

WHY DO SRI LANKAN POLICE OFFICERS TORTURE SUSPECTS

Basil Fernando

In this paper, Police officer refers mostly to persons working for the Sri Lanka Police Service. But it also includes others who at times are called upon to do police duties such as interrogation similar to the military and other agencies. Further aspects, relevant to this paper, generally speaking, are the persons from the low-income group--THEY are the ones who are tortured. There are rare instances where someone outside that social group may be tortured. They are few in number as compared to the vast majority of the cases where the victim is from a low income group. Important to know about this article is, the observations made are based upon actual case studies. While one case may be mentioned under each heading, it is only a sample of very many similar cases.

REASONS FOR TORTURE

1. OBTAINING REWARDS:

A schoolteacher complains that he has lost 50,000 Rupees, which he thinks was stolen from his home by someone. The teacher suspects one young man who has been working in the vicinity as the culprit. He seeks help of the Police to find the 50,000 Rupees. Police records do not show any complaint recorded from this teacher. Later he is arrested. At the police station he is beaten by the police OIC with another officer. He is requested to give back the 50,000 Rupees. He denies the allegation. However, due to the severe beating he becomes unconscious, is taken to hospital and dies.

Why was he tortured? Was it as part of a criminal investigation? If it is a part of criminal investigation, the very first thing that should have been done was to record the complaint of the teacher in the Complaints Book. In the process of recording the teacher should have been asked about the details. Things such as the position of such money as well as the particulars which lead to an understanding of when and how the loss took place. The complainant teacher should have been asked what reasons he had to suspect a particular boy as the possible culprit in this theft. The Police should have sought out other evidence in support of the suspicions by the teacher. All such steps that should have taken for recording of the statement are based on the Law, as laid down in the Criminal Procedure Court.

However, that procedure is valid only if the OIC or any other Police Officer was sincerely interested in conducting an inquiry into the criminal Law of the country, with a view to collecting evidence to prosecute the offender. This means that the Officer's involvement in the case is basically as a Criminal Investigator. The functions and the methodologies within which the criminal investigation took place have been well laid down both by law and institutional principles that evolved over time within the Policing System.

What appears in this case is that the Police Officer or Officers who arrested the boy did not have the intention to conduct a criminal investigation. They did not have the view to collect evidence which could be placed before a Court leading to a criminal trial against the suspect. This is not the mindset or the intention of the Police who intervened in this case.

They had taken a complaint made by the teacher who we could assume in terms of the local rural area to have some kind of influence. The details on the relationships between the teacher and any of the Police Officers have not been revealed. What is clear is that the Police acted to help the complaining teacher to find the money and that was their sole objective.

Then the question becomes -WHY? Did the Police Officers go out of their way to help the complainant get what he wanted? To that purpose, did Police Officers ignore all that they are officially bound to do as acting investigators? One could postulate yes to these three reasons. Either it is due to personal reasons or they wanted to help the teacher, or they were acting with hope. Hope due to the promise given by the teacher to reward them if they find the money.

When the Officers fail to find any information leading to recovery of the money, they brutally assaulted the boy finally leading to his death. Now this instance cannot be in any way explained as an over enthusiastic Criminal Investigators' act because of his eagerness to solve the crime. This kind of brutal torture, leading to the boy's death would, not be consistent with the activity of a Criminal Investigator. His sole aim is to collect evidence so a successful prosecution could be made. Recovery of the money and handing over of the money to the complainant under the criminal procedure code could only happen through the Courts. The money, if it was found has to be deposited under the Courts' jurisdiction. It would be after the trial that the Court could be satisfied that the money belonged to the complainant. The money was to be handed over to him after the suspect is found guilty.

Such a procedure is cumbersome. In terms of the general practice in Sri Lanka, it would have taken a long time. Therefore, the interest of the complainant would have been to obtain the money as soon as possible. Any interest of pursuit against the subject in a criminal case, would hinder the achievement of his immediate objective. Get the money back as soon as possible!

