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## PLIGHT OF OUR PUBLIC ADMINISTRATION — EXTRACTS FROM THE SHAH COMMISSION OF INQUIRY REPORT

### LESSONS NEVER TO BE FORGOTTEN

*“The Shah Commission Reports have exposed grave defects in the public life and public services of our country during the Emergency. It can have given Shah J. no pleasure to do so, as his General Observations, with their “simple human message” clearly show. His Reports convey the spirit of the memorable words, “Our country, right or wrong. If right, to keep right, if wrong, to put right.”<sup>1</sup>*

—H. M. Seervai , *Constitutional Law of India*  
(4th ed.) p. 3066

[Note: The Shah Commission Report examined the excesses of the Emergency. Never in the past the public administration had ever been examined with so much thoroughness, as was done by the Shah Commission. The Report turned out unique. It was drawn up by one of the most distinguished judges of our Supreme Court, well-known for his objectiveness and clarity in perception. It was unique as it was drawn up after a sound scrutiny of the primary documents, and after closely examining many of those who were responsible for the excesses of the Emergency (25 June 1975 – 21 March 1977). The Commission could do remarkably good work because the government in power was not interested in obstructing its working by adopting legal and administrative subterfuges. I have already told you that the *Report* came out when the Janata regime was gasping for its last breath, and Mrs. Indira Gandhi was emerging from her political wilderness. The Report vanished from market soon after its publication. Now it is rare. But I had read it closely, and feel that all vigilant citizens must read the *Report*, especially Chapters XV and XXIV which contain the Commission’s valuable ‘General Observations’. As the *Report* is not available in the market, I have compiled some of its observations and comments in this Chapter. I have added appropriate headings to highlight their purport the way I understand them. References to the numbers in the brackets are the references to the Chapters of the *Report*, and the paragraphs therein.]

**Extracts from the general observations in the Report of the Shah Commission of Inquiry (1978), Chapters XV & XXIV**

**1. When RUMOURS ruled**

‘Absence of the freedom of the Press and the severity of the censorship rules coupled with *ad hoc* authoritarian oral orders, rendered the channels of communication over the sub-continent choked and polluted. Rumours became the accepted channels of communication..... Censorship of news and the manner in which the media was manipulated, should be a lesson to the Government and to the people that in a vast country like our blanketing of news in the way it was done, has serious repercussions on the lives and thought of the people.’ [15.7]

**2. The Plight of the Press**

‘The Press has a special responsibility to safeguard the fundamentals of democracy and the rule of law. This responsibility cannot be discharged without vigilance, a measure of denials willingly and altruistically undertaken and courage to accept the consequences of challenging the infringement by the Government of not only the rights of the Press but also of the people. But the freedom of the Press was the second casualty; closely following the incarceration without trial of respected political leaders, who protested against Smt. Gandhi’s attempt to flout the judicial verdict, instead of clearing herself of the impropriety in due course.’ [15.8]

**3. The idea to clip the wings of judiciary brooded upon**

‘The Commission notes with great concern Shri S.S.Ray’s statement in so far as it concerns the decision taken at an irresponsible level on the night of June 25, 1975 for closing down the courts and cutting off the electricity connections to the Press. What happened in the months following the declaration of the emergency with regard to the High Court Judges appears to have been merely an extension of the idea conceived on the night of the 25th on account of which Shri S.S. Ray had felt very uneasy and had also spoken to Smt. Indira Gandhi before leaving her residence that night. [15.9]

The administration in a democratic society has a special responsibility to ensure that the proceedings of the law courts and the Parliament are available to the people at all times through the Press and other media. But this was sought to be smothered during the period of emergency. .... The State owes it to the nation to assure that this vital limb of the Government will not be subjected to strains which might even indirectly operate as punitive merely because of pronouncements not to the liking of the executive authority.’ [15.10]

