

**LAW** opinion



**FACT** file

# The criminal justice system and our police in a changing environment

MUHAMMAD NURUL HUDA

THE foremost duty of the state is to ensure security thereby ensuring the protection of the individual's dignity and total development. These two functions devolve on the police force also. The traditional police functions have undergone considerable change in a democratic polity. Ours is a democratic society in which people may participate in the policy formulation and implementation at all levels of political and administrative system. The politico-administrative system is accountable to the people. The effectiveness of the administrative system in a democracy lies in its intimate relationship with the people. The police being one of the most significant component of the criminal justice system and an important segment of the overall administrative setup is no exception to the foregoing reality. However, a police system conceived and grown in a colonial ecology and planted in a developmental, democratic and prismatic environment finds it difficult to obtain and secure a close cooperation of the people for discharging its functions and fulfilling the expected role efficiently. It is necessary make an effort to understand the twin concepts of criminal justice and environment so that the role perception of the police system in the changing environment, challenges emanating from the systemic stress and strains can be identified and as such viable response may be formulated.

**Objectives of criminal justice system**

The objective of the criminal justice system is to control arbitrariness and guarantee equal status to all citizens, promote sense of security, ensure rights of victims and the accused, motivate the public to participate in the crime prevention process etc. It is needed to protect social values and procedurally ensure fair play and justice to all. The criminal justice system can be a barometer of civilisation in a society, an indicator of the operational patterns of "due process model" against the "enforcement model". It is intricately related to the legislative, executive and adjudication systems. Police is a limb of the executive system, the judiciary or adjudicate system which takes its energy from legislative system. Out of this, police plays a very significant role in the criminal justice system. Before analysing the role and functions of police it might be relevant to understand the concept of the system broadly in the context of the criminal justice system as all branches of criminal justice work for a common goal.

The criminal justice system operates in socio-economic, political and developmental environment in which a community lives. The social systems and conventions, legal and constitutional provisions try to keep the society in equilibrium. However, the environmental pressures, stress and strains, change and dynamism often incite an individual or group to violate the customs and convention, rules and regulations, laws and constitutional provisions. The violation of law results in law and order situation in which crime and criminals thrive. In such a situation, the aspirations of the community is the maintenance of peace and prevention and detection of crime. The police, courts, prosecution and correction are the four arms of the criminal justice administration to fulfil the aspirations of the people.

**Role of police in criminal justice system**

The police is the initial arm of the system mentioned hereinbefore. If violation of law is input and reduced crime in society is the output, then all the four arms of criminal justice are processes on whose efficiency the success of criminal justice depends. The input is what that system deals with, process is how the system deals with and the output represents the result of the process. The output of judicial system may be societal success with crime and the output of correctional sub-system could be the corrected offender. One has to identify the linkage of the police system with the other sub-systems of the criminal justice system. The functions of police are largely enforcement of laws and maintenance of order and investigation of crime, detection of criminals, arrest, collection of evidence and getting conviction. On the preventive front the police is to keep strict surveillance on juvenile delinquents and enforce the preventive laws. This may be understood as per the following frame:

In the above context if the process is not earnestly followed the conviction and the beneficiaries down the line have to suffer in terms of payment of high interests for loans which, otherwise, could have been brought down. There is no doubt that considerable justification exists for down-sizing and rationalising the administrative cost of the NGOs so that beneficiaries of their programmes stand to benefit more.



tion in the background of liberal, legal and judicial system is not possible. This will, therefore, contribute to a growth in the volume of crime and might tantamount to ineffectiveness of the system wherein the process would appear unsuccessful in converting the input in desirable output or translate

**Environment:** Population Growth, Poverty, Economic Development, Organised Groups and Pressures

(Input)	(Process)	(Output)
Incidence of Crime	1. Correct Recording of the case 2. Investigation (Collection of evidence) 3. Arrest 4. Detention/Release (Bail)	Conviction of the criminal

constitutional values into realities. The constitutional value depicts general spirit of service to people specially weaker sections, women and children, handicapped, serving the people in natural calamity and functioning as per rule of law and due process of law. Whether and how our police system can successfully achieve all these values in the larger context of criminal justice system demands a serious review.

**The drawbacks**

Our police system as part of the overall administrative system functions in an environment consisting of all the human and non-human phenomenon that exist within a polity, meaning in our case the national political system. The social configuration, cultural ethos, economic exercises, political processes and psychological compulsions all form the part of the environment. Their actions and interactions not only create but transform the overall

existing environment and as such the demands of the people. In our context the environment has undergone significant transformation and as in most countries of the world the development activities have not succeeded in stalling the upward swing in crime, as evidenced in the crime statistics. Serious crimes have not, however, registered an alarming increase as some quarters would like to impress upon.