Here, the Police Officer is transformed from a Criminal Investigator's position to some sort of an assistant. He could provide help for a complainant to acquire what he wants materially but not in terms of justice. The Police function is not exercised in order to enforce justice within the framework of the Law but in a sort of practical way, to resolve a person's problem. It is not within the legal function of a Police Officer to engage in such a work. For example, if the teacher, instead of going to the Police, went to the ordinary criminal who engages in the use of force to settle things, the teacher could have sought such a person's help. And that person, in turn, by threatening, directly assaulting or using some other means, could have forced the suspect to give back the money. Now, the teacher instead of completing this in a criminal mode uses the Police Officers to accomplish the same thing. When Police in their uniforms and the Official Authority act in a worse way than the criminal, they are protected by the Law. Therefore the matter could be brought to an end in this manner.

We are seeing in this process a majority of theft and robbery cases. They are brought against complainants or against persons in low income groups. They fall into this kind of category of crime and this kind of transformation

This cultural transformation could have happened not entirely due to the bad quality of policing but due to other societal changes. It is necessary to understand what these societal changes are to understand the kind of policing that has developed in Sri Lanka--and the reasons for torture that takes place in police stations. The assumption that the Police Officers engaged in torture in the course of a criminal investigation (in order to find more evidence to be placed before the Courts) is not the basis on which, in most instances, particularly activities done by the Police towards the low income groups, happen to take place.

2. In Order to Gain Promotions

A young-man of about 20, or so, is brought by the Police to Magistrate Court just as the Court begins its work for the day. His case is called and the Court clerk begins to read a series of charges. All together there are about 15 cases of theft and robberies. After each charge, the young man pleads guilty. Then, the case was postponed for sentencing for the next day and for a subsequent day and the young man was sent back to the prisoners' cell block within the Courts. While the Court proceedings were going on, suddenly, a huge cry is heard from the prisoners' cells. It was the young-man and he is crying. During the short interval in the Courts, some prisoners called the lawyers who represented them and informed them that the young man was asking for help. A few young lawyers talked to the young man. The young man tells the following story.

He is from a faraway village travelling a long distance by bus coming towards Colombo. At one spot, as is the usual custom, the bus stops for passengers to have a little rest and perhaps to have a cup of tea. As the young man wanted to ease himself, he goes to a place behind a big stone and was voiding when a Police Officer passes by. The police officer is a sergeant in a nearby police station. The Police inquire about where the boy is from. He mentions the name of his far away village. The boy is asked to accompany the policeman to the nearby police station, which he does. He was then detained in the police station. And, kept there for about three weeks. In the beginning, he was tortured to admit to certain crimes that he does not know anything about. Due to the long detention, harassment and promise, he finally agrees to plead guilty to some charges. But he does not know anything about them. The Police gathered together all the unresolved cases remaining at the Police Station. They attribute that this young man is the suspect in all these cases. And, then, he is told that if he pleads guilty, the Magistrate, being a very kind man, will take a soft attitude towards him. Because of his honesty and because he is young he was given mild suspended sentences and allowed to return home. To create an assurance that what they were saying was true, he was given 10 Rupees to go back home after the hearing that day. Believing in all these, the young-man pleaded guilty to all the charges. Notwithstanding that he was a person from a faraway village, knowing nothing about all these thefts and robberies. They took place in this particular area where he had never been. It was only when he goes back to his cell that the experienced prisoners about these matters told him this: he will be in jail for a very long time as he pleaded guilty to some 15 crimes. It was at that point the boy started crying. The lawyers, having all the details, approached the Magistrate. They used the powers available to them, under the Criminal Procedure Code, to request a withdrawal of the plea he has made. The Magistrate postpones the case and asked the lawyers to take up the issues on the next date.

The lawyers draft a letter to the Police Officer who was in charge of these proceedings. He is told that he has filed cases against innocent persons. Unless he withdraws these cases against him (the young-man), they will proceed to take action against him. It was a letter demand assigned by a lawyer. On next day, the senior Police Officer, in charge of making up these cases against the suspect, sends a junior officer to the lawyers concerned. He states that he is willing to withdraw all the cases by the next day. Then, he tells this to the lawyer who was taking the most active part in the case. 'Sir, the Officer-in-Charge (OIC) wants to let you know that you have prevented his imminent promotion.'

