

Insight into Governance from the Arrest that did not happen

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The story that the editor of the Sunday Leader was to be arrested on account of that paper's reportage on the proposed construction of a presidential bunker and the subsequent reportage that presidential intervention ensured that the arrest did not take place, provides an insight into governance and the Rule of Law in Sri Lanka which could well continue into 2007. That such a bunker will not now be built, has also been reported.

The details of the incident are well known. The immediate backdrop to it is the promulgation of new emergency regulations effectively reactivating the Prevention of Terrorism Act – regulations which the government assured were formulated to deal with terrorism and would not be used to stifle freedom of expression. However, in the wake of the incident the government has stated that the media and media persons are by no means immune from the effects of these regulations. The original Sunday Leader report was cleared with the authorities with special reference to these regulations.

The dangers arising from the over breadth and lack of clarity of the regulations have been highlighted on previous occasions along with concerns arising from the composition of the appeals procedure and its negation of the doctrine of the separation of powers. The regulations in short, irrespective of government clarifications and/or assurances, have a chilling effect on the freedom of expression. The incident re the editor of the Sunday Leader only confirms this. It is also instructive in terms of how freedom of expression can be defended in these increasingly trying and testing times.

Whatever cynics and detractors may aver, the public show of support and solidarity for the Sunday Leader editor, must have had a considerable if not decisive bearing on the decision not to go ahead with the arrest. The entire incident was politically damaging for the government, sections of which have been at pains to demonstrate the sincerity of its human rights credentials and commitment in trying and testing times, partly of its own making. Whilst few may have the courage and chutzpah of the Sunday Leader editor, the morale of the story is that if one is going to report critically on what passes for governance in the country, one should be aware of the dangers and be prepared to make as big a noise, and if necessary, as big a stink about it, locally and internationally. This is the only insurance policy one may have.

The critical issue though, highlighted by this incident, is with regard to the decision making process in the country and the extent to which the president is aware of what is going on, especially when it comes to the taking of decisions that could be politically damaging to his government. From what has been reported it appears to be the case that the Defence Secretary acted impulsively and impetuously, in a manner that showed either no awareness and knowledge of, or scant regard for the norms and procedures befitting the decision making process in a functioning democracy. The tendency towards ham

fisted action, towards “acting first and thinking thereafter” could be a serious problem for this government if it is not addressed by it, as a serious challenge to it. “ Lets see what we can get away with” cannot be allowed to become the standard operating procedure of decision making in government, if this government is to live up to its pretensions of being the government of a functioning democracy.

What is the decision making process in the Rajapakse government and amongst the Rajapakse siblings who effectively run it, by virtue of the pivotal positions they occupy within it ? At which point did the president get to know about what his brother was purportedly trying to do and with serious damage to the democratic credentials of his government ? Would it be grossly unfair to say that this lends credence to the charge of a “good cop/bad cop” routine at the heart of the decision making process of government ?

As we move into a year of further military offensives, hosannas of praise for military victory by some and for some, further internal displacement and misery for others and the likelihood of elections for us all, the judicious balancing of the considerations of national security with the overarching considerations of democracy, the freedom of expression and dissent become crucial. Elections in particular, are the basic mechanism for choice and change in a functioning democracy and fundamental to this is information. The people need to know what is going on and why if they are to make intelligent and informed choices.

The Rajapakse administration must get its act together on the decision making front and with regard to its stewardship of our democracy, its protection and advancement. The year ahead is bound to throw up many more challenges and tests to its capacity and aptitude for democratic governance.

There is a lot of learning and unlearning to do in 2007.