The London and Irish police model and our experience

The principal reason the police commanders generally lack essential leadership qualities is that the police organisation created under the Police Act 1861 was not meant to reward initiative, promote merit or manage and sustain organisational change.

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THE late 18th century and early 19th century Britain faced serious challenges of law and order. London, the capital of the British Empire, was itself plagued by insecurity and violent crimes. It goes to the credit of Sir Robert Peel, the then Home Secretary, who, after several abortive attempts by the British government to reform the police, succeeded in devising a system that slowly and gradually resulted in bringing about order to a city in shambles. The main principles behind Peel's London Metropolitan Police Act 1829 that shaped modern policing were:

(i) The police would be a uniformed force but drawn from the local communities.
(ii) Policing was to be preventive and based on winning the trust and cooperation of the people.
(iii) The primary means of policing was conspicuous patrolling.
(iv) The force was to be totally unarmed.
(v) The police were to be patient, impersonal and professional.

The authority of the English Police constable was derived from three official sources -- the crown (not the political party in power), the law, and the consent and co-operation of the citizenry. He would seek and preserve public favour, not by pandering to public opinion, but by constantly demonstrating absolutely impartial service to law. He would readily offer individual service and friendship to all members of the public without regard to their wealth or social standing.

Policing in Britain for the past 180 years has continued to rest on Peel's broad principles. The high mark of this model is that law guarantees the independence of chief officers of police. In maintaining the police chief's responsibility of direction and control of his force, the law places high value on freedom from political control and influence when making decisions concerning the administration of his force and operational decisions in individual cases.

With Britain expanding its empire, a policing model deemed ideal for colonial rule came to be identified. The model was based principally on the experience of the English in Ireland, which led to the establishment of Irish Constabulary though the Constabulary quite clearly sought legitimacy at Westminster rather than among the local communities.

On a structural level, the Irish Constabulary was highly centralised with a recognised chain of command from the individual constable to inspector general, who in turn was responsible to the chief secretary and lord lieutenant. Another significant characteristic of the Irish model was that it firmly established the principle that the constable was answerable to the chief constable, rather than the law, the chief constable himself being responsible to the central government.

It was clear enough that from the point of view of the Colonies there was much attraction in an arrangement which provided what we should now call a 'para-military' organisation or gendarmerie, armed and trained to operate as an agent of the central government in a country where the population was predominantly rural, communications were poor, social conditions were largely primitive, and the recourse to violence by members of the public who were 'against the government' was not infrequent.

It was natural that such a force, rather than one organised on the lines of the purely civilian and localised forces of Great Britain should have been taken as a suitable model for adaptation to colonial conditions.

The three criteria of legitimacy, structure and function demonstrate that the English and colonial models of policing are quite distinct. In terms of legitimacy, while the English system is founded on the law and on local government accountability, an alien authority using its law to suit its purpose legitimises the Irish colonial model. In the colonial system, the police not infrequently usurped the role of judge, jailer and executor. The order imposed by the police did not automatically square with 'law' with which it was habitually coupled.

In Bangladesh we are still following the colonial model of policing. Therefore, a fundamental prerequisite for success of a reform strategy is publicly demonstrated political will of top leadership, and an on-going commitment of all stakeholders to support and sustain the expected outcomes of that strategy. When the challenge is to foster democratic governance, rule of law and human security, it is not possible to implement successfully any meaningful reforms without a broad agreement across the political landscape on the future role and responsibilities of the police.

They need to learn from experience.

The principal reason the police commanders generally lack essential leadership qualities is that the police organisation created under the Police Act 1861 was not meant to reward initiative, promote merit or manage and sustain organisational change. It was in fact designed to promote and sustain a culture of status quo, with police hierarchy playing a second fiddle to their 'bosses' outside the organisation. There is no institutional mechanism for recognising or rewarding professional excellence; rather the system is loaded stunningly in favour of mediocrities who inherently oppose any meaningful reform effort.

In practical terms, the way forward is that the government leaders proactively give up their long-held powers of 'superintendence' over the police in favour of apolitical public safety commissions charged with the responsibility of designing and implementing measures necessary to ensure political neutrality of police operations.