**4. Motivated appointments and subversion of public service**

‘.... the Commission is of the opinion that a calculated effort was made to place persons in vital positions who were willing to further the

interests of the centre of power in gross violation of established administrative norms and practices. Indisputably every Government must have the right to select its own functionaries, especially for performing duties pertaining to important jobs, but, in doing so, the rules that the Government has framed for making such appointments should not be thrown to the winds. In some of the cases brought before the Commission, the recommendations of the Public Enterprises Selection Board were brushed aside and persons who had been interviewed and not considered fit for appointment by the PSEB were appointed. Important financial institutions such as the Reserve Bank, the State Bank of India and the Punjab National Bank, came to be controlled through postings of men whose selection did not conform to the accepted norms. The conduct of the Chairman, Central Board of Direct Taxes, in certain matters has come to the adverse notice of the Commission. Some of these beneficiaries of Government actions were willing to go along with the power centres, though in the process they had to disregard the accepted norms and practices. These posts are some of the important levers of powers. This is evident from the use to which some of the incumbents of these posts are shown to have been put. The Government having framed the rules governing its conduct cannot normally arrogate to itself the discretion to disregard them, unless there are demonstrably compelling reasons and circumstances, justifying the side-stepping of those rules; and recording the reasons in writing by the functionaries concerned to justify the action if need arises. Selective application of the rules is a direct invitation to indiscipline and arbitrary behaviour in appointments at all levels, with all that it implies. The appointments, terms and tenures of these important functionaries must strictly conform to the statutory requirements; and the Government has a special responsibility to ensure that the financial institutions are not manipulated for unscrupulous operations.' [15.11]

##### **5. The Administration of MISA, and the duty of law enforcing authorities**

'The Commission had opportunity to examine in detail the application of the Maintenance of Internal Security Act in relation to the various categories of persons including acknowledged national leaders, members of banned and not banned organisations and political leaders, students, teachers, trade union leaders, lawyers, juveniles, respected writers, journalists and ordinary criminals — in short, a broad spectrum of cases of persons drawn from almost every walk of life. Forging of records, fabrication of grounds for detentions, ante-dating of detention orders, the callousness with which the request of the detenus for revocation of orders of detention or even parole were ignored — in short, the manner in which a large majority of these persons were incarcerated for the only fault, namely, dissent or suspected dissent from the views of the centres of power, should be a warning to every thinking man as to how an Act initially intended to serve an extremely limited purpose to deal with the misdeeds of a special category of

persons can be given such a wide and comprehensive application so as to embrace all sections of the population to penalise dissent.' [15.12] 'The Commission views with anguish the evidence of patent collusion between the police and the Magistracy in denying the citizens their basic freedoms by arrests and detentions on grounds which were now admitted to be non-existent or deliberately invented. Even when the slender legal remedies were attempted to be resorted to by the aggrieved citizens, these were considered sufficient provocation for incarcerating them on fabricated or non-existent grounds.' [15.13]

'Attention must be invited to the large-scale fabrication of records that followed every illegal action including arrests and detentions by the police and the Magistracy. The consequential entries in the chain of records of the Police Stations and offices of the Police and the Magistrates have become a part of the permanent records which may come to be consulted in future with the inevitable pit-falls.' [15.14]

'On occasions, the Magistracy which is set up as a bulwark against the onslaught of arbitrary or unlawful execution of law and expected to function with independence and judicial restraint, was found seriously wanting, and willing to pander to the whims of the centres of power. Even the cream of the talent of the country in the administrative field often collapsed at the slightest pressure.' [15.15]

'The Commission invites the Government's attention pointedly to the manner in which the Police was used and allowed themselves to be used for purposes some of which were, to say the least, questionable. Some Police officers behaved as though they are not accountable at all to any public authority. The decision to arrest and release certain persons were entirely on political considerations which were intended to be favourable to the ruling party. Employing the police to the advantage of any political party is a sure source of subverting the rule of law. The Government must seriously consider the feasibility and the desirability of insulating the Police from the politics of the country and employing it scrupulously on duties for which alone it is by law intended. The policemen must also be made to realise that politicking by them is outside the sphere of their domain and the Government would take a very serious view of it.' [15.16]

'In this context the Commission can do no better than quote from one of the speeches of Shri Robert Mark, the ex-Chief Commissioner of Police, London. Its relevance for the Police of our country is self-evident. Shri Robert Mark says :—

