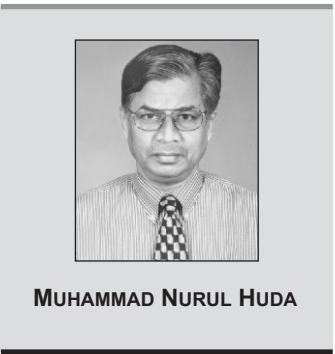


Changing mindset : Why only police?



MUHAMMAD NURUL HUDA

WHILE it may not be far from truth to say that the public servants of Bangladesh do not perform their assigned functions in a salutary manner thereby rarely deserving plaudits from the population, they are indeed privileged to be periodically showered with high quality moral prescriptions dished out by politicians of all descriptions that has to be followed to serve the public. Amongst such public servants the members of police service figure disproportionately high on the frequency of listening side. It is in the background of such a reality that one may refer to the very timely and erudite speech of the Honourable Prime Minister, who while laying the foundation stone of the new headquarters of Dhaka Metropolitan Police on 14th June last impressed upon the prime necessity of changing the mindset of police personnel in order to equip themselves as true public servants under the changed socio-economic conditions.

Discerning observers and cynics are of the considered view that it is high time our society directed its attention towards the paramount need of changing the mindset of the people in authority, in particular, the political masters. For they are the policy makers and the public servants including the police are operatives. We are confident that the Honourable Prime Minister definitely wants our police in democracy to be a provider of service to the community, and not a force to subdue and subjugate people.

Organisational identity and mindset

Our politicians know very well that policing in Bangladesh has been by and large a one-sided affair; with communities having little or no say in local policing plans and strategies that affect them most. The idea that police are people and people are police has not taken root in our

STRAIGHT LINE

We need to develop a self-respecting trim police force which is apolitical and professional in its outlook. Let us slow down the recruitment of inappropriate manpower in order to reach a stage in future where we will have the benefit of fuller and socially desirable policing. Policing has been less than a respectable profession in our environment for well-known but less appreciated reasons. Let us make a modest beginning to reverse the process. Are politicians listening?

country. Our politicians including legislators know very well that the Police Act of 1861, the mother police law, is silent on the issue of community consultation. This law focused on the responsibility of communities to ensure order and should any member step out of line, the whole community would face vicarious punishment. The situation persists to this day.

Therefore, one may very logically ask as to why the politician-legislator is not demonstrably concerned about the necessary amendment in this law to facilitate organisational and operational changes entailing meaningful public-friendly ramifications? Is it not necessary to witness a change in the mindset of the politicians of our country to usher in a modern, progressive and forward-looking police service in line with the enlightened system elsewhere? Whose interests do we serve by remaining bogged down in an archaic Police Act?

The politician's mind has to appreciate that the Police Act 1861 was principally aimed to administer a static, immobile and backward rural society living in villages and small towns. It envisaged exercise of authority without local accountability. It presupposed a society without any constitution, basic and fundamental rights, organised public opinion and mass-media projecting and agitating the public interest. Therefore, we, including the legislator-politician have to change our feudal and colonial mindset as we ask our policemen to be imbued with a service mentality. The need, therefore, is to initiate informed debates and ultimately succeed in enacting suitable act as has been done in a neighbouring country.

Statutory change in the sub-continent

In Pakistan, at least conceptually, the police order of 2002 has a pre-

amble which reads as follows:

"To reconstruct and regulate the police;

Whereas the police has an obligation and duty to function according to the constitution, law and democratic aspirations of the people;

And whereas it is expedient to redefine the police role, its duties and responsibilities;

And whereas it is necessary to reconstruct the police for efficient prevention and detection of crime, and maintenance of public order".

As far as the all important change of mindset is concerned, we can take a cue from Pakistan because whereas the Police Act of 1861 vested the undefined open-ended 'superintendence' of police in the hands of the political executive, the police order 2002 restricts the power of superintendence to ensuring that the police perform its duties efficiently and strictly in accordance with law. The police order 2002 seeks to replace the ruler-driven police with a community-based police through the institutional mechanism of public safety commissions at national, provincial and district levels. These statutory bodies with wide ranging oversight powers for the first time in Pakistan give representation to the opposition parties and members of civil society, including one-third reserved seats for women. Indeed, this arrangement is a major step toward fostering credible police accountability, gender-sensitive policing and operational neutrality of police.

One would definitely agree that the actual taking of such steps by politicians would really change our colonial and feudal mindset as we expect our police personnel to change their mindset.

