AHRC has been publishing its annual reports since2005. In these reports, we try to document the right violations prevalent in the Asian region, by showing the struggles people put against such violations. We are devoting this report specifically to document the nature of Policing Systems in several countries in the region. This report reveals a story that is little known and discussed in the internaional discourses on human rights. It is a story of Law Enforcement Agencies being used, NOT as protectors of the rights of people, BUT as those engaged in causing un-imaginable violations amid enoromos corruption. What is worse is the political systems and political leaders use the Policing System of repression of people. This is deny them their rights. These stories present a great challenge to all those engaged in promoting Human Rights. It comples them to find answers to the questions arising from these stories.

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ASIA REPORT 2016

ASIAN HUMAN RIGHTS COMMISSION

BANGLADESH

Policing System Stands Against the Purpose of Administering Justice

Introduction:

The Bangladesh Police have been widely questioned for its brutal practices and habitual violations of human rights. The country's Police have one of the poorest human rights records world-wide especially in Asia for gross violations of human rights against its citizen taxpayers.

Human rights discourse in Bangladesh is still centered on individual incidents of rights abuses. Individual victims get attention from the human rights community. The activists often blame one or more individual perpetrators, concerning particular incidents. The Institutions that unleash and nourish the violation-prone system hardly get adequate publicity in the country's discourse. Such an incident-centred human rights approach requires a PARADIGM SHIFT.

Rights are enshrined in Constitutions, domestic laws, jurisprudence, and international treaties. Enshrining rights has no value unless they are enjoyed and implemented in the citizens' daily life. To implement rights in daily life, citizens of every nation-state need a set of Institutions that are designed for action in protecting them through a certain course of actions. In another words, the guarantees of rights in legal documents are worthless if effectively functional Justice Institutions – such as policing, prosecution, and the judiciary – do not exist. The Justice Institutions that are incapable of guaranteeing rights, objectively and independently, in accordance with their professional standards, require REDESIGNING AND REBUILDING to be able to discharge their duties for the citizens.

The Asian Human Rights Commission (AHRC) published its human rights situation report titled "***Institutionalised Injustice: Asia Report 2015***". That report had a chapter on Bangladesh titled "***Bangladesh – Institutions Cultivate Authoritarianism***", which focused on the four institutional aspects, particularly the policing, prosecution, judiciary, and the prisons of Bangladesh. - The present report seeks to explore the policing and law enforcement systems. Specifically, it wants to explore the relation between the protection of rights and the balance of power structures in the country's system of governance.

Bangladesh's policing system operates as a coercive lethal force. Extreme political control and nepotism are inseparable. Chains of corruption and all forms of abuse of police power have made the Police a monstrous entity. Torture is institutionalised in the law-enforcement system for extortion and silencing of political dissidents. Gross violation of human rights – including enforced disappearances, extrajudicial executions, and kneecapping have become the regular business of the Police. Illegal arrest and arbitrary detention of innocent people and fabricating criminal charges is an unavoidable phenomenon. Credibility, accountability and transparency are alienated from the Police. In an overall, broken justice mechanism there is no capable Institution in place to hold back the extreme form of corruption and violence that the Police impose upon the ordinary person. In fact, the Bangladesh Police is broken as far as professionalism, efficiency and competence in upholding the Rule of Law are concerned. The Bangladesh Police is not an institution responsible for assisting the process of administering justice. It survives as the musclemen of the rulers of the day, standing in opposition to the purpose of the people--striving for justice and democracy.

Brief Background Information on Bangladesh Police:

Today's Bangladesh Police Institution was originally born out of the British colonial system. The mutiny of soldiers in 1857 against the British rulers led to the inception of an Institutional Policing System in India. The British rulers made into law the Police Act in 1861 to establish a policing system. Its aim was to spread control over the people in the region.

The Policing System was found to be a 'failed' one in the first assessment report by Sir Andrew Henderson Leith Fraser in 1902-1903 under the British rule. The Fraser Commission Report reads about Northern and Eastern Bengal: " . . . *[T]he System is stated to have failed from the utter inability of the public Authorities to secure the co-operation of the people in the administration of the Law*. . ." (Sir Andrew H. L. Fraser, Report of the Indian Police Commission 1902-03, Page 29). According to the Fraser Commission Report, the village police were responsible for collecting revenue on behalf of the British colonial regime.

The British rulers promulgated the Police Regulation of Bengal in 1943 for regulating the operations and actions of the Police. There are 1290 Regulations in it, dealing with the overall activities of the entire Policing System. This means internally within the department and externally in the public arena.

With the partition of India in 1947, today's Bangladesh became part of East Pakistan Province. Under the Pakistan regime at least four separate Commissions were set up between 1948 and 1969. There had been no thorough reforms of the Police following the recommendations of those Commissions. It was 24 years before the inception of Bangladesh as an independent Nation-State.

The Bangladesh Government set up separate Police Commissions in 1978, 1986, and in 1988 for reforming the Police. However, the reports have neither been published nor their recommendations been implemented to reform the Police. Apart from the inadequate governmental efforts, the United Nations Development Programme, United States Agency for International Development, European Commission, and Department for International Development initiated a Police Reform Programme in 2005. Millions of dollars were invested in the two-phased program that was drafted as a new Police Bill in 2007. The Bill received wide-range criticism from the country's human rights defenders and jurists. Their opinion was that the Police were being put above the scrutiny of the Judiciary, thereby guaranteeing immunity for the Police.

Bangladesh has catapulted into the donor-funded initiatives of creating agencies with impunity. The inception of the Rapid Action Battalion (RAB) in 2004 and the latest launching of Counter-Terrorism and Transnational Crime Unit (CTTCU) were done with active support from, at least, five Western development partners. The actions of these two agencies, clearly suggest that the purpose of creating these special units was to insert Bangladesh into the global 'war against terrorism' in the post 2001 global phenomenon.

Police are seen illtreating an Environmental Rights Activist for protesting against a coal-fuelled powerplant being jointly implemented by Bangladesh and India in Sundarban, which may cause huge impact on the echosystem of the region. AHRC File Photo.

Active and distant participation in this global controversial campaign has rapidly changed the attitudes of law-enforcement and crime investigation personnel together with guaranteeing the right to a fair trial. 'National security' is randomly used, as an excuse, to suppress most of the peoples' movements against the violence of the incumbent Police Institution. The peoples' struggles for democracy, Rule of Law, and fundamental freedoms are branded as 'terrorism'. The immediate result of this practice is death of the 'unarmed' men along with their women and children. This is a lame excuse for fighting militancy without credibility and absence of modern investigative techniques. The long-term impact will certainly be devastating, as far as the protection of people from State-sponsored atrocities are concerned.

Ironically, the Bangladesh Police manage to send their officers to peacekeeping missions under the United Nations supervision. Their participation in the UN peacekeeping missions fostered the following debate. How can the Police, being extremely unprofessional at home, serve abroad? And what quality of service do they provide for people in conflict areas in the world?

Recruitment and Training of Police:

The recruitment of individuals into the Bangladesh Police takes place in two ways[1]: 1. The Cadre Service Officers are recruited under the supervision of the Bangladesh Public Service Commission. 2. The Non-Cadre Service Officers and Personnel are recruited directly by the Bangladesh Police itself. The Cadre Service recruitment starts with the rank of Assistant Superintendent of Police (ASP), having at least a bachelor degree or above, through the Bangladesh Civil Service (BCS) Police Cadres. The cadre service officers are promoted to the highest ranks that deal with the hierarchal managerial and commanding affairs. The non-cadre service recruitment starts with Police Constable, Sub-Inspector of Police, and Police Sergeant. The non-cadre police actually manage the day-to-day law and order, crime investigations, and traffic control across the country. They can reach up to the level of a Superintendent of Police, at best. In present circumstances, if luck favours them, they can secure promotions either on merit or through influence.

The recruitment process has been degraded to such an extent that today nepotism and corruption is a default practice. The career of a police officer begins with corruption. For example: the BCS recruitment exams have been taking place with scandalous question leakage by the relevant authorities to the examinees having close ties with the government. The recruitments that the Police maintain are entangled in entrenched bribery from the candidates. For example: a job-seeker has to pay BDT 0.6 million (USD 7,500) to 1 million (USD 12,500) for securing the rank of a Police Constable, which is the lowest level rank in the police. Bigger posts require larger amounts of money and political influence from the ruling political parties of the day. The unavoidable necessity of physical and psychological fitness of the new recruits for serving in the Police is undermined at the very beginning while corruption reigns the process. The ability to pay such huge amount of bribes and the capacity of securing political or bureaucratic influence makes the police arrogant and greedy for earning the money back as quickly as possible. As a result, the quality of the personnel never reaches the standard of what a professional Policing System requires for upholding the Rule of Law and developing a just society.

The foundational training course of the Bangladesh Police, of all ranks of cadre and non-cadre posts – from Constable to ASP – is conducted in the Bangladesh Police Academy at Sardah in Rajshahi District, in northern Bangladesh. For additional, separate in-service professional training there are semi-modern facilities for the staff in eight different training schools at different periods in their careers.

[1] According to the Bangladesh Police, the department recruits their personnel in three levels; the Constables - having an academic qualification of Secondary School Certificate or equivalent degree; the Sub Inspectors (SI) and Sergeants - having a minimum bachelor degree. The ASPs - having bachelor or masters or equivalent degrees, are recruited by the Bangladesh Public Service Commission (BPSC) as the Cadre of top-level government officers through sitting for the examination of the Bangladesh Civil Service (BCS). All the recruited personnel are trained in the Police Academy at Sardah in Rajshahi district following the respective primary formalities of the department and the BPSC.

The foundational training programs for the new recruits has the reputation of being seriously corrupted. This is according to Bangladeshi Police Officers who were in communication with the Asian Human Rights Commission. The instructors extort bribes from the trainees for each and every step in the entire process of their training.

The Police recruits are not provided with modern training or adequate, appropriate equipment for conducting credible crime investigations. The country's Forensic Medicine Examination System, as a whole, is still primitive. Whatever the standard of the academic training/educationprovided the new recruits in the Police Academy, the day-to-day practice is never in compliance with the actual purpose of having a policing system.

A protester is being picked up by the Police - the way often arrests are made in Bangladesh. AHRC File Photo.

The policy-makers of Bangladesh who are the politicians of the ruling parties and the bureaucrats – oppose bringing about fundamental changes in the Police Institution through education and global exchange. One can ask the question, why does it happen? The ultimate answer is that the politicians and bureaucrats directly benefit politically and financially from a bad policing system. It helps them to stay beyond the purview of the criminal justice system. How do they snag this benefit? The answer is: by all and any means! For example: the Police can be against anyone who gains political advantage against their opponents. And, justice can be systematically denied to the victims of the opposition by using the Police while the ruling party is in power.

Likewise, Bangladesh's unscrupulous bureaucrats also need a policing system, which matches its corrupt standards, for keeping up the system of exaction intact. This situation allows the Police to abuse their power extensively during the process of crime investigations. The abuse of Police power destroys the actual purpose of having a nation-wide criminal justice system.

Infrastructure of Bangladesh Police:

The Bangladesh Police have some 200,000 police personnel to serve 160 million people in the country. According to geographical administrative jurisdictions in the country, the Police are divided into 8 Ranges, headed by the Deputy Inspector General (DIG); 7 Metropolitan cities, headed by Commissioners equivalent to DIG or Additional Inspector General of Police; 64 districts, headed by a Superintendent of Police (SP). There are over 650 police stations, headed by Inspectors serving as Officers-in-Charge (OC), located in urban and rural areas. The Assistant Superintendents of Police (ASP) are assigned to supervise the Circle consisting of two or more police stations in each jurisdiction.

The police have several UNITS such as the Criminal Investigation Department (CID), Special Branch (SB), Detective Branch (DB), Police Bureau of Investigation (PBI), Railway Police, Industrial Police, Highway Police, Tourist Police, and Battalions such as Rapid Action Battalion (RAB), Armed Police Battalion, Special Security and Protection Battalion—all having different goals of policing in the country. Officers of the rank of Deputy Inspector General or Additional Inspector General of Police currently head each of these units. There are Prosecution Police, often known as 'Court Police', to assist the Public Prosecutors' offices at the Magistrate's Courts and the Session Judge's Courts.

Legislation related to Policing:

The Police Act of 1861 was the first and basic legislation that established the Police Institution. Without any substantive amendment the same British Colonial Law is still in effect today. The Code of Criminal Procedure of 1898 empowered the Police to greatly serve the purposes of the ruling elites of the colonial era. The Police Regulation of Bengal (PRB) came into effect in 1943 under the British regime. It contained two items: 1. detailed regulations to control the conduct and disciplinary matters of the Police. 2. a certain accountability before the district administrators cum ex-officio District Magistrates. These three laws have their respective and inter-related provisions to hold the Police accountable before the Magistrates, despite attributing excessive power to the Police leading to abuse.

The Bangladesh Government promulgated the Dhaka Metropolitan Police Ordinance in 1976 when the country started turning towns into major cities, similar to a metropolis. The Dhaka Metropolitan Police Ordinance, which has been replicated whenever a new city is being given a new identity, has draconian[2] provisions to curtail the rights of citizens. The provision of the Police being accountable before the District Magistrate under the Code of Criminal Procedure has been barred in the Ordinance.

[2] Chapter VII of the Dhaka Metropolitan Police Ordinance – 1976, Accessible at http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=511

The Purpose of Policing and the Realities of Bangladesh:

The concept of a Policing System emerged with the purpose of upholding the Rule of Law to ensure constant assistance to the Judiciary in administering justice. The people of an independent Nation-State need a Policing Service which is fundamentally different from the agenda of the colonial master. In order to comply with the people's aspirations there has to be a definite basic system of checks and balances in place. This assures accountability and transparency in the Policing System.

Police action in a peaceful rally in Dhaka for saving the largest mangrove - Sundarban from coal-fueled power plant's environmental damages. AHRC File Photo.

The Bangladesh Police manifest the State to the people in the country. The Police are seen to behave like rabid monsters in uniform paid by taxpayers' money. They treat citizens like detestable animals. Look at the pattern of policing, the non-compliance in maintaining citizens' complaint mechanism, the level of inefficiency in investigating crimes, the use of weapons and torture and the chain of corruption. The Police have rooted these things in society. Their derogatory attitudes towards the PUBLIC have lead to a very poor reputation of the Bangladesh Police Institution. No one trusts the Police except the authoritarian superior, ruling elites. In Bangladesh, there is a spree of gross human rights violations by the Police with subsequent impunity of perpetrators in the Law-Enforcement Agencies. What they enjoy is incompatible in any civilised society, let alone in a State striving for democracy and the Rule of Law.

Given the realities of the present day, the question arises. Is Police conduct regulated by clear legislation and policy instruments? What happens when the Police, as the key law-enforcement agency, becomes reckless in performing their duties? The answers to these questions are extremely chilling in the negative.

The Police and law-enforcement agencies do not have comprehensive guidelines for the use of force and firearms. These guidelines are in compliance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, as adopted by the United Nations. The following loopholes let the Police walk free: domestic legislation, Judicial Magistrates ignorance about legal provisions to hold the Police accountable and government policy guaranteeing impunity.

The law-enforcement agencies face almost zero percentage prosecution against the large number of cognizable crimes being committed every day in Bangladesh. The police department does not let the criminal justice system take its course to adjudicate the crimes committed by police personnel. Instead, the police administration systematically covers up their colleagues scandalous crimes. The excuse offered is initiating 'departmental proceedings', which breeds and nourishes corruption.

Police Victimise Police:

It is not only the ordinary people accusing the Police in Bangladesh. The non-cadre police officers accuse their cadre service top-ranking officers for their indifference to reforming the policing system. The officers of the ranks of Inspector and Sub Inspector explain that in the existing system, they –as field based police officers – have to maintain law and order; control the complaints mechanism; conduct crime investigation; assist the Courts to produce the defendants, evidence and witnesses for trial; ensure police patrol; and perform protocol duties for the VIPs within their jurisdictions. All done with poorly arranged logistics and sub-standard salaries. In contrast, the cadre service officers do not have to shoulder the afore-mentioned professional hazards. Each has an official vehicle and driver, a desk in a well-furnished office together with better family housing facilities. The allocations of resources between the cadre and non-cadre officers of the Bangladesh Police, and the recognitions of achievements, appear to be similar to the caste-based discrimination of an Indian Hindu-dominant society.

The cadre service officers of top hierarchies, from the IGP to the SP of the districts, systematically force their subordinate officers to routinely pay high amounts of bribes. An ordinary posting, preferred transfer, a promotion, or escape from petty or medium punishment in departmental proceedings is costly. It could be from few hundred thousand to several million Taka in Bangladesh currency, depending on the circumstances. The IGP wants the DIG of each Range or Commissioners of a Metropolitan City to pay a certain amount of a monthly bribe in every possible event. Then, the DIG orders the SPs and Deputy Commissioners of Police to pay bribes. The same order reaches to the Officer-in-Charge (OC) and Sub-Inspectors of the police of each of the police stations or outposts across the country. Therefore, there is a strong chain of corruption within the Bangladesh Police. Apart from the police hierarchy, the influential leaders of the ruling political parties, including the Ministry of Home Affairs, extort money from the police officers for keeping their job 'smooth' in the local jurisdiction. Thus, the non-cadre police officers, who deal with the ordinary crimes control, registration of complaints, crime investigation and other grassroots based operational functions, are forced to be corrupt, abusive, and violent. From beggars and street-hawkers to industrialists and religious shrines – everyone comes under the jaw of extortion by the police throughout the country. The Police have a propelling role in rooting corruption as a norm into Bangladeshi society.

According to the Inspectors and Sub-Inspectors, the non-cadre police officers posted to the police stations are disproportionately overloaded with work. The police department deprives them of just treatment and benefits all the while harassing them from within. The working environment, along with housing and extremely poor logistics facilities, severely frustrates them. The ultimate result is, that the nation is overburdened with an inefficient, corrupt and torturous policing system expected to uphold the Rule of Law in the land.

The Police and the Politics of Authoritarianism:

Police actions are bound to be politically motivated and biased in favour of the ruling elite in Bangladesh's reality in 2017. Bangladesh's incumbent regime policy appears to be worse than its predecessors in regard to the practice of arbitrary deprivation of right to life. The Government has been implementing a policy of disappearing political dissenting voices. Enforced disappearance has been re-introduced as a regular practice of the law-enforcement agencies after almost three decades. The Prime Minister, has publicly endorsed and ridiculed instances of enforced disappearances. The law-enforcement agencies, including the Police and Rapid Action Battalion (RAB), are abducting citizens as part of Government policy.

The high number of enforced disappearances has been the most frightening scene for the Bangladeshi people in recent years. Such disappearances mean abduction, killing, and disposal of bodies often by Sate forces like the RAB and other law-enforcement agencies. The consistent practice of enforced disappearances and the absence of justice for the victims is a clear indication of the collapse of any legal protection. The families of the disappeared face multiple challenges in pursuing their search to find the whereabouts of their loved ones or seeking legal remedies from the justice mechanism. There are no investigations into the complaints of the ongoing disappearances or any other form of legal remedy. In fact, even the possibility of any investigation and prosecutions does not exist. In addition, over a thousand persons have been extra-judicially executed with no possibility of obtaining any form of legal redress. Another chilling practice is what is referred to as 'kneecapping' by law-enforcement. The State picks up people, transports them to an unknown place, with hands and legs tied. Here they are shot in each knee. Victims are left to bleed and taken to hospital when they are in extreme danger of death or are willing to pay bribes to the officers. At the hospital, their legs are often amputated. They will suffer permanent disability the rest of their lives. Fabricated charges are levelled against them and they are thrown in jail, where conditions are appalling.

In 2016, at least, 91 people were disappeared in Bangladesh by Law-enforcement agencies. During the same year, 178 people were killed extra-judicially while at least
16 people were 'kneecapped'. The statistics could be much higher provided the victims speak out publically. Telling their stories defies the deepened process of intimidation and harassment by State Agencies. Politicians, including ministers, parliamentarians, and local government representatives of the ruling political party take advantage by using the Law-Enforcement Agencies to assassinate their political opponents.

Police shot tear gas shell at environmental rights activists in Dhaka pointing gun straight to the bodyline of the protesters. AHRC File Photo.

