

Interview 10: SRI LANKA: Nimalka Fernando

Mrs. Nimalka Fernando is a lawyer, presently serving as President of IMADR and Convenor of Mothers and Daughters of Lanka. MDL is a network pioneered in 1989 to develop a campaign against disappearances by women's groups and feminist activists. She made the following comments on the policing institution of Sri Lanka.

What do you think of the policing system in your country?

The task of the police is to maintain law and order, and to assist the judges and lawyers in the administration of justice. But over the years, we have seen a gradual erosion in the functioning of the police as an independent institution. The objective conditions -namely the political atmosphere in Sri Lanka - are impacted by the police service, and have made it just another institution that is dominated by the politics of the day.

The police force has become an arm of the Prevention of Terrorism Act and the Executive in the sense that they are implementing the law to please the executive and the politician of the ruling party in the area, rather than assisting in the administration of justice. When the 17th Amendment to the Constitution was introduced, all political parties in the Parliament in the year 2000 approved it by consensus precisely because the politicians themselves recognized the need to deepen Sri Lanka's democratic environment, and depoliticize the police and public services.

When the Police Commission was active, for a short period we experienced a change in the police services. Finally, members of the public were able to effectively make complaints.

Today the most dangerous thing is that the Executive President is deliberately violating the Constitution by not implementing the 17th Amendment. He has turned our democracy upside down. Furthermore, Mahinda Rajapakse is trying to pull all powers back into the centre by bringing in constitutional reforms which will remove the 17th Amendment. What is going to happen is this regime will ultimately nullify the essence of the 17th Amendment. The Attorney General and the police who should be assisting the courts in the administration of justice have become mouthpieces of the Mahinda Rajapakse government. This situation would make us lose even more faith in the administration of justice.

What is your view on the use of torture by the police?

I do not condone torture in any way. The police must adopt a scientific method to investigate crimes rather than torturing suspects. In many countries the police is seen to be a trained force with the professional capacity to investigate crimes. But in Sri Lanka, the power they have over a suspect is manifested in torture, due to the inability of the police to understand their role and task.

The situation has been further exacerbated as a result of the ethnic conflict. The police treat everybody who has been arrested like a terrorist. But it is my view that even a terrorist should not be tortured. The police today are treating petty thieves as if they are people taken under the Prevention of Terrorism Act, and these petty thieves often disappear or face torture.

The culture behind the police's present training is to eliminate the enemy. This is the ideology of the state and the government in Sri Lanka. They justify their behaviour in this way. The Sinhalese, as well as the Tamils and Muslim people from all communities, face this agony. The police have moved away from maintaining law and order and have become pawns in the hands of the government. We cannot give excuses to this brutal behavior of the police.

How is the relationship between police and the public?

What is the relationship between the police and the public? The relationship is pseudo; it is not real. There is no interaction and dialogue between the police and the public. We used to train the police and armed forces on human rights mechanisms during CBK's time. I have participated in these programs, and I am aware that human rights desks were established in these institutions. It is not sufficient to give the police training and say 'now you must protect human rights.' We could not fulfill this even during CBK times.

There is The Gazette notification which states that the police should prepare a list of those in custody by 6pm every day and fax it to the SSP of the region. Subsequently, the HRC-SL managed to encourage the police to send this list to them to assist them in their investigations. We managed to unearth this Gazette notification and distributed it to all police stations through the Human Rights Ministry a few years ago. But the system was not implemented properly. There needs to be an interaction with the police on human rights issues and protection of human rights. The conversation today is built on a power paradigm. People are afraid to expose the wrongdoings of the police. We need to develop a healthy dialogue; we cannot do this artificially. We cannot merely liberate one institution from this abyss. Our democracy has gone to the dogs. We have to liberate the police from the clutches of the executive so that we can develop a healthy conversation.

There are Civil Police Committees in certain areas, who consist of government supporters and a police unit. But I am not talking about such units. In certain areas, they investigate the political background of the committee members. They want to know who is a UNPer (United National Party) and who is a SLFPer (Sri Lanka Freedom Party). They chose those who will not challenge the politics of the day.

As for making a complaint in the police station, this is the right of every Sri Lankan citizen. Many people complain but then they inform their Member of Parliament for protection, or to expedite the investigation. Even for very personal matters, when a case is filed, people ask for the help of politician. To such an extent, this whole process has been extremely politicized. For example, when Prageeth Eknaligoda disappeared, the family - accompanied by lawyer - went to the police station and lodged a complaint. Now the family members have to go to a politician in order to get the investigation expedited.

How is the law against domestic violence implemented in Sri Lanka?

This piece of legislation was introduced after a long legal battle. The patriarchal culture within the Parliament resisted against this law being brought into practice. I supported this law because I thought it was necessary to bring a personal topic into the public domain for a discussion. Some would think that we can achieve great things by the introduction of a law against domestic violence, but this is a restraining order process.

In order to bring about true punishment, we need to invoke provisions relevant to the penal code. But unfortunately, we have not been able to bring these discussions into the public domain as yet. We have not been able to place this within the larger human rights discourse. If you study the patterns of domestic violence in Sri Lanka, you will see that it is like torture. Organizations campaigning against torture have a challenge to face in this realm. There is the need to promote this law and also to raise awareness in relation to its usability.