This particular story is purely one among many similar cases that surfaces in the Magistrate's Court quite often. When the Police receive complaints of unresolved petty thefts and or even robberies, they usually look for a defenseless, poor, young person to blame. He/she is charged in all the cases, causing promises of a sort, to create confidence that no significant consequences will follow.

3. Sharing Fees with the Lawyers

In almost all Police Stations in recent decades, there developed a collaboration between the Policemen and some lawyers around the issue of arrest and detention. The Police arrest persons without a proper preliminary inquiry. And, thereafter, they submit the report, charging the person with offences for which bail cannot be easily given. A regular practice has developed. It is sending suspects for two weeks detention in remand prison--even in simple offences where bail could be given immediately. Next, the people look for lawyers. The general opinion is, that it is created for a period, with only some lawyers being able to a secure suspect's bail. Very often the reason for this is that these lawyers have established a close relationship with the Police on the basis of sharing their fees with them. When these lawyers make applications for bail the Police do not object and bail could be obtained. However, if one of those lawyers in a favorable relationship with the Police do not appear, objection is taken against their bail request. Often the Magistrate allows the request, the persons are detained and could be several times. Even the Supreme Court has at times commented that the Magistrates should not refuse bail purely on the request of the Police. The Magistrate should examine all the circumstances and where the bail could be given it should be given. The principle established in Law is to give bail and only in certain circumstances should bail be denied.

This special relationship between some lawyers and some Police Officers affects not only issues of bail but also issues of charges. When such lawyers do not appear at the initial appeal itself, the Police would file serious charges against them. This might be for possession of drugs above a certain quantity or other offences about which the Magistrate cannot offer bail. When that happens, a person has to wait until the proceedings are taken up in the High Court, the matters are examined and finally a bail order may be made. The process of disentangling oneself from such charges is extremely difficult. This, itself, encourages the family when they know that one of their family members has been arrested very often for no reason. Use the approach to intervene quite early with lawyers to ensure that the suspects are not charged with non-bail able offences. Furthermore, even when people are charged with serious offences initially, the Police may later alter such reports. Often the excuse is this. After inquiry they found that their initial findings are not accurate and reduce the charges to enable the Magistrate to get bail. Again, these kind of charges occur purely on the basis of relationship. The connection between the Police and the lawyers concerned with the sharing of monies earned from such clients.

This practice affects those lawyers who do not engage in such practices. The word is spread that lawyers, who object for various reasons, reports filed by the Police--get into trouble. On legitimate grounds, when lawyers appear for their clients, carrying out their obligations in a faithful manner, they are treated as hostile people by the Police. The way such lawyers are treated creates a kind of chatter around the Courthouses. Various messengers engaged in touting, spread the message of risks the clients face. Risks, by using the services of lawyers who try to honestly defend their

clients. This creates an environment within the Magistrate Courts. Fair play, on the basis of carrying out professional duties, get discouraged. Many lawyers who would like to play their role in a more honest and efficient manner get disheartened. They pursue their activities in a manner which they would otherwise not do.

At times, in some Magistrate's Courts, Magistrates themselves contribute to this atmosphere. They put various restrictions on lawyers who would not adjust easily. Practices, such as pleading guilty for offences, purely for the sake of complying with the kind of expectation that gets built up in such restrictive environments.

All these practices have an overall impact of discouraging a fair fight for the protection of rights of all the suspects, particularly suspects from low income groups. These groups are expected to be more submissive towards Police pressure even when they have not committed any crime.

4. Torture for Obtaining Ransom

Two sons of a relatively well-off family from a remote area are arrested by the Police. It is alleged that that they have stolen two buffalos. Both of them are assaulted by Police in civilian clothing at the Police Station. Having heard about this treatment the family intervenes on behalf of the two boys. The OIC of the Police Station makes a demand on the family to this effect. Since the father of the two boys has enough money, they should ask him to give one 1 million Rupees to the OIC. On that condition the boys will be released and no charges will be filed against them.

