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Asian Human Rights Commission (AHRC)
Unit 701A, Westley Square,
48 Hoi Yuen Road,
Kwun Tong, Kowloon
Hong Kong, China
Telephone: +(852) 2698-6339
Fax: +(852) 2698-6367
E-mail: eia@ahrc.asia
Web: www.humanrights.asia

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Asian Human Rights Commission

Justice still out of reach for millions of women

UN Women, Press release

Flagship report from the UN's new organization for women recognizes progress, but calls on governments to take urgent action to end the injustices that keep women poorer and less powerful than men in every country in the world.

(United Nations, New York, 6 July 2011) Justice remains out of reach for millions of the world's women, a flagship report launched today by UN Women warns.

Progress of the World's Women: In Pursuit of Justice is UN Women's first major report, following the organization's launch in early 2011. It recognizes the positive progress made—139 countries and territories now guarantee gender equality in their constitutions, for example—but also shows that too often, women continue to experience injustice, violence and inequality in their home and working lives.

To ensure justice becomes a reality for all women, UN Women calls on governments to:

- *Repeal laws that discriminate against women*, and ensure that legislation protects women from violence and inequality in the home and the workplace.
- *Support innovative justice services*, including one-stop shops, legal aid and specialized courts, to ensure women can access the justice to which they are entitled.
- *Put women on the frontline of justice delivery*. As police, judges, legislators and activists, women in every region are making a difference and bringing about change.
- *Invest in justice systems that can respond to women's needs*. Donors spend USD 4.2 billion annually on aid for justice reform, but only five percent of this spending specifically targets women and girls.

“With half the world's population at stake, the findings of this report are a powerful call to action. The foundations for justice for women have been laid: In 1911, just two countries in the world allowed women to vote—now that right is virtually universal. But full equality demands that women become men's true equals in the eyes of the law—in their home and working lives, and in the public sphere,” said Michelle Bachelet, Under-Secretary-General and Executive Director of UN Women.

Women still suffer gender injustice in their homes, the workplace and public life, *Progress* finds

Much has been achieved in the private and public spheres in the last century. Yet discrimination and gender injustice remain prevalent around the world. This inequality can be seen:

In the home:

- Domestic violence is now outlawed in 125 countries but, globally, 603 million women live in countries where domestic violence is not considered a crime.
- By 2011, at least 52 countries had made marital rape a criminal offence. And yet, more than 2.6 billion women live in countries where it has not been explicitly criminalized.
- Laws based on custom or religion, which exist alongside state legislation, frequently restrict women's rights within the family, in marriage, divorce and the right to inherit property.

In the workplace:

- 117 countries have equal pay laws, yet, in practice, women are still paid up to 30 percent less than men in some countries. And women still do more unpaid domestic and caring work than men in every region of the world.
- Globally, 53 percent of working women—600 million in total—are in vulnerable jobs, such as self-employment, domestic work or unpaid work for family businesses, which often lack the protection of labour laws.

In politics and public life:

- In countries where there have been steep increases in women's representation in parliaments, for example Rwanda, Nepal and Spain, progressive laws on women's rights have often followed. Yet there are still less than 30 percent of women in parliament in the vast majority of countries.

Changes in the law, when properly enforced, lay the groundwork for changing attitudes and improving women's position in society, *Progress* highlights

Progress has been made, the report shows, thanks to the efforts of individuals, civil society and governments, to give women more economic and political power through legal change, including guaranteeing equal pay, introducing parliamentary quotas, and ensuring women know their rights and are able to claim them. Landmark cases that have sped reform of laws and changed attitudes include:

- The case of Maria da Penha in Brazil, whose husband's attacks, including an attempt to electrocute her, left her paralysed. She took the case to the Inter-American Court of Human Rights, resulting in stronger legislation in Brazil on domestic violence, symbolically named Maria da Penha's Law.
- The case of Unity Dow, a judge from Botswana, who demanded that she be able to pass on citizenship to her children, whose father was a foreigner. Unity won her case, and at least 19 African countries have since reformed their laws to allow women to pass on citizenship to their children.

But legal reform is only a start, *Progress* argues—laws must be implemented to translate into true equality

Across the board, existing laws are too often inadequately enforced, the report finds. Many women shrink away from reporting crimes due to social stigma and weak justice systems. The costs and practical difficulties of seeking justice can be prohibitive—from travel to a distant court, to paying for expensive legal advice. The result is high drop-out rates in cases where women seek redress, especially on gender-based violence.

Many governments are now taking practical steps to make justice more accessible for ordinary women—and others should learn from their example, *Progress* argues

Ways of opening up access to justice can include:

- *Investing in one-stop shops*, which bring together justice, legal and health care services in one place and cut down the number of steps a woman has to take to access justice, as in South Africa.
- *Employing more women police as in Latin America*, where women's police stations have led to an increase in the reporting of gender-based violence.
- *Providing legal aid and awareness for women* as in countries as diverse as Pakistan, Mexico, Fiji and Kyrgyzstan, to ensure that women know their rights and can navigate justice systems.
- *Creating specialized courts* such as mobile courts in the Democratic Republic of the Congo, which are bringing justice to women in remote rural areas where levels of sexual violence are very high.

By changing laws and giving women practical support to see justice done, we can change society and ensure women and men enjoy real equality in the future, *Progress* concludes.

UN Women is the UN organization dedicated to gender equality and the empowerment of women. A global champion for women and girls, UN Women was established to accelerate progress on meeting their rights worldwide. For more information, visit www.unwomen.org.

Women's journey to food and health in Mugu, Nepal

Jin Ju

The blue sky is dazzling. Far off in the distance, being sharply shaken in a light airplane having only seven seats, passengers can see beautiful snowy mountains on the right side and the deep blue Rara lake on the left. Isolated villages are dotted amongst the valleys. This is Mugu, the most vulnerable and food insecure of Nepal's 75 districts, despite receiving food aid for decades. When the passengers step on the ground, at an altitude of some 3,000 meters, Mugu women welcome them, expecting to carry their luggage. Some passengers suffer from altitude sickness, while others enjoy the natural beauty, a gift given by God.

