

Rationale for a revised Police Act



MUHAMMAD NURUL HUDA

Of late, we have heard a great deal about the imperatives of a revised or amended Police Ordinance in the interest of public service. The police management is striving hard to modernise the organisation, and it was on June 16 that the Inspector General of Police formally launched a three year Strategic Plan of Bangladesh Police. However, it is the considered view of the concerned quarter that without a supportive and revised Police Act the planned police modernisation efforts will not bear much fruit.

It would be relevant to recollect that the principal characteristics of the police organisation produced by the Police Act 1861 are: it principally aims at the preservation of status quo; and it lays major emphasis on maintenance of order and avoidance of breach of peace. It over-emphasises the constabulary functions of the police as against the

STRAIGHT LINE

There is no denying that we have to squarely deal with the vexed issue of political interference in the internal administration of police. The Police Act of 1861 must be replaced by a new police act, which will not only change the system of superintendence and control over the police but also enlarge the role of the police to make it function as an agency which promotes the rule of law in the country and renders impartial service to the community.

professional aspect of crime control. Except in the preamble, the Act does not mention crime control. In fact, the duties of a police officer as laid down in the Act are:

- To obey and execute all orders and warrants lawfully issued to him by any competent authority.
- To collect and communicate intelligence affecting the public peace.
- To prevent the commission of offences and public nuisances.
- To detect and bring offenders to justice.
- To apprehend all persons he is legally authorised to apprehend.
- To take charge of unclaimed property and to furnish an inventory thereof to the District Magistrate.
- To keep order on the public roads and in the public streets, thoroughfares, and ghats and landing places, and on all other places of public resort.
- To prevent obstructions on occasions of assemblies and processions on the public streets.

It was principally aimed to administer a static, immobile and backward rural society living in villages and small towns. It envisages exercise of authority without local accountability. It presupposes a society without any constitution, basic and fundamental rights, organised public opinion, and mass-media projecting the public interest.

The overriding objective of the police organisation designed in 1861 was to maintain the stability of the Raj. This was admirably achieved through emulating the Irish Constabulary model and placing the district superintendent of police under direction and control of the district magistrate who acted as the agent of the central government.

It may be pertinent to note that, under the Police Act of 1861, in addition to being under the senior police hierarchy, the police superintendent of a district was simultaneously subjected to the lateral control of the district magistrate.

The police administration at the district level was thus subjected to dual control: administrative, technical, financial, professional and organisational control by the inspector general through his deputies; and the lateral general control and direction of the district magistrate.

What was meant by the general control and direction of the district superintendent of Police by the district magistrate was not explicitly defined anywhere. As such, the extent of this control and direction varied from province to province, which generated much controversy over its true import. Consequently, from the very beginning, an unending debate has continued, both at the conceptual and administrative levels.

The Sir Andrew Fraser Police Commission of 1902 reported that the 1861 system had completely failed to produce an efficient and professional police force in the country, and commented that "the

police force is far from efficient, it is defective in training and organisation, it is inadequately supervised, it is generally regarded as corrupt and oppressive, and it has utterly failed to secure the confidence and cordial cooperation of the people." One of the major causes of failure of the 1861 Act, according to the Fraser Commission, was undue interference with the police by the civilian authorities.

The reason as to why the colonial governments did not address the problem was that they were not prepared to make the service terms and conditions of the police rank and file attractive enough. In fact, the police organisation was designed not to attract better talent to ensure built-in subservience of the police to the executive administration, regardless of the resulting corruption, lack of professional excellence, police high-handedness and police-public estrangement.

It may be relevant to mention

here that in Pakistan a new Police Order 2002 has been effective for some years. The principal features of that Order are as follows:

- It redefines in clear terms the role and responsibilities of the police.
- It seeks to improve human security and access to justice within the ambit of rule of law.
- It phases out obsolete police management practices.
- It provides for enhancing police professionalism.
- It introduces new powers to improve police discipline.
- It strengthens external police accountability through institutionalised civil society oversight.
- It aims to transform the police into a public-friendly service-delivery organisation.
- It makes it obligatory for the government to establish public-public consultative committees.

