



LAW reform

Bangladesh Police: Existing problems and some reform proposals

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In common parlance cops and robbers are a conceptual couple - cops always to chase the robbers. This was not the case until relatively recently. Criminology has shed light, for most of its history, on the robbers and miscreants; cops and other components of criminal justice system were outside its jurisdiction. The "classical school" was concerned with the establishment of a reasonable and efficient criminal justice system. In the late eighteenth and early nineteenth centuries "science of police" was flourished as a branch of political economy. This branch took into consideration the problem of crime and disorder and considered how to develop appropriate policies to prevent and control it. "Police" in this sense is much broader and is used to mean a whole system of governing a society by economic, social, political and cultural policy. The police in our contemporary sense are seen as a small part of the whole of domestic government and an important agency of criminal justice system.

Here I want to focus the problems of Bangladesh Police and how to come out of the situation. Good law and order situation presupposes the establishment of a professional police force. An environment should be created where police will serve the purpose of the people. Their primary concern will be crime control and maintenance of social order.

Recently people are more conscious than ever about the role of police in ensuring law and order. A number of former police officials, columnists, advocates, judges and human rights activists are putting their valuable views in different newspapers about the problems of police and setting forth their recommendations to reform the police. This positive trend, I hope, will usher in a path where we shall get a professional and institutional police.

Police of the Indian sub-continent took institutional shape after the mutiny of 1857. The British rulers were bewildered at the widespread mutiny all over India. After controlling the mutiny they thought to reorganise the police of Indian sub-continent and appointed a Police Commission in 1860. In accordance with the recommendations of the Police Commission the Police Act, 1861 was passed. The organisation of police was established according to the provisions of this Act, which continues to regulate the police functions still today in Bangladesh. Immediately after

establishing the police, British rulers realised that they had created a Frankenstein. Later on successive enquiries found the police incompetent, high-handed and corrupt. In 1902 the Fraser Commission clearly told that, the police system established by the British rulers had completely failed. It recorded that, "Everywhere they went, the Commission heard the most bitter complaints against the corruption of the police. These complaints were not made by non-officials only, but also officials of all classes including Magistrates and police officers, both European and native."

The structure, within which the police of Bangladesh are working, was established by the British rulers. At that time police was low salaried, little educated, corrupt and they had no accountability. At the end of nineteenth century, movement against British government became widespread. They got a readymade force, police, at their disposal to suppress the rightful movement of this sub-continent. After the emergence of Bangladesh, government kept the previous structure of police. Some initiatives were taken to reform it, but no government implemented the reform proposals. The incumbents did not do anything for establishing a professional police force in this country. The whole government machinery is well aware of the corruption, manipulation, illegal arrest, torture and other malpractices of police. In spite of that they are working with this deviated force. It has become a usual practice that opposition parties criticise the activities of police, but when they go to power they defend the same police force and utilise the force for narrow party purpose as usual.

Police force in Bangladesh is beset with many problems. First, the structure of police was established by the British rulers and the laws regulating the activities of the police were enacted by the same ruling elite. Both the structure and laws require extensive review. Our police owes its creation to the Police Act, 1861, principal purpose of which was to maintain the status quo. The Act puts major emphasis on maintenance of order. Rather than focusing on the professional aspect of crime control, the Act overemphasises the constabulary functions of the police. We require a new Police Act, which will focus on professional aspect of crime control and clearly define police role and responsibility. The new Act needs to ensure police professionalism, accountability and modern police management, the proper functioning of which seeks to improve human security and access to justice. It should

provide the basis for establishing police as a public-friendly service-oriented organisation, which will be monitored by police-public consultative committees.

Second, the police of lower echelon constitute majority of police force. But they, particularly the constables, Nayeks and low ranking police officers, do not possess substantial educational and intellectual attainments. Their treatment and exposure to the general people is very arrogant and frightening.