Law-Enforcement, on the one hand are unprofessional in discharging their mandatory legal responsibilities while on the other hand they have no choice but to keep violating human rights with acts of vicious cruelty. The recruitment, postings, and promotions of law-enforcement personnel largely depend on the political identities of the individual candidates. Being hailed from the incumbent government's preferred districts, families, communities, and relations reign over merit and fitness in the entire process. The regime has set an agenda of deep silence in society. It is then able to perpetuate power without the people's mandate and without a credible electoral process. The officers of the law are expected to act in a fashion that silence is established, by any means. The nepotism-based recruits had performed better, in the eyes of the regime, to set a competitive environment for the rest of the members in law-enforcement. Anyone having an unsteady attitude in complying with the requirements of the regime may be in peril. So, the only choice is to keep fulfilling the Government requirements. As a result, the grooming of the Police has not emerged as a useful institution for the purpose of assisting the process of administering justice in Bangladesh. Regrettably, the Police, as a state entity, stand opposite to the purpose of administering justice. It works as a lethal force for the ruling politicians and financially powerful elite, who wear a uniform at the taxpayers' expense. Out of

numerous instances, the setting fire of the Santal huts by the police at Gobindaganj in Gaibandha district in November 2016 is a glaring one.[3] The Police are ready to commit crimes

of any nature against the citizens at the wish of the ruling party and the Executive Authorities. They do not care about the legal implications or moral or ethical obligations as human beings when they commit these crimes routinely. The Government, which runs state affairs with or without the people's mandate, deliberately wants a coercive policing system and a dysfunctional justice mechanism in place.

In the given context, which Bangladesh has been plunged in today, the State behaves as an extremist entity. Extremism begets extremisms and anarchy. The State, by behaving in an extreme manner with its citizens and undermining the basic concept of justice decade after decade, spreads and nourishes extremes in society. State extremism is reflected through both the behaviour and actions of the public institutions on all tiers plus the responses of certain non-state actors. It gives rise to various socio-ideological groups with low or high profiles, to unleash violent actions that are incompatible with the people's aspirations. The Bangladesh Government is currently taking the advantage of the ongoing global war on terror and the pro-Western Islamophobia – products and by-products of extremisms – to renew and perpetuate governmental power at home. The incumbent regime and its external supporters and actors have invested their collective resources to create psychopaths to destroy the harmonious social fabric of Bangladesh.

[3] Al Jazeera News, *Exclusive: Bangladesh Santal tribe fighting government authorities in a land dispute,* 11 December 2016, audio-visual report shows the police in uniform are setting fire to the huts of the Santal community at Gobindaganj in Gaibandha district: https://www.youtube.com/watch?v=OOdAiKLik24

Conclusion:

The Asian Human Rights Commission has found the following aspects to be responsible for making the Bangladesh Police a monstrous and coercive entity: 1. physical and psychological unfitness; 2. inadequate and substandard education; 3. under-resourced logistics; 4. political and bureaucratic nepotism; 5. chain of corruption within and around the policing and justice mechanism; 6. excessive police power in laws in absence of a proper accountability mechanism; 7. discrimination among the police officers by the hierarchies; 8. ignorance of the judicial officers – particularly the Judicial Magistrates – on how to hold the police accountable despite the availability of certain legal provisions; 9. governmental policy of using the law-enforcement agencies for creating fear in the society to silence and eliminate critiques through gross abuse of human rights; 10. culture of impunity; 11. inadequate studies on the systemic failure of the justice institutions by the government, human rights groups and the international community; and 12. possessing and promoting a belief that professionals like lawyers, judges, doctors, bureaucrats, politicians, and civil society actors that the 'system is okay with some small defects here and there' without looking into the depths of the causes.

The relationship between a bad policing system i.e. dysfunctional justice mechanism and authoritarian governmental system is inseparable. Both complement each other and lead an entire nation toward a completely wrong destination. Bangladesh has already been derailed from the track of the people's aspiration due to its justice mechanisms, particularly the coercive and torturous policing system. The power-hungry politicians and corrupt bureaucrats have deliberately destroyed the institutions even further from where the colonial masters left the wreckage of the institutions. The policing that Bangladesh has today plays an active role in driving innocent people to emigrate abroad on a large scale.

Bangladesh urgently needs re-engineering of its policing, prosecutorial and adjudication systems. The entire justice mechanism needs adjustment if it wants to create a liveable nation-state for its population accommodating a population of all religions, ethnicities, and races. This can be only done by the Government of Bangladesh which is accountable to the people of Bangladesh.

There are examples available in Asian jurisdictions where the people have rebuilt their institutions. Hong Kong was able to establish the Independent Commission Against Corruption (ICAC) in the 1970s. This one institution has worked efficiently to change the characteristics of the Police and other public institutions to such an extent that coerciveness and corruption in the policing system has not been alleged by citizens for many years. The police behave respectfully with the citizens who are not afraid of seeking help from the police. The same Hong Kong Police had a very bad reputation for corruption in the 1970s. But it has earned the reputation of an honest and professional Police Institution, despite rare criticisms and allegations of breaching the law in recent years. There are specific distinctions between the police of Bangladesh and Hong Kong. The Bangladesh Police is coercive and torturous in its day-to-day work and has lost the people's trust. And since the Hong Kong Police have given up such practices decades ago, they have earned the trust of its citizens by their credible and professional service.

The Bangladeshis need to decide how much they will endure to survive the brutal atrocities inflicted by their own law-enforcement agencies. The sooner they initiate transformation to a civilised Policing System, the better life they can envisage for themselves and future generations.

The International community needs to revise their understanding of spending resources. Creating new entities like the Rapid Action Battalion and Counter-Terrorism and Transnational Crimes Unit is neither a solution for securing their investments in Bangladesh nor protecting the native citizens from gross human rights abuses. Instead of wasting money – as was done in the 'Police Reform Programme' – there should be comprehensive understanding of the entire dysfunctional justice mechanisms in which the policing system plays the vital role. Picking and choosing among the political rivals of the country to feel 'comfortable' is not a solution to entrenched problems. Rather, it is important to stand beside the people in building the country with a functional and independent justice mechanism for a thriving liberal democracy. The Rule of Law and a just society. Such initiatives will pay off if the international community wants to avoid more Bangladeshi immigrants. There should be genuine and prompt action to support the aspirations of the people.

Photo Credit to : Rajat Gupta/European Pressphoto Agency

INDIA

The Police

The year 2016 was the year many Indians felt the effects of voicing dissent and the consequences of being labelled 'anti-national'. It was a year that saw cases of sedition[1], a very serious charge, being slapped against young student protesters in the country, signaling the rising intolerance by large sections of society to opinions and positions that are different.

In January 2016, a Dalit scholar, Rohit Vemula, committed suicide in Hyderabad, reportedly due to caste discrimination and related issues. His suicide resulted in widespread protests and anger across the country. In February 2016, a video surfaced allegedly showing the Delhi Police beating up students who were protesting Vemula's suicide outside the RSS headquarters in New Delhi. While the students were reported to be protesting peacefully, the police used excessive force to try and disband them. The police also attacked media persons and damaged their equipment, including the cameras of press photographers. According to the Delhi Police however, the Police only reacted with force as the protesters attacked first.

In February 2016, in an incident that has become synonymous with 'rising intolerance' in India, the President of the Jawaharlal Nehru University Students Union (JNUSU), Kanhaiya Kumar, was charged with sedition for apparently raising anti-India slogans at an event protesting the hanging of Mohammad Afzal Guru, for his role in the 2001 Parliament attack. While Kumar repeatedly denied the charges, he was arrested and granted bail in March 2016. Kumar's arrest led to widespread protests in defense of democracy and the freedom of speech and expression. In June 2016, while protesting police brutalities on student protesters in Patna, Kumar was detained in New Delhi outside Bihar Bhawan.

While the debates raged on in newsrooms and on the web about whether India is indeed becoming an 'intolerant' nation, those who spoke their mind were subject to increasingly vile online abuse and hate. Cyber 'trolls'and abusers frequently targeted liberal voices online, especially women, so much so that Union Minister for Women and Child Development, Maneka Gandhi, urged women who were subject to online harassment to inform her via email. The rising number of these incidents have pushed the frontiers of policing and the anonymity offered by cyberspace and the inherent complexities of the internet make it difficult for the police to track cyber criminals. Further, some experts state that the laws relating to cybercrimes are inadequate and insufficient to deal with such instances, and that police are reluctant and ill-equipped to handle the investigation of cases of online harassment. With the nature of crime changing and our online and offline worlds merging, the need to modernize investigation methods is even more urgent. Given the easy access to data and insufficient laws on data

[1] S.124A of the Indian Penal Code reads,

"124A. Sedition

Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in India, shall be punished with imprisonment for life,to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1- The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2- Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3- Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section."

privacy, it is imperative that police are trained to track and identify online abusers when they receive complaints.

The Asia Report 2016: Police for India will trace the developments related to the police in India by linking them to the major events of the year. As it was a tumultuous year with many different events changing the nature and scope of policing, it will be interesting to understand the complexities and challenges they pose for human rights. The rise in online media and the nature of news has been changing the nature of crime, as well as the nature of oversight by civil society and human rights organisations, posing new challenges and new opportunities for intervention.

Rising vigilantism and incidents of lynching

The year 2015 saw the infamous Dadri incident in which a murderous mob lynched and killed 50-year old Mohammad Akhlaq and severely injured his son, Danish, on suspicions that the family was storing beef in their refrigerator. In March 2016, in Latehar, Kharkhand, two Muslim cattle traders were found hanging from a tree, with injury marks from apparent beatings before they were killed.

In July 2016, in what would set off one of the largest and most unified Dalit protests in India, seven members of a Dalit family were beaten, stripped, tied up and their agony caught on camera, for skinning a dead cow. This attack in Una, Gujarat, was carried out by 'Gau Rakshaks' or 'cow vigilantes', self-appointed custodians of Hindu pride and honour in the 'Holy Cow'.

Mass protests by Dalits in Ahmedabad, Gujarat. Credit: PTI
Source: The Wire

The incident renewed the conversation on caste-based discrimination, vigilantism and police apathy, with allegations that the police stood and watched while the vigilantes attacked the men. More ominously, the incident was one of the biggest reminders of the wave of 'Gau Rakshak' vigilantism that had already begun. Gau Rakshaks are extreme right-wing fundamentalists who have taken it upon themselves to ensure cow protection. This includes targeting those who slaughter the cow as well as those who consume beef or cow meat.

Earlier in March 2016, four Kashmiri students were arrested in Chittorgarh, Rajasthan after they got into a fight with locals who alleged they were cooking and consuming beef in their hostel room at Mewar University. While there is no information regarding whether those who spread the allegations and indulged in the scuffle were arrested, the four students were promptly detained. They were only released after the meat was found not to be beef.

After the Dadri mob incident of 2015 that shook the nation, resulting in the death of 50 year old Mohammad Akhlaq, 19 people were arrested on charges of murder and assault. Two years later however, charges have still not been framed against them. Meanwhile, in June 2016, the local Surajpur District Court directed that an FIR be registered against Akhlaq and his family, under laws prohibiting cow slaughter.

These incidents of vigilantism show how the police become agents of a majoritarian religious belief in a secular country meant to be governed by the Constitution. In popular conception, beef is commonly eaten by non-Hindus, Dalits and mainly Muslims, and the professions of skinning dead cattle and getting rid of the carcasses are relegated to the Dalits. Any sustained policy to prohibit cow slaughter and the consumption of beef impinges on people's freedom to practice their profession and eat what they wish.

In a secular country with no State religion, it is unbecoming that a movement to protect the cow and prevent its slaughter and consumption has taken such strong roots. It has supported the mushrooming of vigilante groups, to which the police usually turn a blind eye, especially in Hindu majority states and states where cow slaughter is prohibited. When policing is undertaken by non-state agents and where vigilantism and lynching become commonplace, it is clear that there is a breakdown in rule of law. Furthermore, when the police effectively stand by and allow vigilantism to flourish instead of protecting the people, there is a breakdown of trust. This is a dangerous situation for India to be in, and it is hoped that the Central Government and the State Governments will take adequate measures to reign in these vigilante groups, book them for their crimes and bring them to justice. It is equally important that the police officers who allowed the vigilante groups to flourish and failed to protect those being attacked, are also punished.

Burhan Wani and the continuing violence in Kashmir

Youths shout pro-independence slogans in Srinagar, Indian-controlled Kashmir, as clashes between Indian troops and protesters continued for a fourth consecutive day despite a curfew. (Dar Yasin/AP) Source: Washington Post, July 12, 2016

In July 2016, young militant leader Burhan Wani was killed in a gun battle by Indian security forces. His death resulted in protests in Kashmir, with clashes between security forces and the protesters. Although there was a curfew, thousands of people attended Wani's funeral in Tral, south of Srinagar, and the ensuing violence between the civilians and the security forces saw many civilians being killed due to police firing. The violent protests began on July 8 and the clashes have resulted in the death of more than 42 people, while more than 3,400 people have been injured, including 1,600 security force personnel.[2]

The handling of the protests by the security forces put the focus back on the conflict in Kashmir, and the alleged use of excessive force by the Army and the Police in conflict zones in India. It also brought the debate squarely back on the constitutionality of the Armed Forces (Special Powers) Act and its purported need in 'disturbed areas'. According to experts, the violence was the worst seen in Kashmir in many years and there were allegations and counter-allegations bandied about, wherein the forces blamed the stone-pelters and the protesters for instigating the violence, while the civilians claimed that the security forces used excessive force, giving them no option.

[2] 'INDIA: Cycles of violence and revenge must end' Statement by the Asian Human Rights Commission published on July 20, 2016 available at http://www.humanrights.asia/news/ahrc-news/AHRC-STM-106-2016

Chattisgarh and the counter-insurgency operations

In June 2016, reports emerged that a young woman, 23-year old Madkam Hidme had been allegedly raped and murdered by security forces in Gompad, Chattisgarh. The state is a hotbed of violent Naxalism and counter-insurgency operations, with ordinary villagers and tribals caught in the crossfire. It was alleged by the police that Hidme was a Maoist who was killed in an 'encounter', in a 'fierce gun battle' with Naxalites in the area. Hidme's family, on the other hand, claim that she was not a Maoist and was raped and tortured before being killed. A petition was filed before the Chattisgarh High Court asking for a judicial probe after a photo of the encounter revealed Hidme's dead body in a Maoist uniform that was "clean and ironed", showing "no signs of an encounter". The court directed that the body be exhumed and a postmortem conducted.

Earlier in the year, in March, the AHRC had issued an urgent appeal regarding the breakdown of rule of law in the state of Chattisgarh:

> *"The AHRC has taken note of new reports from Chhattisgarh, which expose how the rule of law and democratic space are being asphyxiated, as a result of continuing malevolent governance. Threats, harassment, and attacks on the Jagdalpur Legal Aid Group, journalist Malini Subramaniam, and Soni Sori showcase how anyone providing a voice to the poorest and most vulnerable in the state is being hounded. The reports speak of the even worse reality faced by the majority population at the hands of Chhattisgarh state authorities, who have taken to openly abusing the criminal justice apparatus."*

News reports stated that those who were helping the tribals in the region either through legal assistance as in the case of the Jagdalpur Legal Aid Group (JagLAG), or by writing about it like journalist Malini Subramaniam, were targeted by the police through threats and monitoring, and even public lynching by vigilante groups accusing them of being Naxalites or Naxalite sympathisers. In February 2016, the JagLAG and Subramaniam were both forced to leave Bastar due to the threatening situation. Two days later, activist Soni Sori was attacked in Bastar while on her way to work. Soni Sori, one of the most prominent voices against police brutalities in the region, is herself a victim of police torture.

These incidents show how there has been a complete breakdown of trust in the police within the region. The police are accused of engaging in criminal activities, trying to shut down dissent and labeling anyone concerned about the treatment of tribals as a Maoist or a sympathizer. The AHRC hopes that the security forces in the region begin to treat the tribals and others with respect and dignity, and those who are committing human rights violations be brought to book. It is also imperative that the State finds new ways to manage the insurgency in the region, with honest efforts at negotiation.

Jonathan Powell, author of the book "Talking to Terrorists, How to End Armed Conflicts" and chief British negotiator on the Northern Ireland peace talks, wrote in an essay for the Guardian:

> *"If you can't kill them all, then sooner or later you come back to the same point, and it is a question of when, not whether, you talk. If there is a political cause then there has to be a political solution…*
>
> *….If people sit around waiting for a conflict to be "ripe" for talks to start, or for the forces of history to solve it for them, then it will never be resolved. If the negotiations are handled badly, they will fail, which is why it is worth trying to learn from the experience of others."*

Powell was the chief negotiator on behalf of the British Government in its peace talks with the Irish Republican Army. His work and his advice to governments handling armed conflict is especially potent for the Indian State today, dealing with the continuing violence in different conflict zones across the country, whether in Kashmir or Chhattisgarh.

Important judicial and legal developments in 2016

A. Police Reforms

In the 2015 Asia Report, the Asian Human Rights Commission wrote that,

> "Continuing failed efforts at police reform have only deepened the mistrust and fear that the public harbor against the police. The police in India are not a symbol of safety and security – instead, they operate as tools of the patriarchal political elite, powerful, violent and something to be feared."

The year 2016 brought with it another effort at reforming the police, once again from the judiciary. In September 2016, the Supreme Court of India issued directions in the writ petition ***Youth Bar Association of India vs. Union of India & Others.***[3] The writ petition was filed for issuing a writ of mandamus, directing the Union of India (UOI) and the States to:

> "upload each and every First Information Report (FIR) registered in all the police stations within the territory in India in the official website of the police of all States, as early as possible, preferably within 24 hours from the time of registration".[4]

The directions issued were lauded as far-thinking, a serious attempt at modernizing aspects of the criminal justice framework. It is necessary to reproduce the guidelines herein:

[3] Writ Petition (CRL.) No. 68 of 2016 available here http://supremecourtofindia.nic.in/FileServer/2016-09-07_1473255677.pdf

[4] Ibid

(a) An accused is entitled to get a copy of the First Information Report at an earlier stage than as prescribed under Section 207 of the Cr.P.C[5].
(b) An accused who has reasons to suspect that he has been roped in a criminal case and his name may be finding place in a First Information Report can submit an application through his representative/agent/parokar for grant of a certified copy before the concerned police officer or to the Superintendent of Police on payment of such fee which is payable for obtaining such a copy from the Court. On such application being made, the copy shall be supplied within twenty-four hours.
(c) Once the First Information Report is forwarded by the police station to the concerned Magistrate or any Special Judge, on an application being filed for certified copy on behalf of the accused, the same shall be given by the Court concerned within two working days. The aforesaid direction has nothing to do with the statutory mandate inhered under Section 207 of the Cr.P.C
(d) The copies of the FIRs, unless the offence is sensitive in nature, like sexual offences, offences pertaining to insurgency, terrorism and of that category, offences under POCSO[6] Act and such other offences, should be uploaded on the police website, and if there is no such website, on the official website of the State Government, within twenty-four hours of the registration of the First Information Report so that the accused or any person connected with the same can download the FIR and file appropriate application before the Court as per law for redressal of his grievances. It may be clarified here that in case there is connectivity problems due to geographical location or there is some other unavoidable difficulty, the time can be extended up to forty-eight hours. The said 48 hours can be extended maximum up to 72 hours and it is only relatable to connectivity problems due to geographical location.
(e) The decision not to upload the copy of the FIR on the website shall not be taken by an officer below the rank of Deputy Superintendent of Police or any person holding equivalent post. In case, the States where District Magistrate has a role, he may also assume the said authority. A decision taken by the concerned police officer or the District Magistrate shall be duly communicated to the concerned jurisdictional Magistrate.
(f) The word 'sensitive' apart from the other aspects which may be thought of being sensitive by the competent authority as stated hereinbefore would also include concept of privacy regard being had to the nature of the FIR. The examples given with regard to the sensitive cases are absolutely illustrative and are not exhaustive.
(g) If an FIR is not uploaded, needless to say, it shall not enure per se a ground to obtain the benefit under Section 438 of the Cr.P.C.
(h) In case a copy of the FIR is not provided on the ground of sensitive nature of the case, a person grieved by the said action, after disclosing his identity, can submit a representation to the Superintendent of Police or any person holding the equivalent post in the State. The Superintendent of Police shall constitute a committee of three officers which shall deal with the said grievance. As far as the Metropolitan cities are concerned, where Commissioner is there, if a representation is submitted to the Commissioner of Police who shall constitute a committee

[5] Code of Criminal Procedure, 1973
[6] Protection of Children from Sexual Offences Act, 2012

of three officers. The committee so constituted shall deal with the grievance within three days from the date of receipt of the representation and communicate it to the grieved person.
(i) The competent authority referred to hereinabove shall constitute the committee, as directed herein-above, within eight weeks from today.
(j) In cases wherein decisions have been taken not to give copies of the FIR regard being had to the sensitive nature of the case, it will be open to the accused/hisauthorized representative/parokar to file an application for grant of certified copy before the Court to which the FIR has been sent and the same shall be provided in quite promptitude by the concerned Court not beyond three days of the submission of the application.
(k) The directions for uploading of FIR in the website of all the States shall be given effect from 15th November, 2016.