Mindset and political interference

The police order 2002 of Pakistan has ventured to deal with the vexed

issue of political interference in the internal administration of police. It is well-known that the leverage of causing transfer vested in the political executive lower the morale of upright officers and affects the discipline of the service. To counter it the Pakistan police order of 2002 not only lays down a fixed tenure of three years for key police appointments but also requires the authorities to record grounds of premature transfer for independent scrutiny by the relevant public safety commission. Can we in Bangladesh adopt similar measures for a change in the mindset, to start with?

Myopic postures and political aberrations

A clear understanding of the dividing line between state and government/party interests is one of the fundamental requirements of a democracy. Such realisation assumed heightened significance in polities that have been subjected to colonial rule for a long time. A people's republic ought to be different from the governance culture of dictatorship or the colonial administration and the same must be a manifest reality to emulate and to draw lesson from. Unfortunately, however, our feudal mindset has not changed although feudalism is a relic of the past. It is such mindset that demands personalised and partisan attention from the services of the republic and would not let institutions grow to support and sustain our not-very-adult and mature democracy.

Our politicians betray a pathetic lack of appreciation of the imperative that the foundation of a civilised society depends upon the effective and impartial working of some corrective institutions, prominent among which is the public service. They appear to be perilously oblivious to the reality that the regulatory outfit of police must be demonstrably impartial to ensure public confidence in the governance ability of

the ruling class. The ruling parties in their misplaced exuberance forget that the police was the dominant visible symbol of repressive imperial alien power and that decolonisation requires large-scale behavioural and attitudinal changes of the political masters and the public servants belonging to this vital organ of the state. Thus while admonitions from the pulpit come in plenty for rational behaviour on the part of enforcement officials, in reality, unhealthy pressures are regularly exerted to carry out the wishes of the ruling coterie in the most expeditious manner. It is the continuance of such regressive mentality that has brought us to the present lamentable scenario wherein the police outfit has been described a lackey of the political government. Nothing could be more sad and frustrating than that.

The image crisis and mindset

There are credible fears that the

police image in Bangladesh will suffer a grave damage if politicisation continues unabated. We already have the unfortunate spectacle of a police service in whose investigative fairness the major opposition political parties and a sizable section of the civil society entertain grave doubt. Criminal cases relating to victims of diabolical and dismal murders that are considered as acts of political vendetta are not investigated properly, according to the versions of complainants and relations. There are persistently vociferous demands to arrange for proper investigation of sensational cases by external agencies including international organisation. Without doubt, such appeals and petitioning indicate the deep distrust of the impartiality of the state's investigative apparatus. No sensible citizen would feel at ease in such an unsettling environment.

It must be appreciated very clearly that the regulatory functions of the state like maintenance and preservation of public order and investigation of criminal cases can not be arrogated to private bodies. These functions cannot be performed through contractual arrangements either. Only persons with solemnly sworn loyalty to the state who have been examined, selected and verified in a constitutional process are expected to conscientiously perform the onerous responsibilities without profit

motive. If this is accepted as an article of faith and conviction then a serious and sincere attempt should be made to recruit the best type of young persons at grassroots and intermediary levels of the police organisation and train them appropriately. Police officials at these levels come into contact with the common man. Recruitments at this layer, therefore, may be entrusted to a very broad-based committee as against the existing departmental arrangements.

Lack of sensitisation

Our politicians have failed to sensitise our policemen in correctly understanding the rising expectations and aspirations of the people which result from the enunciation of national goals in the political sphere. Our policemen are not made to understand that any gap between the promise of constitutional ideal and the reality leads to strains and tensions which are mobilised for the 'politics of agitation'. There is still not adequate appreciation that the resultant politicisation of the masses and the development among them of a greater awareness of their rights and methods of achievement intensify the ferment and lead to confrontations with authority. Thus our policemen often come into conflict with the forces generated by the political system which they are intended not only to serve but also to preserve. This delicacy and complexity is not adequately understood and impressed