Third, because of lack of proper training and motivation, police do not know that they are the servants of the Republic, which requires its people to be served properly. Members of police force are busy with serving the government officers and party in power, rather than acting in a service-delivery system. Proper training will make them aware about their role of establishing rule of law. As members of an important agency of state and criminal justice system, they are under lawful compulsion to provide proper service to all types of people of the society.

Fourth, salary given to the police officers and constables is insufficient. Police officers and constables work 13-18 hours a day, which is almost double than the working hours of the government employees of other professions. On an average officer in charge of a metropolitan police station works 18 hours a day, an officer in charge of district and thana level works 15 hours. In all the police stations Sub-Inspectors, Assistant Sub-Inspectors and constables work 13-16 hours a day. But their salary is not sufficient to their serving 13-18 hours a day, as professional service requires sufficient monetary support. The salary structure of police is like that of other government employees, they do not get any remuneration for extra work. (Working Paper on Police Stations, Transparency International Bangladesh, March 4, 2004.)

Fifth, police is always confronted with the problem of inadequate logistic support. On an average 5-6 police staff sit in each room of a police station. In most of the police stations there is no room for conference or meeting. Police stations of districts and thanas have no prison van, metropolitan police stations though have prison vans, but those are old and obsolete. Malkhanas of metropolitan and district police stations are narrow and unhygienic, while police stations of thanas have no malkhana. The toilet facilities of police stations are insufficient. Police require sufficient number of vehicles for arresting criminals, but

most of the police stations do not have sufficient number of cars, and the available cars are old. The police stations are not provided with necessary furniture. Police require modern and light arms for expected crime control, but 45.5 percent arms in the metropolitan police stations are Chinese shot guns, 78.6 percent arms in the police stations of districts are three-not-three rifles, in thana police stations this is 95.5 percent (Ibid.). Criminals are using modern arms like Chinese rifle, AK-47 rifle, SMG, LMG etc., whereas our police is equipped with such weapons, which are difficult to carry and manoeuvre.

Sixth, police is the only state agency to investigate criminal cases, the outcome of which may be a charge-sheet for the prosecution or final report for release of the accused. This reality places police in an advantageous situation which they can manipulate and they do it extensively for their personal gain. There is no authority to monitor the investigating activities of police. In the absence of a supervising authority police officers easily include or delete names from the charge-sheet, or give final report where charge-sheet should be given, or vice-versa.

Seventh, police officers do not get sufficient time for controlling crime and investigating criminal cases. On an average every Sub-Inspector of district police stations, has to investigate 7.5 cases in a month, and Sub-Inspector of thana police stations four cases. They do these investigating activities in addition to other duties, hence police officers remain reluctant to take up new cases. Metropolitan police spend 40.6 percent time of a month for maintaining law and order, 32.7 percent for ensuring the security of VIPs, and 18.4 percent for works relating to criminal cases. Police officers of districts and thanas take half of the time of a month for securing the VIPs. (Ibid.)

Eighth, government uses the police as a branch of its political organisation and suppresses often the rightful activities of opposition political parties. Extensive political use of police force hinders the development of professionalism, as a result less qualified and dishonest police officers are placed in important positions, and the people remain deprived of the service of honest and sincere police officers. Because of excessive political use, police has no chain of command.

Ninth, police organisation of Bangladesh suffers from insufficient accountability, both internal and external. Internal accountability can enhance competence, and prevent corruption, whereas exter-

nal accountability can ensure people-oriented service. Law prescribes the mode and manner how the police officers will dispose of their duties, but there is insufficient departmental mechanism, and no neutral body of the state to scrutinise whether the police officers are doing their duties properly. It creates widespread human sufferings, and violation of citizens' rights.

Police unrest and reform of police

Brutality and corruption are not the recent phenomenon of the police force of this region, rather the available history witnesses the reality from the Mughal period. Police has been practicing torture from the very beginning. In 1813 a Committee of the British Parliament commented on the police brutality that police was appointed to save the villagers from the robbers, but they so brutally tortured the villagers which was no less than that of the robbers. (Janakantha, Fortnightly, 7-21 July, 2000). After the creation of new police force in 1861, the British rulers understood that they had created a Frankenstein. In 1869 they took initiative to reform the police, but it failed to bring any good result. In 1902 the Fraser Commission was appointed and it found the police high-handed, incompetent and corrupt. After 1947 the police force of East Pakistan continued to function under the structure and rules established by the British rulers.