Two helicopters arrived at about the same time as us, carrying rice from the World Food Program (WFP). Other women were waiting to carry these 50kg parcels of rice, food aid provided as a 'work for food' program. I wondered if the WFP was aware that a woman who may not eat enough rice or other food items today, is carrying 50kg of rice. Since the WFP launched its food aid in 2008, had the WFP ever thought of making a rice parcel smaller than 50 kilograms? Other women, regardless of their age, stare at you. Carrying heavy loads on their backs seems to be a punishment given by God.



We tried to look for strong boys to carry our luggage, but ended up handing over them to women and girls. There were no boys; only women and their daughters are willing to carry anything. We regretted not dividing our luggage in small bags. The biggest suitcase is given to a 35-year-old woman, a mid-size bag for her daughter, and a small bag for an old woman. The 35-year old-woman wanted to carry all the luggage to earn more money, confidently saying, "I used to carry more than this, I can carry all. No problem!" We suggested that for the price of three bags, she carry the biggest one only.

It was a steep and sometimes rocky path to the town of Mugu where we could find a place to stay. Mugu has no road for vehicles; your feet are the only means of transportation. While men can ride a horse, women are traditionally not allowed to do so. Beautiful pine trees surround the area, but the villagers do not appreciate them as they do not

produce oxygen. We met another group of women on the way to headquarters carrying firewood collected from the nearby forest. Some said their load weighs around 80kg, requiring them to rest on the rocks from time to time. We walked for about three hours.



Another three to four hours by foot from the town is the Ruga village of the Ruga Village Development Community (VDC), where 118 households live. Most of them belong to Dalit communities. Unlike Dalits living in Nepal's terai (plain area mostly located along the Nepal-Indian border), Dalits living in Mugu have some land for their house and cultivation, as the limited resources in the hill area are shared between the upper and lower castes. However, land here is less fertile than in the plains, and cultivation is totally dependant on rain.

While high caste groups are also poor and deprived of basic resources and rights, it is the Dalits who are the poorest in Mugu. In Ruga, some high caste families and individuals share the same living condition as Dalits. Regardless of their caste, all of them go to the temple together, and sit and chat together. There are some discriminatory customs against women, a few of which are only practiced by high caste villagers.



Ruga village

"Women wash their husbands' hands and feet every morning and evening, and drink the water afterwards," says one high caste man for instance. A Dalit man responds, "We don't practice it, only they do." They both laugh, as if it is not a big deal. Sitting behind men, women say nothing. It is common practice for women to be kept in isolation after giving birth—for five days after the birth of a son and 10 after the birth of a girl. Immediately after that, women go back to work. Women also have to stay at another place during their menstruation period. This is based on the belief that women pollute the 'sacred' while performing anything related to reproduction. Although this practice is being disappeared in Nepal, it is still practiced in remote areas.



Place for women after childbirth

“Did you bring medicines,” an old woman asked. When I said no, she asked, “Why did you come here then?” In fact, many women asked us if we had any medicine. One old woman showed me her stomach, asking for medicines for her stomachache and headache. I took out some herbal balm from my bag and applied it to her forehead and around her nose. What else could I do? The other women also asked me to apply the balm on their faces, which I did one by one. They seemed happy with it. They also wanted contraception to control the frequency of pregnancy, which they are unable to obtain. A few years back, some were given contraception by a female foreign doctor funded by an international agency, while others obtained it from a Nepali male doctor. The former was used successfully without any side effects, while the latter caused the women some discomfort. In accordance with their experience, the women therefore now prefer female foreign doctors for medical assistance.



*Place for women
during menstruation*

Many women in the village have suffered the death of their infants. A 33-year-old Dalit woman lost two children prior to the two she has now, the first at the age of three months, and the second at six months. It is not difficult to understand why they died—her poor living condition provides her with insufficient nutrition, particularly during pregnancy. Rice and roti (local wheat bread) are all that she eats. Even then, she cannot eat her preference of locally produced rice, but only manages to buy cheaper Japanese rice distributed by the Nepal Food Corporation (NFC) at a subsidized price. Most of the women suffer from vomiting or breathing difficulties through the consumption of Japanese rice. The women can only harvest a little local rice, millet, wheat, or beans from their own land. It is particularly difficult to cultivate green vegetables and rice due to limited water resources; they are completely dependant on rain.

Furthermore, this Dalit woman did not have a well-trained midwife who could help her during her labor at home. There are many cases where a woman's first or second child died early on.

Another woman said she lost five of her children, all of whom died of diarrhea. Eight to ten children are dying of diarrhea, pneumonia, or malnutrition-related sicknesses every year, the women noted. They also observed that their children get sick with vomiting or diarrhea when they try to breastfeed immediately after returning from field work. The women assumed that it could be due to the hot temperature of their milk.

Additionally, the supplement nutrition powder distributed by the WFP does not seem to suit the children. Women were provided with three parcels of it, each containing 90 bags of 10 grams each in December 2010, to be fed to the children after being mixed with rice. As a result of consuming this however, the children suffered from vomiting or diarrhea. Mothers who visited the District Health Centre (DHC) were given free medicines, but complained that the medicines were bad. This reflects the DHC's lack of credibility, and that women are not instructed how to keep the medicines properly.

Despite all the problems women face, no one consults with them and nothing is accurately reported. One can assume that the situation of remote areas must be worse than found in Ruga village.

The health worker attached to the health post comes once a month to give polio injections to the children. At the District Health Centre, we met a senior Auxiliary Nursing Midwife (ANM) Mrs Saroja Chimire who has been working in Mugu for the last 18 years. The other staff include one senior health officer, one senior midwife, two junior assistants who joined last year, and one social health worker from UNICEF. Only the two senior staff are from Mugu, the rest are from elsewhere. As the officers only keep medical records of patients who come for treatment, no one knows how many children or women die of water borne diseases or other sicknesses associated with malnutrition. UNICEF Nepal suggests that half of the country's children are undernourished, and the local staff of UNICEF Mugu asserts that 7-8 percent of the children are severely malnourished in Mugu. However, there is no precise data presenting the real picture.



