

The Daily Star ROUNDTABLE ON DRAFT BANGLADESH POLICE ORDINANCE 2007

12 DHAKA THURSDAY SEPTEMBER 6, 2007

The Daily Star

A roundtable on "Draft Bangladesh Police Ordinance 2007" was organised by The Daily Star at its conference room on 11 Aug 2007. It was attended by serving police officers and retired IGPs, senior lawyers, advocates of the Supreme Court, university teachers, and members of the NGOs. We publish below the excerpts of the roundtable proceedings.

Mahfuz Anam

Assalamualaikum and welcome to you all

We at the Daily Star strongly believe that without an honest, efficient and functional police force, investment in other sectors really will not give the society as much benefit. If law and order be one of the primary goals of a civilized society, the major institution that enforces law is not efficient and not sufficiently paid, the environment of work is not conducive to honesty and proficiency then it will be something like, we are trying to build something with our right hand but destroying it with the left hand. I think our failure in developing a civilized society is that the amount of emphasis that was required has not been given to the police force. But now an opportunity has come before us.

This draft is a serious and tangible opportunity to make a difference. But the nitty-gritty's of this draft will be charted out by all of you. Our focus will be within the issues of this ordinance. We can opt for two types of changes. Idealistic changes and the possible changes. If we always stay within the realms of the possible then we shall remain underachieved. I think the boundaries of the possible can as well be expanded. To me the idea seems very interesting that the infrastructure and other expenses of the police can be regarded as a development expense rather than revenue expense. If a school can be made from the development budget then why a police station can't be made from the development budget. Can development and law and order be linked? I think the functioning of the economy can be directly linked to an efficient police force. So there is a lot of logic behind a society investing in an honest police force. I welcome you all to contain your remarks within this draft ordinance. We have come a long way in a sense that the draft is here with us. We are in the last phase of a race. The Daily Star is ready to employ all its capacity to strengthen this draft keeping it constantly in the agenda of the government and the society. I think this draft will have a major impact on the future of Bangladesh.

I thank all the people associated with the making of this draft and the government for taking such a plunge. I now request Brig Anam to moderate the discussion.

Brig Gen S Anam Khan

Thank you all for being here. Our intention this morning is to go into details of the proposed Ordinance. However, to set the scene, we will have two brief presentations, by Mr. Nurul Huda and Dr. Asif Nazrul covering the administrative and the legal aspects respectively. Mr. Huda to start please.

Nurul Huda- Ex IGP



This is an omnibus legislation. There are different aspects covered here. I think my discussion would have been more fruitful if the existing ordinance was brought here to make comparisons. At the present circumstances it is covered by the laws, regulations and instructions. The present one is going to be repealed. So, before that, one should know what is there in the present one.

The proposed ordinance has a preamble with the mention of important documents like the constitution. One of the cornerstones of the present ordinance is that the police operate under the general control and direction of the district magistrate.

That is a principal feature. Organized policing in India came in 1861. So, there is a big departure here and the reasoning for that is police has come of age. I think that police on their own can supervise their own folks; they can be responsible to the government and most of all they act as per law and be answerable to the court. No police officer in his duties, which involves judicial discretion, is not unanswerable. He is answerable. This preamble is very modern and liberal. It will help in making police more accountable to the law. Police needs to be made respectable in the eyes of law.

There is an institutional arrangement in this draft which makes police accountable. Freeing police from extraneous influences is also an important factor. Institutions like the National Police Commission and the Police Complaint Commission will make police a responsible and answerable force. On the point of training and human resource development, the reality as of now is that less than 1 per cent of the police budget is spent on training. If police is given more financial resources then they are likely to become more responsible. The IG of police doesn't own the budget. He does not have the financial powers which he should have.

Sec 23 of the previous Act says all policemen are on duty for 24 hours. Why should not they have fixed duty hours?

I think the working hour needs to be resolved and overtime entitlement should be there. This draft will strengthen the hands of the professionals. One of the tests of police success everywhere in the world is how fast police can respond to a situation. Though it is difficult to decolonize ourselves and yet it is time that we go for a change. I believe that in case of reforms, the attitude is very important. It will take time to change the age old attitude of the police. Meanwhile, the laws laid out in this draft can help better the situation.