That is very recent incident taking place within the last two months. A few years back 11 young people were adopted by unknown persons. They were all from relatively affluent families. After arrest a request for ransom was made. However, in each of the cases, due to various obstacles, the attempt to collect the ransoms failed. Later, due to a number of pressures, an inquiry was initiated. It was discovered that the boys were held inside a Navy camp and some high-ranking officers were involved in the crime. As the ransom demands were not met in time, the boys were killed. The parents made complaints about their disappearance despite clear evidence of adoption and detention. The case has been dragging on for several years now.

Both these reported incidents point to a quite frequent practice of the use of law-enforcement powers to obtain ransom. There has also been complaints from Persons of Tamil origins. They complained of being exposed to such ransom attempts under the threat that, if they fail to comply they will be charged under the terrorism Laws. Some of these persons returned from abroad. It seems to have been assumed that they or their loved ones would have money to pay a ransom. Nearly all of these complaints have been examined by international forensic experts. So far, not a single law-enforcement Officer has been successfully prosecuted for such offences.

5. For Unjust Enrichment

A young man, around the age of twenty, was charged with 8 to 10 car robberies. After investigation, the suspect has been identified and kept in the custody of a certain Police Station. At the beginning he is beaten by Police in civilian clothes. He reveals some details about a few stolen cars. With that admission, the treatment of the subject softens down. The OIC of the police station makes inquires on the basis of information given by the suspect. As a result, the OIC was able to trace some of the cars and their original owners. Then, the OIC started negotiations with

the car owners on terms which would return the vehicles. The owners agreed to pay some substantial amounts to the OIC and so the cars were returned to them. Gradually, as more information was obtained from the suspect, all cars were recovered. The OIC followed a method of obtaining money for returning the cars to the original owners. Although a B report was filed initially against the suspect, no charges were filed against him. The OIC was able to convince the car owners that if the suspect were charged, the cars, as stolen goods, would have to be kept on the Court premises until the end of the case. In the end, the car owners got their cars, the OIC collected money for himself and the suspect was freed.

The use of a criminal complaint, for finding ways for unjust enrichment of some law-enforcement officers, is a frequent practice. This is particularly seen in cases where the value of goods involved is relatively large.

A man was arrested on suspicion of some offence and produced before a Magistrate's Court. In the case of inquiry, the Police discover that he was the owner of some jewelry and some gold items which he had inherited from his family. After getting an order for his detention, the Police kept on filing further applications for detentions for several months. During this time they were able to acquire for themselves the value of the jewelry and gold items which was in his possession. In doing that, the Police also had the cooperation of the lawyer who appeared for the suspect.

A DIG of the Police lost some gold. They were stolen from his house by a burglar. Despite all inquiries, it was not possible to find the burglar or the gold items. Some months later, the same burglar was caught in a different province while engaged in a robbery. Once the Inspector at the headquarters (HQI) of that particular district found that this burglar had many things in his possession, he took over the case. By using torture, he was able to get the location of the different places from which things were stolen. This included reference to the burglary at the DIG's house. HQI kept all the gold for himself and did not file any charges against the thief. However, the story of what happened leaked out. The DIG came to know that the HQI kept his gold items together with the other loot. The HQI was later suspended from his post.

The use of complaints made at Police Stations, are a means of enriching themselves which are widespread and frequently practiced.

Part-2

Institutional Theories about the Use of Torture

There are a number of entrenched beliefs which have become institutional doctrines within the Policing System which contributes to the continuing practice of torture.

1. **No Suspect will ever tell the truth.**

Therefore it is better not to waste time asking questions before torturing the person. This is a practice almost invariably followed in the cases of people from low income groups. However the same assumption is not applied when the suspects are from more affluent classes or persons that wheel some political or social influence. For example, there have been many cases in recent years against politicians and high officials relating to corruption charges. However, none of these persons made any complaints that they were tortured or harassed in any way. As against that, there are thousands of complaints from persons of lower income groups who are often arrested for very petty crimes. The interrogation takes place accompanied by torture and ill-treatment with the use of very harsh language against the suspect. This issue was discussed before the Supreme Court in the case of Gerard Perera. Gerald Parera was brought to meet the Police by forcing his wife to call him to come immediately. Upon arrival he was put in a Police jeep and taken to the Watala police station. At the police station no questions were asked of him. He was taken to an isolated room where he was hung up. Here the police officers beat him with wooden and iron rods. As he was beaten he was told to reveal what he knows about a triple murder case that had happened within the jurisdiction of that police station. He did not know anything about the issue so he was beaten more. The Police were under the impression that he was such a stubborn person that he refused to divulge the information even after being severely tortured. The victim was taken down only after the Police received the news that the actual culprits of the case had been identified and that Jeral Parera knew nothing about this case. Due to his injuries, Jeral Perera suffered kidney failure remaining unconscious for nearly two weeks. This is what the Supreme Court observed in this case. If after the arrest a few questions had been asked, the whole matter could have been brought to an end within a few minutes--with the suspect being released.