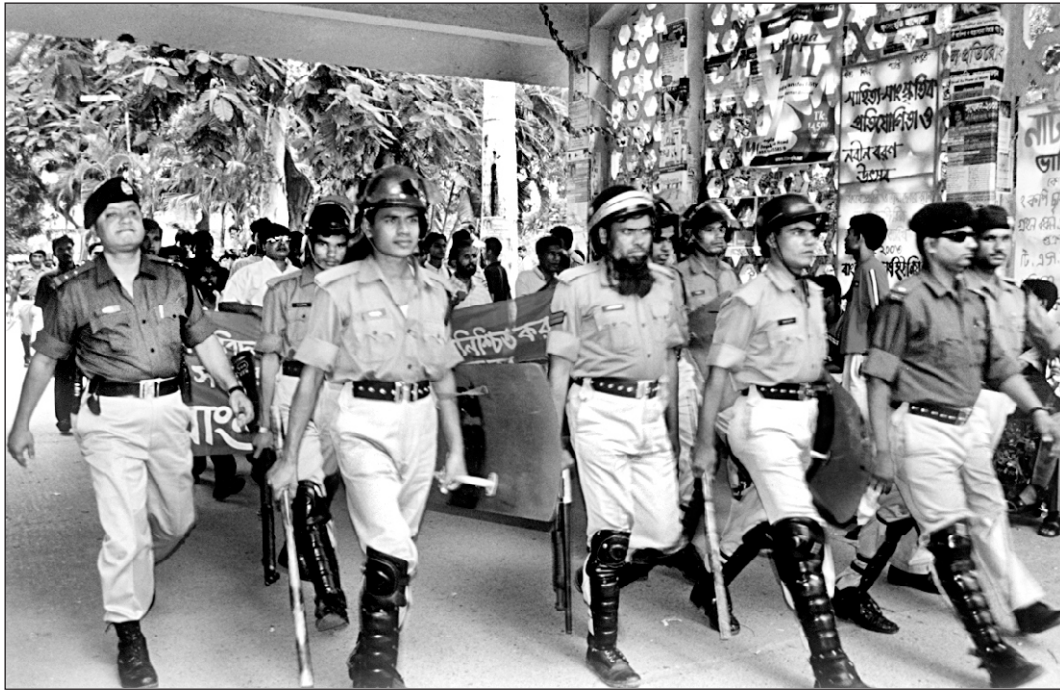
upon. The net result to such a scenario is that the police are cast in to a rigid adversarial relationship. Under such circumstances, the hallowed talks of endearing the police to the community and the lofty ideas of community policing sound hollow. In any venture of promotional efforts the real stakeholders are conspicuously absent. The outcome remains less than desirable.

The desirable way

As of now, many agitations which pose a threat to law and order have a claim to social legitimacy. The police, therefore, have a risk of being cast in an anti-people role. In the changed circumstances of our society, a wholly law and order oriented force has to be transformed into one, which, while retaining a keen appreciation of its legal responsibilities to safeguard life and property, have also an understanding of the larger social issues involved in its day to day work. The implications of this are that police officers must be helped to acquire a high degree of professional competence and develop an understanding of the social purpose of their activity and attitudes in consonance with the concept of social justice with particular reference to the weaker sections of the community.

We need to develop a self-respecting trim police force which is apolitical and professional in its outlook. Let us slow down the recruitment of inappropriate manpower in order to reach a stage in future where we will have the benefit of fuller and socially desirable policing. Policing has been less than a respectable profession in our environment for well-known but less appreciated reasons. Let us make a modest beginning to reverse the process. Are politicians listening?

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ELECTORAL ROLL Court judgments, EC decisions and controversies

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THE Election Commission's (EC) decision of June 12, 2006 to revise the electoral roll as per the recent decision of the Supreme Court (SC) has evoked a great deal of controversy. Some legal experts have argued that the EC's decision not to send enumerators door to door and to use its own offices and functionaries for revision are inconsistent with both the law and the Appellate Division's judgment. Some election experts also raised serious questions about the wisdom of EC's decision. They argue that the revision contemplated by the EC would keep many eligible voters out and include many fictitious ones, making the revised electoral roll utterly unreliable. Are these concerns justified?

The court judgments

On January 4, 2006, a Division Bench of the High Court held that the EC is indeed a composite body and it must act collectively. However, the Court found that the Commission's decision of August 6, 2005 to prepare the electoral roll was not unilateral. More importantly, the Court directed that:

"(III) The Commission should prepare Electoral Roll taking the existing Roll maintained under section 7(6) of the Ordinance as a major basis. If there is a computerised database the Commission should make the best use of it and if not, a computerised electoral roll with database should always be maintained to avoid future controversy, costs and labour.

(IV) The persons whose names are already in the existing electoral roll cannot be dropped from that roll unless they are dead or have been declared to be of unsound mind or ceased to be residents or ceased to be deemed to be residents of that area or the constituency."

The EC appealed against these two directives while continuing to prepare the new electoral roll, although the Supreme Court issued no stay on the High Court judgment. On May 23, the Court dismissed the appeal and upheld the earlier judgment with slight modifications. The only significant thing the Court added in its main judgment was that

those who are below the age of 18 be deleted from the existing roll, and it provided a "legal guideline" for the deletion of names.

