

Military Assisting Police During Crowd Dispersal Duties: Addressing the Gray Area of Sri Lankan Pragmatism

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Abstract— Military and Police forces are established in every state with the prime objective of preserving state and internal security respectively. Moreover, in some occasions Military assist Police in order to uphold peace and order of the state. Thus it is evident that though the theoretical aspects and procedures of Military Corporation with Police during crowd dispersal duties succeed to a certain extent, there are many grey areas which are required to be addressed when both corporate together in practical scenarios because the two establishments are diverse in nature. This was evident during the recent Rathupaswala incident, too. The research problem of this study is to reveal the right time to call for military assistance rather than pre-mature calls, the challenges faced by joint task duties of both organizations due to diverse commanding orders, various terms and cultures being used in military compared with Police and most importantly the responsibility and liability for the actions during military assisting Police in crowd dispersal duties. Also the hypothesis of this study is that if the joint task duties are clearly stated rather than separately, both establishments will be able to overcome these practical challenges. The objective of this study is to introduce new means and methods for joint task duties in crowd dispersing when Police is aided by military and also to educate both Police and military personnel in combination rather than to maintain separate procedures forces-wise. Ultimately these reforms are to be introduced to the defence strategies, in order to inculcate professionalism of both Police and military personnel for national development in order to overcome many challenges in the future.

Keywords— Military assisting Police, Crowd Dispersal Duties

I. BACKGROUND TO THE STUDY

Military assisting Police is a very rare occasion. Though Police force executes their powers in order to foster peace and to maintain law & order in the civil society,

Military will be engaged with civil society only during the utmost urgency or serious calamity, which Police force cannot surmount on their own steam - such as riots.

Since this study deals with Crowd Dispersal Duties, this will mainly focus on the subject of Military assisting Police during crowd dispersal duties. According to Collins English Dictionary, crowd dispersal or crowd control duty means “the management of crowds at sporting events, demonstrations, etc. to prevent trouble”. Thus in this research it would not focus on the general interpretation provided by Collins dictionary, but will be specified to most tempting touchstones of the crowd dispersal duties namely, the most harsh stage of demonstrations called as ‘riots’.

II. CONCEPTUAL FRAMEWORK

In Sri Lankan pragmatism, crowd dispersal duties are mainly two fold, as Police Crowd Dispersal Duties and Military Crowd Dispersal duties. The research design of this paper will be first to address these two forms of crowd dispersal duties. Then to spotlight on the prevailing joint duties of organizations, drawbacks and later the recommendations of the new proposed structure..

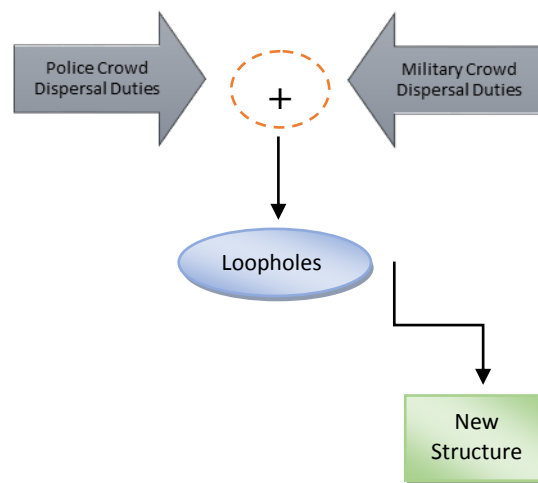


Figure 1: Conceptual Framework
Source: Author's original construction

III. POLICE CROWD DISPERSAL DUTIES

Police crowd dispersal duties are laid down in the Department Orders 19A and Code of Criminal Procedure No 15 of 1979. In both these documents crowd dispersal duties have been addressed under 'Unlawful Assembly'. According Section 95 (1) of the Code of Criminal Procedure, any Magistrate or a Police officer not below the rank of IP (Inspector) may command any unlawful assembly likely to cause a disturbance of peace to disperse. Also, Section 95 (2) describes the procedures to the use of Military force to disperse an unlawful assembly when Police is unable to do so.

Moreover, moving on to the Police Riot Drill mentioned in the Department Orders 19A, it includes several steps such as follows: Preparatory, doubling & extending, standing load, object, firing, changing direction and finally cease-fire. Before performing the riot drill it is expected and surely a must to convey a warning order to the rioters.

IV. MILITARY CROWD DISPERSAL DUTIES

The word 'Military' connotes three forces of Army, Navy and Air Force. This has been further clarified with the usage of interpretation in Section 95 (3). Thus in the practical scenario of Sri Lanka it is commonly believed that only the SL Army assists Police force during crowd dispersal duties. Therefore, this study will be confined to research mainly on Sri Lanka Army Crowd Dispersal Duties.

