

## **Army on the Street: Will it serve the intended purpose?**

*By Barrister Harun ur Rashid*

*Former Bangladesh Ambassador to the UN, Geneva.*

It is noted either the President is empowered to call emergency under Article 141A of the Constitution or also he, in charge of the defence portfolio, is entitled to call out army for the reasons as he deemed fit.

The President has thought it fit to call the army to join ranks with other law enforcement agencies in "maintaining law and order " to ensure a fair election. On 10th December, the President reportedly stated in a nation-wide address that in the past the army had been called out in aid of the civil administration to curb terrorism, tackle disasters, control traffic, distribute VGF cards and manage water supply in the Dhaka city. This means that calling out army to assist the civil administration is not something extraordinary.

It is correct that army had been deployed in the past to assist and aid the civil administration and the decision to do that was entirely by the government led by the elected Prime Minister.

During the Care-taker government, the executive powers of the Republic of Bangladesh is exercised, not by the President, but by the Chief Adviser who shall act in accordance with the advice of the non-party care-taker government ( Article 58B.3). A distinction is to be made between the powers of the President and the Chief Adviser under the Constitution and it is important.

The distinction I again make is that the powers exercised by the elected Prime Minister are not the same as those of the un-elected Chief Adviser. The scope of exercising powers of the un-elected Chief Adviser is very limited compared with those of the elected Prime Minister.

The first question that arises in this connection is whether the decision to call out army is in his capacity as the President or as the Chief Adviser in charge of home affairs portfolio, among others.

I raise this issue because both the high offices are currently held by the same person and it is often confusing to people under which capacity he is exercising his powers as the President or the Chief Adviser.

It is widely reported in the media that it is routine for the home affairs ministry to call out the army in aid of the civil administration. Therefore it is reasonable to assume that the Chief Adviser who is in charge of the home affairs portfolio (among others) has decided to call out army.

The second question is that since the calling out of army on the streets is made out to be a decision of the Chief Adviser, not by the President, can the Chief Adviser do it alone disregarding the opinion of some of the Advisers?

This question essentially boils down to the issue as to the powers of the Chief Adviser of the Non-party Care-taker government under the terms of the Constitution which the

Chief Adviser is oath bound "to preserve, protect and defend the Constitution". The Non-party Care-taker government is interpreted as the Council of Advisers led by the Chief Adviser (first among the equals).

It has been reported that at least four Advisers do not consider that current situation in the country calls for army deployment. It is significant to note that one of the Advisers is the last Army Chief. On 11<sup>th</sup> December, these four Advisers have resigned from the care-taker government.

In the light of this background, many legal experts argue that the Chief Adviser alone cannot take decision such as the calling out the army disregarding the opinion of the Advisers, even though the Chief Adviser in this case happens to be in charge of home affairs. Such decision arguably contravenes the provision of the working of the Non-party Care-taker government under the Constitution.

It is noted that in terms of the Constitution, the Non-party Care-taker government is collectively responsible to the President (Article 58B 2.)

In the past often it has been the experience that the President did not endorse some of the proposed actions of the Chief Adviser. In such a situation, the Chief Adviser together with Advisers had no unfettered power to take decisions.

For instance in 2001, the Chief Adviser after the approval of the Council of Advisers wanted to amend the Criminal Penal Code (Amendment) Ordinance but the President did not agree. Since both the high offices are occupied by the same person, there appears to be no second opinion on any proposed action. In other words the checks and balances contemplated in the Constitution between the President and the Chief Adviser has disappeared.

The third question is related to the purpose of calling out the army on the streets in a situation that has produced mixed reaction among the public and civil society.

Many perceive that army should not be called out in situation where the political parties are in confrontation in their attitudes and views as to how to ensure a fair, free and credible election. Mass civil and peaceful demonstrations are often carried out against any unpopular decision or commission or omission of the government and they are the legitimate methods of democratic society.

Calling out army on the streets is not a light matter. There must be considerable justifiable reasons for doing so. There should not be differing views on deployment of army. If their presence becomes controversial, the personnel of the army may likely to lose their morale in carrying out their duty.

Many argue that there could be four, among others, implications arising out of the deployment of army in a situation where some core issues need to be resolved by the care-taker government in consultation with political parties to create an environment of free, fair and credible election.

*First*, the army is to defend the sovereignty and territorial integrity of the country. The army has been essentially trained to fight with an enemy and its training is

inherently poised to fight wars and brutality in wars is commonplace. That is why people fear army. They are not trained to maintain law and order.

*Second*, history provides ample examples when army is called by authorities to suppress public protest and demonstrations, army personnel may not be able to handle the situation and the purpose for which they are deployed becomes counter-productive. The personnel of army carry lethal weapons and if there is a confrontation between a group of demonstrators and army, the consequences may go totally out of control and unimaginable.

*Third*, most public fear army personnel for a very limited time but if they become a part of normal scenario for some weeks, public do not any more fear them. This is psychological because as public closely know the army personnel, public treats them as one of them. This works reciprocally in that army personnel often appreciate their grievances and reasons of their protests.

*Fourth and finally*, Article 21 (2) of the Constitution provides that "every person in the service of the Republic has a duty to strive at all times to serve the people." The phrase "service of the Republic" includes any service whether in a civil or military capacity (Article 152 of the Constitution). Many argue that any suppressive action by the army against a group of demonstrators is purported to contravene Article 21, that is "to serve the people at all times."

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