It is interesting to note that the distinguishing feature of the new Police Order of Pakistan is that, 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 performs 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.

The above 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.

According to credible sources, the draft police ordinance of Bangladesh has recommended provisions along the lines of Police Order, 2002 of Pakistan, and other best practices of reputed police forces of different countries. Under such circumstances, one wonders what has kept the authorities from promulgating a new police ordinance.

There is no denying that we have to squarely deal with the vexed issue of political interference in the internal administration of police. There is an imperative need to lay down a fixed tenure of service for key police appointments, and to also require the authorities to record grounds of premature transfer for independent scrutiny by the proposed Public Safety Commission.

It is also time to duly recognise the importance of community policing, and make it obligatory for the government to establish citi-

zen/police liaison committees. The purpose is to help establish and maintain police/public partnership, promote communication and cooperation between citizens and police, enhance transparency in police functioning and strengthen police responsiveness to the community.

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In practical terms, it is time to give up the long-held powers of superintendence over the police in favour of apolitical Public Safety Commissions charged with the responsibility of designing and implementing majors necessary to ensure political neutrality of police operations.

To sum up, whereas the Police Act 1861 had for too long obstructed the establishment of rule of law and retarded the growth of police professionalism in Bangladesh, it is high time that the citizens of Bangladesh have the benefit of the proposed new police ordinance which provides the basis of a modern and progressive 21st century system of policing.

Muhammad Nurul Huda is a columnist for The Daily Star.

Wounds heal, scars remain



KULDIP NAYAR
writes from New Delhi

IT was a conflagration the emergency imposed by Mrs Indira Gandhi in June 33 years ago. In 19 months, the period for which it lasted, every institution got scarred. The constitution was mutilated. Personal freedom was forfeited. The press was gagged. The judiciary was shackled. Parliament had its tenure extended. The largest democracy in the world put under detention more than 100,000 people without trial. And, as the then Attorney General said, the state could kill anyone with impunity.

The institutions have regained their health but the scars are still visible. What has probably been lost for ever is the people's sensitiv-

BETWEEN THE LINES

Journalists' role was pathetic. They were afraid to join issue with the government. L.K. Advani said aptly: You were asked to bend and you began to crawl. In contrast, the Pakistani media came out on the streets when restrictions were imposed on the telecast of lawyers' agitation. True, at present, there is no visible dictation in India. But it looks as if it is not necessary.

ity. They do not react to the abuse of power. I thought that those brutalities would never revisit the country. I see all of them coming back with a vengeance: false encounter killings, custodial deaths, kidnappings, violations of human rights and detentions under the security law.

What has probably happened to the people is that once Mrs Gandhi wiped out the thin line dividing right from wrong, moral from immoral they do not mind or feel where they stand. There is no compunction in hitting below the belt or committing even the gravest wrong. In fact, the wrong itself has undergone a change in the meaning. It has become a relative term.

The Manmohan Singh government has five ministers whose

hands are tainted with the excesses committed during the emergency. They are: Foreign Minister Pranab Mukherjee, Commerce Minister Kamal Nath, Law Minister H.R. Bhardwaj, Heavy Industries Minister Santosh Mohan Dey and Tourism Minister Ambika Soni. They should quit giving face to morality and ethics.

The judiciary has been the biggest casualty. Mrs Gandhi transferred 16 judges. President Pervez Musharraf when he clamped the emergency in Pakistan dismissed some 60 of them. But there had to be a difference between a military dictator and a civil dictator. Judges in India were restored to their positions. But in Pakistan the dismissed judges have become victims to the politics of behind-the-

scenes bargains.

The Shah Commission which went into the excesses during the emergency in India warned: "The state owes it to the nation to assure that this vital limb (the judiciary) of the government will not be subjected to strains which might even indirectly operate as punitive." But this has had little effect. Chief Justices in India are vying with each other to oblige the government on transfers or, for that matter, appointments. Judgments are generally at the asking. The high-falutin phrases like the independence of the judiciary are primarily on paper. Corruption was inevitable once the standards came to be compromised.

