

Asia: Outdated policing systems rely on the use of torture as the most important tool in criminal investigations

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Due to the enormous changes in the popular consciousness of people throughout Asian countries there is an increased demand for the elimination of the practice of torture. In recent decades, due to changes in education as well as communications, people have undergone significant changes regarding their attitudes to governance. The rejection of the abusive use of force for social control is one of the marked features of the present times.

However, the governments of Asia are still resorting to the use of torture on an extensive scale. The failure to improve the law enforcement agencies in keeping with modern times and the continued use of outdated policing and other law enforcement practices remains one of the major causes of torture. The reliance on such outdated instruments is mostly due to the refusal of the state to allocate adequate funding for the administration of justice in general, and on policing and other forms of law enforcement in particular.

In most countries of Asia due to varying political reasons, political regimes resist the development of rule of law systems as the mode of social control. Often a regime allows itself to be above the law in one respect or another. Various forms of immunity are claimed and sometimes incorporated into the constitutions and legal instruments. On the other hand impunity is also widely allowed to state agencies and particularly to the police and the military.

The result of such practices is the diminishment of equality before the law and the power and capacity of the courts to protect the individual's personal and property rights in varying degrees. The powerlessness of the courts to protect the individual is very much a part of the political schemes prevailing in several countries. In the absence of judicial protection for the individual, the law enforcement agencies are free to abuse their power and the individual is left without redress.

The Asian Human Rights Commission receives reports from many Asian countries on a daily basis regarding acts of torture perpetrated by the police or military agencies. On the basis of details revealed through these cases it can be asserted that very often people are arrested at random without the normal safeguards of arrest on the basis of a reasonable suspicion of the commission of an offense. Often, abuse of power and extortion are the reasons for a person's arrest. The abuse of the powers of arrest and the use of torture are often intertwined.

Under the Convention against Torture, and Other Cruel, Inhuman and Degrading Treatment or Punishment states are required to provide substantive and procedural measures for the protection of victims of torture and for the prevention of torture. However, such substantive and procedural obligations of the state are not created legislatively, and even where these laws exist to some extent, they are not implemented.

States have obligations for restitution, compensation and rehabilitation, all of which require them to initiate legislative, judicial and administrative measures. There is hardly any noteworthy example of compliance with these obligations from many of the countries in Asia however.

States also have the procedural obligation for providing effective legislative, administrative, judicial and other measures to prevent acts of torture in their territories. And yet, torture is not recognized as a crime except in a few countries of Asia. Governments appear to resist the enactment of laws to criminalize torture despite having signed or ratified the Convention against Torture. The failure to recognize torture as a crime contributes to the encouragement of its use by law enforcement agencies. Even countries where torture has been criminalized fail to prosecute violators of such laws despite of the violations being committed on a large scale.

States have an obligation to establish complaint mechanisms, investigation bodies and institutions capable of determining the right to, and awarding redress, for victims of torture and ill treatment and ensuring that such mechanisms and bodies are effective and accessible to all victims. However, there is no noteworthy example of a credible complaint mechanism for victims of torture and any credible investigation mechanism for torture victims in any of the countries in Asia.

Besides this, torture victims who complain about their perpetrators, be they from the police, military or paramilitary groups, are exposed to threats of assassination and other violence. Credible systems of witness protection do not exist. The victims fear to make complaints, and in any case often consider complaint making an exercise in futility, as they do not lead to investigations or effective redress. Such silence imposed on torture victims is a clear demonstration of the failure of states to honour their obligations to prevent the use of torture within their territories.

Torture is also used as an effective instrument for political domination. Citizens are, for the most part, prohibited from active participation in politics. Those who attempt to break such prohibitions are exposed to torture and even worse forms of punishment. The police and military are often mobilized by political regimes in order to suppress political opposition and keep their hold on power.

The direct result of politicization of the police is the emergence of various forms of special police task forces engaging in secret operations such as kidnappings and the maintenance of secret places of detention with facilities for extraordinary forms of torture such as cold rooms for those subject to interrogations. Despite considerable evidence of the existence these practices, there is hardly any possibility to stop them or make complaints against them. There seems to be an assumption that such extra-legal bodies engaging in illegal activities are necessary for the maintenance of social control.

All these factors prevent the development of modern civilian policing based on the rule of law and on respect for citizen's democratic rights. Any meaningful action for the prevention of torture requires far reaching police reforms which will eliminate outdated and politicized forms of policing that exist at present. Special measures need to be taken to stop all kinds of extra-legal and secret operations of special units that are authorized to abduct, torture and interrogate persons outside the normal process of

the law.

In Asia there is an urgent need for public attention to the practice of torture and the ways to prevent it. The prevalence of torture as it exists now, while causing enormous problems to the dignity of many individual citizens, threatens society as a whole by undermining the rule of law and, in fact, the very notion of governance on the basis of law.