Prof Asif Nazrul, University of Dhaka

I think it is a good start as it has many strong points. These should not be ignored by us. The status of the police has been elevated in this draft, which is an excellent initiative. It was a long standing demand in the police force. The proposed draft refers that the chief of police will be given the status of a secretary. There can be at least five IGPs. The chief of police will have a separate salary and an allowance recommended by the National Police Commission. Junior ranked officers will get the opportunity to take up additional jobs besides policing since we cannot give them a better salary. Why can't they do part time work? There is no problem there.

But here it is said that police will be on duty 24 hours. The working hour should be clarified. The draft says that without the consent of the National Police Commission, the chief of police can neither be removed, transferred or terminated. For senior rank officials like IG, DIG etc a selection board will look after promotion or transfer. So the ministry will not have the only say in these matters. It also says that 50% of the posts for the asst. inspectors will be filled up through promoting sergeants. ASPs will be appointed by PSC and the final interview will be conducted by a DIG or an officer of similar rank. Unlawful interference in police activities will be treated as a criminal offense.

Sec 2

I also think that the definitions given should be clearly explained. For example, the terms like good faith, emergency, appropriate or competent authority should be clarified in the draft. In the preamble it is mentioned article 93(1), should actually confirming that it is article 93(1) of the constitution.

Sec 3

I have come across sec 3, which says, police will guarantee human rights. I think police will ensure that human right is well adapted. It is the constitution that will guarantee us of human rights.

Sec 4

It talks about police duty. There is an universal complaint against the police on issues like torture on remand etc.

It says that the police should not treat any person under custody in a degrading or inhuman manner. This fact should be stated very clearly in the draft. Protect the rights and privilege of the people. It is also said that police will only execute lawful order of competent authority. It should define what is a lawful order. This needs better definition. What will a police officer do if there is an unlawful order?

I think recruitment of independent members in the police commission is a very vital provision. Instead of Auditor and Controller General, a civil society member nominated by the chief justice would be a good option. This is my proposal. There are many other substitutions and recommendations as well. There should be three selectors: the Chief Justice and

Chairman of ACC but there must be a civil society member nominated by the Chief Justice. Another thing that I would like to point out is that even though we have the chairman for ACC but we see no involvement of Law Commission whatsoever. In the national police, there are members from Public Service Commission, Controller and Auditor General, ACC members but why nobody from the Law Commission?

One more thing I find irrelevant is that among the eleven members of National Police Commission one is the Chief of Police. Then again Chief of Police will be appointed from a short list drawn by the National Police Commission! That means when National Police Commission is preparing the list, no one is acting as the Chief of Police! So how can he be a member? It is constituted in the ordinance that decision-making will be conducted by a simple majority. My disagreement here is that if the government is a corrupt one and if it has the police commissioner, the ministers, secretaries, chief of police and two parliament members then it can easily select the kind of police chief that will suit its purpose. The procedure of reaching common grounds should therefore not be done by a simple majority.

If decisions are influenced by a simple majority then the opposition members of parliament and the civil society member will have nothing to contribute to the whole system as they will be the minority. I can see that the Bureau of Police Research has been proposed to be the secretariat of the commission. We all know that the Bureau of Police Research mainly undertakes research and analysis. My question is, how can such an institution function as the secretariat of the commission? The power might even be given to the police commission itself. This I think will certainly increase the independence of the police commission.

I find the proposal to establish a very important organization called the Police Complaint Commission very significant where people can complain about the activities of the police. The draft says police complaint commission, will only investigate serious crimes and employ a judge. Let me point out the composition. I think the selection panel will comprise of a retired judge of appellate division, a retired police officer, one retired secretary and two civil society members. These two civil society members will be recommended by a selection panel. Panel that takes in the senior most judge of appellate division, senior member of ACC, and senior member of PSC. I don't think it is very logical. Whether civil society members can be included in the selection panel. The selection panel might as well include a member of the civil society and a member of the law commission.

The police complain commission and its activities will be to investigate two types of complaints and that is (1) ordinary complaints and (2) serious complaints.

Ordinary complaints will be disposed of following the same rules as the ones followed at present. The complaint will be sent to the appropriate authority and a police officer will investigate the case. The officer will then send the report along with the measures taken to the commission. If the commission thinks it is not sufficient then it will be sent back to a more senior police officer. This I think is indeed an efficient rule.