“Our authority under the law is strictly defined and we are personally liable for the consequences whenever we invoke it. We play no part in determining guilt or punishment and our accountability to the courts both criminal and civil, to local police authorities, to Parliament and to public opinion is unsurpassed anywhere else in the world. In the legal and constitutional framework in which society requires us to enforce the laws enacted by its elected representatives, the most essential weap-

ons in our armoury are not firearms, water cannon, tear gas or rubber bullets, but the confidence and support of the people on whose behalf we act. That confidence and support depends not only on the factors I have already mentioned but on our personal and collective integrity and in particular on our long tradition of constitutional freedom from political interference in our operational role. Notwithstanding the heavy responsibilities for the policing of England and Wales given to the Home Secretary by the 1964 Police Act, it is important for you to understand that the police are not the servants of the Government at any level. We do not act at the behest of a minister or any political party, not even the party in government. We act on behalf of the people as a whole and the powers we exercise cannot be restricted or widened by anyone, save Parliament alone. It is this which above all else determines our relationship with the public, especially in relation to the maintenance of public order, and allows us to operate reasonably effectively with minimal numbers, limited powers and by the avoidance of force, or at least with the use only of such force as will be approved by the courts and by public opinion.”

“To sum the position up for you in easily understandable and practical terms, a chief officer of police will always give the most careful consideration to any views or representations he may receive from his police authority, be it Home Secretary or police committee, on any issue affecting enforcement of the law, whether public order or anything else, but in England and Wales it is generally for him and him alone to decide what operational action to take and to answer for the consequences. In the case of the Commissioner of Police of the Metropolis his exercise of those responsibilities will no doubt be all the more scrupulous in that he alone of all chief police officers enjoys no security of tenure and that subject to parliamentary approval, he may be removed by the Home Secretary.”

“I emphasise this because whilst the police place great importance on their constitutional freedom the significance of their accountability should not be overlooked as a counter-balance to any improper use of it.” [15.17]

‘The Commission feels that what applies to the Police applies in equal measure to the Services as a whole. The politician who uses a public servant for purely political purposes and the public servant who allows himself to be so used are both debasing themselves and doing a signal disservice to the country. [15.18]

### **6. Moral component in public administration**

It is necessary to emphasise, even at the risk of sounding pedantic, that the moral component must take its legitimate and rightful place in every decision-

making process by the public functionary. The following quotation from Walt Lippman has great relevance for the public functionaries generally and to those who were called upon to function in the days of emergency :—

“Those in high places are more than the administrators of Government bureaux. They are the custodians of a nation’s ideals, of the beliefs it cherishes, of its permanent hopes, of the faith which makes the nation out of a mere aggregation of individuals. They are unfaithful to their trust when by word and example they promote a spirit that is complacent, evasive and acquisitive.” [15.19]

### **7. The derelictions of the civil servants in discharge of their public duties**

‘It may not be that the number of senior officials at important places doing the wrong things has increased. But what certainly can be sensed to the point of certainty is that there is a general and wider acceptance of the officials who indulge in short-circuiting of administrative procedures, level jumpings in chains of command, and non-conformity to standard administrative norms and values. It is the absence of service sanctions and the non-critical and an almost supine acceptance of the wrong doings of the members of the services by the general run of officials which spurs others to swell the ranks of the wrong-doers.....Imaginary fear of possible and probable consequences for doing the right things have done more havoc than the known consequences that actually may have followed the performance of duties on the right lines by the Government servants. One must realise that even during the emergency there were several functionaries in the Government who stood up for what was right though the examples under this category were more in evidence among the lower functionaries than among the higher echelons.’ [15.20]

### **8. The story of demolitions**

‘Apart from the legal facade fraudulently created under the cover of which large-scale and indiscriminate demolition were carried out in Delhi, there is the poignant story of a vast majority of the demolitions carried out by the authorities which were attended by a complete disregard for the human suffering of persons in very humble walks of life to whom the demolition of their houses meant complete ruination and in some cases the loss of a life-time’s savings. The Commission hopes that the Government will take immediate steps to remedy the wrongs and also to ensure that the conditions in the resettlement colonies are rendered safe, clean and convenient, considering the colossal nature of the job involved, unless the Government gives the job top priority and sets up an agency equipped with the necessary staff, resources and the decision-making powers, there may be little hope of a satisfactory solution, assuaging the misery caused to several lakhs of affected individuals in the immediate future. The job needs to be taken up on priority footing and the usual ‘red-tape’ dispensed with

if the Government is to carry conviction with the affected people about its purposeful intentions.' [15.21]