Mrs Gandhi regretted "certain mistakes", but never the emergency

and brought back the officers who were instruments of tyranny during her rule. Not only did she punish those who had pursued cases of excesses against her and her son Sanjay Gandhi, who was an extra-constitutional authority, she divided the bureaucracy into "ours" and "theirs." The civil service is now a set of sycophants and supplicants who allow themselves to be used by politicians. There was one Sanjay Gandhi at the centre then. Now every state has a chief minister's son or a nephew emulating him.

And it was no surprise that she threw out even the recommendations by the National Police Commission to reform the force because the police were used by her indiscriminately. She preferred to stay with the Indian Police system,

structured on an Act of 1861 and rejected the draft bill which the Police Commission had recommended to release the force from the stranglehold of politicians.

Since the baby was thrown out with the bathtub, even the recommendations to make police accountable were not implemented. The Supreme Court has picked up the thread and made it obligatory for the states to implement the recommendations. The states have not done so. Even the centre has not asked the Union Territories to fall in line.

The illegal power, to which the police have got used since the emergency, is hard to withdraw now. What is seen in Kashmir, the northeast or elsewhere in the country is a cumulative effect of unbridled authority given to the force. It does not know much less cares about normal, acceptable methods to deal with a situation.

The IB and CBI are loaded with assignments which are not really theirs. Keeping track of opposition leaders and critics of the government, intercepting their mail and tapping their telephones is not what the two agencies should be doing. Nor should they be checking the credentials of candidates and

weighing their chance of winning at the polls. But this is the practice started during the emergency and continued by government of all hues. The agencies remain unaccountable.

The worst fallout of the emergency has been that the public servants have invariably become an instrument in the hands of ministers at the centre and in the states. The ethical considerations inherent in public behaviour have become generally dim and in many cases beyond the mental grasp of many of the public functionaries. Desire for self-preservation has become the sole motivation for their action and behaviour.

Manmohan Singh who has been a top civil servant should have devised some steps to retrieve them. Anxiety to survive at any cost forms the keynote of approach to the problems that come before public servants. The training academies live in an ivory tower because their elitist approach makes them too distant from aam aadmi (common man). It should be obligatory for the trainees to work with NGOs at the grassroots. They may learn, if not imbibe, the qualities of humility which officials lack.

And there has to be a mechanism

to punish the errant civil servants. None was even demoted or sacked for deliberately flouting laws and harassing those who were against the emergency. Some of them occupy key positions today: N.K. Chawla, the hatchet man Lt. Governor Kishen Chand is a member of the Union Election Commission.

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True, at present, there is no visible dictation in India. But it looks as if it is not necessary. The different pieces are beginning to fall into place without anyone making an effort. Already there is a tendency to go along and not to question. If without the emergency people start "behaving" there is something wrong with the system. Once the desire to act according to what is right goes, there may be no realization of what is wrong. This is precisely what is happening.

Kuldip Nayar is an eminent Indian columnist.

Homestead food production: Ensuring security, empowering women

PARVEZ BABUL

WHEN some staff from Helen Keller International (HKI) met Chaidapru Marna (55), she was working in her homestead vegetable garden after returning from prayers at the nearest Buddhist temple. Chaidapru has been involved with HKI's Homestead Food Production (HFP) program since 2006, which the organization implements in partnership with Integrated Development Foundation (IDF).

Chaidapru lives in the village Bhuiyan para of Matiranga pourasbha in Khagrachhari. She is happy that she can grow food in her homestead garden and rear poultry with the help of her daughter Aunkra Marna (30) and son Mongsa Marna (22). Her children are very proud of her success.

Chaidapru cultivates about twenty varieties of vegetables year-round along with different types of fruit saplings, and rears a local variety of chicken. She grows enough vegetables in her garden for her family, although they also enjoy the eggs and chicken. She sells surplus vegetables, eggs and chicken.