On a number of occasions, the Police Officers, particularly officers in charge of the police stations OICS, have been questioned on this issue by the persons engaged in human rights work. The general reply to that has been something similar to this. You do not expect us to call these people gentleman or sir. Unless we are rough they will not divulge anything. Particularly in the cases of theft and robbery, there is no point in wasting time asking questions, because we know they will never tell the truth. The only way to get the truth out is to treat them in a rough way meaning by use of force.

2. Among the higher officers there is a general assumption that it is not possible to develop sophisticated means of criminal investigation as Sri Lanka is a poor country.

Even at very high levels, the officers have asserted the following at meetings. Due to the economic backwardness of the country, they cannot afford to provide first class treatment to the suspects. Implied in this attitude is that the use of torture and ill-treatment is the only affordable method that could be used to extract information from the suspects.

3. There is also this institutional agreement. Although statements obtained from the suspects cannot be used against them during a trial, the use of such force is quite useful in getting information that would lead to the identification of other witnesses.

Their evidence can be presented before the Courts. Such evidence is not admissible to be held as evidence of a confession or an admission by a suspect. However, the use of torture is permissible as a first step into discovery of details about the commission of the crime. Thus, the inquiries do not begin generally with an independent investigation into the evidence. It is the basis of incriminating evidence that could be discovered from the suspect himself. Where the suspect is innocent and is unable to give evidence about the alleged crime, he/she is repeatedly tortured. Actually, it is more than for an actual suspect who may divulge what he knows with the hope of avoiding torture.

1. It is also institutionally

acceptable that crime is solved even with a false suspect rather than admitting failure of the investigation. The reason for this is an institutional assumption. If proper reports are filed before the Courts and to higher authorities about solving a crime, it saves them from being questioned about unresolved cases. These could have impact on promotions and other matters within the institutional framework. In addition, this solves the problem in terms of possible questioning by the media or politicians. What is needed, is not to resolve crimes in a manner required by Law. It is to create the appearance of such resolution. This is accomplished by way of any kind of subterfuge for which torture could be used as an efficient instrument.

2. The Belief That FEAR is a Necessary Condition for Social Control of the Poor

The cultural belief ingrained into policing

and other law enforcement agencies is this. FEAR is a necessary condition for the control of the poor and low income groups. This cultural belief has a long history related to the methods of social control that has been used in Sri Lanka for over 1000 years. When the policing system was introduced by the British, the colonial officers gradually began to understand this factor. It was the reason why the prohibition of leading the evidence of confessions and admission was introduced into the Evidence Ordinance itself. However,

during Colonial control over the policing system, there were many measures to keep torture and ill treatment by law enforcement officers under control. However, after independence this gradually began to break down. Particularly, since the 1970s, the use of torture, ill-treatment and extra-judicial killings, including enforced disappearances, was re-introduced on a large scale. This class element relating to torture is a necessary factor. It tries to understand the widespread use of torture within the Policing System and the institutional justification of it.

1.A further factor is the practices that exist within the Policing System itself regarding the treatment of the lower ranks by higher ranking Police Officers.

The general practice (though there may be some exceptions) is the very harsh treatment of lower ranking officers in order to get them to perform various tasks. Use of very harsh language against them and imposing harsh schedules of work and the like is part of the Institutional Culture of policing in Sri Lanka. The result is, the officers who are treated badly in this manner by their seniors, tend to repeat the same pattern of behavior in their own interactions with people. Frequently, it is the lower ranking officers who do the direct torturing while the senior officers engage in such practices less often. The use of language by the Police regarding the persons from low income groups is harsh. They often use what is usually understood to be bad language and phrases. So, there is a pattern of reproducing internal violence to outsiders within the Policing System.