Medical facilities at the District Health Centre

We saw a few patients lying in beds, and were told that some pregnant women give birth at the DHC. When pregnant women visit the DHC four times a year, they are entitled to 400 Nepali rupees (USD 5), while those who give birth there get 1,500 Nepali rupees (USD 20). The DHC health officers hold seminars on mortality, pregnancy, and nutrition targeting mothers. They aim to reduce mother mortality by encouraging mothers to come

to public health institutions for delivery or other medical treatment. The biggest obstacle for women in accessing such institutions is the total absence of transportation. It is almost impossible for mothers who have serious medical issues to come to the DHC on foot. For the same reason, mothers cannot bring their malnourished children to the DHC for treatment.

The villagers of Ruga go to the DHC located at the nearby headquarters instead of the village health post farther away, which requires five hours of walking uphill to reach. Unless it is urgent, villagers find it difficult to go to the public health institutions. Even then, it takes a couple of hours to reach from the villages located near the headquarter zone, and some days to reach from the remote villages. Although the medicines and treatments are free, the physical distance is the biggest challenge. Furthermore, there has been no doctor posted at the DHC for the past five months; the previous doctor left for personal reasons and no replacement doctor has yet been posted. The patients who require surgery are referred to the hospital in Nepalgunj, which the villagers have to fly to.

Not just medical officers, but all government officers working in Mugu are from other districts. Their term is very short, one to two years, which means they leave before truly learning about Mugu. The remote and undeveloped nature of the district requires these officers to be paid compensation as an incentive, while their short term status encourages them to engage in corruption. This causes further distress to young villagers; the village's one college bears 200 students every year, who find it difficult to find jobs in Mugu, while government and public jobs are filled by external officers.

One good leader can make a considerable difference. The senior ANM's daughter who currently studies at a university in Bangalore says, "I want to go back to Mugu to work for the Mugu people after finishing my studies." While many youngsters today want to go to big cities or abroad, she on the contrary, expresses her dream of becoming a doctor in Mugu. She is likely influenced by her parents, who worked together in Mugu for many years. Her father was also a medical officer in Mugu, but was an alcoholic, and died as a result. "I love my father. He drank every day but gave the poor villagers whatever he had in his hands. That was his character. He was not possessive and lived like the river. I also want to live like the river. I will take whatever comes to me in my life," she says.

We promised to support her, encouraging her to do her best to be a doctor in the future. One day, you will see a lovely and warm-hearted female doctor sitting in the DHC office in Mugu or walking around the remote villages looking after the poor villagers who need medical treatment. She will perhaps make the necessary changes for mothers and children in Mugu.

Sankaracarya's influence on the Indian religious mind—A bird's eye view

Basil Fernando

India became a society having replaced religion with humanism quite early. The Western world came to this stage only after the greater acceptance of Darwinism. Even so, until today, finding a basis for morality outside a belief in God remains one of the West's main concerns. This issue was resolved early in India however, through the rejection of religion, which had created enormous chaos in many parts of the country due to practices such as large scale animal sacrifices—causing serious problems for farmers—and through other modes of exploitation of the people by priests. Anti-priest and anti-religious attitudes thus grew among the people. The replacement of religion was led by movements of Jainism and Buddhism, which introduced a new mode of social cooperation with reason as the basis of morality. These movements introduced moral bases against the killing of living things, against the abuse of sex, the avoidance of liquor and respect for the truth. The movements naturally became very popular due to the benefits they brought to the people; the end to the destruction of their cattle and agriculture, and to problems brought about through the abuse of priestly positions.

The horrors and suffering wrought by the abuse of clergy can be evidenced from the writings of many Western poets and authors, who have developed much bitter criticism and satire against the clergy. Peoples' anger against the exploitation of religion by priests played a great part in revolutions and great religious reforms. In India this happened a few centuries before the Common Era. This priest-less and religion-less India influenced Emperor Ashoka into embracing this new situation and establishing a political bond with the religion-less movements. Ashoka became an ardent propagandist of this new order based on reason.

Not surprisingly, this period became India's golden age of progress in economics, social development and culture. Later ages were to marvel at the great achievements of India during this time, when India's influence spread to other countries and regions. That was without doubt India's great age of glory and the most productive and creative age of the Indian mind.

In the 20th century, Sri Aurobindo lamented the death of the Indian mind and devoted the latter part of his life to recover the lost mind of India. Living in Pondicherry, he tried to motivate young people to regain their lost heritage. Another great Indian, Dr B R Ambedkar, attempted to pursue the same goal as Sri Aurobindo through attempts to reawaken the Untouchables, renamed Dalits by him. In an attempt to reclaim India's lost glory, he publicly became a Buddhist together with a large gathering.

How did India lose its great mind? How did Indian decadence begin? The answer lies in religion, in the process of replacing reason with religious beliefs and cults. This began with the assassination of the last Maurya king and by burning Buddhist libraries. The path was then forged to return to the hegemony of Brahmins and a caste-based social order. The reestablishment of caste-based India and the death of Indian Humanism happened at the same time, although it did not happen overnight. Visva Mitra's assassination of the last Maurya king happened in 185 BCE, while the final wiping out of Buddhism in India happened only after the eighth century of the Common Era. The process was a slow elimination of the secular mindset among people throughout the country, replaced by one absorbed in religious beliefs and dependent on cults and rituals. This new mindset became the greatest barrier for people's progress. Light disappeared and darkness descended on the Indian soil.

The man who was destined to bring about the death of the Indian mind, (which Sri Aurobindo later vowed to revive), was intellectually a brilliant Sankar known as Sankaracarya, who brought about the revival of religion with his poems and hymns. He introduced a kind of theism, complete with myths and rituals. Indians of later generations were indoctrinated and immersed in such ritualism and worship. Whether there is any other nation as deeply enslaved to its rituals and religion as India is hard to tell.

It must be noted here that there may have been many 'Sankaracaryas'—'head of monasteries'. Some scholars mention 144 Sankaracaryas, with the original Sankaracarya to have lived in 509 BCE. Others speak of 35 Sankaracaryas. The one referred to in this article lived around 800 CE. His teaching was quite different to that of earlier Sankaracaryas, who rejected the existence of a personal god. Sankaracarya of 800 CE was the first Indian to accept and propagate the concept of monotheism as part of the modern Hinduism. He reintroduced the idea of caste. His teachings brought about the dark ages that were to follow in India.