This Supreme Court decision is one of the most important developments in 2016 with respect to police reforms and human rights. If implemented as envisaged, this move will help protect the rights of the accused in a country where corruption within the police is rife. While the police authorities are exempted from uploading FIRs in sensitive cases such as those related to sexual assault, those under the Protection of Children from Sexual Offences Act, 2012 (POCSO) and those related to terrorism and national security, for other offences the guidelines will help the accused obtain access to FIRs, which is largely an uphill task in many cases. The police usually refuse to provide the FIR unless a bribe is paid, or refuse to share the details of the provisions under which the person has been accused.

Relying on judgments in cases such as ***Som Mittal vs Government of Karnataka***[(2008) 3 SCC 753], ***State of West Bengal and others vs. Committee for Protection of Democratic Rights, West Bengal and others***[(2010) 3 SCC 571] and the landmark judgment in ***D.K. Basu vs. State of West Bengal***[AIR 1997 SC 610], the Supreme Court bench stated that when a person's liberty is at stake due to the criminal law, then they have a right to all the information required in order to protect their liberty, referring to the right to life guaranteed under Article 21 of the Indian Constitution.

While this decision by the Supreme Court is a step in the right direction, with some even terming it a 'landmark judgment', it is one that might remain on paper due to the limitations of digital infrastructure and lack of internet connectivity in many places. The directions do not include any penalties if the police stations do not upload the FIR as per the guidelines. These directions may well have the effect of a blunt knife, as with no measures to ensure implementation, they will only look good on paper with no realistic hope of execution. It is however an important aspect of modernizing investigation methods in India, and one that can go a long way in the fight against torture and impunity. It remains to be seen what the impact of this decision will be and the AHRC hopes that it does not meet the same fate as the landmark 2006 Supreme Court judgment in ***Prakash Singh v. UOI &Ors***[7][(2006) 8 SCC 1].

[7] The Supreme Court of India in a judgment delivered on 22 September 2006 in WP (Civil) 310 of 1996

B. Extrajudicial Killings in Manipur

On 8 July 2016, the Supreme Court of India, in the case ***of Extra Judicial Execution Victim Families Association (EEVFAM) &Anr. v. Union of India &Anr***.[8], ruled that victims of extrajudicial executions have the right to know the truth. This was an extremely important development in the fight against extrajudicial executions or 'encounter killings' in India, particularly by the armed forces and police in conflict zones and during counter-insurgency operations. The AHRC's partner organization in Manipur, Human Rights Alert, was the second petitioner in this important case.[9] The judgment reiterated the view expressed by a Constitution Bench in the case ***in Naga People's Movement of Human Rights v. Union of India***(1998) 2 SCC 109.

The Supreme Court stated that the right of self-defence or private defence must be differentiated from the use of excessive force or retaliation.[10] Relying on the judgments in previous cases, such as ***Rohtash v. State of Haryana***[(2013) 14 SCC 290] and ***Darshan Singh v. State of Punjab*** [(2010) 2 SCC 333], the Supreme Court stated:[11]

> "122. From the above, it is abundantly clear that the right of self-defence or private defence falls in one basket and use of excessive force or retaliatory force falls in another basket. Therefore, while a victim of aggression has a right of private defence or self-defence (recognized by Sections 96 to 106 of the IPC) if that victim exceeds the right of private defence or self-defence by using excessive force or retaliatory measures, he then becomes an aggressor and commits a punishable offence. Unfortunately, occasionally, use of excessive force or retaliation leads to the death of the original aggressor. When the State uses such excessive or retaliatory force leading to death, it is referred to as an extra-judicial killing or an extra-judicial execution… Society and the courts obviously cannot and do not accept such a death caused by the State since it is destructive of the rule of law and plainly unconstitutional."

In paragraph 123, the Court stated that,

> *"123. The problem before the courts tends to become vexed when the victims are alleged to be militants, insurgents or terrorists. In such cases, how does anyone (including the court) assess the degree of force required in a given situation and whether it was excessive and retaliatory or not? Scrutiny by the courts in such cases leads to complaints by the State of its having to fight militants, insurgents and terrorists with one hand tied behind its back. This is not a valid criticism since and this is important, in such cases it is not the encounter or the operation that is under scrutiny but the smoking gun that is under scrutiny. There is a qualitative difference between use of force in an operation and use of such deadly force that is akin to using a sledgehammer to kill a fly; one is an act of self-defence while the other is an act of retaliation."*

[8] **(W.P. (CRL.) 129 OF 2012**

[9] 'INDIA: Cycles of violence and revenge must end' Statement by the Asian Human Rights Commission published on July 20, 2016 available at http://www.humanrights.asia/news/ahrc-news/AHRC-STM-106-2016

[10] Ibid

[11] Ibid

Crucially, the Court noted that the use of excessive and disproportionate force on a person is wrong and illegal, irrespective of whether the person was a militant or not:

> *"It does not matter whether the victim was a common person or a militant or a terrorist, nor does it matter whether the aggressor was a common person or the State. The law is the same for both and is equally applicable to both."*

The Court went on to add that there must be a proper and thorough inquiry if there is an allegation that excessive force was used or that there has been an extrajudicial killing.

> "Each instance of an alleged extra-judicial killing of even such a person would have to be examined or thoroughly enquired into to ascertain and determine the facts. In the enquiry, it might turn out that the victim was in fact an enemy and an unprovoked aggressor and was killed in an exchange of fire. But the question for enquiry would still remain whether excessive or retaliatory force was used to kill that enemy…"

This judgment unequivocally establishes that the rule of law is paramount and no one is above the law and no circumstance can justify bypassing the law.

C. Developments in the LGBTQ (Lesbian, Gay, Bisexual, Transgender, Queer) Rights movement in India

Human rights violations by police are rife with respect to the LGBTQ community in India. Section 377 of the Indian Penal Code criminalises "unnatural" sexual acts, effectively criminalising homosexuality in India.

> "377. Unnatural Offences:
>
> Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
>
> **Explanation-** Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section."

This archaic section was challenged before the Delhi High Court, which ruled it to be unconstitutional in 2009. This landmark judgment was overturned by the Supreme Court in 2013 however, thereby recriminalizing gay sex, and effectively homosexuality. On 2 February 2016, the Supreme Court referred the batch of curative petitions filed to a five-judge Constitutional Bench. In June 2016, the Supreme Court judgment was once again challenged in a joint petition filed through prominent Indian LGBTQ personalities. The court declined to examine the plea and instead directed that the petition be placed before a bench headed by the Chief Justice of India.

Supporters of LGBT rights protesting the 11 December 2013 decision of the Supreme Court that upheld section 377 of the Indian Penal Code. Credit: PTI (Source: The Wire)

The existence of Section 377 is a grim reminder that the State can poke its nose into the private spaces of individuals and police their behaviour. Moral policing at its worst, Section 377 allows the police to exploit this provision to harass members of the community. LGBTQ persons may be subject to extortion, threats, blackmail, torture and the like by police and others. It is hoped that the Supreme Court takes the opportunity to pass a far-thinking judgment that will ensure that the human rights of LGBTQ persons in India are not trampled upon and that they are able to live openly, without fear.

Quick look at the data

In terms of human rights violations by the police, the National Crime Records Bureau (NCRB) data for 2015[12] shows that,

- "A total of 54,916 complaints were made against police personnel during the year 2015, out of which 5,526 criminal cases were registered, 1,122 police personnel were charge-sheeted and 25 police personnel were convicted.
- A total of 94 cases of human rights violation by police (all cases against State police personnel and Nil cases against Central Armed Police Forces) were reported during 2015 out of which 34 police personnel were charge-sheeted during 2015. In 12 cases registered against State police personnel final reports were submitted declaring these cases as false.
- Out of 94 cases of human rights violations, maximum cases were reported under 'Hurt/Injury' (14 cases) followed by 'Extortion' (13 cases) and 'Assault on women with intent to outrage her modesty' (7 cases) during 2015. "

[12] 'Snapshots -2015' National Crime Records Bureau, Ministry of Home Affairs, India available at http://ncrb.gov.in/StatPublications/CII/CII2015/FILES/Snapshots-11.11.16.pdf

Conclusion

The year 2016 shows the new and more complicated challenges faced by the police in India. With rising incidents of vigilantism and lynching by mobs in different parts of the country and the increase in online abuse and harassment by vigilantes and abusers in cyberspace, the police are having a hard time keeping up. Add this to the age-old issues plaguing the police in India, such as police torture, extrajudicial killings and human rights violations committed against the most vulnerable populations in India such as tribals, LGBTQ persons and women, the nature of relations with the police appears to be worsening. The rise of social media, though, has enabled the police in many Indian cities to maintain a direct link with the people, with different online initiatives through different channels allowing ordinary citizens to understand the police and their challenges better and help the police respond as quickly and efficiently as possible to complaints. The changing nature of crime along with the rapid developments in technology and media requires India's police to not only keep up to fight crime better, but also, to rebuild people's trust and gain their support. It is hoped that the coming year sees some broad strides in this area.

Photo Credit to tempo.co

INDONESIA

Unfinished Police Reform

Introduction

The Indonesian police force was established during the Dutch Colonial era. At that time, the division of labor between the police and military was much clearer compared to the post-colonial era. It is especially true after Suharto took over power from President Sukarno, the first Indonesian President. The police of the Republic of Indonesia, under 32 years of President Suharto's administration, was integrated under the Indonesian Military (ABRI).

Under Suharto, police policy was influenced and dominated by military policy. The curriculum and material training of the police was largely influenced by military culture. As a result, the characteristics and performance of the police was militaristic. It tended to use a repressive rather than a persuasive approach in dealing with problems, resulting in human rights violations. Two cases in point are the shooting of students in Trisakti and Semanggi in 1998, and State negligence in the case of the 1998 May Riots. In the May Riots, the police allegedly accommodated the rioters who had attacked and gang raped Indonesians of Chinese descent. The police were also allegedly involved in human rights violations in Aceh and Papua.

After Suharto stepped down in 1998, there was a strong civil society movement advocating institutional reform (Security Sector Reform). It honed in on police reform and the separation of the police and military institutions. Civil society groups pressured the transitional government and parliament to reform the regulations and policies related to the police. It sought to strengthen law enforcement and to guarantee the rule of law, as the police are the frontline institution dealing with those seeking justice.

Finally, the people's Consultative Assembly (MPR) issued regulation (Ketetapan MPR RI) No.VI/MPR/2000. It concerned separation of the police (POLRI) and the military (TNI) and became the starting point of police reform. Subsequently, there have been many changes within the internal police department regarding institutional and policy reform.

Article 2 of the regulation clearly states the division of labor between the police and the military as follows:

> Paragraph 1-- the military deals with the defense of the State
> Paragraph 2-- the police maintain security and order

Moreover, one of the significant reform achievements is Law No. 2 of 2002, concerning the Police of the Republic of Indonesia (POLRI). The aims of the police are clearly stipulated under article 4:

> The State Police of the Republic of Indonesia aims to establish national security. This includes the defense of public orderliness and safety, orderliness and law enforcement, protection, safeguards and services to the public, and the establishment of peace for the public while holding to a high standard of human rights

After separation from the military, the police conducted a policy reform. They issued regulations in favor of police accountability as follows:

1. Police Regulation No. 8 of 2009 concerns Human Rights for Indonesian Police officers
2. Police Regulation No. 1 of 2009 concerns the use of force in police actions
3. Standard Operating Procedure (PROTAP) No. 16 of 2006 concerns control of the masses
4. Standard Operating Procedure (PROTAP) No. 1 of 2010 concerns control of rebellious demonstrations
5. Circular No. SE/06/X2015 on hate speech, signed by the National Chief of Police

At present, the police remain under the aegis of the president. This means that the Chief of the National police is directly responsible to the president as mandated by Law No. 2 of 2002. Internal oversight and Police Investigators oversight (Wasidik) is conducted by the General Supervision Inspectorate (Irwasum), as well as Provost and Security (Propam).

Some institutions that have conducted external oversight on the police include the National Police Commission (KOMPOLNAS), the Commission III of the House of Representatives (DPR RI) and the Ombudsman of the Republic of Indonesia. In the last ten years, the community at large and the media also took a very active part in monitoring the police.

Despite policy reform, the police institution faces problems at the implementation level. There is no consistency in implementing regulations between police headquarters and the local police sectors. Lack of an oversight mechanism has contributed to the problem. An example concerns the role of the National Police Commission, which merely provides recommendations. It does not have sufficient authority and power to execute its recommendations however.

Police officers in the field still abuse power, violate human rights and are involved in cases of bribery and corruption. In the last two years, the Asian Human Rights Commission (AHRC) noted that police officers are the most frequent actors committing human rights violations, as compared to the military and other government institutions.

After more than 18 years of political reform, the question remains: is current police performance in accordance with the aims of police reform?

Political influences

Law No. 2 of 2002, article 5, paragraph 1 on the Police, clearly stated:

> The State Police of the Republic of Indonesia shall be the State's tool that has the role in maintaining public orderliness and safety, law enforcement, protection, safeguards and services to the public—all in the context of national security defense.

In fact, the police have difficulties in avoiding political influence. One of the entry points of political influence is the mechanism of selecting the Chief of National Police. This mechanism is dependent on the President's prerogative authority. Besides the President, political parties and the ruling party along with its coalitions have their own political interests in selecting the Chief of National Police.

Authority resides with the President to select and recommend candidates to the Parliament for the position of Chief of the National Police. The selected candidate will be examined through a proper test mechanism. Actually, this mechanism is part of the political process because the Parliament is a political body. No one can guarantee that there is no political interest such as lobbying and agreements under the table among political parties. So, despite the fact that this process is regulated by law, the selection process itself can be the entry point of political interest in the police.

Torture in Police custody

In the last year, the police remain the most frequent actors committing torture. According to the data of the National Commission on Human Rights (Komnas HAM), in 2016, the commission received complaints of 135 cases of torture.These occurred in many provinces in Indonesia. Ironically, a high number of torture cases occurred in Jakarta-33 cases,with North Sumatera province reporting 17 cases.

Table No 1

No	Perpetrators	Number of Cases
1	Central government (ministers)	4 cases
2	Local government	1 case
3	Police officers	120 cases
4	Military	2 cases
5	Prosecutors	1 case
6	Prison guards	7 cases

Source : *National Commission on Human Rights*

The motive behind the torture is to obtain a confession from a suspect. Police investigators intimidate and torture suspects to confess and acknowledge a crime they did not commit. In the case involving Mr. Juprianto, the police investigator tortured him to death during the examination process.

> The Torture Case of Mr. Juprianto
>
> On 30 March 2016, at 7 p.m., Mr. Juprianto, who allegedly stole a motorcycle, surrendered to the Luwu police (Polres Luwu). He was accompanied by Mr. Herianto, a cousin of Juprianto's wife. Juprianto was in good physical condition when he gave himself up. On April 1, after three days in police custody, Juprianto's wife visited her husband and found him with bodily injuries. On April 3, at 9 a.m., she visited again. She saw that Juprianto was in a critical condition with new injuries. Juprianto told his wife that he was tortured by Luwu police officers. He was tortured during the field examination in Padang Sappa police sector (Polsek Padang Sappa) and during the examination in the Luwu police station. On 4 April 2016, at 10 a.m., Juprianto's wife was notified that her husband had passed away. His body was in the Batara Luwu hospital, South Sulawesi.
>
> For further details please visit http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-080-2016/?searchterm=juprianto

Torture in police custody occurred against suspects and witnesses who did not have opportunities or resources to hire a lawyer. Even though the government has enacted Law No. 16 of 2011 concerning Legal Aid, torture continues.

The Torture case of Mr. Asep Sunandar

On 10 September 2016, at around 4:30 a.m., Mr. Asep Sunandar was arrested along with his two friends by three police officers of the Cianjur police resort. They were brought to the local community's main house (ketua RW). According to Asep's two friends, they had guns pointed at them and their hands and mouth were taped. The police did not show them an arrest warrant or provide any explanation for the arrest. Asep and his friends did not resist or fight back against the police; they obeyed police instructions. After being arrested, Asep and his two friends were separated; Asep's friends were brought to Cianjur police resort, whereas Asep was brought to an unknown place. In the afternoon, Asep's family was informed by the local hospital (RSUD Cianjur) that Asep had passed away. When his family went to the hospital to see Asep's dead body, the hospital asked them to obtain a permit from the police. After obtaining the permit, Asep's family saw his bloody corpse with 12 holes in it. The police denied the family's request to take his dead body home.The family's request for an autopsy was also denied by the hospital. Instead, the Cianjur police requested Asep's family to sign a letter and accept IDR. 5, 000, 000 as compensation for the death of Asep Sunandar.

See AHRC's urgent appeal at http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-114-2016/?searchterm=cianjur

While police investigators still torture suspects or witnesses to obtain a confession, Indonesia's Criminal Procedure law (KUHAP) considers a confession as the lowest form of evidence. In fact, legally, there is no need for an investigator to obtain a confession. The law mandates a minimum of two evidences to complete the investigation report before being submitted to the public prosecutor.

KUHAP

Article 184

Legal evidence materials are:

1. The testimony of a witness
2. Information by an expert
3. A letter
4. An indication
5. The statement of the defendant

When police investigators examine suspects or accused persons, one of the first questions they ask is whether or not the suspect should be accompanied by a lawyer? The right to legal aid is mandatory and regulated by law, not a choice. It is the State's obligation to provide a lawyer for justice seekers. The police has yet to fully comply with Law No. 11 of 2016 on Legal Aid. While the law states that poor people are entitled to free legal aid funded by the government, the Police nevertheless retain their outdated mindsets.

For torture cases which occur in police custody, victims or families of victims will face difficulties in challenging the case. This is particularly so when the defendant states before the court that he or she had been tortured during the examination process. In practice, judges will ignore information or statements from the defendant. Needless to say, many suspects or defendants are afraid to confess or inform judges about their torture. Some lawyers are also reluctant to include the torture experienced by the defendant in the petition, considering that the defendant will face difficulties during the trial process.

Police and the protection of minorities

In 2016, the AHRC noted several cases of human rights violations against minority religions and beliefs in Indonesia. One such case was the forced dissolution of the Spiritual Awakening Service (***KKR***) at the Sasana Budaya, Bandung Technology Institute, West Java province, on 6 December 2016. In this instance, the police did not provide security guarantees to the congregation who attended the KKR. On the contrary, the police along with vigilante groups forcibly dispersed the people who were praying. They warned against and prohibited mass prayers conducted in a public area. Up until now, there has been no proper investigation of this case. Police officials are reluctant to mete out punishment to the police officers who failed to protect the people praying in Sabuga.

Previously, the AHRC had documented and reported another incident which occurred in Tolikara Papua. Here, the police perpetrated violence and shot into the Gidi congregation. In total 11 people were injured. As of yet, there has been no result announced regarding the investigation conducted by the police.[1]

Police shoot protesting congregants in Papua, killing a child and injuring others

Between 15-20 July 2015, the Evangelical Church of Indonesia (known as GIDI) organized an international youth seminar and revival service (KKR) in Tolikara regency, Papua province, Indonesia. On July 17, the local Muslim congregations were to celebrate Idul Fitri. GIDI's leader issued a letter stating that they objected to the use of the loudspeaker during the Idul Fitri prayers in Karubaga, Tolikara on July 17, as it coincided with the national conference held by GIDI. A similar notification letter was also sent by GIDI to the Tolikara police resort on July 13. After receiving the letter, the police chief stated that the loudspeaker could be used, and was reaffirmed by the local regent.

The GIDI congregation then organized a protest near the Mosque on July 17, and began throwing stones at the Muslims celebrating Idul Fitri. In a brutal and excessive show of force, the police suddenly shot at the protesters, killing one elementary school child and injuring 11 adults. This violence angered the protesters, who subsequently burned down the Mosque of Baitul Mutaqin and other public facilities around the Mosque.