1. The firm conviction that torture and ill-treatment and others forms of use of violence will be protected by an effective system of impunity.

The high ranking officers collaborate in the attempts to hush up the instances of the use of force by the Police Officers in two ways. They do not conduct inquiries as soon as possible (creating various kinds of harassment to the complaints). They even alter documents to eliminate any kind of evidence that may in those records.

2. The Change of Institutional Mentalities As a Result of Counter Insurgencies

The 1971 insurrection virtually changed the course of history in Sri Lanka in political as well as legal spheres. That was not due to the strength of the insurgency itself. Looking back from a distance, the insurgency was in fact extremely weak carried out without any extensive organization or with any kind of substantial means. Many activities of the insurgency consisted of training some young people in few classes about the casualty of the Janatha Vimukthi Peramuna (People's Liberation Front). The activities were mainly in making some Molotov cocktails and some work on the trade union front. The importance of the insurgency was that it exposed the weakness of the Sri Lankan State. The insurgents mainly relied on this weakness. They thought they could create situations of disturbance in the country although the leader and a few others may have thought of the possibility to come into power. They had in fact not convinced any significant portion of the population about that capacity, nor were they prepared for such an eventuality. In fact, the insurgency was uncovered while some were making Molotov cocktails. The later documents which

came up, for example, the statements given by the organization before the Criminal Justice Commission, clearly indicated that there was no grand plan for action for revolution or taking of power. What made the insurgency have a decisive effect was that the news of some incidents taking place in a few places, the weak state of Sri Lanka was thoroughly shaken. There was a state of panic, both among the leaders of the Government and in the Policing System. The document shows that there was a real fear that the Government may collapse and that a revolution might take place.

The Government was taken completely by surprise by the few incidents of bomb blasts and some attacks. This reaction was not based on any detailed intelligence reports or assessment of the actual strength of the insurgent groups. The command that came from the top, to shoot on sight, and to engage in whatever forms of action were needed to bring down the insurgency, led to relatively large scale killings. While the number of security personnel killed was around 50, the number of alleged insurgents killed exceeded 5000. It was this large-scale and ruthless reaction to a relatively weak insurgency that virtually led to a crisis in the State. It was reflected mostly in its policing system which made this event a very prominent event and decisive for change in the political life as well as security arrangements in Sri Lanka.

Politically, the opposition party which has been very seriously damaged by an electoral defeat in the 1970's, found a way to regain their strength within a short time. It was particularly through the shock and the unrest within the population as a result of the large-scale killings that took place during the short period of insurgency. The exploitation of this unusual situation was perhaps the major reason for the defeat of the coalition government of the 1970's and the election of the United National Party government with nearly 80% of the seats in the Parliament in 1977. That became decisive in 1978, seven (7) years after the insurgency. The Constitution of Sri Lanka was completely changed from the Rule of Law based on a democratic system. It became an executive based system which could undermine the normal legal process and resort more directly to the national Security Law. In fact, the national security law was incorporated into the Constitution itself. That, as subsequent decades would show, altered the political culture of Sri Lanka drastically. Among other things, the decision on the legality of any action depended more on the executive and less on the legislature or on the judiciary. Both these institutions were undermined in favor of an executive led government.

3. Change of Mentalities Due to an

Erosion of Discipline

As far as the Policing System was concerned, the counter insurgency measures eroded the traditions of adherence to legal principles within the system as the Police were used for military purposes during the time of the insurgency. The Police were mobilized for illegal arrests, detentions and above all, the killings of persons after they have been arrested. The entire fabric of the Criminal Law was based on the model introduced by the British. When a person is arrested, the protection of that person is the primary duty of the Police. This was completely abandoned. The killings of arrested persons were authorized. Arrest itself didn't take place on the basis of any reliable evidence but more on petitions and the information obtained through torture. As a result of that many who were killed could not be in anyway characterized as persons who were involved in serious insurgencies. The theory, for allowing such arrests, was that in a situation of the conflict of this nature, it is not correct to find out who is involved and who is not involved. Now the Police were given liberty to act on the basis of their own judgment. The power of killings passed into the hands of the Police or other security personnel or their agents. Thus, there was for the first time, in modern Sri Lankan history, a unique situation. Power over life and death was passed from the Judiciary into the hands of the Police. Among the Police, those who carried out most of the actual implementing actions as arrests, detentions and the killings, were the lower ranks of the Police. The higher ranks were silent. Some cooperated in the scheme of carrying out deaths.