According to David Reigle, Indian author Phulgenda Sinha notes the difference in India's cultural heritage pre and post 800 CE:

Considering the whole history of India from the most ancient to the contemporary period, I found a distinct dividing line in the literary and philosophical heritage of the country, making it appear as if there were two Indias—one which existed from ancient times to

800 A.D., and another which came after 800 A.D. India prior to 800 A.D. produced philosophers and writers who accepted Man as the supreme being. They talked about two main entities: Purusha (Man) and Prakriti (Nature). Man can liberate himself from dukha [sorrow or unhappiness] and can attain sukha (happiness) by acquiring proper knowledge, mastering certain teachings, following certain practices, and by working according to the Samkhya-yoga theory of action.

India after 800 A.D. adopted quite a different outlook. The ideas proposed by writers and commentators were now mostly matters of belief and faith, colored by religion, mysticism, and caste. Not Man but God was held to be supreme. Man could do only what was predestined by God [David Reigle, "Original Sankaracarya," www.easterntradition.org/original%20sankaracarya.pdf].

Furthermore, Sinha asserts that religious intolerance began

when the Brahmans accepted monotheism and began interpreting the whole religious history of India, from Vedas to Upanishads, in a completely new way. The most interesting points in this interpretation were that the status of Brahmans as a caste and class was strengthened, all the gods and goddesses of Vedas were superseded by a single Almighty God, and religious persecution began with a sense of crushing the enemies. It happened with the coming of Shankaracharya [David Reigle, "Original Sankaracarya"].

The rise of monotheism and religion gave rise to religious wars, which were largely the cause of India's ruin. Sankaracarya's philosophy justified the caste system which graded human beings into different categories, and thus divided Indian society. Plato spoke of people's friendship towards each other as an important characteristic of a nation; the caste system removed any such possibility. Britain thus found it easy to conquer the religiously and socially divided India.

Twentieth century India has seen many attempts to replace religion with reason, and the attempt to regain the creativity and power of the Indian mind. By now however, religion has exploited politics to such an extent that it has not proved easy to bring about unity and friendship amongst Indians. Moreover, religion so deeply embedded in rituals and myths is not easily replaced. Similarly, any imagination rooted in religious explanations and world views cannot be easily replaced. Above all, when the mind is so divorced from ethics and morality and so easily adjusts to manipulation, it is difficult for reason to take hold. The division sowed by religious philosophy disrupts the nation building process.

In the West, replacement of religion took place mostly due to science, and particularly due to Darwinism. In the Christian West, the belief in one God was established and all explanations regarding the world and society were based on this belief. When the belief that God created the world was lost, these religious explanations lost their validity.

The acceptance of science in India has unfortunately not led to the same result. The internal process influencing the mind has not changed due to science. Perhaps the manner in which Indian religion has affected the Indian mind is different than in the West. The kind of religion that was established in India needs to be understood better if the enterprise undertaken by Sri Aurobindo, Ambedkar and other modernizers, including the country's first prime-minister Jawaharlal Nehru is to succeed. In gaining such an understanding, the study of the work of Sankaracarya of the eighth century needs to be better appreciated. Sankaracarya's monotheism was of a different kind from its Western counterpart. The understanding of his work may be useful in ending the dark impressions left over the Indian mind by his religion.

The greatest treasure of any nation is the mind of its own people. When that is darkened by mistrust, the resulting negative mindset can be the greatest obstacle to creativity and positive development. Sankaracarya's religious philosophy continues to generate such negative spirits.

Supreme Court of India: ‘Salwa Judum’ is unconstitutional

Rolly Shivhare

“People do not take arms without reason” — Supreme Court

The recent judgment of the Supreme Court of India in *Dr. Nandini Sundar and others Vs State of Chhattisgarh and Union Government* indicates that the country’s judicial system is alive, and a citizen can hope for justice from it. In the decision rendered on 5 July 2011, the Supreme Court declared the Chhattisgarh government sponsored *Salwa Judum* to be unconstitutional. The Court prohibited deploying members of tribal communities as Special Police Officers (SPOs) in any counter-insurgency operation by the state against the Naxals or Maoists, or against any extremist leftist groups operating in the state and/or region. The Court’s decision to prohibit civil militias is a landmark step in protecting marginalised communities from ongoing human rights violations. In essence, the judgment underlines that certain duties of the state cannot be subcontracted out, and further, that the state has the unalienable duty to protect its citizens.

The Constitution of India mandates law and order to be the state’s responsibility. When the protector becomes the violator however, it is a threat to democracy. This is exactly what is happening in Chhattisgarh. Chhattisgarh is one of India’s three states—the other two being Manipur and Jammu and Kashmir—where the government formed private militias to combat anti-state movements. When this was challenged publicly as well as in the court, the government argued that it is its constitutional privilege to adopt modes it sees fit to deal with Naxalite and Maoist activities within the state. In essence, the government was arguing that it has a right to perpetuate, indefinitely, a regime of human rights violations, by adopting the same modes deployed by Maoist and Naxalite extremists in combating them. It is this argument that the Court has thrown out, holding it as unconstitutional.

The government of Chhattisgarh had deployed 6500 tribal illiterate people as SPOs in the state. The government provided arms to these men and women and let them fight the leftist extremists, an act which within days turned neighbour against neighbour. The state took refuge in the century-old Indian Police Act, 1861, which provides for the

Ms. Rolly Shivhare is a staff member of Vikas Samwad, a partner organisation of the AHRC, working in Madhya Pradesh. The author is currently interning at the AHRC’s office in Hong Kong and can be contacted at rolly.shivhare@ahrc.asia

appointment of SPOs to perform duties as guides, spotters and translators. SPOs can work as a source of intelligence, and sometimes are also allowed to carry firearms supplied to them for their self-defence. However, in Chhattisgarh, the government appointed SPOs to fight Maoists and Naxalites. It must be noted that the government even recruited minors as SPOs. In actual fact, the government created a division in the community. By identifying persons as either with the extremists or with the government, neutral space in the community was reduced. SPOs, like the Naxalites and Maoists, used their new power for everything, from settling private disputes to silencing political opposition. According to media reports, the number of cases of rape, murder, and other atrocities increased.