In case of serious complaints, the chief justice will be requested to form a judicial inquiry. This too I think is apparently a good step. This rule is very sensitive as the one who will make the complaint should be given a victim status as long as the complaint is not being disposed of it is pending. My suggestion is that the person concerned (the one who made the complaint) can be given special treatment and observation as he/she can be labeled as a victim.

As I have gone through the ordinance I felt that the police complaint commission might as well be decentralized. There will be a head office as usual but branch offices can also be there. In every district there can be one designated office, which will act as a representative of the police complaint commission. Because it is not quite possible for the people from small towns and villages to come to the capital to make complaints.

Another reassuring rule that is proposed is that if the complainant is not satisfied with the progress of the investigation then he/she can draw the attention of the police complaint commission saying that the inquisition is being delayed. I think that the time limit for a particular investigation should be specified.

It is said that in case of police tribunals, no complaints can be made without the concession of the chief of police. In the police ordinance a number of offences are defined. Some of them are rather serious, like oppressive conduct, misuse of authority. I agree with the rule that without the consent of the police chief, the complainant cannot even go to a court with such a complaint. It needs to be looked into.

My last two observations are: it is being said that all the members in the police policy group will be members of the police force. I think human rights activists and civil society members can also be a part of the police policy group. Police policy group should have close ties with the bureau of police research.

Secondly in section 106 it is written that no assembly or procession is permissible in any district without the consent of the head of district police. In the context of Bangladesh how rational it is needs to be looked into.

Naim Ahmed-Commissioner DMP

If we compare the present law, that is Act 5, with the proposed one then we will see that about the responsibilities of the police it is said that they should obey promptly and execute orders of any competent authority. On the other hand, the proposed draft suggests that police should obey and execute all lawful orders. The word 'lawful' is not there in 1861 Act 5 law. I believe the main objective of this new draft is to establish Bangladesh police as a service giving institution. If we look back at history then we will see that four years after the 1857 Sepoy Mutiny, that is in 1861, Act 5 was constituted. The British then began to rule the region and were in charge of policing.

This Act was to establish the British colonial rule. In the proposed ordinance, police is shown as a service provider and they are obliged to do their duties towards the country and its people. The democratic aspirations of the people should be met through the reforms in the police institution. The preamble consists of clear statement on how the police have an obligation and duty to respond to the democratic aspirations of the people and function according to the law and constitution, respect human rights and the people and protect their rights. The police requires to be professional and service oriented, people friendly, free from extraneous influences and accountable to the law and the people.

Everything that is required to transform the police force of Bangladesh into a service-oriented institution is all given in the draft of police ordinance. We should be careful that according to Act 5 there are scopes for the government to regulate the activities of the police force. Act 5 only discusses control of the government over the police force but how it should be done is not mentioned. And for that reason the past governments have controlled the police force for their use and general people were deprived of the desired services from the police. Because of this control by the government police never had the chance to be a professional body to give legal service. An officer had to carry out the orders because he was naturally concerned about his promotion, transfer etc therefore he was depended on his superiors.

Brig. Anam

Do you think these obstacles that hindered the success and effectiveness of the police force, are eliminated in the proposed draft? Can the new mandate enhance the performances of the policemen?

Naim Ahmed

The new draft considers facts like police will be accountable to the people and act according to law and the constitution. Illegal orders will not be carried out. If someone tries to overlook the law and imposes any illegal order on the force that will be regarded as a criminal offence.

Brig. Anam

How will the police commissioner verify whether the orders are legal or illegal?

Naim Ahmed

For example, if a political party tries to conduct an unlawful assembly, or a lawful assembly turns into unlawful then the question of police action or control will arise. Whether it is lawful or unlawful will be determined by the police. But sometimes it is imposed on the police. We may be told that a certain group should be removed from a certain place from making an assembly even if it is lawful. What is lawful and unlawful is clearly stated in the law. Criminal court Act



127 states if a lawful assembly becomes unlawful then the concerned police officer will command the assembly that its position is unlawful so please disperse.

When the command will be violated the officer concerned can go for action depending on Act 128 of Criminal court. The use of force which means lathi charge, tear gas etc.