4. The information collection at that time was about those who were engaged in insurgency. And the main source of that were those who were arrested allegedly for insurgency related issues. So, this was a severe, extremely serious period with the idea of gaining more information about other insurgents. The culture, of the use of torture, underwent drastic change during this period of insurgency.
5. As such, the entire system of policing underwent a transformation for the worst. Experiences of some countries in the use of Police units for insurgency control shows the following. It is only those units who would have the power to use extra legal means. The basic institution is kept out of such activities so that the normal Rule of Law functions could be exercised by the Police. However in Sri Lanka, this was not the case. The entire system was used causing extreme violence, including killing of persons and disposal of their bodies.
6. There was no real attempt to undo the damage that was done to the institution during this kind of Police mobilization for such illegal and basically criminal activities. Instead the situations which unfolded in later decades increased the use of Police for military purposes. This had been acknowledged by persons like the former Secretary to the Ministry of Justice, later President of Sri Lanka. Now, the problem of the Sri Lankan Police is that it is not useable for enforcement of the Law according to basic principles of the Rule of Law. And the problem has become so complicated that none of the Governments in recent decades have made any serious attempt of serious reform of the institution. Instead, many actions that have been taken aggravated the situation. Take for example the recruitment of over 30,000 policemen, without any training. It was done purely for the purpose of deployment as a political gesture by the Mahinda Rajapaksa government. Thus, out of the 75,000 strong police force, over 30,000 persons were those who were recruited without basic training. They

gradually gained additional persons within the organization through promotions.

7. The institution today is not capable of acting as a Rule of Law based law enforcement agency. It acts outside the Law. It replaces discussion as against the basic legal norms and legislative requirements. Supervisory capacity at the top has deteriorated to such a stage that they are unable to carry out discipline within the system.

This perhaps is the greatest reason as to why the use of torture has become so common place in dealing with the ordinary people in the country.

The Change of Institutional Mentalities As a Result of Counter Insurgencies

The 1971 insurrection virtually changed the course of political and legal spheres of history in Sri Lanka. It was not due to the strength of the insurgency itself. Looking back from a distance, the insurgency was in fact extremely weak. It was carried out without any extensive organization or with any substantial means. Many activities of the insurgency consisted of training some young people in few classes about the casualty of the Janatha Vimukthi Peramuna (People's Liberation Front). These activities were mainly in making Molotov cocktails and some work in the trade union front. The importance of the insurgency was that it exposed the weakness of the Sri Lanka State. The insurgents mainly relied on this weakness. They thought they could create situational disturbances in the country. The leader and a few others may have thought of the possibility coming into power. They had in fact not convinced any significant portion of the population about that capacity. And nor were they were prepared for such an eventuality. In fact, the insurgency was discovered while some were making Molotov cocktails. Later documents which surfaced (for example the statements given by the organization before the Criminal Justice Commission) gave some clear indications. There was no grand plan for revolutionary action or the assumption of power. What made the insurgency have a decisive effect were these; news events of some incidents taking place in a few places; the weakened state of Sri Lanka.

There was a state of panic, both among the leaders of the government as well as in the policing system. The document shows that there was a real fear that the Government might collapse and that a revolution might take place.

The Government was taken completely by surprise by the few incidents of bomb blasts and some attacks. The reaction was not based on any detailed intelligence reports or assessment of the actual strength of the insurgent groups. The command that came from the top to shoot on sight and to engage in whatever forms of action to bring down the insurgency, led to relatively large scale killings. While around 50 security personnel were killed, the number of alleged insurgents killed exceeded 5,000. It was this large-scale and ruthless reaction to a relatively weak insurgency that virtually led to a crisis in the State. It was reflected mostly in its Policing System. This event became a very prominent event and a decisive one. It changed the political life as well as the security arrangements in Sri Lanka.