The Supreme Court judgment noted that the Chhattisgarh government was appointing SPOs without following any legal process, and without evaluating the capacities of appointed tribal youth in undertaking counter insurgency activities. In 2010 the number of SPOs was 3000, but this year it increased to 6500. Unfortunately, these are the persons who become the first target of the Naxalites/Maoists. The Court also held that appointing a civilian as an SPO was a threat to his life, and in violation of article 21 of the Indian Constitution, which guarantees the right to life, with dignity.

It must be mentioned here that this is one of the best judgments of the Supreme Court. It begins with a comparison of the situation in Dantewara, portrayed in Joseph Conrad's classic "Heart of Darkness". It then squarely contextualises both the neo-colonial nature of the Indian state and the fundamental tenets of classical liberal democracy, all the while sticking to the law in its entirety.

As far as Chhattisgarh is concerned, it is rich in natural resources, with 32 percent of its population made up of tribal people, who believe the trees and rivers to be their Gods. These tribal people are forcibly evicted from their ancestral land however, so that their land can be given to private companies and state interests for their gain. When such communities resist eviction, they are tortured to the extent where the only choice left for them is to take up arms. This was humanly acknowledged by the Court when it stated that

...people do not take arms, in an organized fashion, against the might of the state, or against fellow human beings without rhyme or reason. Guided by an instinct for survival, and according to Thomas Hobbes, a fear of lawlessness that is encoded in our collective conscience, we seek an order. However, when that order comes with the price of dehumanization, of manifest injustices of all forms perpetrated against the weak, the poor and the deprived, people revolt.

A milestone in Indian democracy, this heartening judgment sees the Supreme Court render a brilliant exposition of the rule of law in the context of the violence unleashed by the Maoists, which has completely distorted the mindset of the state administration. Moreover, the judgment does not end with Chhattisgarh; it has wider implications where similar myopic and irresponsible tactics are employed, like in Manipur and Jammu and Kashmir.

Like the rain

Layana

Roof dripping with rain,
In a dilapidated bamboo bed we lie in vain,
A room without a window,
My baby and I imprisoned here like a doe.

A room so dark,
Only a closed door in sight,
Heavily guarded by a shark,
And beneath my heart is fright.

My baby weeps with pity,
As I cry with anxiety,
But it was echoed in the dark,
As every body is deafened by the shark.

As the sun rises, Yes Sir! That's for everybody!
Can we go against? Nobody.
Can others show pity to the prisoners? No,
Be careful, they will incarcerate you.

If a soldier expresses support,
His job will be cut short
Camaraderie is forbidden;
So with helping is a mortal sin.

Oh, what a sleepless night,
Cause they woke me up at eleven o' clock
Relentless interrogation using their might
Force their wish as I am locked.

Layana was a former political prisoner in the Philippines. The soldiers took her away from her community in 2005, accusing her of being a member of a dissident organization. They beat her up and refused to give her medications for her injuries. She was pregnant then. Eventually, she was transferred to a high security prison in Manila. Layana regained her freedom in 2009 when the court acquitted her from the charge of rebellion. She has since then reunited with her family. However, she finds it difficult to return to her home place as the military might still do her harm. Now, she works as a volunteer in a human rights organization.

This camp is where?
My comrades are where?
My husband is where?
I need to talk, but where?

I replied, where is justice?
Where are my rights?
Why am I abused?
Is this the system of the society?

Sir is angry, he is shouting
Told me to stop talking
He is asking,
He will be helping.

Enough sir, enough,
I don't want it, I am dreaded
I cried, tears like a grain chaff,
My head is breaking, I am maltreated.

He changes his tactics to be,
He is now kind and gentle
He is caring for my baby
Asking me what he can humble.

Cake and perfume,
He will bring it to my room
Is this true or a doom?
Give my baby's needs, for a boom?

How long will I have to suffer?
Fascism with its two faces,
Gentle and abuser
But only one motive, to be mightier.

In a moment, the truth comes out,
Angry, the soldier let his emotions out,
He almost click the gun out.
Then suddenly he left and run out.

Then falls the rain,
The sticky mud in lain,
In my bamboo bed in vain,
As ants climbs like a paint in limn.

I don't know what to do,
My baby, I will carry you,
We will be running in the rain
Looking for a place to shelter in vain.

Again and again, oppression is there.
I'll never forget that day somewhere.
As I watched the rain in lain,
Remembering the past, as pictured in my brain.

When it rains,
I shouted, hounded for justice.
Thousands of people will rise not in vain,
But like the rain, never we can stop them.

Ahmadiyah community in Indonesia faces ongoing discrimination

Interview with Zaenuda Ikhwanul Aziz

An interview conducted by the Asian Human Rights Commission with Zaenuda Ikhwanul Aziz, secretary of the legal committee of the Indonesian Ahmadiyah congregation (Jamaah Ahmadiyah Indonesia - JAI). He is actively involved in the struggle of the Ahmadiyah in the country.

How do you feel about what is happening to the Ahmadiyah community in Indonesia?

We feel that we are being discriminated against, especially the Ahmadiyah communities at the localities outside the capital of Jakarta. For example, the government does not give identification cards and marriage certificates to Ahmadiyahs.

In the economic sector, many Ahmadiyahs have had to change the location of their businesses. In some provinces, people from the community are even intimidated not to buy products from Ahmadiyah shops and businesses, which has resulted in a serious reduction of our income.

In the social sector we also are excluded and intimidated. We are not allowed to be involved in social gatherings.

In the religious sector, the Minister of Religion prohibits us from conducting the Hajj, (*the pilgrimage to Mecca*) and even when we pray, members of the local communities attack our mosques. Sometimes, our villages are also attacked.

Also, in the health sector, many people reject Ahmadiyahs as patients. We therefore feel discriminated against in most, if not all, sectors.