Within the past two years, Chaidapru has earned more than Taka 100,000.00 selling vegetables and saplings from her garden and Taka 20,000.00 selling eggs and chicken. Chaidapru bought a shallow machine with this income and earned more than Taka 30,000.00 by renting the machine to the farmers, which allowed her to repay a loan her husband had taken.

Observing her success, Chaidapru's neighbours became interested in homestead gardening and several have been successful. Chaidapru played a key role in her neighbors' success as HKI purchased the seeds from her to dis-

Due to their hard work, they have been an inspiration for others in their community. Annually, they earn Taka 60,000.00-70,000.00 from the vegetable garden and nursery, and about Taka 30,000.00 selling eggs and chicken.

tribute to the beneficiaries. In addition, Chaidapru's son conducts training sessions for the HFP group members in their community (20 people in each group) and motivates them about gardening.

Chaidapru is one of the more than five million beneficiaries of HKI's HFP programme in Bangladesh. The programme is particularly active in the CHT and char areas of northern Bangladesh. The landless and marginalised women in these areas became not only self-reliant but also empowered. They can practice their political, social and cultural rights and have been able to prove themselves as essential part of decision-making on health, nutrition and national development.

Chaidapru says, "HFP taught me vegetable gardening and poultry rearing using modern techniques. It has been a blessing for my family. I hope it can be extended to more areas so that more poor people can benefit both eating vitamin A-rich foods and earning money as we do."

Although Chaidapru is now a successful owner of a Village Model Farm (VMF), just two years ago, she faced a grave crisis for her family members after the untimely death of her husband because she didn't have any money to buy food. Luckily, HKI and IDF invited her to become a group member of the HFP program. She accepted and made sure that her son Mongsa also received free training and technical assistance on vegetables gardening, poultry rearing, and

marketing.

After being trained, Mongsa started the garden on their small plot of land, and then Chaidapru and daughter Aunkra started helping him. Due to their hard work, they have been an inspiration for others in their community. Annually, they earn Taka 60,000.00-70,000.00 from the vegetable garden and nursery, and about Taka 30,000.00 selling eggs and chicken. Chaidapru pays for the schooling for son and daughter and is able to celebrate special occasions for her children and grandchildren with clothes, special foods, and other gifts.

Shishir Swapan Chakma, Project Officer of HFP says, "Once Chaidapru and her family members were just nobody but now they have earned the respect of the community."

Women's empowerment

Malnutrition of women and children in rural Bangladesh is among the highest in the world. Majority of households lack access to sufficient food and safe water. Women are key to food security. In Bangladesh rural poor women remain unemployed for most of the year because they have little opportunity to go outside the home to find work. Involving them in the production of vegetables enables them to make good use of their available time and skills. Women can also supplement the family income by selling the surplus produce. Experience shows that the income from the home



Chaidapru and her grandson in their vegetable garden.

PHOTO: HKI/IDF

garden goes towards buying food and improving the welfare and nutritional status of the family.

On the other hand, gender inequality is central to poor health and development with the burden of disease on women and female children. In this respect, raising gender awareness and encouraging participants to address gender bias by treating boy and girl children equally with regard to food-share and workload is central to HFP programmes. HFP also focused on supporting women to participate in the household decision-making process to improve health and nutrition of all members. Nutrition education and women empowerment are key components to achieve increased utilization and integration of key food production and marketing practices. Since 1990, HKI/Bangladesh has been implementing food-based interventions to provide micronutrient-rich food at the household and community level.

There are many more success stories like Chaidapru Marna

across the country who have benefited from homestead food production activity. It assists households to produce and consume more micronutrient-rich foods, has positive impacts on women's empowerment, and allows households more access to income that is used for other important expenses (like other food items, education and health care). In addition, HFP facilities women to participate in other social activities, decision making in their family and some control over the resources. All these activities have improved the status of women in their family and in the community as well.