See AHRC's urgent appeal athttp://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-106-2015/?searchterm=tolikara

The prohibition against the establishment of new houses of worship is still going on. The Karo Batak Protestant Church (GBKP) in Pasar Minggu, South Jakarta was denied permission to build a new church. Without giving a clear reason, the South Jakarta mayor appears reluctant to facilitate the GBKP in obtaining a permit to proceed.[2] Another example is the Santa Clara Church in Bekasi, in the West Java province. Despite the congregation having fulfilled all legal requirements to build a Church, a vigilante group has demanded the Bekasi Mayor to cancel the Church's official permit.[3] The police failed to back up and ensure the congregation's right to freedom of religion and belief.

[1] http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-001-2016/?searchterm=tolikara
[2] http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-131-2016
[3] http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-025-2016/?searchterm=bekasi

A basic problem of the police is that they do not have a strong policy regarding protection of minorities, and tend to side with anti-tolerant groups. Police personnel and resources are sufficient to prevent incidents and conduct effective law enforcement. However, there has been no serious effort undertaken to ensure protection for minorities and guarantee the rights of freedom of religion and belief. Similarly, the AHRC has not seen any prosecution of those involved in serious crimes against minorities, be they vigilantes or police officers. Thus, the problem recurs.

Human rights violations against land rights activists

In the area of natural resources, in particular mining and plantations, the AHRC had documented and reported patterns of human rights violations committed by the police. In general, human rights violations were caused by excessive use of force, violence, random shooting, arbitrary arrest, detention, land confiscation and forced eviction.

We now consider land confiscation and fabricated cases against local farmers in Tulang Bawang, Lampung province. The police were not neutral in this confrontation, tending to side with the Bangun Nusa Indah Lampung Company (PT. BNIL). Fighting since 1993 for their occupied land, farmers faced violence and various types of repression. Some activists were also arrested and charged, including human rights defender Mr. Sugianto. He was charged for assisting the farmers, and will be prosecuted before the courts.[4]

Human rights violations in the environmental mining sector worsened since the police failed to ensure protection for human rights defenders. Land rights activist Salim Kancil in Lumajang, East Java province for instance, was viciously tortured and killed by thugs sponsored by the head of Selok Awar-Awar village.[5] In a land grabbing case from Bahotokong, the farmers and land rights activists who fought for land rights were summoned by the police.[6]

Another incident occurred against environmental activists in Bali province. Mr. I. Wayan Suardana (alias Gendo), is a prominent environmental activist from Bali. He was reported to the Criminal Investigation Department of Police headquarters (Bareskrim Mabes Polri) for being in the forefront of the refusal to reclaim Telok Benoa in Bali for the preservation of the environment.[7]

[4] http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-145-2016
[5] http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-130-2015/?searchterm=selok%20awar%20awar
[6] http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-108-2016/?searchterm=
[7] http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-112-2016/?searchterm=gendo

Picture of freedom of opinion, expression and peaceful assembly

> The Indonesian Constitution 1945, Article 28:
> "The freedom to associate and to assemble, to express written and oral opinions, etc., shall be regulated by law."

Besides being recognized and protected by the Indonesian Constitution of 1945, as a party to the International Covenant on Civil and Political Rights (ICCPR), the government of Indonesia and its statutory bodies, in particular the police, have an obligation to respect and protect the right to freedom of association, peaceful assembly and opinions. As stated by the General Comment of the ICCPR, Paragraph 4:

> The obligations of the Covenant in general and article 2 in particular are binding on every State Party as a whole. All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level - national, regional or local - are in a position to engage the responsibility of the State Party.

The Police, as a state institution, must respect and guarantee the exercise of the right to freedom of opinion, peaceful assembly and association. In practice, the AHRC has documented and reported serious violations of this right by the police. These include violence and forced termination of peaceful public protests, as well as permitting unauthorized groups and demonstrations to continue protesting after the 6 p.m. deadline. The police frequently use excessive force and arbitrary arrests in dealing with peaceful protestors.

In 2016, the AHRC documented and reported on some cases which gained high visibility and attention by the media and the public. One such case was the forced dissolution and arbitrary arrest of a peaceful labour protest in front of the Presidential Palace. Labor activists and public defenders demanded the cancelation of Government Regulation (PP) No.78, 2015, on wages which does not consider the basic cost of living (KHL) from a survey of 84 basic commodities and the needs of laborers.

Twenty-six protesters--two legal aid lawyers, 23 laborers and one university student were arrested and brought to the Jakarta Metropolitan Police (Polda Metro Jaya). After more than six hours of being questioned by the police, 26 people are named as suspects and charged with article 216, paragraph 1 and article 218 of the Penal Code (KUHP) on crimes against public authority. The protesters were also charged with Law No. 9 of 1998 on freedom of expression by public and internal police regulation No. 7 of 2012 on the procedure of public protest.[8]

Due to lack of evidence and witness credibility, the Central Jakarta Court released all the defendants. The judgment proved that the police fabricated cases and violated the right to freedom of opinion, association and peaceful assembly.

In another case, local residents of Majalengka,West Java organized a protest against the West Java International Airport (BIJB) development project, which would occupy land belonging to the villagers. The police deployed excessive force in attacking the protesters and attempting to forcibly evict them, resulting in arbitrary arrest and serious injuries.[9]

[8] http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-009-2016/?searchterm=jakarta%20legal%20aid
[9] http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-148-2016/?searchterm=majalengka

A third case reported by the AHRC involved the massive arrest of Papuan student activists who conducted peaceful public protests in some cities of Papua, supporting the United Liberation Movement for West Papua (ULMWP) to become a full member of the Melanesian Spearhead Group (MSG)--a regional forum in the Pacific. They also gathered to commemorate the integration of Papua into the Republic of Indonesia on 1 May 1963. Police arrested over 2,300indigenous students using execessive force, and disrupted the protests. Although the protesters were eventually released, the police use of force resulted in considerable trauma and fear.[10]

[10] http://www.humanrights.asia/news/ahrc-news/AHRC-STM-064-2016/?searchterm=ULMWP

Police accountability: Corruption cases

Corruption or bribery involving current and former police officers is almost a tradition in the police force. The corruption and money laundering committed by Police Inspector General Djoko Susilo and the deputy chief of the National Police Traffic Corps (Korlantas) Brigadier General Didik Purnomo became a high-profile graft case. It even led to a standoff between the National Police and the Corruption Eradication Commission (KPK). In the first level of the court, Djoko was sentenced to 10 years imprisonment. The High Court increased the sentence to 18 years imprisonment and a fine of IDR 32 billion. On 4 June 2014, the Supreme Court confirmed the sentence of the High Court of 18 years imprisonment. Purnomo was sentenced to five years in prison and a fine of IDR 250 million.

Another high profile graft case involved the Police Commissaries General (Comr. Gen) Susno Duadji. Head of the criminal investigation division (Kabareskrim) of the Police Headquarters (MABES POLRI), Duadji was found guilty of the misappropriation of general election security funds, amounting to IDR 8 Billion. This took place when he was police chief of the West Java regional police (Polda Jawa Barat). He also illegally received bribes during the investigation of the P.T. Salmah Arowana Lestari (SAL) investment scam, amounting to IDR 500 Billion.

In 2015, the Corruption Eradication Commision (KPK) named Police Commissaries General Budi Gunawan as a suspect of graft. At that time, General Budi was a candidate for the Chief of National Police. Subsequently, President Joko Widodo cancelled Budi's candidacy,[11]which led to 46 persons becoming victims of fabricated charges, including the Chairperson of KPK, the vice chairperson and one senior investigator.

The AHRC also noted an extortion allegation committed by Adj. Sr. Comr. (AKBP) Brotoseno, a senior police officer and former Corruption Eradication Commission member. Police investigators finally arrested AKBP Brotoseno and found IDR 3 billion as evidence against him.

All of the above cases indicate that corruption, graft and money laundering is a serious problem within the police institution. These circumstances endanger law enforcement in Indonesia. While these are all high profile cases sensationalized by the national and local media, there must be many more cases not published by the media. The government and the police force must take concrete steps to eradicate corruption within the law enforcement institution. The recently established ad hoc team, to eradicate graft and extortion in public service (Tim Saber Pungli), has its work cut out for it.

[11]http://www.humanrights.asia/news/ahrc-news/AHRC-STM-112-2015/?searchterm=budi%20gunawan

Police and Combat against Terrorism

Since the Bali bomb blast on 12 October 2012, killing approximately 202 civilians, the government of Indonesia confirmed that it will strengthen national awareness of terrorism. The Government issued a Government Regulation in Lieu of Law (PERPU) No.1 of 2002 about Combating Criminal Acts of Terrorism. It became Law No. 15 of 2003 concerning Criminal Acts of Terrorism (currently under revision of the drafting committee in the Parliament).

The enactment of Law No.15 was followed by the police issuing the Decision Letter of the Chief of National Police (SKEP KAPOLRI) Number 30/VI/2003. It concerns the setting up of the Special Detachment 88 anti-terror Unit. Special Detachment 88 is a particular unit in the police institution with authority and power to combat terrorism in Indonesia. Since 2013, the total personnel of Special Detachment 88 is approximately 400 staff, distributed in most regional police offices.

The AHRC notes the various human rights violations committed by Special Detachment 88 since its establishment, including shooting innocent civilians, torture and ill-treatment, arbitrary arrest, wrongful arrest and detention.

In the last five years, there are some instances of abuse of power committed by the Special Detachment 88 anti-terror Unit.

- The Special Detachment 88 Unit shot an innocent civilian, named Mr. Nur Iman in Sukoharjo, Central Java province. At the time, the personnel of Special Detachment 88 were holding a sweeping operation to arrest terrorist suspects Sigit Qordhowi and Hendro Yunianto.

- The Special Detachment 88 arrested terrorist suspect, Mr. Wahono, from Lampung province. This was a wrongful arrest and resulted in the halting of Mr. Wahono's wedding ceremony.

- The Special Detachment 88 arrested two innocent civilians in Tulungagung, Central Java. They are Mr. Mugi Hartanto, an elementary school teacher, and Sapari, an employee of a private company. Both of them were detained for approximately seven hours. There were finally released because they were found not guilty.

- The Special Detachment 88 conducted torture and ill-treatment against a terrorist suspect in Poso, Central Sulawesi. This case was widely published through social media.

- The Special Detachment 88 tortured to death a suspect, Mr. Siyono:

Siyono found dead after being arrested and detained by anti-terror police unit

On 10 March 2016, the police arrested Mr. Siyono and searched his house in Pogung village, Cawas sub district, klaten Regency, Central Java province. The house also functions as a kindergarten, and the searching frightened the children who were studying there. On March 11, Siyono's family received information from the secretariat of Pogung village that Siyono has passed away, and the family should go to Jakarta to verify the information. The head of Pogung village was also ordered by the police to prepare Mr. Siyono's burial site. His family and the village head were concerned at Siyono's death, as he had no health problems prior to being arrested by the police. According to the autopsy of the Kramat Jati Hospital in Jakarta, Mr. Siyono died from bleeding in the brain due to being hit by a hard object. Finally, at a press conference on March 14, police spokesman Inspector General Anton Charliyan confirmed the autopsy result, and further acknowledged that the police had breached procedure in handling terrorist suspects. Siyono's family also noted that before the burial, Siyono's head was still bleeding.

See the AHRC urgent appeal at http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-022-2016/?searchterm=siyono and also the update Urgent Appeal at http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-008-2016/?searchterm=siyono

Lack of accountability of the Special Detachment 88 contributed to the recurrence of alleged human rights violations committed by the anti-terror unit. Police internal mechanisms, the Provost and Security Divisions, are not serious in their willingness and ability to evaluate and properly investigate the alleged human rights violations committed by the personnel of Special Detachment 88.

There is also another problem of lack of regulation of compensation for victims who experience a terrorist attack. Despite Law No. 15, article 36 of 2003, concerning Criminal Acts of Terrorism, regulating compensation for victims, there is no further explanation about how to access this complaint mechanism and how to obtain effective compensation in this case.

Conclusion

Considering all aspects related to police performance, the AHRC concludes that the agenda of police reform in Indonesia needs serious review and comprehensive evaluation. There are indicators that can show that the reform is not yet finished and has not shown significant progress.

The first indicator is related to the culture and doctrine of the police itself. Despite the fact that the police have been separated from the military, a militaristic approach remains part of the police performance.

The second indicator is the high number of human rights violations committed by the police with a culture of impunity continuing.

The third indicator concerns violations of the Criminal Procedure Code, where torture occurs frequently during the police examination process. A Police investigator's mind-set has not yet totally changed; he is still convinced that obtaining a suspect's confession will make the investigation process much easier.

The fourth indicator is political influence and a weak oversight mechanism, which has become a serious problem in police reform.

The fifth indicator is the Special Detachment 88 anti-terror Unit. It is untouchable, in so far that there is no serious and comprehensive evaluation of this special unit in combating terrorism.

Recommendations

1. The government, the President, as executive leader, the institutions who have control over the police, should seriously and comprehensively review the police reform policy. We say this considering that the police are the most frequent actors committing human rights violations such as torture and fabrication of cases.

2. The Parliament, especially the Commission III of the House of Representative, should play a stronger role in monitoring and regularly evaluating police performance. The Commission should follow up and coordinate any complaints submitted by the community at large.

3. The National Police Commission should exercise a more critical external oversight of the police, not only issuing recommendations but further ensuring their recommendations are followed by the police.

4. The police should strengthen the role of internal police oversight, such as the General Supervision Inspectorate (Irwasum), Police Investigator's oversight (Wasidik) and the Provost and Security (Propam). So far, the internal oversight has not functioned well. In some cases they have become part of the police accountability problem.

5. The National Commission on Human Rights (Komnas HAM) and Ombudsman should strengthen the role of the National Police Commission to monitor the policy, performance as well as regulations issued and implemented by the police.

6. The public and the media should also play their roles, by ensuring that police reform and police modernization are on the right track. One of the doors that the public and the media can enter is through the cases handled by the police--whether or not they follow fair trial principles and due process of law.

7. The Police, especially the Special Detachment 88 Unit, in combating terrorism, should obey and respect international human rights instruments to which Indonesia is a state party.

The Nepal Police

Institution Maintaining its Repressive Legacy

Introduction:

The Police are the civil security force of Nepal, under the general supervision and control of the Ministry of Home Affairs. The Police have a Human Rights Unit, established in 2003 to ensure the protection and promotion of human rights. From its inception, the Human Rights Unit has made two claims. Firstly, to firmly uphold international standards of human rights. Secondly, policing and monitoring human rights practices within the organization. However, it is not working according to its mandate.

The Police have a mechanism in receiving citizens' complaints. Cases of human rights violations are at times NOT registered by the police. In practice, the Police generally lodge complaints in a selective way. They file complaints in criminal cases, but they are reluctant to accept complaints associated with human rights violations.

Although the theoretical goal of Nepal's police is to protect and assist citizens to obtain justice, many believe the police do not act accordingly. Rather, the overall goal of Nepal's law enforcement is seen to provide security for powerful persons. They could be politicians, the influential superior elites and business people. Ordinary people generally hesitate to go to the police for any type of service, especially access to justice. Budget allocations for the Police is very limited. Basic infrastructure is lacking at police stations and modern tools of scientific investigation are not available.

Police officers tend to conduct arrests without warrants at the time of arrest, or some time after the arrest. Arbitrary detention is another major issue facing the Nepali police. Victims of arrest and detention are usually denied or delayed access to legal counsel. Their families are not informed of their arrest or the grounds for their arrest. Cursory medical checks are rarely carried out without police scrutiny.

The country's police are not functioning as an independent Institution; they are heavily politicised and controlled by political parties. In our society, a murderer turns into a revolutionary, and a culprit changes into a leader of a political party. Many political leaders are backed by criminal gangs. The leaders reciprocate by giving them protection. Political pressure is applied to release convicts from jail even if the crime is serious, obvious and destructive. Crime has been politicized, and politics has been criminalized, contributing to a culture of impunity.

Without orders or whims from their political overlords, the Nepal police do not take up their responsibility to protect its citizens. From the start of recruitment to promotion, there is significant political interference. This makes it practically impossible for the police to be independent and carry out duties against their political masters.

The practice of torture as a means to deter crimes is the norm. Police do not practice modern methods of investigation and Forensic Science is out of their realm. Police salaries are next to nothing, so they resort to corruption. Innocent people are caught and pressured to offer a bribe so an officer can make some extra money. Many times police officers are themselves involved in petty or serious crimes.

The police have devised new strategies to fool watchful eyes and the attention of the national and international public. Instances of torture and extra-judicial executions have increased and became known to the public due to the wider use of social media. The police started arresting people without warrants, illegally detaining them without a Detention Note. It came to public notice that the police were forcing co-detainees to torture other detainees to escape any blame attached to custodial torturing. The police may have felt somewhat smug and smart with this solution, but this type of shrewd practice is not seen in any other developed jurisdictions in the world. In Nepal's Constitution of 2015, torture is included as a gross violation of human rights. However, it has yet to enact a law criminalizing torture.

If this situation continues, Nepal will turn into a police state. So these behaviors must stop. This is the right time for Nepal to reform and rebuild its Police Institution. The State needs to research, adjust and consider modern police renovations, proven successful in other countries.

The Government must seize this opportunity and take steps to change the policing system which is totally disintegrated .

Police History and its Impact on how it Functions today:

The Nepal Police are mandated to SERVE the public. This includes maintaining public order, ensuring peoples' security, protecting life and property, investigating and reducing crimes and arresting offenders. Additionally, it is also responsible for facilitating the disciplined movement of people and vehicles on the roads, providing services and relief to people who are in distress, and managing domestic and other social disputes.

We now look at the historical roots of policing in Nepal. Of importance is the Rana regime, 1846 -1951 that must be remembered. Prime Minister Chandra Shamsher Rana, 1901 to 1929, deputized officials in large towns including Kathmandu, and some parts of the Tarai, the southern belt of the country. The officials' responsibility was limited to maintaining order. With this action, the Rana rulers cemented the establishment of the Nepali Police.

Nepali Police, established between 1951 and 1952, primarily consisted of freedom fighters with a basic motto of 'truth, service and security'. In the beginning, the Nepal Police acted as a security service rather than as a security force. The foundation for today's Policing in Nepal was laid out during the country's unification process. Military units, officially designated as Kotwal, Umrao, Fausdar and Naike were assigned to internal security duties. The Police were established as a revolutionary and military culture. Its primary objective was one of supporting the Government in power and the political parties. Thus, service to the people was of secondary concern.

As the police inherited a legacy from both the military and the freedom fighters, military domination of policing continued until the 1950 democracy revolution. In January 1951, the Rana regime was forced to transfer power to a coalition government consisting of the King, and the independent political parties. With the enactment of the Police Act in 1955, the foundations for the modern civil police force were laid.

The Police Act of 1955 envisioned an independent police force which is capable of preventing and detecting crime, and maintaining peace and order in society.

The Nepal Police began to serve the interests of Zonal Commissioners who were directly appointed by the King under the autocratic Panchayat System following the royal coup of 1960. Zonal Commissioners were responsible to ensure that people opposing the Regime would be remanded in custody. It was meant to please the royal family and safeguard the Regime.

With this legacy, the Nepal Police developed into a repressive institution controlled by the executive. The Institution focused on pleasing their seniors and political overlords. The result was the institutionalisation of corruption and the misuse of power. Police did not care whether a situation was illegal or immoral. The involvement of the police in protecting the interests and illegal activities of the Royal Family encouraged it to become entirely corrupt. This erosion of police reliability continued even after the restoration of democracy in 1990. The police department remained a tool for fulfiling the interests of ruling governments.

During its long history, the Police Institution has served the interests of politicians and the elite in Nepal. It has consistently been used as a tool of repression which continues even today.

With its repressive historical background, is there any doubt why the Police are a demoralised institution, not capable of fulfiling their mandate of policing? Instead, historic misuse, favouritism, political interference, lack of adequate infrastructure has molded the Nepal Police into a corrupt Institution serving the interests of the rich, the powerful, the brokers and the politicians.

Legislation and Policy Instruments Regulating Police Activities:

The primary law enforcement agency organized under the Home Ministry is the Nepali Police. Nepal Police Act 1955 is the founding document which established the force. It took India as its inspiration.

Rights and duties of the Police are clearly identified in the 1955 Police Act. Similarly, the Criminal Procedure Act clearly outlines the role of the police in crime investigation. The Police Regulations came into effect in 1959.