'It was disconcerting for the Commission to note that some of the demolitions were carried out at the instance of and to pander to the whims of Shri Sanjay Gandhi who was not answerable to anybody and who held no position whatever in the administrative scheme. Tragic stories regarding the doings of Shri Sanjay Gandhi in the matter of demolitions, pressurising the District Magistrate of Delhi and the other magistrates to own up a firing order in the Turkman Gate area in the face of the pleadings of the concerned magistrate about his not having issued the said firing order have been unfolded in the course of evidence before the Commission. Even arrests of respectable citizens were carried out at the instance of Shri Sanjay Gandhi. The Commission had probed the case of the Boeing deal to see how the financial projections of the Boeing deal were shown to people who were not at all concerned with the matter. The Government has a special responsibility to ensure that extra-constitutional centres of power are not allowed to grow, and if and when located, to snuff them out ruthlessly. As the Commission had occasion to observe, in the final analysis this country will be governed well or ill by the competence and character of the Government officers. If they are content to be mere tools and willing to lend themselves to questionable objectives, there will never be a dearth of unscrupulous operators. There is no substitute for a vigilant, enquiring and enlightened public opinion which keeps a close watch on the doings of the public servants.' [15.22]

### **9. The conditions in the jails of our country**

'The conditions in the jails of our country, as disclosed in the course of the evidence of some of the witnesses who had personal experience, make a very painful reading. The Commission expects to put out a separate Chapter on the conditions in the jails in the country as a whole after a visit to some of the important jails by some of the senior officers attached to the Commission and on the basis of the replies of the State Governments to the questionnaire issued by the Commission. In the meantime, however, the Commission suggests to the Government to make a review of the conditions in the jails insofar as these concern the inmates. With regard to the political detenus the Commission finds it necessary to emphasise that preventive detention is not intended to be a punitive detention. Preventive detention is only intended to impose the minimum restraint on the individuals detained consistent with the objective effectively to prevent the persons detained from acting in a manner prejudicial to the security of the State or to the maintenance of law and order. It would be misuse of power for the authorities to heap on such detenus needless disabilities. In this connection the Commission must point out specifically the manner in which a number of student detenus were denied permission to take their annual examinations — a step which, apart from the illegality involved, exposed the authorities concerned to the charge of being completely oblivious to

the objectives of preventive detention. The Commission trusts that specific instructions will be issued emphasising that detainees must be treated with dignity and respect due to them, the restraints imposed upon them will be minimal and consistent only with ensuring the safety of the State or interests of law and order and that student detainees will be permitted to take their periodical examinations and the authorities will extend the requisite facilities. Similarly, for female detainees, special provisions should be made for housing them and for extending to them appropriate conveniences.' [15.23]

**10. The way the Government departments functioned : the CBDT & CBI**

'Certain departments and organisations of the Government have understandably and necessarily to work under cover of a degree of secrecy. Functioning of some of the departments/organisations which have come to the notice of the Commission during its hearing are the Income Tax Department, Intelligence Bureau, Central Bureau of Investigation and the Enforcement Directorate. Because of the special nature of their functions and operations there is a greater necessity to ensure that their activities do not ever go wrong so as to affect the life, liberty and reputation of the individual citizen. The fairness and objectivity with which these organisations function would, in the ultimate analysis, depend upon the extent to which the higher executives of these organisations are allowed to function freely, fearlessly and independently and at the same time ensuring their accountability to statutorily constituted bodies. These executives should normally have fixed tenures, if necessary, to keep them above pressures and temptations. The Commission feels that the practice of continuing in service as heads of the Organisations retired officers on short-term renewable basis is a pernicious practice and often a source of serious abuse of authority. It is the responsibility of the Government to ensure that such organisations are led by strong, competent and self-respecting individuals who are known for their appreciation of values and their concern for the interests of the country and its citizens. Lesser men as heads of such organisations which play a vital role in the life of the nation, would only be a disaster.' [15.24]

'The Commission has viewed with concern some of the secret operations of the Intelligence Bureau and the complete absence of in-built constraints subject to which they function. The Commission had the opportunity to go through the records of the "Hearings before the Select Committee to Study Governmental Operations with respect to Intelligence Activities of the United States Senate, 1975". Senator Tower, Vice-Chairman of the Committee, making his opening statement in this Committee, observed :

"It is my view that there comes a point when the people's right to know must of necessity be subordinated to the people's right to be secure, to the extent that a sophisticated and effective intelligence—gathering capability makes them secure."



