

পত্র-পত্রিকা

বছরখানেক ধরে র্যাভ ও 'ক্রসফায়ার' পত্র-পত্রিকার শিরোনাম দখল করে রেখেছে। 'র্যাভের ক্রসফায়ারে সন্ত্রাসীর মৃত্যু,' সরকারি প্রেসনোট, মন্ত্রী-উপমন্ত্রীর সন্তোষ প্রকাশ আর উৎফুল্ল জনতার ছবিসহ গা-হিম করা সব সংবাদ প্রতিবেদন কাগজ খুললেই চোখে পড়ে। এ পরিস্থিতিতে পাঠকও নিষ্ক্রিয় নন- চিঠি পত্রের কলামে পক্ষ-বিপক্ষের লড়াইয়ে शामिल হয়েছেন। এসব কিছুই বাইরে আমরা পত্রিকা থেকে আরেকটি কণ্ঠস্বর ধরার চেষ্টা করেছি। তা লেখক, বুদ্ধিজীবী, রাজনীতিকের। র্যাভের বিরুদ্ধে তাদের ভাবনার বিচিত্র সমাহার ঘটেছে এ অধ্যায়ে। এ থেকে পাঠক র্যাভ গঠনের আইনি ও হঠকারী দিকসহ বিচার-বহির্ভূত হত্যাকাণ্ডের ভয়াবহ পরিণতি সম্পর্কে সম্যক ধারণা লাভে সক্ষম হবেন।

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From RAT to RAB **What next?**

A M M Shawkat Ali

In the wake of continuing sliding down of the law and order situation, the government, during the past two years and half, has been experimenting with different options. This now appears to have taken almost final shape. Initially, finding a name for the new law-enforcing agency has been debated. It was first thought that it would be a Rapid Action Force (RAF) capable of moving to any place rapidly and take action as appropriate. Later, the name suggested was Rapid Action Team (RAT). It was supposed to act as a team consisting of such disparate elements as the army and the police. The police is a law-enforcing agency, army is not. The new law-enforcing force is Rapid Action Battalion (RAB). It is going to be a hybrid force consisting of the police and the army. In crop science, use of hybrid seeds is advocated to get high yield. But such seeds are not only costly but is also meant for one-shot use. This means financial burden for the farmers. The procedure for one-shot use of the army in combination with civil authority is already there which is discussed below.

Calling out the army in aid of civil power

Calling out the army in aid of civil power is an old tradition. It has its regulatory and administrative framework. This framework, overtime, following frequent military rule has been honoured more in breach than in observance. The Code of Criminal Procedure (CrPC) provides for the limits of legal authority for the armed forces personnel to disperse unlawful assembly (Section 131). It is lawful, when public security is manifestly endangered, for a commissioned officer of the Bangladesh Army, to disperse an unlawful and violent assembly by use of military force. Such intervention by an army officer is permissible only when it is not possible for him to communicate with the nearest magistrate. In such a situation, powers of arrest and confinement of members of an unlawful assembly for subsequent trial under the laws of the land, is available to an army officer.

However, the law also provides that if it is practicable for an army officer to communicate with a magistrate, he is bound to do so “and thenceforward obey the instructions of the magistrate as to whether he shall or shall not continue with such action”.

The requirement of obeying the instructions of the magistrate demonstrates the supremacy of civil and not the military authority. This salutary principle of law is perceived to be an indispensable element of democratic governance. Unfortunately, this principle remains a dead letter thanks to successive military governments. The democratic governments since 1991 also did not do anything to restore this principle.

The process of erosion of the principle of rule of law

The process of erosion started since 1958 when Ayub Khan took over the reins of government. In fact the process predates 1958. Borhanuddin Ahmed, a former home secretary, had keenly observed and recorded the process in his book “The Generals of Pakistan and Bangladesh”. He refers to many army operations in aid of civil power. Two of such operations are known as ‘Operation Jute’ and ‘Operation Close Door’. In post-1971 period, the specific names were ‘Operation Silver Lining’ in 1974 and the latest being ‘Operation Clean Heart’.

In 1977, the question of ‘under command’ in a situation of use of army for law and order was explained by a Major General, then Director General of BDR. In a conference of deputy commissioners at the home ministry, he explained that when forces from different sources are to be employed, every personnel constituting the team would have to be ‘under command’ of the army personnel. This was objected to by DCs. They referred to the administrative framework applicable in such cases, contained in the official booklet called ‘Army in Aid of Civil Power’ and CrPC.