The Nepal Police function independently in accordance with the provisions of their respective legislations. But the Local Administration Act 1971, is a legal instrument which empowers the Chief District Officer to mobilise these Police forces in certain circumstances for the maintenance of law and order.

For the purpose of internal action of the rank and file, none of these Acts define illegal detention, torture, excessive use of force, custodial death, and other human rights violations. So, the routine practice of human rights violations by police, go unchecked and unpunished.

Police Reform Initiatives:

During the Panchayat rule, the role of the police was focused mainly on safeguarding the interests of the ruling party. It was a mechanism largely mobilised by the State to suppress the civil and political rights of the people and to repress activities of political parties.

After the restoration of multi-party democracy in 1990, the Police Institution was expected to reform to complement public aspirations and the norms of democracy. To accelerate this process, the Police Reform Commission was formed in 1992 to modernise the Police force. Inspite of this endeavour, few changes came into effect. The process of reform within the Nepal Police was halted during and after the King's regressive steps of October 2002 and February 2005.

The Human Rights Cell was established on 16 January 2003 with the prime objectives of promoting human rights, constitutionalism and the Rule of Law in the Police Force. It is mandated to deal with the whole range of human rights issues that the police face.

In 2015/2016, the Government allocated a budget of NPR 38 billion for the Nepal Police. The Government planned to develop the force as a professional Police Institution by equipping it with the necessary resources and tools. The Government also intended to upgrade the Central Forensic Laboratory. They would expand it to the regional level in order to enhance the investigative competence of the police force. A total of NPR 160 million has been allocated for the sole purpose of boosting the investigative capability of the police force.

The Government also launched the 'Prahari Mero Saathi' (Police is my friend) Program. They stated that the unilateral effort undertaken by the police was not effective enough to curtail crimes during the Fiscal Year 2015/2016.

A three-year Crime Prevention and Investigation Action Plan (2014-2017) was introduced to upgrade the investigation process, develop job specialization and ensure effective data gathering and analysis.

The police have already received funding from different donor entities. They include the Nepal Peace Trust Fund, the Asian Development Bank, Department for International Development (DFID), United Nations Development Programme (UNDP), China, India, and America. There are different modernization projects, advancement of communication, training and logistical support, and ways of creating better infrastructure.

Despite the Police claims to have undergone reforms from time to time, in reality it has been functioning at an elementary stage. This Institution needs to go many more long miles before it claims itself a reformed and modernised Police Force.

Unceasing Practice of Torture:

The establishment and attitude of the Nepal Police has been inherited from the British Colonial Police Force in India. Their main purpose was to 'prevent or control' crime rather than provide service to the people. This mentality persists until today. It severely limits the capacity of the police to effectively ensure the respect of Human Rights during the investigation of a crime.

The nature of policing is paying more attention to the suspect and to less on the crime. This is one of the major causes of torture in police custody. Torture is a routine practice in Nepal. Most of the people who are detained are tortured because it is the only method of investigation in use. The practice of torture in the modern era means that the Government of Nepal and its security agencies, especially the police, is unable to control crimes in a scientific and coherent manner.

*The AHRC had released an Urgent Appeal in November 2016. Police illegally arrested, kept under illegal detention, and brutally tortured Bijuli Prasad Mahaut (31), resident of ward number 1, Khajurakhurd Village Development Committee (VDC) of Banke District, and Tirath Ram Harijan (30), resident of ward number 9, Indrapur VDC, of Banke District.All this was done under the guise of an investigation into a stolen mobile phone***.**

Before the above case, police officers attached to Area Police Office Rangeli, illegally arrested and illegally detained Gulephun Khatun and her husband in October 2016. Gulephun Khatun, was illegally detained for 24 days. During this time, she was tortured and hung upside down for 30 minutes. Both husband and wife were released on bail, after paying NPR. 20,000.

The most common methods of physical torture reported included beatings using the hands, kicking with police boots and using instruments such as bamboo sticks, plastic pipes and batons. The severity of the torture does not necessarily depend on whether instruments were used by the police. Police often use threats and intimidation as psychological tortute which makes it difficult to figure out the damage done. The aforementioned list of torture methods used by the Nepal Police Force is not exhaustive. For example, the Asian Human Rights Commission reported in 2014 that pins were inserted under the fingernails of a 13-year-old girl to make her confess to having stolen gold.[1]

[1] http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-009-2014

In another incident, police arrested 2 minors and a youth on 9 September 2016 on the charge of stealing mobile phones. It was alleged that they stole the phones in August 2016 from a shop located at Nayabazar, Ward Number 9, Katahari Village Development Committee (VDC). It is run by Shreepat Mahato. Eight police officers, half in civilian clothes and half in uniform, arrived in a police van. They arrested three teenagers, Suraj Chaudhary (15) from Katahari Bazaar, Mahesh Sah (14) from Haatkhola, and Ajay Kumar Tajpuriya (16) from his house at Ganapati Jewelers.

All three were arrested without warrants. Detention papers were not provided. Two days after their arrest, they were handed arrest warrants and detention papers. On 12 September at 10 am their relatives went to see them at the District Police Office (DPO. They were apalled at the the terrible condition of their children. All three sustained injuries to their face, cheeks,necks and hands, in addition to other parts of their bodies. They had been kicked, punched, and stomped on with police boots. Blue bruise marks were easily visible on their bodies. The parents have informed the AHRC that the boys' mental condition has now become fragile as a result of the police torture.

Police cannot imagine conducting a criminal investigation without the use of torture. They are reluctant to support anti-torture laws despite considerable national and international pressure to make torture a crime. They threaten that they cannot maintain law and order in society if this legislation comes into force. As the police are not paid a living wage, they easily fall into the trap of taking bribes. Most victims are tortured because of the profitable incentive of taking in extra cash. For the Police, the Politicians and the State, torture is still seen as a necessary evil.

Nepal has been a party to the UN Convention against Torture (UNCAT) since 1991. But, the Government has failed to bring about any comprehensive anti-torture legislation in line with the Convention. Nepal's Torture Compensation Act (TCA) of 1996 only provides compensation to victims if police officers are found guilty of practicing torture. No mention is made of punishment for the act of torture. The Constitution 2015, for the first time noted that "torture will be punishable".

Section 5 (1) of the Compensation Relating to Torture Act, 1996 ("CRT"), allows a victim of such torture to file a complaint making a claim for compensation for such torture. It is made in the District Court, the district where the victim has been detained. A claim must be lodged within 35 days from the date of the incident of torture or the release of the victim from detention. Section 5 (2) of this Act has extended the locus standi to file such a complaint on behalf of a victim to include the victim's family members (of required age) and legal representative(s).[2] Section 6 (1) of this Act provides for compensation of a sum up to one hundred thousand Nepali Rupees to a victim of such torture.[3] Moreover, it is mentioned in Section 7 of this Act "the District Court may order the concerned body to take departmental action against the government employee who has inflicted such torture, in accordance with the prevailing law."[4]

[2] Ibid., p. 2.
[3] Ibid., p. 3.
[4] Ibid.

The Evidence Act (Chapter 3 Section 9(2(a(1))), 1974 seeks to protect the accused from the use of statements in court that were coerced or extorted during torture or threats[5], although the burden of proof lies with the accused.[6] The Evidence Act, 2031 (1974) has a clear provision for preventing torture in the process of a criminal investigation. This Act clearly mentions that the evidence obtained through torture or coercion cannot be taken as valid evidence. According to Section 9 (2) (a) (2) of this Act, for any out-of-court expression of the accused of a criminal case, regarding the charge against him/her to be used as evidence against him/her, the Court has to be sure that the "fact was not expressed putting pressure on him/her or with torture to him/her or with a threat to torture to him/her or any other person or putting him/her in a condition to express the fact against his / her will."[7]

Draft Criminal Code: Section 169 of the Draft Criminal Code prohibits torture and other cruel, inhuman or degrading treatment (by state officials).[8] Section 169 (1) of this particular document states that no public official with the legal authority for investigating crimes, prosecuting criminals, implementing laws or keeping somebody under control, in custody or in prison shall inflict, or get others to inflict, physical or mental torture or cruel, inhuman or degrading treatment on anybody.[9] Section 169 (3) of the same document posits that a person (state official) who commits torture or other cruel, inhuman or degrading treatment shall be liable to a punishment amounting to imprisonment for a period not exceeding five years or a fine of a sum up to fifty thousand Nepali Rupees or both, depending upon the degree of severity of his/her offense.[10]

Moreover, Section 170 of the Draft Criminal Code prohibits inhuman or degrading treatment. Section 170 (1) of this document states that nobody shall subject, or get others to subject, another person to inhuman or degrading treatment; Section 170 (3) posits that a person who commits the offense mentioned in Section 170 (1) shall be liable to a punishment amounting to imprisonment for a period not exceeding three years or a fine of a sum up to thirty thousand Nepali Rupees or both.[11]Section 170 (4) of this document includes a provision that a government employee who commits such an offense shall be liable to an additional punishment of imprisonment for a period up to three months.[12]

Due to the lack of strong anti-torture Legislation, the use of torture by the Police is rampant in Nepal. The Government has tabled anti-torture legislation in Parliament. It is yet to be approved and promulgated. A problem surfaces. The proposed anti-torture Legislation is not compatible with the UNCAT. This is because there are no provisions for rehabilitation of the

[5] The provision provides that any statement obtained by any inducement, threat, torture and attempt to torture or against his or her consent shall not be treated as evidence by the court.

[6] Advocacy Forum, The right to fair trial in Nepal: a critical study, 2012, p. 16

[7] See "Evidence Act, 2031," p. 5, available at: www.lawcommission.gov.np.

[8] Rashtriya Nyayik Pratishthan, Nepal, *Faujdari Kasur Sambandhi Prachalit Kanoonlai Sanshodhan ra Ekikaran Garna Baneko Bidheyak Aparadh Sanhita, 2067* (Lalitpur: National Judicial Academy, 2013/2070 BS), p. 240.

[9] Ibid.

[10] Ibid.

[11] Ibid., p. 242.

[12] Ibid.

victims of torture, no preventive mechanisms, and no guarantee of investigation of torture cases.

To end the practice of torture, it is not enough to merely bring in a law against torture. The police for instance, are used by Nepal's politicians and elite to maintain social control. And for the police - policing a society with available traditional methods and equipment, which is largely the use of torture, is easy and convenient. The state of Nepal's Justice Institutions is also important. They were designed in such a way that they have become an ally of the rich, the powerful, the politicians, and the State.

Another example in May 2016 shows the police resorting to routine torture, and practicing an ancient method of crime punishment. It is used by authoritarian rulers to show the ramifications of opposing them or the society. It also exposes the ancient, brutal-like status of Police in Nepal.

Three police officers attached to Area Police Office Surkhet District had arrested and tortured two teenagers, Pravesh Sunar (15) and Krishna Bahadur Thapa (19) in an open market. Following the torture, the policemen garlanded the young man, Krishna, and the juvenile, Pravesh, with shoes and slippers, smeared soot to blacken their faces and paraded them around in the market. After the incident came to light, the police offered to pay their expenses for medical treatment. The police arrested the duo on the charge of beating up another local youth.

These examples prove that the use of torture is very much alive and kicking in Nepal. According to detainees, police torture them to obtain confessions. Human rights organisations have succeeded in reducing the percentage of torture since 2001. This is through regular monitoring, legal intervention and sensitizing the victims, public, police, prosecutors, lawyers, judges and medical professionals. The Human Rights Unit of the Nepal Police also provides human rights training to new recruits, as do other NGOs and INGOs. But, when torture occurs, the police deny the allegation and pressurize victims not to speak of the incident. In some instances, police officers justify torture by saying that without slaps and beatings, criminals do not open their mouth, they will not speak up, they remain silent.

During the previous Universal Periodic Review (UPR) 2011, the Government of Nepal clearly denied the recommendation for the ratification of OPCAT. During the UPR 2015, the Government received similar recommendations. By providing lip service, the authorities justify the practice of torture to international bodies by citing the lack of infrastructure and modern tools of scientific investigation.

Corrupt Institutions:

Corruption exists at all levels in the Policing System and the Government. Although the law provides criminal penalties for corruption by officials, there continues to be reports that officials engage in corrupt practices with impunity. Police corruption, especially among junior officers and underpaid police officers remains a problem.

The police hold the attitude that nothing can be done without bribing. There is a close connection between the police, the politicians, the businessmen and the criminals. This also includes where the Police work towards fulfilling the interests of their political overlords.

Police recruitment and promotion involves large sums of money and influence rather than a person's qualifications. Before they enter into the Police Force, officials demand substantial bribes from the candidate. Serious police corruption continues from the first day an individual trainee enters the work force. The entire recruitment and promotion process is the sole responsibility of police headquarters. They are instructed by the Ministry of Home Affairs. The Public Service Commission, responsible for recruiting all other public servants has no role in any part of this process.

Results of the above are corrupt police officers soliciting bribes from in-coming trainees. It leaves no other option for police officers recruited to follow the pervading tendency - earn quick money by any means - often with threats and torture. A free- flowing corruption system is allowed to flourish, as the money is channeled up the chain of command to the higher levels of police superiors.

The force had earned a very bad name during the Panchayat era. It was widely perceived that the Institution would improve its tainted image after the restoration of democracy in 1990. Nothing changed even after the country was declared a federal republic in 2007. In fact, corruption has become the norm. Top officials rarely complete their terms without becoming involved in some wrong-doing. The reputation of the Nepal Police has been equally marred by controversy and corruption during the republic era. From 1990 to 2015, all the 13 Inspector Generals of Police (IGP) of the Nepal Police have faced corruption charges. The exceptions are: Ratna Shamsher, Dhruba Bahadur Pradhan, Shyam Bhakta Thapa and Kuber Singh Rana.

The Supreme Court of Nepal has convicted three former Inspectors General of Nepal Police. They are Om Bikram Rana, Hem Bahadur Gurung, Ramesh Chand Thakuri and other senior officials. They were involved in a multi-million dollar Sudan scam. They were given jail sentences and penalties. Rana was jailed for two years, and Gurung and Thakuri for one year each.

The ruling political parties continually misuse the Police. They use them as a tool at their discretion. Many political leaders, businessmen and their brokers stay in close contact with police officers. In this way they can arrange for the release of their criminal associates in return for favours received. These agents are often able to gain access to valuable information from inside a police Station. This often leaves them with the power to tamper with evidence. Such a corrupt practice weakens a criminal case.

There is a murky nexus between criminals, politicians and law enforcement agencies. It is the reason for the Law not being implemented. Politicization of crime is the biggest threat in Nepal. Once a crime is politicised, it cannot be brought before the justice system. It is obvious that criminals, politicians and law enforcement agencies are interlinked.

Police officers offer bribes to senior officials and politicians in order to secure promotions and transfers to lucrative places or departments. This has become a routine practice setting a bad precedent inside the police force.

Excessive Use of Force:

The police used excessive force against protesters in Nepal's Tarai districts. The anti-Constitution protests that started before the promulgation of the Constitution on 20 September 2015 continued on into early 2016. Instead of increasing meaningful table discussions, the Government muddled things up by using the Police in a continual, ruthless witch-hunt of Madhesi protesters and bystanders.

The police maintained their killing attitude; protests and killings were a near daily occurrence in the Tarai Region in early 2016. For over 6 months the conflict continued on. And then life for people in the southern region was up-ended. More than 57 people, including children and police were killed in the 2015 violence.

The AHRC has secured a video where the police could be seen shooting Mohammad Sams Tabarej, 16, while he was protesting alongside other students in the Rautahat District on 20 December 2016. The video shows Tabarej getting shot and other protesters dragging him away to the hospital. However, the police followed the group and chased the other protesters away. Police then circled Tabarej to beat him which delayed Tabarej's trip to the hospital, located just 5 minutes from the site.

The unceasing Madhesi-hunting spree showed clear signs that the police had a vendetta against the Madhesi leaders and cadres. Unlawful arrests were used for social control in the Southern Plains. Madhesi leaders and other individuals were arrested without due process and without any credible investigation. As could be expected, this created fear among the general public.

In the name of maintaining law and order in the southern belt, the police arrested whoever came into their sight. The Madhesi citizenry started escaping to India to stop arrests and extra-judicial killings at the hands of the police and security forces. It seemed that these charges were politically motivated which conspired to discourage peaceful and constructive political activities in Tarai.

Two frontline leaders of agitating parties from the Rupandehi and Sarlahi Districts were arrested without warrants or a credibile investigation. These leaders belong to the Federal Socialist Forum Nepal (FSFN), one of the constituents of the United Democratic Madhesi Front (UDMF). Both of the leaders played an important role during the Madhes movements in 2015 and 2016.

The District Police Office filed a case on 10 March 2016 at the District Court of Mahottari. It involved 28 persons charged with the murder of the Armed Police Force ASI Thaman Bahadur B.K. during the peak of the Madhes protests. An additional 25 persons have been charged in a case relating to the vandalizing of an ambulance.

No one should be freed from their criminal liabilities. Zero tolerance of impunity should be strongly enforced. It was seen that the police manipulated the criminal investigation system to target certain political and ethnic groups. The issue of fair trial, a fundamental issue of human rights, was trampled upon in Nepal's Tarai.

Against Minority Citizenry:

Although caste-based discrimination is illegal under the Constitution 2015 and there is Caste Based Discrimination and Untouchability (Offence and Punishment) Act, 2011, the chances of Dalits getting compensation for injustices committed against them are remote. The Police Institution and concerned authorities are not accountable. The Government often fails to prosecute those who engage in discrimination against Dalits. Very often the victims do not even lodge complaints. Dalits have no faith in the administrative and justice systems.

Dalits are the most visible victims of torture, extra-judicial killings, and forced disappearances. Security Agencies, mostly the police, are actively engaged in these heinous actions. Dalits are often detained and abused simply because of their 'low-caste' status.

Most of the Dalits are vulnerable to torture. Research shows that the majority of people in custody or in prison are in poor economic conditions and socially marginalized like the Dalits.

A study by Advocacy Forum (AF) suggested that around 70 per cent of detainees are tortured and most of them belong to the Dalit community. It further mentions that the police do not produce detainees before the Courts as required. Plus, they only record the arrest after the torture is completed.

Not surprisingly, Dalits are exposed to this practice more than other segments of the society, as the police and other state agents do not fear retribution when they torture a Dalit.

The police often act in a brutal manner when it comes to dealing with the Dalit community. Even a peaceful demonstration by a Dalit community faces the brunt of a vicious police crackdown.

The Asian Human Rights Commission has secured a particular video footage. In it, the police can be seen using vindictive force aganst a peaceful public demonstration. The protest was held on 3 August 2015 in the Bijuli Bazar area of Kathmandu District. The Joint Political Dalit Struggle Committee organized a gathering. Its purpose was to speak *against the provisions to reduce Dalit rights and representation in the preliminary draft of the country's new Constitution. Several Dalit leaders and activists including Parliamentarians Man Bahadur Bishwokarma and Daljeet Shreepali were humiliated and seriously injured by the police.*

Police are negligent when it comes to the situation in the Dalit Community. Dalits are even killed just because they are a Dalit. The police have become partners in crime, often taking bribes from non-Dalit offenders. They assist in hiding the facts in order to water down offences committed by non-Dalits. Ajit Mijar's case speaks out loud and clear about this type of police engagement. A chain of events leading to Ajit's death and recovery of his body, suggests direct police involvement in the controversy.

Ajit Mijar (Dhakal), 18, a Dalit by caste, was found dead on 14 July 2016 in the Dhading district of Nepal. Ajit was a resident of the Panchkhal Kavre District. He married his non-Dalit girlfriend, Kalpana Parajuli, on 9 July 2016. The girl's relatives and the Area Police Office Panchkhal forced the couple to abandon their marriage. Her relatives took Kalpana away, forcibly, on 11 July 2016, two days after the marriage ceremony. They threatened to kill Ajit within 72 hours. On July 16, Ajit was found dead. His body was buried by the riverbank of Furke Khola, Dhading District, located over 250 km from Panchkhal.

Ajit was murdered for his inter-caste marriage, untouchability and caste-based discrimination related to it. Certain facts have been monitored and confirmed. Although his death was pronounced a suicide, his body, when found, had legs that touched the floor. Fragile tent rope was used and not tied tightly around his neck. The place where his body was found is very close and visible from the Police Station that is open 24 hours a day. The police have not made public who was on duty that day. THIS SCREAMS MURDER.