Parvez Babul is Information and Advocacy Officer of Helen Keller International, Bangladesh. Email: babul@hki.org



Upholding prisoners' right to justice

MOHAMMAD AMJAD HOSSAIN

IN fact, justice prevailed in the United States when historic ruling by the Supreme Court was announced on June 12 upholding the rights of 270 alleged foreign terrorist suspects to appeal in civilian courts on the American mainland despite intention otherwise of the administration and rubber stamp congress until November, 2006. These foreign terrorist suspect have been held in Guantanamo Bay for an indefinite period without trial.

The ruling has been received with mixed reactions. Anti-war group and lawmakers of the Democratic Party in fact welcomed the ruling while the Republican lawmakers and President Bush did not agree with but would have to submit to the ruling.

In a 5 to 4 ruling, the Supreme Court decided that foreign detainees at Guantanamo Bay have the right to challenge the legality of their incarcerations in federal courts using a process known as habeas corpus. In the past those military tribunals were the only courts that could hear the detainees' cases. The ruling in fact goes against President Bush who is responsible for holding the terror suspects for an indefinite period without trial.

The ruling also struck down a provision of the Military Commissions' Act of 2006 that denies Guantanamo Bay detainees the right to file petition under habeas corpus, which would allow courts to determine whether a prisoner is being held illegally. This law was enacted on 7 October, 2006 to nullify the Supreme Court ruling of June 29, 2006 on US citizen Hamdan vs. Rumsfeld which held that the Military Commissions set up by Bush administration to try detainees at Guantanamo Bay

"lack the power to proceed because its structures and procedures violate both the uniform code of military justice and the four Geneva conventions signed in 1949". At that time a number of legal experts and congressional lawmakers, including Republican ranking member of the Senate Judiciary Committee, Arlen Specter criticised the Act by saying that habeas provision of the Act violated a clause of the constitution which says the right to challenge detainees shall not be suspended except in cases of rebellion or invasion.

Now the Supreme Court says not only those detainees have the right under the constitution, but that the system the administration has put in place to classify them as enemy combatant and review those decisions is inadequate. Senator Joe Lieberman, an independent, but chairman of the Senate's homeland security committee and a staunch supporter of war, commented that constitution did not provide protection to the foreign alien but they are entitled to the protection provided by the Geneva Convention. Chairman of the Senate Judiciary Committee, Patrick Leahy while welcoming the ruling said administration has rolled back essential rights that have long guided our nation's conscience. Democrat congressman Jerrold Nadler called the ruling a resounding affirmation for the rule of law and a rejection of the President's sweeping claims of power.

Senator Barack Obama, constitutional law expert, who is opposed to Iraq war, holds the opinion that the decision ensures "we can protect our nation and bring terrorists to justice, while protecting our core values." He said "it is an important step toward re-establishing our credibility as a nation committed to the rule of law and rejecting the false

choice between fighting terrorism and respecting habeas corpus".

Republican presidential nominee Senator McCain, however, expressed concern giving habeas corpus rights to enemy combatant. Senator McCain has spoken to close down Guantanamo Bay which is a long standing demand by Amnesty International and many European allies of the United States. German Chancellor Angela Merkel has also spoken personally to close down the prison. Bush administration did not pay attention to the demands as of now. Guantanamo Bay has been leased from Cuba since 1903.

Khalid Sheikh Mohammad, who is identified as mastermind of 9/11 attacks, and few others are on trial in the military tribunal. In 2006, Republican dominated congress changed the law to allow the detainees to continue without trial. Now the question arises whether military tribunal can continue the trial because the ruling cast doubt to do so. This ruling now opens the gate to hear lawsuits that federal judges put on hold as they awaited the ruling of the Supreme Court.

Law experts are of the opinion that the ruling could force the government to reveal some of the information which was kept secret for national security and that the ruling eliminates the need to continue operating the prison at Guantanamo Bay. Constitutional Law professor of Georgetown University, David Cole is of the opinion that "the whole idea behind Guantanamo was to put the detainees beyond the reach of the law. The Supreme Court has said that you cannot do that". Guantanamo Bay prison has evoked sharp criticism at US and abroad for detention without trials and harsh torture method meted out for interrogation.

Mohammad Amjad Hossain, a former Bangladesh diplomat, writes from Virginia.