

Delegation of Powers to the Armed Forces in a Time Warp

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The substance of the inquiry report prepared by the Director General of Military operations on the functioning of the Technical Support Division (TSD) – a Military Intelligence (MI) unit – set up by a former Army Chief, as reported in the press¹, is as follows: A secret unit was set up without the knowledge or specific approval of the Ministry of Defence (MoD)/Cabinet Committee on Security (CCS), the unit undertook activities that went beyond the MI's mandate, and there was widespread misuse of powers given to the unit.

Going by this press report, MoD has instructed the Army HQ that its permission will need to be taken before changing the structure or role of the units in future. This could easily be interpreted to mean that there are no existing instructions on such vital issues. But such an impression would be wrong. Indeed, there is a large scale delegation of administrative and financial powers to various functionaries in the Services down to the unit level. There are several instructions/orders (government letters, to use the MoD parlance) that lay down what the Services can do on their own and what they cannot under the powers delegated to them. Why then, one may ask, the need arose for MoD to instruct the Army HQ that henceforth permission would need to be taken to alter the structure or the role of a unit? There are three reasons for this.

One, the government letters delegating the administrative powers are more than a decade old. The financial powers were last reviewed in 2006. Much has changed since then both in terms of what needs to be delegated as well as the manner in which the delegated powers should be exercised. For example, there were no dedicated Integrated Financial Advisors with the Service HQ when the administrative powers were last delegated. Now each Service HQ has at least a Principal Integrated Financial Advisor – an officer of the level of Additional Secretary to the Government of India. More administrative powers can easily be delegated to the Service HQ with the stipulation that those which have financial implication will be exercised with the concurrence of these advisors. Similarly, the financial powers delegated to the Services in 2006 have become grossly inadequate because of inflation and change in the exchange rate in the intervening period.

Two, the scheme of delegation of administrative and financial powers has become anachronistic. There are problems relating to interpretation of some of the provisions of the government letters and new areas of decision-making have emerged which call for delegation of powers. To illustrate: the Naval Officers heading the dockyards, though responsible for meeting the targets, do not have full financial powers to buy whatever is needed to meet those targets. Thus, the authority vested in them is not commensurate with their responsibility. A somewhat archaic notion of splitting of financial

¹ 'Any new unit needs our OK: MoD to Army', the Indian Express, New Delhi, December 26, 2013

powers continues to pervade the scheme of financial delegation, resulting in frequent tussle between the financial advisors and the executive officers over its interpretation. A simple provision that the funds allotted to an authority may be spent in any manner required, as long as the requirement is managed within the allotted funds, could solve this problem. As an added measure, exercise of financial powers could be linked with measurable outcomes.

Interpretation of provisions is a big issue. There is a schedule in the government letters issued in 2006 delegating financial powers to the services which gives 'full' powers to the specified functionaries to 'sign contracts', which is in conflict with provisions in other schedules that limit the extent of delegation of financial powers for different purposes. There are similar problems with the administrative powers. The press reports suggest that there was an interpretation issue even in the case of TSD. The authority to set up the unit seems to have been derived by interpreting the operational directives of the Defence Minister to mean that the Army HQ was within its jurisdiction to do whatever it takes to follow those directives.

The National Disaster Management Policy envisages an important primary role for the armed forces in disaster management but there is no delegation of powers to the authorities to spend money to deal with disasters.

These are but a few examples of what is wrong with the existing delegation of administrative and financial powers to the services. It is also not as if the MoD is unaware of these problems. In fact, it was decided way back in 2009 to review the administrative and financial powers of the services and the Coast Guard. A committee was set up to undertake the task. Based on the recommendations of this committee, revised financial powers in respect of the Coast Guard were notified in July 2010.

The recommendations of the same committee as regards revised financial powers of the services was approved in December 2010 but then a handbrake was applied and those powers were not notified, ostensibly on the grounds that there had been misuse of the financial powers in the past and further delegation would only exacerbate this misuse. A comprehensive audit of the exercise of delegate powers was ordered. The report submitted by the Defence Accounts Department created a storm in the tea cup with the matter even figuring in a parliament question in April 2013².

Detailed examination of the report, based on the response from the Services, does not seem to have substantiated the view that there had been a large scale misuse of the delegated powers. With the issue coming up repeatedly in the Commanders' conferences, the need to review the delegation of financial powers must be weighing heavy on the minds of the MoD officials. And while some positive development on this front seems imminent, a few problems would continue to hinder such reviews in future, unless these are taken note of and resolved by the MOD.

The biggest problem is the lack of clarity on who in MoD is responsible for undertaking such reviews on regular intervals? Is it the Department of Defence or the Finance Division? Secondly, such reviews are time consuming and require tremendous patience. The MoD officials, busy as they are with their regular assignments, have little time for such occasional exercises. Thirdly, there has to be absolute

² Parliament Question No 4570 answered in the Lok Sabha on 22.04.2013., accessible at <http://164.100.47.132/LssNew/psearch/QResult15.aspx?qref=139126>, last accessed on 26.12.2013

clarity about the nature and extent of powers being delegated. The terms and conditions for exercise of the delegated powers must be clearly spelt out. Fourthly, the scope of delegation should be expanded to cover such activities as disaster management. Fourthly, the administrative and financial powers must be reviewed in tandem because of their linkages. Fifthly, there has to be an effective system of concurrent audit of sanctions issued under the delegated powers and a mechanism to take follow-up action.

So mammoth was the job that the committee set up in 2009, which took more than a year to give its report on delegation of financial powers, could not complete the review of the administrative powers. But the committee did highlight the importance of reviewing the administrative powers. There are activities such as disbandment and reorganization of units which stand delegated to services as per the existing orders. The ambiguity surrounding those powers lends itself to varying interpretations, as appears to have happened in the case of TSD. Therefore, the sooner this task is undertaken the better it would be.

There is no inherent virtue in delegation of powers but there are areas in which absence of delegation, or inadequate delegation, could hamper smooth functioning of the armed forces. The MOD should continue to deal with 5 to 10 per cent of the routine cases so that the officials remain in touch with the ground realities which will stand them in good stead when they take policy decisions. But concentration of power beyond that could keep the MoD officials perpetually bogged down by routine matters, leaving no time for sustained brainstorming on larger policy issues.

Views expressed are of the author and do not necessarily reflect the views of the IDSA or of the Government of India.