Now we turn our attention to HOW the victim's family was treated. The Ajit family informed the police that they were coming to Dhading to confirm their son's death, and take his body away. Did the police wait for the family members to arrive? NO. They hurridly buried Ajit's corpse. Although the police claimed that they buried an unknown corpse, they did not publicize this, and did not wait for Ajit's family to arrive in Dhading. Everything seemed to have been done in a rush. It showcases mysterious police behavior, and suggests police involvement in a STAGED MURDER.

Conclusion:

The reputation of the Nepalese Police further deteriorated in 2016. Often they are accused of being corrupt and scheming when it comes to crimes. It is hard to differentiate politicians from criminals. There is a well-established nexus of money, muscle, mafia and political power, which is difficult to break up. Politicians discretely use the Police in order to control the public and maintain fear among them. Politicians force police officers to obey illegal orders. Those who resist are transferred immediately. Honorable officers who want to maintain Law and Order have to face and deal with corrupt politicians.

This has been clearly seen during the protests in Tarai in 2015 and 2016. Police showed their violent roots in the way they clamped down on protesters. They did not follow even minimum international regulations on crowd control. They shot directly into a crowd with the intent to kill. And protesters turned to violence too, with vandalism of property and the shocking mob lynching of Security Officers.

The Nepal Police claim to have undergone reforms time and time again. In reality, this Institution still has a long march ahead of it before they can truly say they are a reformed and modernised Police Force. Up to this point, they have been functioning at a rudimentary stage. The status-quo facilitates corruption and all forms of non-accountability in Government. People in power do not want to radically re-design and fundamentally transform the Justice Institutions in Nepal.

Unfortunate things continue to happen in Nepal because of the questionable actions of the poorly-run, existing Criminal Justice Institutions. They must be re-designed and reformed in order for the country to effectively deal with urgent issues. Reforming the Police is a subject that must be approached from different angles. This include resources, specialized training and legal framework changes. An operative Police Force must include accountability, and accede to the fact that torture is a criminal act.

Photo credit to Shahayar Ali/Express

PAKISTAN

Policing - The Time to Reform Was Yesterday!

On 20 August 2015, the Supreme Court directed the Federal and Provincial Governments to submit recommendations on police reform. Supreme Court Chief Justice, Jawwad S. Khawaja, while hearing a case stated "the police are the biggest problem for the people of Pakistan. If the police are corrected, everything will become correct".

Justice Dost Mohammad Khan, another judge on the bench reportedly said, "If any police officer is involved in any crime, his fellow policemen declare him innocent within 3 days and free him. We should introduce Police reforms on the pattern of Scotland Yard."

Each year, The Corruption Perception Index (CPI) shows the Police to be the most corrupt institution in Pakistan. There is no sign of improvement. A lack of political will is an underlying reason why police reforms have not been enacted. The political parties treat the police force as their private guards and/or mercenaries to settle scores with political opponents. A demoralized Police Force and Prosecutors often drag their feet when it comes to investigation. A victim reporting a crime is the first suspect the police interrogate. As interrogation begins with the victim; it adds insult to injury. The modus operandi of police officials is to make it a point to subject the victim to mental torture. Rape victims are a prime example of such treatment.

In societies where the police are corrupt and inefficient, absence of the Rule of Law and chaos are expected. History shows that fair policing practices strengthen democracy and improve the image of a country. The Supreme Court of Pakistan has taken the initiative. And, it must be supported by all proponents of police reform that seek an end to a culture that perpetuates custodial torture.

In earlier times in Pakistan, the Police were principally mandated to meet colonial needs. Today, their main purpose is to safeguard the powerful and maintain the status quo. The police are the first step in any criminal justice process. Without reforming policing first, overhauling of the criminal justice system will remain a distant dream.

In 1947, Pakistan inherited an eighty year old police system from the British. It was designed in 1861 as a system to instill fear in the public. During the last 68 years, 21 commissions and committees have been mandated to recommend police reform!

The Police Act of 1861 was replaced with The Police Order, which came into effect on 14 August 2002. For 55 years, no efforts were made by the government to promulgate police reform from 1947 to 2002. _Unfortunately, The Police Order of 2002 was not implemented due to widespread resistance from the Police, the bureaucracy, and the political leadership.

Originally, the spirit behind the reforms initiated by The Police Order 2002, was to transform the Police from a "force" into a "public service". The order was significantly curtailed in its intended scope by amendments that were subsequently introduced between 2004 and 2007. While the original 2002 Order was aimed at de-politicizing Police operations throughout Pakistan, the amendments defeated the very purpose of reform.

After the 18th Constitutional Amendment in 2010, the Police have formally become a provincial subject. At present, the amended Police Order, 2002 is applicable in only two Provinces--Punjab and Khyber Pakhtunkhwa (KP). The other two Provinces Sindh and Baluchistan, have actually brought back the Police Act, 1861.

State dependence on the Military to counter terrorism in urban centers, is largely due to its failure to reform the Police. Out-sourcing policing to other law enforcement agencies such as the Rangers and paramilitary agencies has proved to be counterproductive. It is but a short-term solution to a problem created by lack of resources and modern training of police officers. It is a globally recognized fact that a State's Police play a pivotal role as the first line of defense against threats of terrorism and insurgencies. A study conducted by the RAND Corporation, a non-profit global policy Think Tank, published a paper titled "How Terrorist Groups End". They stated that effective police and intelligence work, rather than the use of military force, deliver better counter-terrorism results.

Civil society has often highlighted the need for police reform. It has actively participated in police training and sensitization of police personnel towards the vulnerable sections of society, including women, children and minorities. Unless the State takes active measures to introduce reform, these efforts will be in vain. The public realizes that enhanced police training is not enough. Structural changes need to be made to form the Police into a people-centered and people-friendly institution.

Police--Mercenaries of the State rather than Public Servants

Corrupt and incompetent police officers have long been protected by their colleagues, the Police Internal Affairs and the Government. March 13, 2007 shall remain forever etched in the collective memory of the Pakistani people. The deposed Chief Justice of the Supreme Court, Iftikhar Muhammad Chaudary, became the victim of police excess and brutal torture. He was dragged by the hair by police officers stationed outside his residence. The power of the Deep State can be gauged by this fact. Despite experiencing police torture first-hand, the Chief Justice, after being reinstated, was unable to herald or even call for police reform.

Law enforcement agencies rule the roost. They call the shots in a country of 189 million people. Fear and intimidation tactics routinely used by the men in uniform has inculcated fear in the hearts and minds of the people.

We are a country where human rights are disposable propositions to be sacrificed at the altar of national security. And the use of torture is a functional tool to shock and terrorize a repressed populace. The persistent rise in trends of extra-judicial killings, custodial torture, enforced disappearances, and arbitrary arrests by the State, speaks volumes about the state of Human Rights in Pakistan.

Lahore police are considered the most notorious for police excess. On 3rd December 2014 [1], Lahore police baton-charged and injured numerous blind protestors. They were staging a rally on Davis Road to advocate for their rights in view of World Disability Day. In June, at least 11 Pakistan Awami Tehreek (PAT) workers were killed and over 100 people injured during a clash with police personnel in Lahore. Incidents of police brutality continue unabated. Barbaric laws like Pakistan Protection Ordinance (PPO) and the military courts afford law enforcement personnel additional impunity and unchecked power.

Not even schoolchildren are immune from police brutality. On January 23, 2015 Police transcended their authority. They unleashed cruel and violent behavior on school children. They were demanding that their school, run by a Trust, be re-opened with a non-governmental Administration.

[1] AHRC-STM-020-2015

Torture is a systematic tool of oppression in Pakistan. Fundamental rights are a luxury. They are afforded only to those who are on the right side of the State. Religious and ethnic minorities are overlooked when it comes to ensuring citizen equality. The Punjab police are notorious for their ill-treatment of detainees belonging to religious minorities. Many death-row inmates have accused police of extracting a confession through third degree torture. Torture is the norm. It is the beginning and the end of the judicial process in Pakistan. It is a travesty and miscarriage of justice. In extreme cases it causes the deaths of innocent persons, like Ghulam Brother[2]. By the admission of the Court, many were hanged despite their pending appeals.

In Police custody (legal custody by the State), it should constitutionally and ideally be the safest place for individuals. Yet, for the citizens of Pakistan, it is the most dangerous place. Deprived of all their constitutional rights, the alleged accused is at the mercy of his captors. Political interests and personal vendettas often use the Police to subdue their opponents. Their purpose in torturing is not only to obtain information, but to inculcate fear.

[2] AHRC-STM-166-2016

The impediment in eliminating torture is that it is considered an indispensable part of police investigation

To state that torture is endemic and rampant in Pakistan would be an understatement. Torture has become a lifestyle. It is a norm that is the beginning and the end of the judicial process in Pakistan. Thousands suffer torture every day--yet they dare not report their ordeal. Law enforcement agencies that are responsible for this torture have been given undue powers to use and abuse persons, through laws such as the Pakistan Protection Act (PPA). As a result, torture narratives by victims read as gruesome and inhuman horror stories

Torture is routinely employed by the Police as the only means of investigation. Rather than beginning an investigation with circumstances and evidence, the police usually start their investigation by arresting and extorting confessions from innocent by-standers. The lack of uniform policing laws has created legal lacunas that hinder the reprimanding of police officers. Those who routinely indulge in torture during investigation do so with no fear of any action being taken against them. Internal enquiry by the police is a farce that does little to curb the tide of custodial torture.

There is also an overall societal acceptance of torture that impedes its eradication. Even senior lawyers and judges feel that torture is sometimes necessary to deal with hardened criminals. The catch 22 lies in defining who is a hardened criminal?

Pakistan pledged to the UN Human Rights Council that it would change its laws to comply with UNCAT. It has instead enacted additional repressive laws such as the Pakistan Protection Ordinance (PPO). These laws will give absolute power to law enforcement agencies, thereby increasing the incidence of torture

[1] AHRC-STM-166-2016

Torture is a manifestation of corruption in the Police Institution

The police stations in Pakistan have become bastions of corruption where torture reigns supreme. Throughout the country, there are some 1300 police stations. Every day at least one person undergoes physical torture in every police station, in addition to the many cases of mental torture. It would be unimaginable for a person who is arrested to be spared physical or mental torture. The top-to-bottom corruption in the policing system has made it impossible for the common man to approach the police for redress. People are afraid to seek help from the police. They would rather not report a crime which results in an increase in the crime rate throught the country.

Torture is very commonly used for extortion--to demand bribes. Torture and extortion are well connected. Torture is not only used to get information. The purpose is generally extortion. People pay the bribe even if they are tortured, to lessen the degree of torture. After taking accused persons into custody, the police do not formally arrest him/her for several days. They then ask for a bribe to file a case under a bail-able offence. If the bribe is not paid, the person is arrested for a heinous crime. This is the punishment for not agreeing to pay the police the amount demanded.

Until the police internal affairs system starts prosecuting and firing a substantial number of corrupt and incompetent police officers, reforms in the policing system shall remain a distant castle in the sky.

Rapist in uniform

On 6 April 2016, Station House Officer (SHO), Digri Police Station, Badin District, Sindh Province, picked up a 20-year-old mentally challenged woman from her home. Later, on the victim's complaint of rape, an FIR (No. 42) was registered against Digri SHO Mohammad Aslam Jamali, under Section 376 of the Pakistan Penal Code. Jamali was suspended and later arrested. However, with the help of his colleague, he managed to escape from police custody in Mirpurkhas District of Sindh Province.

Proving rape is in itself a difficult task. However, when the law enforcement agencies are involved in such crimes, it becomes next to impossible for the victim to seek and attain redress. Even in most of the cases that garnered media attention, the matter was hushed-up after the initial uproar and media frenzy.

On 3 September 2015, six policemen raped a 22-year-old woman for three days while keeping her intoxicated. The victim told the police that Constable Shahzad Warraich, along with Zulfiqar and his four accomplices, kidnapped her at gunpoint. She said that the accused took her to a hotel and continually raped her after administering intoxicants. She alleged that the accused had taken gold ornaments from her worth Rupees 150,000.

Under administrative jurisprudence, an act of a State functionary amounts to the act of the State itself. The State is responsible to protect and compensate its citizens if he/she is victimized by such actions. But, as there is no semblance of the Rule of Law in Pakistan, the State feels no duty towards its citizens. The status quo, in the garb of democracy, is perpetuating and unleashing terror upon citizens by giving unchecked impunity to guardians of the law. State-sanctioned violence against women and sex-discrimination by law enforcement authorities is a denial of the fundamental right of access to justice to women.

Cases of torture

Death in custody is a common occurrence inside a jail. Sindh Parliamentary Affairs Minister, Nisar Ahmad Khuhro, recently informed the Sindh Assembly that as many as 104 prisoners have died in different Sindh jails in the past three years. The high number of deaths is attributed to natural causes… However, the fact remains that the inhuman conditions prevalent inside Pakistani jails is tantamount to torture, causing inmates to die in large numbers. Karachi Sindh Province Central Prison is notorious for the torture and ill-treatment of their inmates. In 2016, some forty Muttaida Qoumi Movement (MQM) workers were beaten up in the Central Prison in Karachi by para-military forces in order to extract 'favorable' statements from them

The LEA officials deem themselves above the law and one routinely finds extreme cases of torture in custody. In a case reported by the AHRC in its Urgent Appeals[3] 03-4-2016, two generations of a family from Punjab Province suffered the wrath of police officials. The crime of the family--they dared to use their civil rights. They complained against police atrocities, torture and failure to retrieve hundreds of thousands of extorted monies from police officials. As a result, the officers threaten that they will be killed in encounters. They want them to withdraw their complaints from the High Court in Lahore, and from other authorities including theAnti-CorruptionDirectorate.

This case is a classic example of how the criminal justice system in Pakistan fails to protect the rights of its citizens from abuse of power. A family is made to suffer the wrath of police officers who think of themselves as above the law. They are free to perpetuate atrocities in the name of maintenance of law and order. This case is also an example of how police from different police stations unite to protect their brothers in uniform.

[3] AHRC-UAC-034-2016

Half Fry, Full Fry Modus Operandi

"Half-fry" and "full-fry" are terms used predominately by police in the interior parts of Sindh Province. They are code words for extra-judicial killings or injuring a suspect to cripple him. The use of the term "full-fry," to indicate extra-judicial killings, showcases how common and open this extreme practice by law enforcement officials has become. Judges and murderers all rolled into one! Extra-judicial killers, in uniform, have been using the pseudonyms of 'half-fry' and 'full-fry' to indicate the physical condition of a suspect.

Police in Sindh consider encounter killings as the perfect way of getting rid of hardened criminals. They do not consider it a gross violation of human rights. Instead, they see it as an effective way of delivering justice.

On 7 March 2015, in a press briefing that was recorded by *Dawn* newspaper, the Deputy Inspector General of Sindh, Sanaullah Abbasi, claimed that extra-judicial killings are the best modus operandi to curb crime. A Government Official said that…

"Extra-judicial killings and other actions cannot be justified officially. But society has come to accept this 'modus operandi' of the police to eradicate crime and make the streets safer. It is not necessary for an encounter to be seen as genuine, only if a policeman loses his life in it. You can see that the police have restored peace and order in the city through this modus operandi."

The AHRC reported the case[4] of a "half fry" in October 2015. A psychiatrist, Dr Deepak Raj, was maimed for life by police officers, who mistook him for a wanted criminal. Dr. Deepak Raj, was shot in the leg with 12 bullets. He lost the leg. His other leg and arm were badly damaged. Dr. Raj was grilled by the police in relation to the Hyderabad police assignment. They were given the task of arresting or killing a notorious robber, Shareef Panhwar, who has a bounty of Rupees 2.5 million on his head**.**

Dr. Raj is currently under treatment at the Jinnah Post Medical Centre, Karachi's largest, state owned hospital. He has lost his means of livelihood and has been maimed for life. The police officers admitted their mistake and have been paying for his treatment. However, after media reports circulated, they stopped paying his medical bills. Influential officers have threatened to withdraw all financial support if Dr. Raj takes his case to the media.

Update on Anti-Torture bill

Despite its obligations under UNCAT to enact an Anti-torture law, the Pakistani government has been dragging its feet in promulgating such an Act. The AHRC has been very vocal on the conspicuous absence of this law and has been lobbying for its enactment for some time. Due to the lack of political will, the Bill has not received presidential approval. The Senate passed the Anti-Torture Bill with some changes in the AHRC proposed bill. The Bill against custodial torture has been pending before the National Assembly since 2015. It is has been waiting for final approval from both houses of Parliament. Despite a two-thirds majority, the ruling party, PML-N, has resisted putting the Bill up for discussion. It is said that the security establishment does not want to pass an Anti-torture Law. Although the Senate has passed the Bill, it cannot be implemented until both houses pass it.

[4] AHRC-UAC-123-2015

Extra-Judicial Killings

Extra-judicial killings and deaths in custody are the norm. The AHRC reported[5] the death in custody of a 20 year old man. In January 2015, Syed Faraz Alam, was illegally detained for five days and was severely tortured to obtain a confession. He was arrested officially after five days of illegal detention. The post-mortem report on the deceased revealed severe torture marks on different parts of the young man's body. Police say he died of a heart attack when his case was taken to Court.

A similar incident concerns Mr. Anisur Rehman Soomro, 17 years old, the son of Mr. Anwer Soomro. He was a 10th grade student, and a Sindhi national. He was arrested and illegally detained for eleven days. He was tortured in full view of his father after demands were made for a large sum of money. Later, he was shot dead by the Police on the pretext that he was a member of the Taliban. According to his father, the enraged police officer had taken the boy and three other young men, to an Afghan refugee camp in late afternoon. He shot the boy, point blank, killing him on the spot. The police released a statement saying that the killing had taken place in a skirmish with Taliban forces. Explosives were recovered from their possession, following the incident. The AHRC has regularly been reporting on incidents of extra-judicial killings at the hands of the Police. See Urgent appeals AHRC-UAC-069-2014; AHRC-UAC-105-2014; AHRC-UAC-097-2014; and AHRC-STM-238-2013

Throwing the notion of civilized governance on the back burner, the State is pro-actively coming down hard on all dissenters. Not even social media activists and bloggers are safe anymore. The recent spate of enforced disappearances of five, left-wing activists has sent a wave of terror across the country. Not even those supporting these activists on social media and micro-blogging sites were spared. On 17 January 2017, a student at the University in Lahore, Punjab Province was tortured. He was confined for over three hours by activists of a religious-political Student Union for tweeting for the safe recovery of the missing bloggers

[5] AHRC-UAC-004-2015

Impunity

The State routinely indulges in torture and ill-treatment with complete impunity, although it is a signatory to UNCAT and other international conventions. Despite torture and ill-treatment being extremely rampant, the State denies all involvement. It maintains the false stance that the victim is lying to absolve himself of criminal charges. The Courts, especially the lower judiciary, in cases of alleged torture, are particularly susceptible in allowing erring officers of Law Enforcement Agencies to go scot free.

Recently a case of police torture was reported from Gigit Baltistan. It was initially reported by the Pakistan desk at the AHRC [6] and later taken up by the International Press. The victim, Mr. Shabbir Hussain, son of Jaffer Ali, is a resident of Chalat Bala district Nagar. He was beaten causing severe bruising for refusing to heed a Jirga verdict. Mr. Hussain had a dispute with his cousin, Fida Ali, on the use of common space between their houses. While Mr. Shabir was in Dubai, the dispute was presented before a Jirga of local elders who ruled against him.

Because of the Jirga verdict, Mr. Shabbir was required to make major changes inside his house. This took time, infuriating Fida, who lodged a complaint at the Chalat police station. According to the police account, Mr. Shabir was asked to visit the police station a number of times. He refused to oblige. On 26th June 2016, the police invaded his house. He was arrested without a warrant, taken to the police station, illegally detained and beaten with long sticks by Constable Iftikhar and Station House Officer (SHO) Iqbal.