Politically, the opposition party was seriously damaged by an electoral defeat in the 1970's. But, they found a way to regain their strength within a short period of time. This particular shock and unrest within the population took place as a result of the large-scale killings during the short period

of insurgency. The exploitation of this unusual situation had consequences. It was perhaps the major reason for the defeat of the coalition Government of the 1970's and the election of the United National Party Government with nearly 80% of the seats in the Parliament in 1977. It became decisive in 1978, seven (7) years after the insurgency. The Sri Lankan Constitution was completely changed. It went from a Rule of Law based democratic system into an executive based system. It could undermine the normal legal process and relate more directly to the National Security Laws. In fact, the national security law was incorporated into the Constitution itself. That, as subsequent decades show, altered the political culture of Sri Lanka drastically. Among other things, the decision on the legality of any action depended more on the executive and less on the legislature or the judiciary. Both these institutions were undermined in favor of an executive led Government.

Erosions of Traditions of policing

As far as the Policing System was concerned, the counter insurgency measures eroded tradition. They were adherence to legal principles within the system because the Police were used for military purposes during the time of the insurgency. The Police were mobilized for illegal arrests, detentions and above all the killing of persons after they had been arrested. The entire fabric of the Criminal Law was based on the model introduced by the British. This meant that when a person is arrested, his/her protection is the primary duty of the Police. This was completely abandoned and killings of arrested persons were authorized. Arrest itself didn't take place on the basis of any reliable evidence but more on petitions and the information obtained through torture. As a result of that many who were killed could not be in anyway characterized as persons involved in serious insurgencies. The theory for allowing such arrests was that in a situation of a conflict of this nature, it is not enough to find out who is involved and who is not involved. Police were given liberty to act on the basis of their own judgment. The power of killings passed into the hands of the Police or other security personnel or their agents. For the first time in modern Sri Lankan history, the power over life and death was passed from the Judiciary to the Police. Even among the Police, the people who carried out most of the actual implementing actions as arrests, detentions and the killings, were from the lower ranks of the Police. The higher ranks were made to be silent, with some of them cooperating in the scheme of carrying out deaths.

The information collection at that time was about those who were engaged in insurgency. The main source were those who were arrested allegedly for insurgency related issues. So this was an extremely serious period of time where the idea was to gain additional information about other insurgents. We see that the Culture of the use of Torture underwent drastic change during this period of insurgency.

As such, the entire system of policing underwent a transformation for the worst. Experiences of some countries in the use of police units for insurgency control shows us two things. One. It is only those units who have power to use extra legal means. The basic institution is kept out of such activities for this purpose--the normal Rule of Law functions could be exercised by the Police. However in Sri Lanka, this was not the case. The entire system was used to cause extreme violence, including the killing of persons and the disposal of their bodies.

There was no real attempt to undo the damage done to the institution during this kind of mobilization of the Police for illegal and basically criminal activities. Instead, the situations which unfolded for the next few decades increased the use of Police for military purposes. This had been

acknowledged by persons like the former Secretary to the Ministry of Justice, later President of Sri Lanka. Thus, the problem of the Sri Lankan Police is that it is not useable for enforcement of Law according to the basic principles of the Rule of Law. Meanwhile, the problem has become so complicated that none of the Governments in recent decades have made any serious attempt at reform of the institution. Instead, many actions taken aggravated the situation. Take for example the recruitment of over 30,000 policemen without any training. This was proffered purely for the purpose of deployment as a political gesture by Mahinda Rajapaksa Government. Thus, out of a 75,000 strong, man/woman Police force, over 30,000 persons were recruited without basic training. They gradually gained more persons within the organization through promotions.

Thus, the institution today is not capable of acting as a Rule of Law based law enforcement agency. It acts outside the Law. It replaces discussion as against the basic legal norms and legislative requirements. Supervisory capacity at the top has deteriorated to such a stage that they are unable to carry out discipline within the system. This perhaps is the greatest reason why the use of torture has become so common place in dealing with ordinary people in the country.