In 1948 the East Pakistan police were agitating in Dhaka. In this context a six-member Commission was formed to reform the police, with Justice Sahabuddin as the President. This Commission gave their report in 1953, but it was not implemented. In this context another police unrest took place in 1955. Later on a Police Commission was formed in 1959, and another in 1969, but recommendations of none was implemented. After the establishment of Bangladesh a Police Commission was constituted in 1978. Another Commission was formed in 1986 with Toiabuddin Ahmed, then Additional Inspector General of Police, in the chair. Government accepted partially the reports of these two Commissions for implementation. In 1988 a Police Commission was formed under the leadership of Justice Aminur Rashid, and government partially implemented the recommendations of this Commission.

Nine Police Commissions were formed to reform the police from 1960 to 1989. But successive governments did not take concrete measures to implement the recommendations, only some recommenda-



tions were implemented partially. In the absence of any effective reform police is still identified as oppressive, perpetrator, corrupt and abuser.

Transparency International has several times identified police department as the most corrupt among all the departments of the government. On February 4, 2002 the Comptroller and Auditor General of Bangladesh submitted a report, which revealed that during the last seven years officials of 24 ministries took huge amount of bribe. In monetary terms it was 15 thousand crore taka. During the said period the officers and staff of police took bribe to the tune of 2066 crore taka. In a survey report of Transparency International, police department and lower judiciary have been identified as the most corrupt service organisations; 83 and 75 percent citizens fall victim of corruption respectively when coming to get service from these departments. (Bhorer Kagaj, December 21, 2002.)

We need to establish an Independent Anti-Corruption Commission, like ICAC (Independent Commission Against Corruption) of Hong Kong, to combat all pervasive corruption of Bangladesh including the corruption of police. In 1973 ICAC of Hong Kong was established to investigate

the corruption of a police officer. Then the Commission declared its crusade against corruption and successfully rooted out corruption from Hong Kong. Following the example of Hong Kong, many countries have established Independent Anti-Corruption Commission to address the vice. But a Commission like one established by the present government of Bangladesh will have no utility in addressing the menace.

If we want to establish a professional police organisation, which will effectively control crime and give service to the common people, we need to enact a new Police Act and establish a Public Safety Commission or a Security Commission. Muhammad Nurul Huda, a former Secretary and IGP put forward the recommendations. (The Daily Star, July 29, 2006). The Act overemphasised the constabulary functions of the police against the professional aspect of crime control. Maintaining the legacy of British and Pakistani regimes, the police of Bangladesh remain busy with suppressing and persecuting the opposition. Because of excessive political use, the police of Bangladesh failed to develop professionalism.

The present Police Act should be replaced by a new one, which should determine the responsibility

and accountability of police. The Act should establish effective police management and promote professionalism in the department. We may establish a Public Safety Commission or a Security Commission, which should "i) lay down broad guidelines for preventive and service-oriented functions by the police; ii) evaluate the performance of the police every year; iii) function as a forum of appeal to dispose representations from officers regarding their being subjected to illegal orders and regarding their promotions; iv) generally review the functioning of police force."

Concluding remarks: Enacting new law and establishing Public Safety Commission do not suffice to develop an efficient, accountable and professional police organisation. Inevitably we should enact new law and establish some commission, but at the same time it requires a political goodwill, both the government and opposition need to be committed for establishing an apolitical police organisation, which will control crime professionally and serve the people as an organisation of the democratic republic of Bangladesh.

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LAW update

RIGHT TO INFORMATION

Road to good governance

DR BELAL HUSAIN JOY

ON 28th September, 2006, Bangladesh, for the first time ever, has observed the International Right to Information Day. Professionals like lawyers, teachers, journalists and the civil society activists emphasised the need for creating mass awareness, explaining the necessity of right to information, and demanded immediate enactment of the proposed Right to Information Act.