**The need for reform**

The environmental change in post 1971 period has made the law and order and crime scene very complex. Group tensions, increased number of unemployed youth, industrial unrest, inadequately planned urbanisation etc. have enhanced the crime figures. Economic crimes like adulteration, counterfeiting, drug trafficking, hoarding, black marketing have increased. There is, thus, a need of a skilled, expert and a talented police organisation which can reduce the rate, volume and fear of crime. Each sub-system of the criminal justice system should function in unison for a common goal. The police has a primary role in the criminal justice system. The process of police system demands close thinking and reforms without being oblivious of the reality that timely and right registration of the case, a dedicated investigation and effective prosecution will hopefully lead to the conviction of the criminal.

The norms for checking the efficiency of the police could be as under

- 4 Whether a sense of security prevails in the community.
- 4 Whether people are willing to cooperate and participate in the programmes meant for the prevention of crime.
- 4 Whether police registers FIR promptly and officer visit the scene of incident and conducts proper investigation.
- 4 Whether law and order is being maintained with people's cooperation.
- 4 Whether there is a feeling of service in police personnel towards woman, children and handicapped.
- 4 Whether police renders service to the people during natural calamities.

**Concluding remarks**

It is desirable that police personnel together with other sub-systems of the criminal justice system make serious effort for converting the input into desirable output mentioned hereinbefore, while sustaining the criminal justice system. The state should update the Police Act to suit democratic values and culture and equip the organisation with most modern gadgets. The police should be guided in becoming effectively accountable to the real sovereign - the people.

Muhammad Nurul Huda is former Secretary of Bangladesh Government and former IG of police.

## Tale of the child soldiers in Burma

HUMAN RIGHTS WATCH

"Burma has a poor human rights record, but its record on child soldiers is the worst in the world," said Jo Becker, advocacy director of the Children's Rights Division at Human Rights Watch.

Burma's army has doubled in size since 1988, and with an estimated 350,000 soldiers is now one of the largest armies in Southeast Asia. According to the accounts of former soldiers interviewed by Human Rights Watch, 20 percent or more of its active duty soldiers may be children under the age of 18.

The 220-page report, "My Gun was as Tall as Me: Child Soldiers in Burma," is the most comprehensive study of child soldiers in Burma to date. Drawing on interviews with more than three dozen current and former child soldiers, the report examines child recruitment by 19 different armed opposition groups in addition to Burma's national army.

Recruiters for Burma's army frequently apprehend boys at train and bus stations, markets and other public places, threatening them with jail if they refuse to join the army. The boys are given no opportunity to contact their families, and are sent to camps where they undergo weapons training, are routinely beaten, and brutally punished if they try to escape. Human Rights Watch received several accounts of boys who were beaten to death after trying to run away.

Once deployed, boys as young as 12 engage in combat against opposition groups, and are forced to commit human rights abuses against civilians, including rounding up villagers for forced labor, burning villages, and carrying out executions. Human Rights Watch interviewed two boys, ages 13 and 15 at the time, who belonged to units that massacred a group of 15 women and children in Shan State in early 2001.

"Burma's army preys on children, using threats, intimidation and often violence to force young boys to become soldiers," said Becker. "To be a boy in Burma today means facing the constant risk of being picked up off the street, forced to commit atrocities against villagers, and never seeing your family again."

Human Rights Watch noted that there is no way to precisely estimate the number of children in Burma's army, but it appears that the vast majority of new recruits are forcibly conscripted, and there may be as



many as 70,000 soldiers under the age of 18.

Children are also present in Burma's myriad armed opposition groups, although child recruitment is generally decreasing as many opposition groups have shrunk in size and resources in recent years. The United Wa State Army, the largest of the opposition forces, forcibly conscripts children and has the largest number of child soldiers of the opposition groups. The Kachin Independence Army also forcibly recruits children, and according to witnesses interviewed by Human Rights Watch, is the only armed group in Burma to recruit girls.

Other opposition forces, including the Shan State Army (South), Karen National Liberation Army and the Karenni Army, have stated policies against recruiting children under the age of 18, but appear to accept children who actively seek to join their forces. Although many armed opposition groups have ceasefire agreements with the government, children in opposition forces may also participate in combat, sometimes with little training.

"The international community has increasingly recognised the use of child soldiers as unacceptable," said Becker. "Burma's armed forces and groups must immediately stop recruiting children, and demobilise all children in their ranks."

International law prohibits government forces or armed groups from recruiting children under the age of fifteen. Such recruitment has been recognised as a war crime under the statute for the International Criminal Court. In 2000, the United Nations General Assembly adopted an optional protocol to the Convention on the Rights of the Child that raised the minimum age for participation in armed conflict to 18, and prohibits all forced recruitment of children below age 18. Burma is a party to the Convention on the Rights of the Child, but has not yet signed and ratified the optional protocol.

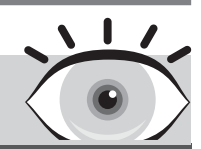
The International Labour Organisation convention on the worst forms of child labour, adopted in 1999, also recognises the forced recruitment of children under age 18 for use in armed conflict as one of the worst forms of child labour.