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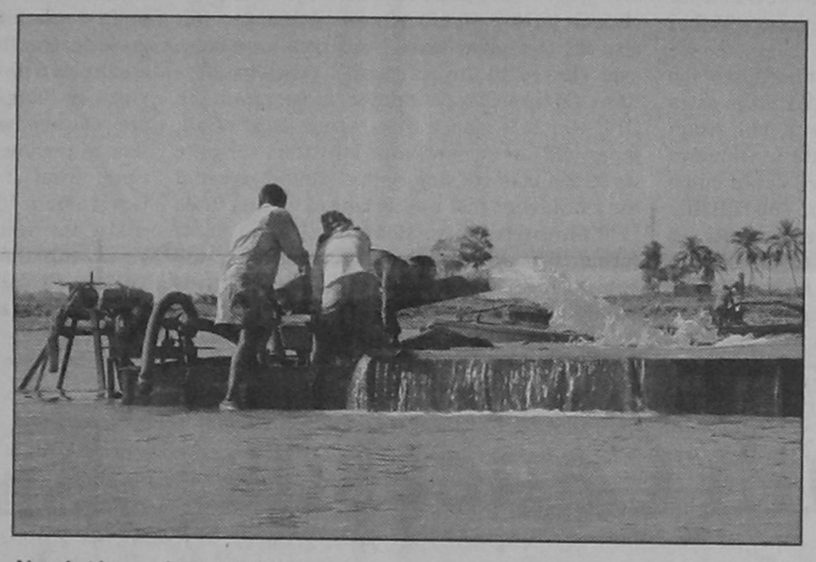
Dredging the silted rivers

The whole government is worried about the land grabbers. In fact it is fighting against these people to mitigate the suffering of the common people. The prime minister herself is seriously trying to control this nefarious activity.

A.B.M.S ZAHUR

THE prime minister has directed the authorities concerned to formulate a complete plan for dredging the silted rivers of Bangladesh to bring back navigability of those rivers at the earliest. She has prescribed the time limit of the plan as 'not more than 15 years'. She has suggested that the plan should start with excavating river Gorai as its work progressed much during the last AL regime (1996-2001). Unfortunately,4-party government stopped it along with other dredging projects on political consideration completely ignoring the fact that economic and humanitarian consideration should always remain above political consideration, particularly in a poor developing country such as Bangladesh. Such a whimsical decision of the said government resulted in increase of people's misery and wastage of huge public money.

Due to mainly resource constraint dredging of rivers could not be undertaken regularly in Bangladesh since partition of India in 1947. Consequently, most of its 310 rivers are dying. She stated that previously prepared 30-year long project be revised to complete it within 15 years. This time she wants a total plan to save the rivers. Regarding mobilization of funds for the project she said that she had discussions with our development partners who appear to be positive on providing assistance. However, she emphasized the need for a good plan.



Aimed at increasing navigability.

It is certain that the Prime Minister is very sincere and committed in starting a complete plan for river dredging. It is unfortunate that things are seemingly not going her way. Some lawmakers and upazila administration are perhaps working against the central plan in Bangladesh.

It is interesting that while the dredging plan aims at increasing navigability of the silted rivers it came to our notice that the administration of Golachipa upazila with the help of some lawmaker is building a market on the bank of river Ramnabad of Golachipa in the name of protecting the town from tidal surge!

Despite pointing out the wrong doing the upazila administration sanctioned 100 MTs of rice under the government's Test Relief project. The project has been named as 'Golachipa New Market Project'. Regarding the progress of the project so far, a brick wall on a stretch of 1150 by 380 ft area has been erected by the bank of the river. Earth filling is also going on. Barisal district administration, Golachipa municipality, upazila land administration termed this market project as illegal and unauthorized.

Assistant commissioner of land, Golachipa has stated that the project is situated on government's khas land and land office has not given any allotment. The department of environment showed their ignorance in the matter. It is learnt that the UNO sanctioned 100MT of rice under government's Test Relief Project to complete the project and " he himself was overseeing it". The said UNO failed to give any plausible explanation in support of his action.

It appears that action of the lawmaker in question was unauthorized. The unusual cooperation of the UNO concerned is strange and a gross violation of service discipline. His activities call for major punitive action.

The whole government is worried about the land grabbers. In fact it is fighting against these people to mitigate the suffering of the common people. The prime minister herself is seriously trying to control this nefarious activity. Lawmaker and administrators such as that's of Golachipa and the UNO concerned may not be large in number but their activities are surely condemnable. In the greater interest of the nation all out efforts are necessary to control these activities with iron hand so that no influential persons dare bamboozle any such projects of the central government in future. The government must show its effectiveness. There is no scope for lethargy, leniency or laxity.

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Matter of credibility

The demand for the constitution of a judicial forum has not in any way minimized the Supreme Court's resolution on the declaration of assets by the judges. Countries like Australia and New Zealand have it. Why not the third world?

KULDIP NAYAR

IN third world countries the judiciary evokes a god-like faith. People leave it to the judges to give them justice, even if it is delayed. The judges cannot allow even an iota of their credibility to be challenged.

Therefore, when there was a public demand in India that the judges should declare their assets, they could not have evaded the issue which they were avoiding since independence. The Supreme Court has unanimously passed a resolution that the judges should declare their assets and put them on the website. But then, the Supreme Court passed a similar resolution some 12 years ago to submit the list of assets to the Chief Justice of India. Apparently, the judges did very little because Chief Justice of India K.G. Balakrishnan refused to answer to the Right to Information (RTI) query whether the judges had been complying with the resolution. In fact, his reply trigged off the controversy.