When did you start to feel the discrimination?

The discrimination started when the Indonesian Ulama Assembly (Majelis Ulama Indonesia - MUI) declared the Ahmadiyah as an errant sect in around 2005. This fatwa brought to light the differences between Ahmadiyahs and the community. The people followed the fatwa believing that Ahmadiyah is errant without seeking any further explanation or consideration.

The main actors involved are the Indonesian government, central and local law enforcement authorities and several Ulama members who influence the people to attack Ahmadiyah communities. This is especially so with those persons who live within Ahmadiyah communities.

In your opinion, what is the reason for the increase of the aggression against Ahmadiyahs in the last few years?

There are several reasons, not the least of which is that the government is indecisive about law enforcement. If the joint ministerial decree against JAI still prevailed, then the government could not allow the local authorities in the provinces to declare Ahmadiyah as an errant sect. Unfortunately, the government did nothing to prevent this from happening.

The aggressors see Ahmadiyah as a threat because the numbers of Ahmadiyah communities is increasing and they are scared that they will lose their followers.

Also, the content of the joint ministerial decree has been misinterpreted. There are local regulations which use the joint resolution decree to declare Ahmadiyah as errant whereas there is no such statement in the decree itself. The JAI think the misinterpretations occur due to the government trying to distance itself from the decree [and therefore not doing enough to create awareness regarding it].

Is the state doing anything to protect the Ahmadiyahs?

We feel the state protection is still minimal. There is still turmoil because there is no law enforcement. It is seldom that perpetrators of violence against Ahmadiyahs are arrested, and they are never prosecuted in the courts.

What do you feel about the work of the police?

In general, the work of the police is still far from professional. However, we must acknowledge that in some areas, there are some good police officers working in relation to Ahmadiyahs.

What about the work of the courts?

Judges are deficient at searching for the truth. Their efforts are deficient when examining at a trial, investigating the witness and proof, such as happened at the Cikeusik trial. The verdict against the Ahmadiyah victim was heavier than that of the perpetrators.

What is the Ahmadiyah community doing in their own defence?

Our representatives visit government officials, legal enforcement authorities, and the community in general. Relating to the legal dealings, we entrust this to our legal counsel.

The result of our visits are promising in that there are several communities and authorities who opened up and accepted us, such as in Bandung, Central Java, and Wonosobo. But there have also been rejections, such as in Cianjur, Bogor.

What is your ultimate goal in this struggle?

All we ask for is the right to live like other citizens and that these rights are fulfilled by the government.

Sri Lanka: Report on torture cases

Asian Human Rights Commission

The Asian Human Rights Commission (AHRC) has compiled a report of 1500 cases of police torture in Sri Lanka between 1998 and 2011. This particular report summarizes 323 of the most serious cases of torture. The most notable finding of this report is that almost all of the victims whose cases were summarized were randomly selected by the police to be arrested and detained for a fabricated charge. Perhaps the most shocking aspect of the criminal justice system in Sri Lanka is the overwhelmingly large number of charges which are fabricated by the police on a daily basis. Torture is used to obtain a confession for these fabricated charges.

The failure of the complaints system

The reason for such arrests lies in the inefficiency and ineffectiveness of the complaint system. Firstly, complaints give rise to opportunities for the police to make social, political or financial gains, by means of bribery or extortion of the victims. If victims fail to pay these bribes, they may be tortured. There are numerous complaints made by citizens regarding crimes and disputes that the police are unable to resolve by way of competent criminal justice enquiries. The inaction of the police leads to a rise in public pressure which the police counter by randomly selecting people, usually from those of less privileged socio-economic statuses, as perpetrators of these crimes. These unsuspecting people rightly deny their involvement in the crime in question, and torture is used to force them to sign confessions written by police officers. There may be occasions in which the police are able to determine who the true offender is, but these offenders are often well-experienced in the art of bargaining with the police and maneuvering the criminal justice system, and are thereby kept from their rightful punishments.

The loss of command responsibility

The use of police torture has become endemic to the criminal justice system in Sri Lanka today, but it has been a problem since the establishment of the criminal justice system in colonial times. The most striking difference between the torture that took place then and that which takes place now is the pervasiveness of state-sponsored violence today. In the past, there were controls placed on the police from the high-ranking officers, from the Inspector General of Police (IGP) to the Senior Superintendents of Police, the Deputy Inspector General of Police, Assistant Superintendent of Police (ASP) as well as the Officer-in-Charge (OIC) of each police station, to ensure professional integrity at

each level of the system. These controls, which served to maintain professionalism and efficiency within police stations, have been dissolved.

The failure of ASPs to supervise police stations

The officer immediately responsible for any problems within the police station is the ASP. While the OIC supervises the daily goings-on within the police station, it is the duty of the ASP to supervise the OIC and, by extension, the activities of the police station. The ASP should ensure that each station within their area is following all the rules stated by the police departmental code. Within this code, there are a number of standard procedures for supervision. For example, the duties of the OIC include reviewing criminal files, looking into the conditions of the detainees and ensuring that procedures regarding arrest and detention are followed. This supervisory aspect has all but disappeared. Any understanding of police torture in Sri Lanka should involve an examination of the failings of the ASP in their basic duties. The ASP and other high-ranking officers are supposed to supervise the OIC and other police officers, and ensure that police duties are carried out with efficiency and professional integrity. However, such responsibilities exist only in name, and are rarely carried out in practice.

The control of the policing system by politicians

At this point, an examination of the factors that led to this deplorable state is required. It is clear that the 1978 Constitution had an extremely negative effect on the policing system. This constitution led to the politicization of the police by politicians—particularly the President and the Minister of Defense, as well as powerful members of the ruling party—who began to control the actions of the police. Since professional etiquette had to be flouted in order to meet the needs of these politicians, investigations were not carried out according to the rule of law. Politicians would demand for certain citizens to be arrested or released for reasons of social gain or political expedience. Police officers have repeatedly said that to deny requests from high-ranking state officials would result in demotions, transfers or even the loss of their jobs. Nevertheless, this is not a sufficient excuse for their departure from the procedures of the law. The law states that police officers should not obey any orders other than lawful orders from lawful superiors, i.e. the OIC up to the IGP. However, this hierarchical order embodied in the command responsibility doctrine does not operate effectively in Sri Lanka. As a result, the policing system is failing. Moreover, the police officers themselves have lost confidence in the political system due to their constant need to grapple with the internal contradictions of the inability to enforce command responsibility and a presumed obligation to use their roles to meet the needs of politicians.