The SC judgment once for all settled the question of whether to prepare a new electoral roll or to revise it. The Court unequivocally directed the revision of the existing electoral roll prepared in 2000. In fact, it held that the Commission is in no way authorised to prepare a fresh electoral roll for all electoral areas or constituencies upon scrapping the already existing roll preserved under section 7(6) of the said *Ordinance* since there are provisions for amendments, corrections and revisions of the same. Thus, the Court directed continuity of the electoral roll and maintaining it in the form of a computerised database.

In order to determine whether the EC fully complied with the Court directives, one must very carefully read the judgment in conjunction with the *The Electoral Rolls Ordinance*, 1982. Justice Amirul Kabir Chowdhury, who wrote the main judgment, directed the Election Commission to "prepare Electoral Roll taking into consideration the existing Roll under section 7(6) of the *Ordinance*." He then provided a guideline to delete names from the existing roll in accordance with rule 20 and sub-rule 3 and 4 of the said *Ordinance*. The other four Justices, including the Chief Justice, concurred with these directives.

It should be noted that although Justice Chowdhury provided a guideline for deletion, he offered no guidance as to how to prepare an electoral roll for the upcoming election taking into consideration the existing roll. Justice Md. Tafazzul Islam remedied this void by directing that "before the 9th Parliamentary election it is the existing electoral roll, i.e., the electoral roll of 2000, with some additions, deletions and modification as may be necessary, that is to be published as draft electoral roll." The other three Justices, Chief Justice Syed J.R. Mudassir Husain, Justice M.M. Ruhul Amin and Justice Md. Ruhul Amin, concurred with this guideline. It is thus clear that Justice Islam's additions contain a critical supplement to the main judgment written by Justice

Chowdhury.

In order to understand the significance of Justice Islam's additions, one must clearly understand the stages in the preparation of electoral roll. Justice Islam himself specified the stages as: "(1) preparation of the draft electoral roll, (2) after making addition or modification or correction in the draft electoral roll publication of the final electoral roll, (3) maintenance of the final electoral roll in the prescribed manner and keeping it open for public inspection, (4) addition, modification and correction of the final electoral roll, (5) revision of the existing electoral roll and preparation of subsequent electoral roll after revision." Justice Islam elaborated

Aside from the Court directions and the legal requirements, the EC should initiate revisions under sections 11 and rule 21 of the Ordinance. This may be done quickly and with reasonable costs if the local body representatives and other social leaders are involved in the process. Furthermore, the overriding concern should be to prepare the most reliable electoral roll rather than the cost of doing so. In addition, we must take up the idea of issuing the identity cards, required by section 11A of the ordinance, and with technical advancements it may not be very difficult to issue identity cards while doing a revision.

the procedure involved in the fifth stage: "At the fifth stage in terms of section 11 read with rule 21, unless otherwise directed by the Election Commission, before each election to an elected body, the electoral roll shall be revised and if directed by the Election Commission, the electoral roll shall also be revised in any year." Thus, it is clear that unless otherwise decided by the Commission in writing, it is mandatory by law to revise the existing electoral roll before each election to an elective body.

Rule 21(1) of the *The Electoral Rolls Ordinance*, 1982 elaborates the procedure: "For the purpose of revision of the electoral roll for any electoral area, the electoral roll of the electoral area for the time being in force shall, with some additions, deletions and modifications as may be necessary, be published as draft electoral roll in the manner provided in rule 6 and thereupon the provisions of rules 7 to 18 shall apply in relation to every such roll as they apply to the first preparation of an electoral roll for an electoral roll." Accordingly, Justice Md. Tafazzul Islam directed that prior

to the next parliamentary elections the existing electoral roll will have to be revised and published as a draft electoral roll for the sake of continuity. (quoted earlier) As noted earlier, Chief Justice Syed J.R. Mudassir Husain, Justice M.M. Ruhul Amin and Justice Md. Ruhul Amin concurred with this direction.

It must be noted that the publication of the draft electoral roll requires enumerators to go from door to door for collecting information under section 7(1) rules 3, 4 and 5, and then publishing it under section 7(2) rule 6 of the said *Ordinance* inviting claims and objections. Once the draft roll is published, it must be added to, modified and corrected using the procedures laid out in

to amend and correct the existing electoral roll during the month of July in accordance with rule 20 of *The Electoral Rolls Ordinance*, 1982. Nearly 6,400 Registration/Assistant Registration Officers will be used for this purpose. They will use Forms 2, 7, 8 and 9. The Commission will not send enumerators from door to door for collecting information. The Commission has also decided to prepare a supplementary electoral roll rather than make changes and additions to the existing roll. Furthermore, the Commission initially decided to use the ill-fated electoral roll, although it backed off later because of widespread criticism.