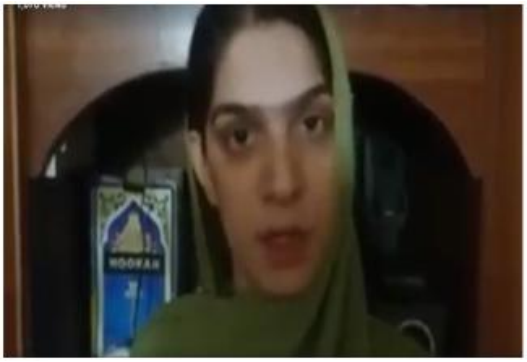
[6] AHRC-STM-119-2016

Another example of Pakistani Police negligence is that of Nasira Parveen, a 50 year old victim of police torture**, excessive** and inhuman torture. She has been seeking justice for the past six years. The Pakistan desk at the AHRC has followed up her case through several Urgent appeals.[7]

On April 2016, Ms. Nasira Parveen, attempted self-immolation after her case for action against the Station House Officer, Kasowal Police Station, Punjab, was dismissed by a civil judge. The delinquent officer was exonerated of all charges. Disheartened by the injustice, Nasira poured petrol over herself, but accidently set the courtroom door on fire. This was Nasira's third attempt to kill herself. The victim has been seeking redress for the past 6 years, despite the odds. Needless to say, the judicial system has failed her at every step. Frustrated by the incessant injustice meted out to her, Nasira had been forced to take dire steps to protest against the injustice.

[7] AHRC-UAC-148-2015

Police Excesses On Transgender Communities



There are an estimated 500,000 'third-gender' citizens in Pakistan, including cross-dressers, trans-sexuals, eunuchs, hermaphrodites, and transvestites. They are regularly harassed by the police. The police of the conservative province of KPK easily resort to violence against vulnerable communities. In July 2016, the AHRC issued an Urgent appeal reporting the rape of seven transgender persons[8]. They were arrested and reportedly sexually abused by the Cantonment police in Nowshera, KP Province. They were in illegal confinement for almost 10 hours (a whole night) and forced to dance in front of the policemen. The Inspector General of Police (IGP) refused to take action against Station House Officer (SHO). He forced the transgender persons to expose their body parts during the dance and if they refused-- tortured them. According to media reports, the transgender persons accuse the police of raping them and making jokes about them.

On 17 February 2016, the AHRC reported[9] on a group of armed men. They were led by a member of the Khyber Pakhtunkhwa Elite Police Force, who forcibly entered the house of a transgender, Human Rights Defender, Chocolate. They attempted to kidnap her. Chocolate is a Human Rights Defender and joint secretary of the Transaction Alliance. It is a group defending the rights of the trans-communities in the Pakistani province of Khyber Pakhtunkhuwa (KPK).

When Chocolate tried to register an FIR at Gulbahar police station, the police officer at the station refused. Instead, he only entered the incident in the Roznamcha (a temporary file where cases are registered and can only be investigated upon the court's order). He refused to include that the group of men were led by a member of the Khyber Pakhtunkhwa Elite Police Force.

[8] AHRC-UAC-092-2016
[9] AHRC-STM-023-2016

Minorities and the Desensitized Police of Pakistan

The failure of the State is not only in failing to provide protection to religious minority groups. It is also failing by providing patronage to killers of minorities by not investigating the murders. Personnel in the Police and other Law Enforcement Agencies are so biased that they avoid investigating murders of a member of a minority community.

In Sindh, Police have failed to protect minorities by not taking any effective action. They left the Hindu Community with two choices--barricade themselves in their homes or migrate to Karachi or Punjab. The AHRC reported on the escalating violence that engulfed the city of Daharki in the interior of Sindh. On the pretext of blasphemy, two innocent Hindu youths lost their lives, as the police watched on as silent spectators. [10] No effort has been made by the Pakistan Government to sensitize the Police on vulnerable religious and ethnic communities. Religious minorities particularly the Ahmedis suffer the wrath of the police who often blatantly refuse to register the case of a murder of an Ahmedi victim.

In December 2016 [11], an Ahmadi place of worship in Chakwal district of Punjab province was attacked by an enraged mob. The mob, armed with batons and weapons, threw stones and fired inside the premises. The mob was “attempting to seize Ahmadiyya property”. The police allowed the mob to besiege the Mosque. The attackers later burned the property and rugs within the building to "bring it under Islamic influence

[10] AHRC-STM-112-2016
[11] AHRC-STM-191-2016

Observations

The demand for re-engineering and overhauling the criminal justice structure in Pakistan is capricious without reforming the policing in the country. Logical steps should be taken when resolving any issue. This entails first recognizing the existence of the problem. Secondly, correct identification of the core problem area is essential. By contrast, the demands for reform in the policing structure have always been made without identifying the ill will within the system, that is corruption and politicizing. They have eroded the foundation of the policing system in Pakistan.

In 1947, Pakistan inherited an eighty-year-old British police system. Designed in 1861, it was a tool that was aimed at frightening the public.The colonial-era policing, though apt for its time, has not kept pace with the complexities of modern urban crimes. Meddling in police affairs by the bureaucracy and politicians has contributed to difficulties in keeping crime in check.

Pakistan's 18th Constitutional Amendment of 2010, provided that the Police formally became a Provincial subject. Today, the amended Police Order, 2002 is operational in two Provinces--Punjab and Khyber Pakhtunkhwa (KP). The other two Provinces, Sindh and Baluchistan, have brought back the Police Act of 1861!

The AHRC Pakistan Desk recommends the following:

1. The Police Order of 2002 was not implemented throughout the country. This was due to resistance from the Police, bureaucracy and political leadership. This lack of political will can be resolved by political CONSENSUS. This should ensure that all political parties are participating. Only then can they arrive at an Administrative Decision to finally promulgate the order and clear up the ambiguity.

2. Structural changes are required from the Constabulary to the Inspector General of Police (IG) level within the Policing System. As most of the appointments are made on a political basis, the Police are resisting the reform. It would seem that the first step towards reform should come through de-politicization. The State should refrain from using the police force as its mercenary. All appointments and promotions should be made through a public ,transparent system of vetting to select the most eligible, competent and deserving officer.

3. Community participation in policing should be made through citizen policing-committees (aka complaint and liaison committees). These committees could be set up in each district to ensure that all questionable police actions are reviewed by a board. Ideally, it should be comprised of retired civil servants, retired senior police officers, legal practitioners and academics of impeccable character and reputation.

4. Officers, no matter how good their performances were, who used tortured or abetted torture, should never be promoted. Rather, they should be blacklisted by Compliant and Liaison Committees.

5. Installing CCTV in interrogation rooms and making it compulsory for officers on duty to wear a body camera, should aid in keeping the incidents of torture in check.

6. To bring down the trend of corruption in individual policemen/women, the Committee will be tasked to check on the financial statements of police staff in their jurisdiction.

7. Priority for positions should be given to neighborhood residents of the Province. Appointments of a local police officer will benefit the public, as they have a better understanding of the neighborhood and its law and order situations.

8. The practice of giving unchecked powers of Law and Order to the police and para-military forces in emergencies should be abolished. Experience shows that all-out police action can further escalate tension and violence. All such action should have prior approval from senior officers. They should deliberate with the District Liaison Committee on possible consequences. Only then should police actions be taken in unavoidable circumstances.

Photo Credit to Gnanasiri Koththigoda

SRI LANKA

Background and Overview of the Criminal Justice Sector and Its (Non) Functioning and The Policing System

1. Introduction/ overview to the country's criminal justice sector

1.1. Brief history of the establishment of the criminal justice system and its evolution

The establishment of a criminal justice system in its modern sense took place under the colonial administration of Sri Lanka by the British. Sri Lanka has undergone about 450 years of colonial rule and the last of the colonial powers to occupy Sri Lanka was Britain. The Portuguese occupied the maritime areas of Sri Lanka from around 1505 to about 1658. The Dutch occupied the same areas up to 1796. The British took over the maritime areas from the Dutch in 1796 and began their rule. In 1815, the British captured the entire island of Sri Lanka and from then until 1948 Sri Lanka was a part of the British colonial empire. Independence was declared on 4 February 1948.

One of the major contributions of the British was the establishment of a system for the administration of justice. The Supreme Court was established in 1802. The policing system of Sri Lanka was established in 1806, when the British-occupied parts of Sri Lanka were governed by Thomas Maitland. The system of prosecutions under the Attorney General's Department was established much later.

Prior to this, the Dutch had established a kind of policing system, and that started from 1866. However, with the British takeover, the system which was introduced was in line with British law, and therefore it was completely new. Prior to the colonial takeovers, there wasn't a formal system of policing in Sri Lanka.

The overall administration of the country from around the 8th century AD gradually came to be under a caste system. The overarching principles of the caste system that became established in Sri Lanka, which was due to the occupation of Sri Lanka by several Indian rulers, were basically the same as those in the Indian caste system. Within a caste system, there is a system of governing crime and punishment in a way that is in keeping with the hierarchical system of ordering society in terms of caste. The rules applied relatively - that is, in terms of which caste a person was said to belong to. Under these principles, punishments differed in severity and lower-caste persons would be dealt more severe forms of punishment for the same crime, with lighter sentences higher up the hierarchy.

The king himself was not subject to any kind of law; he was, in fact, the source of law. The group that was in the king's closest circle were called Radalayas and the king assigned them power over areas of Sri Lanka. The understanding of crime and punishment under this basically feudal system was very different to the ideas of crime and punishment introduced under the British system, which became the criminal justice system of Sri Lanka thereafter.

This study will explore the nature of crimes and punishments under the feudal system, which was based on the caste system, and thereafter will outline the basic system that was introduced by the British.

Thereafter, the study will explore the evolution of this system after independence, particularly in terms of certain constitutional reforms that took place in Sri Lanka in 1972 and 1978, and also in the context of the control of insurgencies which took place in 1971 and thereafter from 1987 to 1991 after a southern insurgency by a group known as Janatha Vimukthi Peramuna (JVP). The Tamil militancy developed from the late 1970s and there was an intense period of internal conflict up to 2009. During these periods, Sri Lanka came to be ruled under emergency regulations and anti- terrorism laws.

The idea of crime and punishment changed significantly under these emergency and anti-terrorism laws. On the one hand, the definition of crimes changed and expanded; on the other, the notion of extrajudicial punishments came to be embedded as being necessary to anti-terrorism. All these aspects will be explored in detail in this study.

1.2. Brief overview of the political history and development to the present day

Sri Lanka has a long history. The more organized forms of governance in Sri Lanka began to develop around the 1st century BC with the establishment of a monarchy that ruled over certain parts of Sri Lanka. This period is known as the Anuradhapura period. The monarchy that began to function in Sri Lanka underwent a very significant transformation due to the influence of Asoka's ideals of governance, which were then spreading in India.

Asokan ideas have been explored in great detail by Indian historians such as Romila Tharpar, giving us a detailed understanding of Asoka's philosophy of governance. Asoka realized, after being a warrior who enlarged the kingdom of the Mauryas, that ruling countries requires a certain development of rules based on moral principles. He tried to do this by bringing in Buddhist ideas, which had spread in his kingdom, and forging an idea of governance that combined moral authority with political authority. Asoka sent his son to Sri Lanka to meet with the Sri Lankan king. The Sri Lankan king received him warmly and accepted Asokan ideas, and the political system in the country was thereafter developed within the framework of Asokan ideals.

This period lasted until about the 5th century AD in Sri Lanka, followed by a period of decline. Meanwhile, in India there had been drastic changes and the Asokan ideals of governance were no longer in practice. In Sri Lanka, there was a drastic change around the 8th century, when there were several invasions from India and the occupation of Sri Lanka by Indian rulers, who introduced their own system of administration, a major feature being the introduction of the Indian caste system.

By around the 11th century, the caste system was well established and became the main form of social organization in Sri Lanka. This system was incompatible with the ideas introduced by Asoka, both in terms of the form of governance and in terms of ideas about crime and punishment, which underwent severe changes. This aspect will be explored in this study to throw light on some of the continuing social problems that militate against the development of a modern system of justice in Sri Lanka in spite of the changes later introduced by the British.

The third period of development involves the various Western foreign powers that occupied Sri Lanka – first the Portuguese, then the Dutch, and culminating in the takeover of the entire country by the British in 1815. From 1815 to 1948, Sri Lanka was a British colony. The basic changes that took place during this period and the impact of the Western occupations will also be discussed in this study.

The first period after independence in 1948 followed the governance model set up by the British, similar to the model introduced in India, Myanmar, Malaysia, Singapore, Hong Kong and even some African colonies. In essence, Sri Lanka accepted the separation of powers model of governance and the basic notions of liberal democracy.

A change had begun to take place by the beginning of the 1960s, when there was growing dissatisfaction among the elite about the British model, as a section of the elite felt that the model undermined their place as the upper class of the society, and they thought that a semi-authoritarian model was more suitable to Sri Lanka than the liberal democratic model.

The first attempt at this change was through a failed coup in 1962. It was by military and police leaders, and their aim was to get more influence in political affairs and change the political structure to one they considered more fit for Sri Lanka. The coup was exposed and failed, but the ideas behind the coup continued to be nourished by a group of elites. Subsequently, these ideas were introduced without a coup, through democratic means.

The next attempt to undermine the liberal democratic setup was in 1972, when the coalition government withdrew the judicial review powers of the Supreme Court of Sri Lanka. This was the first successful attack on the separation of powers concept in Sri Lanka. The next and more thorough attack was in 1978, when a government with more than 80% control of parliament introduced a new constitution giving extraordinary powers to a new institution, the Executive President. The Executive Presidential system undermined both the parliament and the judiciary, and the president virtually stood above the law. A great transformation took place in the entire structure of governance, and this naturally affected Sri Lanka's justice system too. This period lasted until January 2015, and within that long period a serious undermining of the democratic structure took place. This period is important in understanding the political rules creating the dysfunctional justice system in the country. This aspect will also be explored in the study. Finally, at the moment there are attempts at reforms, and the discussions on reforms and the limitations of those discussions will also be scrutinized in this study.

2. Police System

2.1. Is police conduct regulated by clear legislation and policy instruments?

Sri Lanka, as a former British colony, inherited a very rich legacy of law. All aspects of life and society, whether it be personal matters or property matters or even issues of rights, whether under the civil or criminal law, are all well defined by legislation and case law. This is a general characteristic of most of the British colonies: for example, India also has a very rich system of legislation and case law on all those matters. Regarding the police, there is a Police Ordinance and also police orders, which are supposed to regulate almost all aspects of the life and conduct of the police.

However, when we study the reports of various commissions appointed by the government to examine the policing system, we find in their observations and recommendations many very serious criticisms of the policing system in Sri Lanka. For example, one of the first commissions appointed was in 1946 – two years before independence – headed by a Supreme Court judge, Justice Soertsz, who wrote a lengthy report which is still available. In this report, the commissioners categorically stated that the model of policing in Sri Lanka is mostly military-style policing and that concepts of civilian policing had not been introduced into Sri Lanka to any adequate degree. The place of law, particularly criminal law, and the policing system in terms of the law, as well as various criticisms that were made by commissions appointed to study the policing system, will be explored in this study.

2.2. How does the history of the police system impact its functioning today?

Studying the impact of the history of policing on the present day institution needs to be in the context of the social and political history of Sri Lanka. On the positive side, the long years in which policing developed under the colonial administration have led to a policing system that has acquired many of the characteristics of a developed policing system, much more so than in some other Asian countries. In fact, it is perhaps more developed than the one in India, possibly because of the absence of a rigid caste system in Sri Lanka in the way it exists in India, as well as Sri Lanka being a much smaller place as compared to India.

The Sri Lankan police were able to assimilate some of the aspects of more Western-style policing systems. The basic ideas of the rule of law were introduced by the British to Sri Lanka. The basic ideas at the foundation of Western democratic institutions were also introduced to Sri Lanka, and were practiced during the long period of British colonial rule. That gave considerable time for local officers to assimilate at last some of the practices from the colonial model.

However, it must be noted that it was not the British police that was responsible for moulding the policing system in Sri Lanka; it was the Irish constabulary and the persons who were brought from that constabulary that provided the models for the policing systems of both India and Sri Lanka. Ireland at the time was a colony of the British and, therefore, the policing was done in a colonial style. That is one of the limitations of the system that was introduced to Sri Lanka.

Historically, also, the issue of a system introduced under colonialism poses some very basic questions in relation to policing. The idea of the justice system as a whole, in particular the policing system, being the protector of the rights of citizens, was problematic because, in a colony, one of the fundamental principles is that the citizens are not regarded as citizens. They are regarded as the subjects of the British monarch, and thus the very idea of self-determination, which goes into informing the nature of our rights, suffered a serious setback from the very beginning. Above all, a system of rights can only be built on the recognition

of the principles of liberty and equality. In a colony, the interpretation of the idea of liberty is very limited. Liberty is limited to the extent that the citizen has no right to challenge the government and its right to govern. That, of course, is an enormously serious limitation to the idea of the development of rights.

On the other hand, the colonial system as introduced by the British allowed for the liberties of a citizen within the criminal justice and civil law system. Thus, in terms of criminal justice, as well as in many civil law issues (such as property, marriage, the right to practice religion and the like), the idea of liberty was developed without creating any undue hindrances. Thus, from that point of view, there was a development of the idea of basic rights, which the policing system had to respect and protect. In this study, the colonial origins of the modern policing system - both the negative and the positive aspects of the system bequeathed to the Sri Lankan people - will be examined.

2.3. Have there been police reform programmes in place, and if so, with what impact and why?

Police reforms have been discussed over a long period, becoming particularly prominent during the time leading up to independence and continuing thereafter. For example, the policing system was known as the police 'force,' and this was changed after independence into a policing 'service'. This was a name change but, at least from the point of view of the authorities, this also meant a certain orientation of thought towards what the policing system should be. A number of commissions appointed by the government and their reports show rather intensive discussions about reforms.

However, in terms of actual reform, there has not been much in the way of practical endeavors and practical schemes for implementation. For example, although the Justice Soertz commission recommended that the policing system should be changed from the military style to a civilian style policing system, this change did not occur in Sri Lanka. Thus, the kind of transformation that took place in Britain after the introduction of the metropolitan policing system in London and other parts of Britain did not lead to counterpart developments in Sri Lanka.

Also, while there have been some attempts to develop a more sophisticated group of criminal investigators through the creation of the Criminal Investigation Division (CID), for the officers that are in the general policing system run through police stations throughout the country, criminal investigation training is poor. Thus, the use of torture and ill treatment has remained a key way of investigating crimes, not merely due to the inclination of police officers to that practice, but mostly due to the authorities neglecting to develop a more sophisticated and modern system that develops practical methodologies with a deep respect for the rights of the individual and the dignity of human beings. In this study, we will explore these historical aspects of the development of the policing system in Sri Lanka.

2.4. Recruitment and promotion procedures

The recruitment process under the colonial system gradually developed very strict procedures. The officers in the senior positions of the police supervised the recruitment process to ensure that selected persons had relatively acceptable educational standards, the capacity to use the languages necessary in particular areas, and also, character-wise, came from families without criminal backgrounds. The vetting process was an important part of police recruitment in the British colonial period.

In the first two to three decades after independence, similar procedures continued to be used.

However, very serious changes began to happen, including the institution of the constitutional changes in 1972 and, with a greater impact, in 1978. After 1978 in particular there has been a tendency to cultivate and develop persons in the policing system who are particularly loyal to the politicians in power. This process of absorbing the police into the political ideology of the ruling party is known in Sri Lanka as the

politicization of the police. The policing system underwent a very serious transformation in the period from 1978 to 2000, when there were some attempts made to control the situation. However, those attempts failed, and the system of recruitment is still under the thrall of those very serious and negative changes. The period after 2005 has seen large-scale recruitment – 1/3 of the existing force – and included some who did not even meet the basic requirements of literacy and elementary education. The overall emphasis was to take in people who were loyal to politicians. Though they were recruited into the lowest ranks of the police, over the years they have been absorbed into the police cadres and have risen into positions higher than reserve constables. Some have become sergeants, subinspectors and inspectors, and some have proceeded to even higher ranks. The problems in the recruitment process remain one of the major issues to deal with in terms of reforms in Sri Lanka. When, out of a police cadre of 86,000, around 26,000 are persons selected in this manner, there is clearly a serious problem in recruitment. There is a considerable body of literature on the subject of police recruitment and we will explore this theme as a very important part of this study.

2.5. Is corruption a problem amongst the police, and with what consequences?

During colonial times, various methods were used to control police corruption. It was admitted that various levels of corruption existed during this time, similar to that found in India and other places, where corrupt practices were tolerated for various reasons. However, in the period after independence, particularly after the constitutional changes towards a more authoritarian system (as discussed above), corruption surfaced as serious problem. In essence, the control of corruption was abandoned. This was a way of encouraging officers in the entire civil service to be loyal to the political regime in power. Loyalty to the existing political regime became the only consideration; those who were loyal were promoted, and there was an open policy of discouraging the Commission against Bribery from pursuing inquiries and controlling corruption. In the recent decades, the police, in surveys conducted by organizations such as Transparency International, came at the top of institutional corruption watch lists. Last year, they came in second place to education, not because there was less corruption in policing, but because there was even more corruption in other areas.