Of course, the CJI is right when he says that the resolution is "voluntary" in nature. But a law by parliament, as suggested by him, would have placed the judges at the same level as civil servants. The law on the subject would have been embarrassing and Law Minister Veerapa Moily has announced to drop the proposed bill. Unfortunately, a new legislation is being proposed. However, the government should see that the dignity of the judges is not whittled down.

On the other hand, the judges must realize that their credentials have already been smudged due to some serious lapses in their record. The sword of contempt of court hangs on the head of lawyers, clients, journalists and others. Otherwise, many skeletons would have tumbled out of the closet by this time. The judiciary has also the advantage of an instinctive respect for the institution. People do not want to pull down a pillar on which the democratic structure rests. The judges should consider it a plus point.

In fact, former Chief Justice of India S.P. Bharucha was the first one to throw the stone in the placid water of the judiciary a few years ago. He said that the 20 per cent of the judges were corrupt. He never elucidated his statement, nor did he give any concrete suggestion to punish the corrupt. In fact, an advocate from Rajasthan, the state from where Bharucha had made the statement, wrote to him to know the details of his charge which would help him to take up the matter with the state high court. Bharucha did not reply to the letter.

The thread was picked up by the retired Chief Justice J.S. Verma when he wrote a letter to Prime Minister Manmohan Singh to request him to "devise a suitable procedure with legal sanction, without any further delay, to provide for such situations." That was in April 2005. Verma is still waiting for the reply.

For the sake of credibility, there has to be a uniform procedure to deal with the errant judges. Chief Justice Balakrishnan has applied different yardsticks to different judges. When Justice Soumitra Sen of the Calcutta High Court refused to resign despite his indictment, Justice Balakrishnan asked the government to initiate impeachment proceedings against him.

But when it came to Justice Nirmal Yadav of the Punjab and Haryana High Court in the cash-for-judge scam, the CJI made no such recommendation against her despite an even more severe indictment. Instead, he allowed the CBI to drop the corruption case against Justice Yadav on the opinion of the attorney general. The inaction lent credence to Justice Yadav's counter-allegation that other judges were involved in the scam.

More recently, when Justice R Reghupathy of the Madras High Court alleged that a Union Minister had tried to influence him in a pending case through a telephone call, the CJI's initial reaction was to deplore the interference with the administration of justice. Yet, the matter was laid to rest simply because it was found that a lawyer visiting Justice Reghupathy's chamber had made the call on behalf of the minister.

All would remember the government's wishy-washy attitude on the complaint made against retired Chief Justice of India Y.K. Sabharwal when in office he sealed certain properties in Delhi that benefited his sons in the real estate business. The Law Ministry said that the Judges (Protection) Act bars court from entertaining any civil or criminal proceedings against a sitting judge "for any act, thing or word committed, done or spoken by him or in the course of acting or purporting to act in the discharge of his official or judicial duty of functioning." I wonder if the chapter and verse quoted by the ministry is germane to the case. The Act protects a judge against litigants feeling aggrieved over his verdict. It does not cover the allegations made against a judge.

The bill that the Law Ministry introduced in the last Lok Sabha to empower a judicial forum to deal with complaints against judges lapsed after the general elections. What shape the bill would have eventually taken is difficult to say because there were serious differences on the constitution of a judicial forum. The government's motive was suspect because as the then Lok Sabha Speaker Somnath Chatterjee said if the government had been serious it would have issued an ordinance to give powers to the judicial forum to look into the allegation of corruption against judges.

The demand for the constitution of a judicial forum has not in any way minimized the Supreme Court's resolution on the declaration of assets by the judges. Countries like Australia and New Zealand have it. Why not the third world? This forum, as the demand goes so far, will have the Chief Justice of India, a Supreme Court judge and a third legal luminary from outside in consultation with the Prime Minister, the opposition leader and the Chief Justice of India. I wish the forum could also have an eminent person from the public, not connected with the law.

Seat of justice must not be smeared with allegation of corruption.

In fact, the appointment of judges also needs to be more transparent. At present the Collegium's senior Supreme Court judges, presided over by the CJI, make the selection. America and South Africa have the Senate to endorse the appointments. The Charter of Democracy which the late Benazir Bhutto and Nawaz Sharif, the Muslim League chief, signed provides an approval by the Senate. India can adopt the same procedure, the Rajya Sabha discussing the recommendation for appointment of judges to the high courts and the Supreme Court.

Accountability of judges is something basic to the credibility of the verdict they pronounce. Their honesty and integrity has to be beyond reproach for their judgments to be respected, not only legally but also morally.

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