.....

The Commission does not suggest that a system developed in another country should be transplanted without appropriate amendments in our country. Each country has to evolve its own methods so as to suit its own primary and peculiar needs. Here it is only sought to emphasise that for the effective and objective functioning of the intelligence agencies, their activities and achievements should be suitably overseen and evaluated by responsible forums composed of persons specially selected for their integrity and sense of public duty and functioning independently of the intelligence agencies. The one and the only overriding consideration in suggesting this has been the overall interest of the nation and its citizens.' [15. 25 & 26]

### **11. The degradation in civic culture, and the flawed role perception**

'...Arbitrariness and reckless disregard of the rights of others and the consequent misery, which characterized a number of actions of the different public servants over a period of nearly 19 months, terrorised the citizens resulting in a complete loss of faith of the people in the fairness and objectivity of the Administration generally...'. [24.1]

'The commission has also come across officers who having committed excesses at the behest of others — politicians or higher administrative authorities— have sought to defend patently indefensible conduct by suggesting that they had acted in good faith and in due compliance with the provisions of the MISA. Some of these officers did apparently a series of wrong things, being powerless to resist the pressures in the prevailing conditions and being afraid then of the consequences, if they were not to do what the politicians or higher authorities expected or ordered them to do. They have now sought to justify their wrong conduct again presumably because of the fear of consequences. These officers, who could not do the right thing during emergency by resisting illegal pressures, did not do the right thing even after the withdrawal of the emergency. Not only that they made no attempt to atone for their past infirmity, they have in fact made vain attempts to justify their conduct. They could not display courage to face the truth then; they have not the character to face the truth now and to own up their past wrongs.' [24.4]

'...In a number of cases, officials were almost anticipating the wishes of those in authority, however illegal, immoral and incongruous with the basic tenets of administration, such conduct on their part may have been....' [24.7]

'Exhortations have in the past often been addressed by political leaders that public functionaries must be committed servants of the Government. These have in no small measure been responsible for some of the serious consequences that had followed certain steps taken by the Government servants during the emergency. The commitment of a public functionary is, however to the duties of his office, their due performance with an accent on their ethical content, and not to the ideologies, political or otherwise, of the politicians who admin-

ister the affairs of the State. Commitment by the public servants, therefore means only and entirely, commitment to the policy and programmes of the Government insofar as the policy and programmes are in conformity with the fundamentals of the Constitution. Anything beyond these fundamentals should be construed to mean as falling outside the scope and the purview of the commitment. The nation has given to itself a democratic form of Government and the administrative setup must function in a manner fulfilling the demands of that form of the Government in the context of our developing society. Public servants of the different departments have responsibilities, special and peculiar to their respective functions and charter of duties, and the orientation of these responsibilities must be to the programme of social and economic change set out by the Government, but within the constraints of the rule of law in a democratic society....'[24.12]

### **12. Abuse of powers by persons nearer the seats of power**

'The Commission has viewed with concern the evidence relating to the enormous power that was wielded by the lower functionaries like Shri R.K. Dhawan, Shri R.C Mehtani, Shri Navin Chawla and some others. It is necessary for the Government to appreciate the need for defining the various powers and functions of the several lower functionaries who are in close proximity to the seats of power. The Commission views the development in this regard with great concern, for power came to be exercised by some of these lower functionaries without the requisite authority and accountability that goes with it. Power and responsibility must generally go together.....'[24.14]

### **13. What our nation expects from our public servants**

'As borne out by the records of the Government and the depositions of several responsible Government servants, dishonesty and falsehood became almost a way of official life during the emergency. As Robert Frost said, "most of the change we think we see in life is due to truth being in or out of favour". If administrative machinery in our country is to be rendered safe for our children, the services must give a better account of themselves by standing up for the basic values of an honest and efficient administration. That alone can resurrect the people's lost faith once again in our Services. If a democratic heritage is to be left for future generations, we should want the truth again to be enshrined in its legitimate place in the social, economic and political scheme of things in our country. There is nothing unattainable or profound in this. It is a simple human message.' [24.19]

## **NOTES AND REFERENCES**

1. Carl Schurz, addressing the United States Congress in 1872