Nurul Huda

If the government commands the police to disperse a group of activists belonging to the opposition party then it is undoubtedly an unlawful order. The police might even overlook such orders.

Naim Ahmed

Which assembly is lawful and unlawful is determined by the police or the competent authority. It should not be imposed by someone from outside. But when the situation is such that the authority controls the promotion and transfer of the officers then they are obliged to go by the directions of the authority. The present ordinance does ensure a certain amount of independence for the police to enjoy. This will enable them to carry out their responsibilities in a more professional and efficient way. The police force will be pro-people as people will be truly benefited from the new ordinance.

Brig. Anam

The UN identifies the police force as a service provider. Please give your remarks on the context of the proposed ordinance how it can enhance the performance of the police officers.

Naim Ahmed

My main emphasis is, if the police force can work freely to serve the people avoiding illegal orders, it can truly become a service providing agency. Otherwise there is no point in holding seminars, or roundtables. I want to give an example, after 11/1, as Dhaka Metropolitan Police Commissioner, the changes I have been able to bring about were surprising. Now I can work freely and these is no outside force to impose decisions on me. To my surprise, it was not possible to bring about these very changes even in the last 100 years.

The police is a service providing institution. My aim was that a police station will be a legal service delivery centre. There are 33 service delivery centres around Dhaka district that are run by a designated officer who is called service delivery officer. While someone is making a GD he will see whether the person is doing it correctly and help him in this regard. The whole process has been made time saving and efficient.

The next issue is police clearance certificate and one stop service. About 60 lakh people of Bangladesh are working and living in different countries. They need the police clearance certificate for their various needs. But they used to face harassment in the police stations. Now the system has been simplified and they do not have to pay money or wait long hours. It could be possible because now we can work freely without any pressure.

The five objectives that the metropolitan police now have are

(1) Service delivery
(2) Addressing of harassment. Every arrest should be accountable. The officer who is going to arrest someone should verify that it is not done to harass the arrestee. This is to make officers accountable. At the moment arrests to harass has greatly reduced.

(3) Community police and open house day which has been inaugurated in 32 thanas police stations. One Saturday in a month open house day will be observed. The Deputy Commissioner will supervise this event. The participants will be women representative, ward commissioner, union chairman, industrialist representative etc. Altogether, about 30 people will come and discuss law and order situation of the area. They will take decision and put their plans into action. It will also be monitored by a higher authority.

(4) Internal discipline. If there is no discipline within the system then we cannot be professional. In regard to crime and internal discipline of the police force the authority will show zero tolerance.

(5) Professionalism
The investigators will only investigate and be involved with other things. The detective branch is being reconstructed. For the first time in history we have laid out designated teams. For example, cyber crime team will only deal with cyber crimes. Militancy team will investigate militancy. Similarly there are separate teams for robbery, theft, snatching, drug abuse etc. Statistics show that crime rate has fallen sharply in last three months. Things have really improved as new innovative ways of fighting crime has been established.

Mahfuz Anam

It seems that we have reached a land of Utopia. Please give us the idea whether these measures are only Dhaka centered or district centered as well. Does the police feel the need for any changes for inclusion in the proposed ordinance to make it more professional? What is the guarantee that if more freedom is given to you then you will not become a Frankenstein? There is still the fear that if someone has complaints against the police then the entire police department might behave differently with him. Because of this fear one might not want to lodge a complaint against the police. What is the protection of that person?

Naim Ahmed

The main objective of the ordinance is to turn police into a service institution in Bangladesh. It is likely to have an independent police complaint commission where people can drop their complaints against the force. These complaints will be investigated. There is no such provision in any other cadre service. This ordinance will see to it that police do not become reckless. A competent police officer should find of all investigate whether the crime has been committed at all. Then he will find out who were involved in the crime. It will proceed on this way.

Brig. Anam

The apprehension is, it may read fine on paper but whether it will be fine when you go to implement them. How efficient will these measures be at the onset of a political government? How will you resist it?

Nurul Huda

In Bangladesh, the improvement of democracy is being tried when democracy is suspended. I am referring to a built in problem and that is the effort to institutionalise these rules. All professional associations are protective of their own interests. The provision for the public complaints is an indication of their enlightenment and sensitivity. Others do not curtail people's freedom, we as a coercive organization curtail people's freedom. The draft shows that we understand that we curtail freedom.