From a careful review, it appears

that while the Commission's position is consistent with the guideline provided by Justice Amirul Kabir Chowdhury, it totally ignored the additions made and the guideline provided by Justice Md. Tafazzul Islam, with whom three other Justices concurred. It also totally disregards the revision needed prior to the election of an elective body, as required by the law. We are not aware of any decision by the Commission not to revise the existing electoral roll, as required under section 11 of the *Ordinance*. Thus, the EC's decisions appear to violate both the law and the Court directives.

However, the EC's decisions are "convenient" for the Commission. The decisions are convenient in that the planned updating can be completed within a short period (31 days are earmarked for it) and with little cost -- the Commission is already under severe criticism for squandering away a large sum of money and time. Thus, the decisions will serve the Commission well.

Although the EC's decisions are convenient and will serve the

Commission well, it will not serve the cause of preparing a dependable electoral roll, which is an essential prerequisite for fair elections. It fact, the practicality and wisdom of the Commission's decisions can be seriously questioned. The decision is impractical because it is not conducive to preparing a reliable electoral roll. Nearly six years have elapsed since the existing electoral roll was prepared and many young citizens became eligible to become voters and many lost their eligibility because of death and other reasons. By the EC's own account, as revealed by the electoral roll rejected by the Court, 1.75 crore voters increased between 2000 and 2006. Furthermore, the

High Court and Supreme Court judgments invalidating the preparation of fresh electoral roll also invalidate the appointments of those who were doing the job?

The EC's decision to prepare a supplementary roll rather than making changes in the existing electoral roll prepared in 2000 also begs serious questions. What it would mean is that the names of the fake and ineligible voters will remain in the already existing electoral roll and its users will face nightmarish experiences. There will also be complications for future revisions. In addition, the existing electoral roll will not be "correct" since the age of the voters will not be updated. Furthermore, the Court directed the preparation and maintenance of a computerised database, and there should be one updated database rather than two separate ones. The names of voters by household, irrespective of whether male or female, should be in the electoral roll together, and if the database is properly prepared, they can be easily separated with a simple command.

Given these practical considerations, aside from the Court directions and the legal requirements, the EC should initiate revisions under sections 11 and rule 21 of the *Ordinance*. This may be done quickly and with reasonable costs if the local body representatives and other social leaders are involved in the process. Furthermore, the overriding concern should be to prepare the most reliable electoral roll rather than the cost of doing so. In addition, we must take up the idea of issuing the identity cards, required by section 11A of the *Ordinance*, and with technical advancements it may not be very difficult to issue identity cards while doing a revision.

Another practical matter is that the proposed updating could perhaps be made reasonably successful if there was political consensus prevailing in the country. In other words, if the political parties would come forward to help with the revision and would mobilise their own forces for this purpose, the task would become much easier, making the Commission more successful. But the opposition political parties

have already declared their opposition to the EC's decisions.

In addition to the political opposition, many of our thoughtful citizens are also very critical of the EC. Many of them view the Commission as a partisan body and not capable of conducting free and fair elections. In fact, some even contend that the Commission itself, as it is constituted now, is the biggest barrier to fair elections. Past decisions of the Commission, and personal behaviour of the Commissioners only created new controversies deepening the doubts. For example, the position taken by the CEC that the High Court directives of May 2005 for disclosures by candidates contesting in parliament elections is *directory*, rather than *mandatory*, is without legal basis. Similarly, contempt proceedings are already underway for the EC's defiance of the High Court judgment on the preparation of electoral roll afresh. Accusations against Commissioner SM Zakaria that he serves the interests of only certain quarters are well known. Thus, the Commission appears to have lost the trust and confidence of a large proportion of our population.

Conclusion

To conclude, free, fair and impartial elections are preconditions for a true democratic system. However, fair elections require reliable electoral rolls. We are now facing a serious challenge in preparing a reasonably reliable electoral roll, pointing to an unnecessary stumbling block for holding parliamentary elections on time. The problem arises from the EC's defiance of both the law (section 11) and the Supreme Court judgment. Thus, it is clear that the EC is incapable of carrying out its constitutional mandate of holding free, fair and timely elections. We therefore recommend that in order to restore public trust and confidence in the Commission, the three Commissioners resign immediately and they are replaced by competent individuals on the basis of political consensus so that we can get on with the important tasks ahead of us.

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