The direct result of bending to authoritarianism was the deep spread of corruption. In the 2015 election, one of the opposition's major promises was to curb corruption. There have been some measures taken after the election to have commissions of inquiry, and the CID have been given more powers to investigate into corruption. Some of these efforts are ongoing. Meanwhile, one of the most recent developments is that the National Police Commission is undertaking certain measures to deal with corruption.

If the policing system is to be brought up to standards acceptable to a functional rule of law system, one of the major areas that requires change is the control of corruption. The dysfunctional elements that we are speaking about in this study could be traced to various measures that were taken to virtually encourage corruption, and the aim was to keep the policing system loyal to the ruling regime. This area will be explored in detail in this study.

2.6. Oversight mechanisms for the police

The most important oversight mechanism established over the police was the National Police Commission, a constitutional body brought about through the 17th Amendment to the Constitution, which was passed almost unanimously by the Parliament in 2001. Through this Amendment, certain measures were taken to introduce oversight mechanisms to control various aspects of public institutions. The public services, the electoral mechanisms and the policing system are examples of the institutions brought under the 17th Amendment's procedures.

However, the progress made in 2001 was soon defeated by a change of government. The new government wanted to deliberately destroy any kind of oversight over public institutions. Thus, the period between 2005 and 2015 was one in which all oversight mechanisms came to face serious problems, and the policing system was particularly affected.

One of the first reform attempts made after the January 2015 election was the revival of the idea of the 17th Amendment through a new Amendment, the 19th Amendment, through which the powers of these oversight mechanisms, including the National Police Commission, have been restored. Within the last two years, this Commission has been working towards changes, but it is too early to make any kind of serious observation into how far it will succeed as an oversight mechanism. In this study, we will explore the issue of oversight bodies in more detail.

3. Separation of Powers

3.1. Does the constitution provide explicitly for separation of powers amongst the executive, judiciary and legislative branches of government? Does the separation of powers exist in practice?

3.2. If not, what are the possible reasons for the lack of separation of powers? What are the ways in which the lack of separation of powers impacts on the functioning of the criminal justice institutions?

The original constitution, known as the Soulbury Constitution, adopted at the time of independence in 1948, was clearly structured on the basis of the acceptance of the doctrine of the separation of powers. The entire constitutional structure was based on equilibrium of power between the three branches of governance – the executive, legislature and judiciary. There was a body of case law from the higher courts in Sri Lanka discussing the principles and nature of the separation of powers. As Sri Lanka follows the common law model, the idea of judicial precedent is part of the law and, for this reason, what the judges decide is part of the law.

Therefore, it can be shown that the idea of the separation of powers was accepted in the Soulbury constitution and was strictly practiced up until 1972, when a new constitution was used to undermine these ideas.

The 1972 Constitution removed the judicial review powers of the Supreme Court. This was the first major blow to the operation of the separation of powers principle in Sri Lanka. During this time, the idea of the supremacy of the legislature was wrongly construed to mean that the legislature was superior to the executive and the judiciary. The government at the time, which considered itself a progressive government, considered the judges of the higher courts to be conservative and that judges could delay the implementation of laws that the government considered important and urgent. In any case, there were (and still are) serious delays inherent in the judicial system in Sri Lanka, and the government believed that any person who opposed them could bring cases before the courts solely for the purpose of causing delay to the implementation of laws. This whole misinterpretation of the phrase 'supremacy of Parliament' disturbed the manner in which the separation of powers was understood.

The next attack on the separation of powers was much more drastic and complete: in 1978, the whole structure of the constitution was changed in favour of giving extraordinary powers to a new institution, the Executive Presidency. What it really meant was that all the powers of governance were placed in the hands of a single person. To achieve this, it was necessary to bring both the legislature and the judiciary under the control of the Executive President.

Though this constitution was initially accepted without protest from the courts, perhaps due to the overwhelming power that the government had in Parliament (over 80% of seats were held by the ruling party), a conflict soon developed between the Chief Justice and the Executive President. In fact, the conflict was provoked by the Executive President in order to get the message across that things had changed and that, under the new constitution, he controlled everything. This conflict continued for a few years and the Executive President even attempted to impeach the Chief Justice, starting parliamentary proceedings for that purpose. However, the official period for which the Chief Justice held office came to an end during this time, before the impeachment proceedings were completed.

This attempted impeachment had its impact on Chief Justices who came after this. The immediate successors attempted to work out some form of compromise in order to avoid any conflict between them and the Executive President. This itself left an impression on the population that the judiciary was not functioning in the same manner as it had earlier, and that it had become subordinate to the Executive President.

The situation became worse when a new government was appointed in 1994; the new Executive President appointed one of her close associates as the Chief Justice. The new Chief Justice openly collaborated with the Executive President, and virtually became a protector of the government rather than the rights of citizens.

A large number of new practices were adopted by the Chief Justice, who showed that he was able and willing to abuse his discretion in order to undermine the express provisions of the law. In fact, the approach was to use discretion instead of law. This overall approach gradually spread into the entire judiciary, the result being that the law and the place it held were undermined.

In order to further undermine the judiciary, the Executive Presidents adopted the practice of appointing people who were loyal to them to the higher judiciary – to the Supreme Court and the Court of Appeal – further violating respect for seniority and merit, as well as independence. This gradually developed into a situation in which the Executive President would illegally and arbitrarily dismiss Chief Justices who would even slightly deviate from their wishes.

In January 2015 there was a change of government, and it adopted the 19th Amendment to the Constitution as a step towards reestablishing the equilibrium of power between the three branches of government. While this has been seen as an important first step, it has not been perceived as an adequate measure for restoring the operation of the separation of powers principle into Sri Lankan governance.

There is now a discussion on adopting a completely new constitution and a committee has been appointed to consult on the views of the people on necessary constitutional changes. The committee, after such consultations, has issued their report. In their recommendations, the committee has clearly stated that the basic structure doctrine developed by the Indian Supreme Court by way of several famous judgments should be incorporated into the law of Sri Lanka and that the new constitution should be drafted on the basis of this doctrine. Discussions on the reestablishment of a liberal democratic form of governance in Sri Lanka are underway. There is a vast body of literature on the aspects explored under this section. This will be reviewed in the proposed study.

4. Judiciary

The separation of powers is a fundamental aspect of criminal justice institutions that function on the basis of the rule of law. The independence of the judiciary is central to a functioning criminal justice system, and in all matters of criminal justice the final arbiter is the judiciary. If that position does not exist, or it is seriously undermined, then the whole fabric of criminal justice is thereby disturbed. This process of disturbance is known in Sri Lanka as politicization. What politicization means is that, simply put, political decisions replace judicial decisions. Thus, the justifiability of any action relating to criminal justice doesn't depend on the law alone. Instead, the directives and wishes of the government or the politicians in power can interfere with the functioning of the system.

What the Sri Lankan experience demonstrates is the way in which, for example, the upper echelons of the police hierarchy – meaning the Inspector General of Police and their deputies, who, within the original structure had the power to control the whole system - lost their control and the politicians took over the system. This means the appointments, transfers and dismissals of officers was based more on political criteria than on the criteria developed by the institution itself on the basis of its institutional needs. Further, politicians began to interfere into decisions about whether certain complaints (i.e. information about crimes) should be investigated into. With the politicians themselves being, directly or indirectly, involved in crimes, pressure was brought on the policing system to stop investigations into many very serious and scandalous crimes. A large list of such uninvestigated crimes became part of the opposition's accusations against the government.

The same process also took place in Sri Lanka's prosecutorial department, known as the Attorney General's Department. The politicization of prosecutions meant that prosecuting officers had to develop a pro-government bias when they exercised their functions. This meant that the very essence of the prosecutor's function - their independence relating to all professional matters - was seriously undermined. At a later stage, the prosecutors' office was brought directly under the control of the presidential secretariat.

This also applied, though in a less obvious manner, to the judiciary. There was direct interference with the judiciary and the intimidation of judges became part of the routine complaints against the government.

This whole issue of how political changes that undermine the separation of powers interfere with and undermine the whole judicial process is at the heart of this study, which concentrates on how this makes the justice system dysfunctional. Political interference can virtually change the character of a justice system by

fundamentally shifting its task from being the protection of the rights of parties involved in adjudication to being a protector of the state.

5. Reform Programmes

5.1 Justice sector reform programmes

These issues are related to what has been stated on the history of democracy and rule of law in Sri Lanka after the period of independence, particularly after 1972 when there was thrust towards a semi-authoritarian system, replacing the essentially liberal democratic system in place at the time of independence in 1948.

The period of direct and very explicit authoritarian tendencies lasted from 1972 to January 2015. Therefore, talk about any kind of reforms for the better occurred outside this historical context. What we have is not reforms but deformities, in terms of the criminal justice system and the constitutional system. The most intense forms of undermining took place after 2005, and one of the circumstances that provided the ethos for undermining the rule of law and democracy was the heightening of the conflict between the militant Tamil groups, such as the LTTE, and the military. The conflict developed into the proportions of what is called a war. It is an extreme case of antiterrorism without limits. It must also be said that it was the kind of terrorism that also knew no limits to the undermining of all rules of decent engagement, including respect for the rights of civilians.

During this most unfortunate period, some of the greatest beneficiaries were those who aspired to form a more authoritarian form of government. They justified what they were doing by framing themselves as heroes fighting against terrorism. When people in society experience intensified forms of complete instability and insecurity, society – or at least a considerable part of it – begins to give consent to the State to do whatever it wishes in order to bring back some normalcy and stability. This is an aspect that needs to be understood in dealing with developing countries. The kind of situation that Sri Lanka experienced from 2005 to 2009, and which continued up to 2015, is being experienced in many parts of Asia today in even more intensified forms. Two of the clearest examples of this are Pakistan and Bangladesh. Even the developments taking place in the Philippines, where the President has authorized direct extrajudicial killings, forms of illegal arrest, detention and the like for those who are called drug dealers and those involved in any way with the drug business, are examples of how the instability that develops in society creates social and psychological conditions wherein society itself demands more vigorous actions of repression from the State, and there are people who will unscrupulously utilize this situation for their own ambitions for power.

The worst part of this phenomenon took place, ironically, at the end of the conflict with the LTTE, after the government claimed victory and the complete suppression of the LTTE. What was expected at this point was a liberalization and a withdrawal of the repressive measures put in place during the conflict. However, what happened was the opposite: the Ministry of Defence was developed into a virtual State within the State, with extremely repressive machinery, exercising surveillance on all those who were critical of the government – opposition parties, journalists, human rights organizations as well as, naturally, trade unions, peasants movements and student movements fighting for their most basic rights. During this period, intelligence services working under the Secretary to the Ministry of Defence and those they manipulated were responsible for abductions and death threats.

Thus, in the period before 2015, talking about any kind of reforms was to misunderstand the ethos and milieu within which the Sri Lankan population lived throughout all parts of Sri Lanka, whether they belonged to the majority or a minority.

Small inroads towards reform started with the change after the January 2015 elections and the parliamentary election victory for the same group in August 2015. However, they have not embarked on a well-thought-out reform program.

They have, however, embarked on several constitutional reforms, and the 19th Amendment is an example of this. Through this, oversight bodies were once again appointed in terms of the institutions (mentioned above) addressed by the former 17th Amendment and attempts were made to ensure that appointments, promotions, transfers, dismissals and disciplinary actions were controlled by certain commissions appointed by an independent constitutional council. The police come under this and, to some extent, so do the judiciary, with the Judicial Services Commission being granted greater autonomy and the withdrawal of controls exercised by former governments.

These constitutional reforms are part of attempts to return to the liberal democratic model, but that commitment has not yet been clearly stated. As mentioned above, there have been discussions on constitutional reforms, and even a committee appointed to consult on the people's views, and they have given their recommendations within the purview of liberal democracy. They advocate a basic structure doctrine, as developed by the Indian Supreme Court, to be brought into the constitution and the government, and a return to a completely democratic structure.

However, the government does not have the required majorities to pull through these reforms by way of legislation, and a section of the opposition – representing the old guard, responsible for the kinds of repression stated above – are strongly militating against the reforms mentioned. Thus, getting parliamentary consensus on the reform program remains one of the challenges in terms of the future development of governance in Sri Lanka.

However, even with the limited possibilities available, the present government has some liberty for improving oversight mechanisms, such as the National Police Commission, Judicial Services Commission, the Human Rights Commission and the like, and helping them to evolve their own reforms and development program.

It is the view of the Asian Human Rights Commission, which has closely observed the development of Sri Lanka, that one of the major obstacles for reforms is the loss of the memory of democratic institutions, of democratic norms and practices, over a period of several decades in which these things were seriously undermined.

On the issue of reforms as discussed by civil society agencies, it has been the view of the Asian Human Rights Commission that priority should be given to the reintroduction of an education program on basic notions of democracy and the rule of law for all government institutions – particularly into the justice system, meaning the police, prosecutions department, judiciary, prisons and related services.

One of the factors that is also related to this is that, at the time that basic democratic notions and the rule of law were introduced in the colonial context, it was done through an elite class that used English as their medium of communication. With the subsequent changes that have taken place, this elite group has virtually lost their influence in Sri Lanka and many of the younger generations belonging to these groups have left Sri Lanka and/or have very little interest in matters relating to Sri Lanka. What is important in that context is that English is no longer the medium of education and administration in Sri Lanka. The languages of importance are Sinhalese and Tamil. However, there is no substantive literature in these languages for the education of the state sectors involved, for civil society and for the younger generation going through legal education, political education and the like, which they can refer to in their own languages.

It is impossible to expect that there will be a sizable population in Sri Lanka who are able to read texts in English in the near future. Therefore, a reform program should emphasise the creation of a body of literature based on substantial texts from the international community on democracy, human rights and the rule of law in the Sinhala and Tamil languages, so that the basic notions around which the whole discourse on democracy and rule of law take place will be understood by a larger section of the population. The parliamentarians come from the population and their level of education in recent times has reached its lowest levels because of the repressive system discussed earlier. This state of affairs has virtually disheartened those with better education from being involved in public affairs. There were also enormous personal risks during repressive periods. There has also been an enormous withdrawal of those with greater integrity because people have seen that the opportunities for actual action towards a better future don't exist. Added to that has been the brain drain, where nearly everyone who is able to secure employment outside prefers to leave Sri Lanka rather than to stay within its borders.

All this imposes a very serious obligation on those interested in reforms to engage in a very substantive form of education, not the ordinary types of training in civil society education, but a more substantive education with texts being prepared and more educational facilities for the population at large.

Particular focus should be on the sectors whose work relates to the administration of justice, so that the quality of education on the basic concepts, notions and practices of democracy, rule of law and human rights can be better understood in these populations.

6. How the Criminal Justice System functions (or not) in practice

6.1 Arrest, detention and interrogation: in law and in practice 1.1. The right to be informed of the reasons for arrest

The legal provisions do exist and they are in the constitution itself. The rights against illegal arrest and detention provided in the constitution are inkeeping with the international norms when taken generally. However, the issue is not the availability of legal provisions, but of the practices that have developed outside them and the impunity for ignoring those legal provisions.

Some cases have come up on the right to be informed of the reasons for arrest, and the Supreme Court has held that this right has not been made available to those victims. However, a large section of the victims don't come to complain because of poverty, illiteracy and the lack of support available from the state and civil society in providing support for everyone to pursue their constitutional rights. Thus, it is an inbuilt practice in the policing system to arrest persons without any substantive evidence; arrest can be made purely on the basis of gossip or trivial suspicion with police officers having a free hand in to engage in the torture of these victims. The very fact of torture itself prevents any kind of information about arrest from being obtained. Furthermore, the basic goal is to secure arrest without having to give any reasons. It has been demonstrated by large-scale documentation of such arrests, including the documentation done by the Asian Human Rights Commission, that the arresting officers are often not clear as to why people are being arrested. It is a matter of testing and guesses, and an expectation that by way of torture they can get some information about crimes and be able to begin investigations thereafter. Thus, a deep study into these practices – for which a large amount of empirical data is available - shows that this right, while it exists in legislation, is not practiced except on rare occasions.

6.2. Right to be brought promptly before a judge and notification of arrest-detention to independent authority

The general legal principle of producing a person within 48 hours has been well-engrained into the Sri Lankan law. In the long period of colonial rule it was only 24 hours. Later, due to various problems related particularly to insurgencies, this was extended to 48 hours. In general, it can be said that persons are in most instances produced before a court within this period. However, there are many instances in which, through various pretexts, persons are not really arrested, but are kept in police stations without records being made. This is in order to keep them in detention for longer than they are allowed to be kept. However, it needs to be emphasized that there has been some improvement in that direction, particularly because of various interventions brought under the fundamental rights law and due to civil society organizations in particular, who make a great noise when such a rule is not observed.

However, when the police really want to keep detentions secret they do so, as the rule relating to reporting to an authority, such as reporting to the Human Rights Commission, goes without being observed. There is a Presidential Order to let the family of the arrested person know of the arrest, but that is also usually not followed. Further to that, the visits by lawyers to arrested persons are severely discouraged by various means. Thus, there is a large area for improvement in this regard.

6.3. Access to a lawyer and to inform members of the family upon arrest

This issue was partly dealt with above. There are no direct legal provisions for access to a lawyer but there are certain circulars, one of which is gazetted, which have been arrived at after negotiations with lawyers, formally granting the right of lawyers to visit police stations. However, getting access is extremely difficult and various means are adopted to discourage lawyers. One method is to try to develop a certain

group of lawyers who act in collaboration with the police, so that the police can manipulate the whole process.

The idea of allowing a lawyer to stay when statements are recorded has not been either part of the law or practice, and changing this has been resisted vehemently by the law enforcement authorities.

Further, a large section of the population is poor and they cannot afford legal fees for better quality legal services. The legal aid system is in extreme disarray and the fees prescribed through legal aid are quite paltry, and, as such, the legal aid system does not play a major role in providing services for the victims. On many kinds of applications, the legal fees are quite high and most people cannot afford such fees. Besides, there is the other problem of the general delay in the justice system, which means that people have to pay over a long period for lawyers, and that is not within the capacities of much of the population. All these factors affect the access to lawyers in Sri Lanka.

In fact, an area that should be studied in the context of developing countries is the quality of lawyering in terms of providing services for the protection of victims' rights. The concept of the protection of victims' rights has not been part of the overall lawyers' psychology in developing countries, and this is clearly the case in Sri Lanka.

The legal profession was considered to be for the privileged and the people recruited in the distant past were people from elite groups, who kept a very great distance from ordinary people, and who normally wanted to keep the status quo, part of which was to support the police in whatever the police may do. There are now more lawyers from poorer backgrounds, but they often don't have the morale or psychological strength to challenge authority and the police in particular, as the police are more able to interfere with the rights of the lawyers themselves. The whole area of the role of the lawyers and what has happened to the legal profession in these countries in the long period of their development, and the retarding factors from the past and the ways to overcome this to create a more liberally-minded, strong legal profession, need to be examined for sake of the victims of human rights abuses.

Not many studies are available in this area and perhaps the proposed study can throw some light on this issue.

6.4. Access to an independent medical examination upon arrest

There is no legal provision requiring a person to undergo a medical examination on arrest. However, there are legal provisions, as well as a fairly developed system for access to Judicial Medical Officers, for when a person reports torture or ill treatment, at which time a magistrate can order the person to be examined by a JMO. However, one major problem is that lawyers in most areas are reluctant to make such a request because they want to keep peaceful relations with the police, and they believe that their legal practice would be affected if they antagonize the police. There have also been cases of custodial deaths after magistrates have ignored the lawyers and victims' statements regarding their treatment by the police. This issue of access to medical examinations, as well as the actions of police, magistrates and lawyers, is important to study.

6.5. Right to writ of habeas corpus

Although habeas corpus is part of Sri Lankan law, in practice it has suffered a great setback, particularly during the long period wherein the security forces were engaged in fighting insurgencies. In the judiciary itself, there is the tendency to have an acquiescent mentality towards the security forces, rather than protecting those who were presumed to be inclined to terrorism. There is a good study on this issue based on around a thousand cases of habeas corpus filed before the courts, in which hardly any cases were found in favor of the victims. Flimsy excuses were found by judges to delay and later to dismiss these cases. A habeas corpus application will on average take five or more years before being dealt with by the courts. Problems of habeas corpus and problems of other writs should be highlighted in dealing with the restoration of democracy, rule of law and human rights in Sri Lanka.