the Kashmir Valley.

The regrouping of villages first tried in India in the then-Mizo Hills during the period 1966-1972 provides yet another instance of how, as part of counter-insurgency tactics, civilians are evicted from their homes and relocated in order to keep them under constant surveillance. A form of village regrouping was recently tried in Tripura, where villagers were moved to areas near the camps of the Tripura State Rifles, with devastating humanitarian consequences.

India has a surprisingly large body of extraordinary legislation effectively ensuring the impunity of the security forces. No law of this kind has attracted so much public attention as the Armed Forces (Special Powers) Act of 1958. The Act authorises even a non-commissioned officer “to open fire or use force even to the causing of death” and provides that “no prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government”. Such examples not only efface the distinction between civilians and armed combatants, but are completely disproportionate to the violence they are supposed to address on the ground.

Counter-insurgency measures need to be taken with adequate precautions. The use of air power in counter-insurgency operations has been an issue particularly since the 1960s in the then-Mizo Hills. Very recently, the same debate has figured again over the question of whether the help of army helicopters during reconnaissance missions should be sought to assist operations against the Maoist insurgents in Odisha and Chattisgarh. The army, however, scotched the proposal on the grounds that such a partial use of air power would be ineffective. It in fact asks for the use of all necessary force while dealing with insurgents.

The paradox of democracy

It is paradoxical that India continues to be known as the world's largest democracy, but has a not-very-impressive record of discharging the responsibility to protect civilians. This may in part be explained by the fact that it has been successful in keeping insurgency and violence confined to a limited number of zones such that their effects do not spill over into the rest of the country. This may be the reason why formal

democracy with periodically held elections in a multiparty setting and such institutions as parliament, an independent judiciary, the rule of law and fundamental rights can survive without being seriously paralysed by the state's abdication of the responsibility to protect civilians in some parts of the country. It is impossible to call India undemocratic. The country can thus be likened to a huge truck with dozens of tyres that can still manage to function even when two or three of them are deflated.

In part, the protection issue often takes a back seat because of the headway India has already made in handling insurgency and violence. The first phase of insurgency is now over. In 2006 the total number of combatants killed was 742, as against the killing of 389 civilians, whereas in

2011 the number of combatants losing their lives was merely 133, as against 31 civilians. This only shows that there is a positive correlation between the rate of civilian casualties, on the one hand, and the incidence of insurgency and violence, on the other. The best way to protect civilians is to centrally address the roots of insurgency and violence in general instead of addressing the protection issue in a piecemeal manner. If their root causes remain unaddressed for long, insurgency and violence are bound to take a toll on civilians and civilian property. Given India's sensitivity to the issue of sovereignty, the strengthening of the country's civil society institutions and popular movements is perhaps the only way to ensure its willingness to carry out the responsibility to protect civilians.