A few case examples

Roshan Chanaka: This situation has produced cases which are undeniably deplorable. Each of the cases we will discuss is a demonstration of the dire state of the Sri Lankan policing system. The most recent case was of a young worker in the Free Trade zone, Roshan Chanaka who was shot by police in the factory where he worked. Government officials later admitted that there had been no reason for the police to use firearms on workers, particularly one who had not aroused their suspicion in any way. As a result of this incident, government officials ordered for each of the 80 officers at the local police station to be transferred. But such a transfer does not alleviate the problem.

Gerald Perera: Another well-known case is that of Gerald Perera. Mr. Perera resided close to Sri Lanka's capital city Colombo, in the suburb of Wattala. In the nearby town of Hendala, there was a triple murder, but the police were unable to ascertain any suspects for this crime. The case was passed on to the ASP who asked the special team of police headed by an ASP to investigate the crime. Under the guidance of the ASP, the team arrested Gerald Perera. There was no evidence of any kind to warrant suspicion of Mr. Perera specifically, the only information the unit had was that a man named Gerald knew something about the incidents. This information led the unit to arrest the first man named Gerald who they could find.

Mr. Perera was a harbor worker and was married with three children. He was arrested and taken to the police station without any information as to why he was being arrested. He was then hung from ceiling beams and beaten with iron rods as police officers demanded information about the murders. These facts were established in the Supreme Court. The court found that there was no reason for arrest and, even if there had been reason, Mr. Perera should have been released upon the police learning of his whereabouts on the night of the murder.

However, this did not happen, and as a result of the torture inflicted upon him, Mr. Perera suffered renal failure and was unconscious in the hospital for over two weeks. This incident underwent a criminal investigation over three years after it took place, and the Supreme Court found the police officers who handled Mr. Perera's case to be guilty of torture.

During the investigation, when the police officers became aware that they would be imprisoned for seven years for this crime, they killed Mr. Perera before he could give evidence in court. The murder case of Gerald Perera continues to this day.

Case of Sarath Kumara Nidos: Another case that demonstrates the irrationality and violence with which police officers treat suspects is that of a man called Nidos from

Moratuwa. Nidos was a worker who was arrested, brought to the police station and subjected to physical assault, as officers demanded that he hand over gold items that he had stolen from a residence. Nidos had no involvement in the crime in question, but police officers continued to torture him for over nine days, under the assumption that he would divulge information under duress. Over the course of the nine days, Nidos' family made a number of complaints to the IGP, the country's national human rights commission as well a number of other organizations. The various institutions informed the police of the family's complaints, and the police produced fabricated evidence in court that Nidos had been found in possession of illegal drugs on the night before his arrest, and was therefore ineligible for bail.

Even though his family had made official complaints to a number of authorities about the behavior of the police towards Nidos, no enquiry of the police was made because this would have led to disciplinary action and potential suspension of the OIC of the station. The other supervisory officers were well aware of what had happened, but chose to keep silent on the matter. Many months later, a high court judge released Nidos on bail, stating that the charges had been found to be false.

This is the manner in which the police operate within the criminal justice system. Higher officers do not investigate charges that lower-ranking officers have committed torture. ASPs do not act on complaints made by citizens for efficient, effective action and intervention into crimes.

Why has this system ruptured?

Firstly, lower-ranking police officers often have connections with local politicians, whose word takes precedence over that of higher-ranked officers. Secondly, the police officers are well aware of the failings of the system, but they are under pressure by the public to convict criminals. Furthermore, they often feel that if they interfere with this method of handling cases, there will be conflicts between the higher and lower ranks, and they are wary of disturbing this established order.

The constitutional reasons for the collapse of the police—replacing legal mechanisms with extra-legal measures

The fissures within the institution of the police are symptomatic of a deeper collapse of the rule of law in Sri Lanka. The 1978 Constitution paralyzed public institutions. The 17th Amendment, which introduced a system of credible selection of higher officers on the basis of merit rather than political interference, was passed to remedy the effects of this constitution. However, the 17th Amendment was indirectly abolished by the 18th

Amendment, which nullified the statutes outlined in the 17th Amendment. As a result, there is no working rule of law system in Sri Lanka. In the absence of such a system, the state must rely on extralegal methods to control crime and other forms of civil unrest. Numerous problems then arise because it is not possible to control extralegal methods through legal means. Those who adopt ad hoc mechanisms to deal with civil unrest cannot be expected to act according to the rule of law. It is this difficulty that makes it almost impossible for Sri Lankan society to effectively counter police torture, extrajudicial killings, disappearances and corruption. When all effective mechanisms are extralegal, and there is no legal mechanism that functions effectively, the rules by which society operates lack structure and order.

The Sri Lankan people are making efforts to publicize their complaints with the use of YouTube and other such technological means. But ultimately, these complaints are of no use because the system is grounded on extralegal mechanisms, so these complaints will never be seen within a rule of law framework, and therefore cannot be investigated according to legal methodologies.

Impossibility of investigations into the state approved extra-legal actions

This has led to a situation of chaos; it is impossible to effectively investigate a case of torture in Sri Lanka. There have been attempts to change this system. Act 22, which was passed in 1994, did recognize torture and other cruel, inhuman and degrading treatment as a crime. Moreover, it stated that the punishment for torture by a police officer would be seven years imprisonment. This act has been enforced in the past, but has not been implemented in recent years.

Stopping investigations into torture by Special Investigations Unit of C.I.D

The method of enforcing the Convention against Torture (CAT) Act was through investigation, which, between 2005 and 2008, was done through a special unit of enquiry of the criminal investigation division of Colombo. The special unit consists of a number of highly experienced police officers who work outside of the normal system and are under strict supervision by higher-ranked officers. A high level of investigation and discipline is expected from these officers. Cases would be referred to this unit by the Attorney General's department or the IGP, and then investigated. While the original system was in place, investigators had sufficient evidence to find that torture had taken place in over 60 cases, and indictments were filed against the suspects in question.