Section 95 (2) describes that if upon being commanded any such assembly does not disperse then the Magistrate or the Police officer may proceed to disperse using such force as is reasonably necessary. Moreover, Section 95 (3) explains the use of military force to disperse an assembly when called upon by a Magistrate or the Government Agent (GA) of the District or any Police officer not below the rank of Superintendent of Police (SP) may cause it to be dispersed by requiring any commissioned or non-commissioned officer in command of any personnel of the Sri Lanka Army, Navy or Air Force.

Military crowd dispersal duties in Sri Lanka are executed in line with the British Pamphlet. Accordingly, the aim of the pamphlet is to give guidance on the tactics and techniques to be used by military forces when called upon by civil authorities for support in dealing with:

- (a) Civil disobedience, unlawful assemblies and riots
- (b) Armed terrorist activities in the urban areas

In comparison with the objectives of Police crowd dispersal duties, the nature of the military duties inherits

a wider scope than Police, because Police duties have mainly focussed only to unlawful assemblies.

IV. MILITARY ASSISTING POLICE DURING CROWD DISPERSAL DUTIES

Under practical circumstances, the most crucial experiences were explicit regarding this topic during the recent Rathupasawala incident.

This incident was with regard to a factory situated at Rathupaswala, Weliveriya in Gampaha district, where the residents of the area accused the factory being responsible for ground water pollution in the area due to the irresponsible disposal of waste water. Police had fired tear gas and water cannon at the protesters in an attempt to force them off the new Colombo-Kandy road, which they had been blocking, causing traffic disruptions.

Also, the Army has been summoned in order to control the situation. Three civilians died during the protest and 10 others were hospitalized following clashes between protesters and members of the security forces and police.

In fact, the Police can summon security forces in order to assist the Police to dissolve the protesters by Section 95 and 96 of code of Criminal Procedure. Moreover, on July 3rd 2013, Ex-President Mahinda Rajapaksha published a gazette that authorized the armed forces (Army, Navy, and the Air Force operating in every area of Sri Lanka) to engage in "the maintenance of public order". Bringing the military to Rathupaswala took place under this new gazette notification from 3rd July 2013. Also, he announced a new ministry under the title "the Ministry of Law and Order" in the aftermath of the said incident.

It is crucial to point out that the maintenance of law and order within the legal framework of Sri Lanka is the function of the police, and the task of the armed forces is rather to defend the country against broader national security threats. The new developments as a result of the Rathupaswala incident have virtually reduced the function of the police, while the mandate of the security forces has broadened to include the maintenance of law and order- which was the primary duty of the Police department.

The functions of the police and the functions of the military are completely different. The police, in carrying out their functions, have to do everything on the basis of the statute law in the country, and their duty is directly under the control of the judiciary. There is an unbreakable link between the magistrate and the police which brings everything to centre around the courts. But when the armed forces enter into the maintenance of

law and order, their framework of reference is not the law but the commands of their superiors. When the military enters into the maintenance of law and order, the jurisdiction of the magistrate and the courts is undermined. The military operating in the streets do neither have to report their actions to the courts; nor are they obliged to take directions from the magistrate at each & every step that they take.

What this means is that in Sri Lanka now, the law and the courts have lost the authority that they were empowered with, under the normal administration of law and justice.

V. DISCUSSION

Issues arise in pragmatism with the simple question of whether Police is aware of the Military tasks and vice versa.

Military said to use the principle of 'minimum force', whereas in Police it is expected to use 'necessary force'. These simple wordings carry a heavy gravity which is enough to spread a gray area in tasks that are expected to be performed.

Major loophole in both Police and Military crowd dispersal duties is that there remain only the crowd dispersal duties of the organization itself, whereas no combined or joint duties are mentioned at all.

Thus most importantly, British Pamphlet of Military crowd dispersal duties emphasize that when performing such duties the local laws of the state must be considered simultaneously with the British Pamphlet. Thus in the practical setting it is seen that Military is confined only to the British pamphlet in which less concern is paid to the national legislations. This was also revealed as a loophole in this sphere.

Furthermore, British pamphlet signifies in Section 3 of the Land Operations, Volume II- Part 2 that the military forces and Police must be considered as one security force operating jointly to a previously rehearsed deployment plan. This phrase is open for argument. Because the issues arise today in the civil society could hardly be predicted and moreover occur during a short period at which military must assist Police as soon as possible during which no time to rehearse will be applicable as mentioned in the pamphlet.