Human Rights Watch called on Burma's army and all armed opposition groups to immediately end all recruitment of children under the age of 18, and to demobilise all children currently serving as soldiers. It urged the government and armed groups to cooperate with international agencies such as UNICEF to reunify former child soldiers with their families and facilitate their rehabilitation and social reintegration.

Human Rights Watch also appealed to other governments to strongly condemn the recruitment and use of child soldiers by the Burma government and other armed groups, and to use diplomatic and other appropriate means to end the use of child soldiers in Burma.

Human Rights Watch is a US based human rights body.

**LAW** vision



## NGOs in Bangladesh

# A critical analysis of the work process

SAIYID MUSHARRAF HUSSAIN

IT will not be an exaggeration to say that Bangladesh is awash with NGOs but whether or not it is a positive or a negative phenomenon has to be seen in the perspective of their contributions towards people's welfare.

**Assessment of NGOs**

Since early days of independence NGOs have been emerging in the development scene at a rather fast rate in the context of a hard reality that Government machinery has proved inadequate to meet the fast growing problems to meet the fast growing problems of a newly created country. Most of the early entrants were established to cope with relief matters and many of them turned later into organisations principally to deal with poverty reduction tasks. The most important mechanism adopted for poverty reduction is the micro-credit programme. Enthused by the success achieved by some of the pioneering NGOs in this field more and more NGOs grew up as credit delivery institutions. The operating strategies varied from one NGO to another but not to a considerable degree.

Some NGOs were set up not with a particular vision or goal but tailored to suit the needs for taking a ride with donors' hand-holding. Assessment of NGOs that has been carried out from time to time at Government or non-Government or donors' initiatives, shows that there are some cases where NGOs were created just to hook business that unfolded its prospect within the framework of a donor assisted project. Many of these NGOs have closed down their establishment or have turned into moribund institutions after the projects have come to a close. A good number of NGOs registered with NGO Affairs Bureau are inactive either because their honeymoon days with the donors are over or they are still unable but trying to enlist donor's co-operation. In the context of these experiences there are policy makers and development thinkers who hold the view that it is not all well with the NGOs and some of the optimism expressed about them in the donors' circle seems considerably misplaced. One phenomenon that is emerging, on the other hand, is that bilateral donors do not favourably view the NGOs who started with allegiance to one donor but now have acquired multifaceted interest in assistance from a variety of sources. This may not be altogether unjustifiable: one particular NGO following different strategies dictated by different donors, some of which may be conflicting at times, may be bogged down in a quagmire of complications. Thus what we see on the ground is a scenario that is not altogether positive about the performance of NGOs and one may draw the conclusion that many of them are not delivering the goods as efficiently as originally thought.

**Issues to be addressed**

Two particular issues have recently emerged that have led to the view that the operations of NGOs need to be brought within a framework of a harder discipline. One, there are NGOs who have demonstrated inclination towards political views, ideologies or even participated in politically



biased activities. Two, NGOs are gradually veering towards commercially oriented activities thus deviating from their primary objectives. NGOs have gained popularity by demonstrating their ability to address the tasks set for themselves, mainly to address poverty alleviation. Some of these successes have, however, stimulated the idea of opening NGOs though lacking in both expertise and logistics, not to speak of commitment. Some of the organisations have become so bureaucratized with a highly costly administrative apparatus that they are assuming the same characteristics of the Government for which the Government has been criticised, such as, cost inefficiency, over-sized bureaucracy, lack of accountability, transparency etc. The result is that the programmes they execute are highly expen-

sive and the beneficiaries down the line have to suffer in terms of payment of high interests for loans which, otherwise, could have been brought down. There is no doubt that considerable justification exists for down-sizing and rationalising the administrative cost of the NGOs so that beneficiaries of their programmes stand to benefit more.

**Actions needed**

Government deserves appreciation for constituting the Task Force on NGOs which has submitted its recommendations. The implementation of these recommendations will greatly contribute towards bringing greater discipline to the operations of NGOs in Bangladesh thereby enhancing their efficiency. Many more issues than those covered by the Task Force need to be addressed, for which it is felt that an NGO reform commission may be constituted by the Government. The composition of the commission should be broad-based including representatives from government, non-government and local government institutions, donors, civil society, women groups, professional groups etc. The whole gamut of issues may be addressed by the Commission and recommendations submitted for implementation. Before going into implementation, a parliamentary discussion may take place.

**Concluding remarks**

NGOs should be looked at not as green pastures for acquiring power, authority and money but truly as institutions for serving interests of the targeted people. Proliferation of NGOs indiscriminately should be discouraged and moribund institutions de-registered. Greater degree of transparency, accountability and qualitative rather than quantitative programmes should be encouraged. For all this what is needed is a set of reforms for which an NGO Reform Commission is recommended to serve as a platform for consultation to bring about a more healthy environment for NGO operations in Bangladesh.

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