What is right to information? To me 'right to information means ensuring empowering the people, strengthening democracy, enforcing rule of law curbing corruption and alleviating poverty through establishment of transparency and accountability in the civil administration of the country, with full dedication to good governance'.

What information are we talking about? According to Oxford Thesaurus, information includes data, facts, knowledge, intelligence, news, notice, word, advice, counsel, instruction, enlightenment, tidings, message, report, communication

etc. And are we looking for all of them? If not, at least, the information related to the effective administration and good governance of the state, are desperately needed to justify the 'Right to Information'.

To be more specific, we the citizens of the country at present, would be more interested to know about the personal details and antecedents of the candidates nominated for parliamentary and local elections by various political parties; We need to know their sources of income; we need to know the amount of money they spend in the elections; we need to know their election investment and earning ratio; we need to know the sources of income of the political parties; we need to know what sort of discretionary power the bureaucrats and all other public servants hold. We need to know, how do the bureaucrats exercise their discretion? We need to know, how do the civil servants deliver the required services to the citizens? And many others.

If we have those and all other information at hand when we need, then we can take appropriate cor-



rective measures in right time, in right place in connection with right persons and authorities. Then we will have no problem in holding free and fair election, curbing corruption, alleviating poverty, establishing transparency and accountability and maintaining law and order. And these are the main reasons why, we, the citizens, must have the right to information as a law.

What does our Constitution say about right to information? In Bangladesh Constitution there is no provision which directly addresses this right to information. However, Article 39 provides guarantee for freedom of thought, conscience, speech and press. But the text of Article 39(2) in fact limits if not fully restricts such right of the citizens saying, "subject to any reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence".

In India, The President of India signed the bill -- the right to infor-

mation -- on 15th June, 2005, which was passed in the parliament on December 22, 2004. This law was also passed as a result of a momentous movement led by the civil society and the media of that country. (Contextual report in Prothom Alo, 30-8-2006). In Nepal, the Constitution was promulgated in the year 1991 following a huge democratic movement throughout the whole country. Article 16 of the constitution states: "Every citizen shall have the right to demand and receive information on any matter of public importance...."

In Pakistan, the government promulgated a Freedom of Information Ordinance (No. XCVI of 2002) on October 27, 2002. The ordinance is seen as more restrictive than empowering, limiting the right to information of ordinary citizens of the country. (Pakistan: Access to information, Journalists Beyond Frontiers, Dhaka, SAFMA, November 10-11, 2005). In Sri Lanka, in regard to right to information, the constitutional provisions are neither clear nor absolute.

Here in Bangladesh, the Law Commission has prepared a draft working paper titled "Right to Information Act 2002" but no initiative has yet been taken for the enactment of this law. Not having a copy of the same readily in hand, we the citizens simply demand a clear and balanced law of Right to Information without restricting and/or limiting our rights in any way, giving all due allowances to the national security and foreign policy of the country. Bangladesh is a signatory to the Universal Declaration of Human Rights 1948, in which under Article 19, the right to information has been recognised. This right also symbolises Article 19(2) of the International Convention of Civil and Political Rights, 1966.

At the dawn of the Third Millennium, information technology is empowering the individuals globally. Increased citizens' awareness through technological advances shall no longer let the people be held in subjugation in dictatorial or semi-dictatorial governance, like we have been in

Bangladesh. Such dictators do need to control information to maintain control over the people, restricting access to information, limiting knowledge and also by not defining clearly the Right to Information, since knowledge is power. But it will not work even in Bangladesh; use of global television channels, mobiles, e-mail, Internet will simply curb the power of dictatorial governments.

The people's ignorance of their right to information calls for a vigorous campaign for raising their awareness. Movement for right to information is a movement for effective parliament, with the objective of strengthening the democratic process to establish good governance through enforcement of Rule of Law, Transparency, Accountability and United Nations' Convention against Corruption. Because right to information will enhance people's knowledge, and knowledge is power.

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