Naim Ahmed

The suspicion is there in all of us due to the interim period. The changes have started to take place in other parts of the country as well. There is fear that when the political government will arrive this opportunity might not be there. But since the system has become more pro-people and people are deriving service from the system they will have an opinion that will work as strength. Secondly, once the ordinance is passed, the political government

judging by its popularity might even want to undertake steps to further improve the system.

Faustina Perera Ain O Shalish Kendra

I have two general observations. Firstly, I hope it is not the end. If the media take the initiatives to make opportunities for national consultation then we might discuss more important issues. Before the ordinance is being signed the input of the general people would be a very good idea.

Mahfuz Anam

The Daily Star is very interested in arranging such national consultations if people concerned with law and order are helpful.

Faustina Perera

If we discuss specifically issues in the draft we shall make it even richer to a great extent. What I notice is that the language of this draft is a bit sexist. Can it not be made more gender sensitive? If we are talking about the realm of possibilities then can we make it a force where men and women can have equal opportunities to work side by side?

I want to go to Miscellaneous and it involves section 141-163.

Sec. 146 and 145 state that if we have complaints against a police officer then we must press charges against the officer within six months of the occurrence of the event. Why? And why I have to take prior permission for this? Why cannot it be treated as an act or offence committed during the performance of duty?

Section 122 to 140 Offence and punishment

Here the substance and procedure is heavily confusing. There is the description of what sort of offences can occur. For example, interference, causing mischief, causing obstruction, cruelty to animals. We should decide what is the police force for? Will police decide what constitutes an offence or are they for enforcement or somewhere in between.

We have the metropolitan ordinance, penal code and CRPC where it is charted out what creates an offence. Why include all these separately in the police ordinance?

My suggestion is police ordinance should only describe the areas of intervention. Where the police will intervene must be specified.

Sec-112-121

Sec. 115 is compensation for injury caused by unlawful assembly. What is the justification of mentioning it here in this ordinance? Police might use this provision to engineer the investigation.

118

False statement given to the police

If someone gives the police a false statement then he/she will be punished with imprisonment for a term which might be extended to six months or more. Let the court decide whether it is a misleading and false statement. Let not the police mix up the substance and procedure. Let it act as a service providing agency.

Asif Nazrul

The offences under this ordinance will be handled by the police tribunal. So it is a valid point for some cases.

Faustina Perera

Sec. 104-111. One general observation

We have a bitter experience of mob control by police. The interaction between the people and the police has so far originated from mob control. Political and civil rights infringements may also occur here.

There is a possibility of a conflict between the police force and the administrative function.

Sec 97-99. Welfare

97E - appropriate legal facilities for defence of police officers facing court proceedings and matters relating to bonafide discharge of duty. Bonafide discharge of duty can be linked up with where bonafide has been described. But it should be further defined.

Sec. 75k

Regarding the annual reporting. Functions of the police complaint commission.

My recommendation is what will this annual report contain. Can we get details about it? For example, what kinds of complaints, what action has been taken, total number of custodial deaths, rape, serious injury in police custody, death due to crossfire or encounter etc. Steps taken to probe misconducts by police should be there.

If this report is made available to the public then it will be beneficial to the people.

Sec. 75D

Police complaint commission. Chief justice to initiate a judicial inquiry through district or session judges. Is it really required? Involving the chief justice would make things more time consuming.

Ordinary and serious cases should be clearly defined in this context.

Chapter-6 (sec-61)

Internal security and public order challenges. The creation of special security area is needed. But it needs to be specified. It now says that the government may on request from the chief of police declare an area as special security area. But what constitutes necessity for declaring an area as security area? What will be the criteria of the request?

Section 57 Urban planning

It says while planning any major development the agency shall consult with the police and the suggestions of the police shall be given due consideration in finalizing the plan. Here it is said "shall" and not may. Before finalizing a plan impact assessments should be collected.

Nurul Huda

There is lack of security consciousness. We should specify residential and commercial areas. We see beside a garments factory there is combustible substance. The element of security consciousness in the process of public enterprise is not there.

Faustina Perera

The power and function of district magistrate as an overall administrator in matters of conflict should be specified.

Sec 37-48

Formation of police commission. It has been said in details.

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