In depth, on the other hand, under Military crowd dispersal duties it is mentioned in that when military took over the duty of crowd dispersing, then Police has to withdraw thus only the senior Police officer has to remain

with the military commander of the duty. Thus in the pragmatism, this peculiarity is not reliable. Even during the recent incident of Rathupaswala, it was revealed that Police was not withdrawn. Therefore, a new form of legal framework is essential when military is assisting Police during crowd dispersal duties. This would enhance the inculcation of professionalism in both Military and Police officers. Moreover, as per Section 110 when military commander takes over, the Police is withdrawn reserve, in which Police can then :

- (a) Follow up quickly with a baton charge after the troops have opened fire
- (b) Cover the troops rear by blocking side streets
- (c) Make arrests.

Here, the wording of 'follow up quickly with a baton charge' emphasizes that when Military takes over, Police must not use weapons other than batons to disperse the crowd.

When comparing the aforesaid theoretical aspect with the practical scenario, it is clear that the lack of a joint dissemination process of both organizations has led them to being unaware of certain aspects of Military British pamphlet .

Another major drawback that occurs when military is called to assist Police the reckless forecasting of ideal time to call military for assistance. Pre-mature callings have led the whole process to disorder. American military slang for such an event is JAPFU – Joint army police foul up. This was amply evident during Rathupaswala incident too.

Next most pressing issue is the responsibility of the officers to verify if any damage to life or property occurred during crowd dispersal duties. It is apparent by the Section 97 (1) of the Code of Criminal Procedure that a prosecution shall not be instituted against any Magistrate, Government Agent, Police officer or personnel of Sri Lanka Army, Navy or Air Force or any person assisting Police officers in the dispersal of an assembly under this chapter if such act is performed in good faith or if a member of the Sri Lanka Army, Navy or Air Force committed any act in obedience to any order which is under military law he was bound to obey, shall not be liable in civil or criminal proceedings for any act purported to be committed under this Chapter.

On the other hand, according to Section 102(b) of the British pamphlet emphasizes that 'Marksmen should be used to provide fire. Steps must be taken to conceal the identity of the firer so that the reprisals cannot later be taken against him'. As per the views of the researchers

this section is open for debate, because this implies an excessive usage of power by Military. It may be accepted in the sake of military principle to conceal the marksman. But this section apparently embarks an issue with the civil or criminal liability. Though as per Section 97(1) of the Code of Criminal procedure if the fire was an legal act then marksman will not be liable but if the firing was an illegal act then the Section 102 (b) has made a legal obligation even to conceal the wrong doer too. Therefore, this section ultimately cause to *ultra vires* of the granted legal domain to marksmen.

Also since the joint duties of both organizations are not properly structured, Police department has now formulated 'Police Riot Squad' under the supervision of the Field headquarters. The initial objective of this was to fulfil the expected requirement mentioned in Section 95 (3) of the code of Criminal Procedure, that is military to assist Police to disperse the unlawful assembly.

VI. RECOMMENDATIONS

In the sphere of recommendations, considering all the above described loopholes in the legal framework of military assisting Police during crowd dispersal duties two proposals can be made out. First is not to seek assistance from military and to further take necessary action to disperse the unlawful assembly solely by Police or vice versa. Second is to make required amendments to the British Pamphlet and Police riot drill, and recommend military assistance to Police.

Even in the British Pamphlet it is recognized under the Section 118 that the use of mixed Police and Military parties in dispersing a riot should be avoided if possible due to following reasons;

- The way in which orders are issued to their men by military and Police commanders is different.
- Troops and Police may use different parlance / jargon
- Drills may vary

All these reasons are genuine and acceptable. Therefore, recommending the first option is somewhat ideal. This is more supported with the establishment of the Police riot squad too.

On the other hand, in order to strengthen the legal aspect of Military assisting Police during crowd dispersal duties, it is recommended to draft a new legal notion with suitable combination duties of both organizations of Military and Police Crowd Dispersal Duties.

(The New Structure is in the process of drafting)

The most updated legal notification with regard to military assisting Police is declared by Inspector General of Police (IGP) in May 2015, that when Police is seeking the assistance of Military, Police should act in accordance with the Section 95 (3) of the Code of Criminal Procedure No 15 of 1979 and Department orders (DO) 19A of unlawful assembly and furthermore with regard to DO A18 of riots. (CRTM)

VII. CONCLUSION

It was repeatedly appreciated in this paper that there remain major differences of the crowd dispersal duties in pragmatism of both organizations - Military and Police. Therefore, in order to surmount this challenge it is recommended to draft a new legal notion of combined tasks of Military and Police crowd dispersal duties

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