In 1986, in a similar conference in the Cabinet Division, the Zonal Martial Law Administrators (ZMLAs) were proposed to be made responsible for law and order and everybody would be under the command of ZMLA in their respective jurisdictions. This was strongly objected to by the then Commissioner of Rajshahi Division. Abdul Mannan Siddiqui, then Home Minister, who presided over the conference suggested that final decision in this regard should be taken at the meeting the very same day to be presided over by the Chief Martial Law Administrator (CMLA).

The CMLA heard both sides of the story and decided that in view of the regulations contained in the Police Regulations of Bangladesh (PRB), the Commissioners of Divisions would be in overall command in respect of

law and order. When official instructions were sent, it was not the Commissioner but ZMLA who was given the authority for overall command and coordination of the activities of all law-enforcing agencies. Such was the process of erosion of values and respect for established laws of the land.

Indemnification

During ‘Operation Clean Heart’ there were some reported custodial deaths. The army personnel who took part in the operation, had to be indemnified. This was neither necessary nor desirable. The established law provides for such protection. Thus CrPC (Section 132) provides for the procedure for protection against prosecution for acts done in such cases. No prosecution is possible except with the sanction of the government. Such protection applies to a magistrate, a police officer and armed forces personnel.

Indemnification of any kind that seeks to protect any civil, police or military personnel for criminal acts even in course of discharging duty, is against the principle of rule of law. It permanently debars an aggrieved citizen to seek equal protection of law and the right to be treated in accordance with law. Viewed in this context, it amounts to a flagrant violation of human rights. It cannot be defended on any ground whatsoever, let alone on ground of maintaining law and order.

Trial of military offenders

Actuated by the respect for rule of law, the framers of CrPC provided the procedure for trial of military offenders (Section 549). The armed forces personnel are subject to the Army Act, the Navy Act and the Air Force Act. These Acts are primarily meant for preserving the discipline within the rank and file of the military. They are not meant to supplant the established laws applicable to all citizens irrespective of their status or station in life. It is for this reason that the relevant statute provides for the procedure for trial of military offenders by a Court Martial or an ordinary court. The procedure also refers to the rules to be made by the government in this regard setting out the cases or the class of cases, which should provide jurisdiction to a Court Martial or the court established under CrPC. Whenever a military offender is brought before a magistrate charged with an offence, the magistrate, consistent with the rules so framed, has to decide the jurisdictional competence of either the Court Martial or an ordinary court. In appropriate, but not in all cases, the magistrate is required to deliver the offender to the custody of the relevant Commanding Officer (CO) for trial by a Court Martial. He is further required to send to the CO a statement of the offence with which the military offender is charged.

Why a battalion?

The phrase battalion is based in the army to denote a formation or unit with specified number of personnel. It is meant for specific purposes within the army. The term is never used in civil administration. However, because of not too frequent martial laws, such terms have invaded civilian organisations. Thus we have the Armed Police Battalions raised during the mid-seventies and the Ansar Battalions constituted at about the same time. During Pakistan times and thereafter until the mid-seventies, the East Pakistan Rifles, the precursor of Bangladesh Rifles (BDR) used to be organised into what was known as Wing led by a Major and more than one Wing would constitute a Sector led by a Lt. Colonel. BDR units have since been renamed as battalions. The process is carried further now. We do not perhaps need battalions outside the precincts of the cantonment. The battalions in the cantonment can always be called should the circumstances so demand.

The implications of RAB

The highly deleterious impact that RAB will have on the principle of rule of law and fundamental rights have already been mentioned. It has also been mentioned that there are enough guidelines in the form of statutes as well as administrative instructions that set forth the Standing Operating Procedures (SOP) when army is called in aid of civil power. If these are followed in letter and spirit, nothing else is needed. There is enough protection granted under CrPC against prosecution of civil, police or military officials for acts done in good faith. No separate indemnification is necessary or desirable. RAB is more likely to erode the authority and chain of command of the existing police establishment than strengthen it. This may have a highly deleterious effect on the morale of the force, which is already sagging.

The newspaper reports (The Independent, February 20, 2004) affirm that the ‘Army men on RAB duty to be accountable to home ministry’. Indeed they should be so. The ministry probably is oblivious of the fact that they are subject (accountable) to Army Act and rules framed there under. That is why CrPC has appropriate provisions, which have been discussed. These provisions, which have stood the test of time, need not be overlooked. Some senior police officials had recently expressed apprehensions about inclusion of army officials in RAB (The Independent, February 27, 2004). The remedy lies not in raising one battalion after another at the cost of the taxpayers’ money, but in strict enforcement of the existing laws that are meant to protect citizens’ rights which probably cannot be ensured by turning Bangladesh into a ‘Battalion City’.

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