However, since the appointment of CR De Silva and, thereafter, the appointment of Mohan Peiris as Attorney General of Sri Lanka, references to the special unit have been halted. CR De Silva and later Mohan Peiris have stated that they do not want to bend to pressure from external agencies, namely the United Nations and other human rights organizations, which have called for credible investigations into crimes. CR De Silva made a policy to dismiss these complaints and employed a new system where complaints are received and investigated by the Attorney General's department, and if necessary, are then referred to this special unit.

This system has also been dissolved. Today, there is no credible method of investigation into torture in Sri Lanka. Despite numerous recommendations by UN agencies and human rights organizations, the recommendations of the act have not been implemented, and the CAT Act is seen as little more than a piece of paper. So long as credible investigations into torture do not exist, there is no possibility for the elimination of torture at the hands of state officials.

Stopping inquiries by the National Human Rights Commission

There have been minor forms of criminal investigation into torture by the country's National Human Rights Commission. However, rather than being thorough investigations in a criminal law sense, these investigations are more like mediation sessions similar to a labour tribunal. But even these investigations have ceased due to lack of compliance. Indeed, Sri Lanka's human rights commission does not have any effective, functioning capacity.

The changes in the adjudication of Fundamental Rights cases

The third remedy available for remedying torture is that of fundamental rights. With this remedy, the complainant would file a complaint as an affidavit. If the court is satisfied that there is *prima facie* case, they will issue notice. A rule has been established within the Attorney General's department with reference to cases of torture that states that the Attorney General will not defend defendants, and will not interfere even if the Attorney General is made a party to the complainants. Moreover, the Attorney General will not testify on behalf of police officers. However, when a case is brought to the Supreme Court, the case is often referred to the Attorney General's department without issuing notice. The Attorney General's department then contacts the police for their opinion on the matter. This opinion is often given without investigation, and the Attorney General's office will then state these objections to the petition in court.

Since objections are made at this stage rather than when the notice is initially issued, the trial is delayed, sometimes for many years, and justice for the torture victim becomes a

distant dream. Since the victims of torture generally come from a lower socio-economic background, a drawn out legal process is particularly difficult because Sri Lanka does not have a state-sponsored legal aid scheme.

Delays and absence of witness protection

Moreover, the delays in trials for numerous years often result in increased pressure on both victims and witnesses of crimes. There is no witness protection scheme in Sri Lanka. A law was proposed about two years ago by the Parliament, but it has not been brought forward for discussion since then. This is a deliberate attempt to allow these practices to continue. Indeed, if witnesses do have protection, more witnesses will come forward with credible information about cases and the legal process will be forced to operate more efficiently. The absence of a witness protection scheme serves to paralyze the legal process. Consequently, people are reluctant to make complaints and those who do complain often rescind their complaints partway into the investigation process. If victims and witnesses do not come forward with complaints and information about crimes, constitutional remedies cannot take place. As a result of this legal paralysis, an inherent understanding of what is legal and illegal is rendered meaningless.

Displacement of the law

These are the kinds of problems that are intertwined with the issue of police torture. Torture at the hands of state officials is a great problem, but in the wider scheme of Sri Lanka's collapsed rule of law system, it is only a symptom of a larger problem of state and societal loss of respect for the law. There is no investment being made into the maintenance of a functional legal system under command responsibility and legal rules. The politicization of these systems has collapsed the legal process and made the welfare of citizens dependent on the whims of politicians. When there is a legal vacuum, society and the state rely on extralegal forces to control civil unrest and other illegalities. Thereafter, there is greater potential for military agencies to play a primary role in the maintenance of societal control.

Criminals allowed function as enforcers of law

Moreover, there is greater possibility for criminals to take on roles as enforcers of order and maintenance of society. We can take the incident that took place with the boy in Karunika as an example of this. When people organized demonstrations, there were employees of politicians waiting to assault them with poles. Since these assailants play a great role in the rule of law system, people tend to go to them rather than law enforcement agencies to make complaints and solve problems.

The executive is above the law

The most important element of the criminal justice system that must be altered for torture to be eliminated is the 1978 Constitution, which allows for the supremacy of the executive over the judiciary. The judiciary must be re-empowered to play the role required of them in a functioning democracy. They must work to bring the policing system back to function with command responsibility. These are difficult challenges but if they do not happen, there will inevitably be more torture and more criminality. In the future, the military could step into the vacuum created by the collapse of the policing system, and the anarchy that exists at present could become even worse.

Please see the link to the report: <http://www.humanrights.asia/countries/sri-lanka/countries/sri-lanka/resources/special-reports/AHRC-SPR-001-2011-SriLanka.pdf>

Practicing Ethics in Action

Ethics in Action begins with the realization that both law and morality have failed the people of many countries, who are today facing incredible forms of cruelty that they have little power to eradicate. Despite all the rhetoric of empowerment, the reality witnessed in most Asian countries is desperation and powerlessness. The two ingredients necessary for any real empowerment of ordinary people are law and morality. If living conditions are to improve, defective legal systems and the failures of upholding ethics and morality cannot be ignored. *article 2*, a publication of the Asian Legal Resource Centre, sister organization of the Asian Human Rights Commission, is devoted to discussing matters relating to defective legal systems obstructing the implementation of human rights. *Ethics in Action* will be devoted to discussing how movements and leaderships claiming to uphold ethics and morality have failed to promote and protect human rights.

Other regular publications by the Asian Human Rights Commission:

Article 2 – This quarterly publication covers issues relating to the implementation of human rights standards as proposed by article 2 of the International Covenant on Civil and Political Rights.

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Asian Human Rights Commission

Unit 701A, Westley Square, 48 Hoi Yuen Road

Kwun Tong, Kowloon, Hong Kong

Tel: (852) 2698 6339 Fax: (852) 2698 6367 Web: www.ethicsinaction.asia

