

VOL: 1 NO: 2

May 14, 2021

Neglect and Loss



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(Reports and Commentaries on current problems)



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INDIA: CREMATION PRICES SOAR HIGH

Several Reports, from reputed Indian newspapers, have stated that as the deaths by Covid 19 go staggeringly high, cremation prices in many parts of India have been hijacked by profiteering groups. They are responsible for the increased cremation charges. The Times of India, the largest circulated English daily in the country, started reporting this from April 19, 2021. The newspaper found that the rates for cremations were hijacked. It also found that in Uttar Pradesh's Varanasi, the rates for cremation were hiked from Rs 5000 (approximately USD 68) to more than double to Rs 11,000. The Reports mentioned a person who was charged Rs 22,000 for the cremation of his aunt on April 14, 2021 and then Rs 30,000 for the cremation of his grandmother just a couple of days later.

The situation was the same in Patna, the capital of the neighbouring province of Bihar, 250 km. away. The Authorities had to install CCTV cameras to detect profiteering instances as reported by IndiaToday.

The situation is no different thousands of kilometers away, down south. For example, Funeral Agencies were found charging exorbitant prices ranging from Rs 20,000 to Rs 35,000 in Andhra Pradesh's Vijayawada. According to reports, Government Authorities have been alarmed by the extent to which this is spreading.

It has also been noted that the number of dead bodies thrown into the rivers has also increased. Some speculate that this is due to the fact that people are unable to pay funeral expenses.

It is no surprise then that the Indian Government has failed to the extent that it is unable to give any kind of genuine leadership to deal with the Covid 19 crisis. It is no surprise that around the miseries of the masses, many kinds of profiteering practices would emerge. It has been seen, in all major crises, that when a crisis deepens, the inhuman aspects that lie beneath society begin to surface. And most unconscionable practices develop to profit from human misery.

The Government must accept full blame for this matter. It must be held responsible for the failure to stop these practices. Even in normal times, Indian law-enforcement capacity is very low and often is very corrupt. It is unable to provide the kind of services required for human security. Now, the Government is proving that it is not even capable of providing an atmosphere for decent burials to take place.

One of the famous actor Sonu Sood has said publicly that their foundation trying to help people on issues such as getting Oxygen, ICU beds and the like. However, now the request they are receiving from the people is for the assistance for cremations of dead bodies.

As pointed out by many critics already, what is prevailing in India today is a grave humanitarian crisis. One of the prominent critics, Arundhati Roy, has described it as a crime against humanity.

INDIA NEEDS HELP IN THESE TERRIBLE SITUATIONS.....

<http://www.humanrights.asia/news/ahrc-news/AHRC-STM-008-2021/>

IMPUNITY – POVERTY AND COVID-19

Sri Lanka has an endemic problem of impunity about some sorts of crimes and human rights violations. This problem of impunity is recognized locally by everyone and is constantly part of the local conversation. The reference to Sri Lanka as a lawless country by the local people themselves, does not surprise anyone. It is almost taken for granted now that the Law is not enforced. And, as a result, most of the time, crime and serious human rights violations go unpunished.

This impunity has caused a much greater problem than mere individual violations. It has caused a crisis of Governance. This is manifest not only in civil rights issues but also on basic problems like extreme poverty. It also contributes to a considerable amount of malnutrition, high suicide rates, massive unemployment and an ever-increasing rise of prices for basic goods. Needless to say, Sri Lanka has a particularly grave problem relating to foreign debts.

Debt payments take up the entirety of the national income and even more! This puts the Government further into a cycle of increased indebtedness. Meanwhile this situation is used by foreign powers to secure a greater foothold in the country to exploit national resources for their own benefit. Furthermore, the powerful people are known to be extremely corrupt and exploit the national resources for themselves. The cutting down of forests coupled with other natural disasters could bring the country into a serious ecological crisis at any moment.

The acute nature of these crises is manifest just now as the numbers of Covid-19 infected persons are rapidly increasing. Daily infection rates have gone up to 3,000 or more per day and the numbers of deaths have increased. Reputed International Agencies studying these matters have put forth this probability. In the coming months, infection rates may go as high as 4,000 per day and the death rate may rise to about 3,000 or more. Given the fact that the country's population is about 21 million people, percentage wise, this rate of infection is even higher than that of India. Presently, it is attracting global attention for the high level of deaths occurring in the country. The problem really is that the Civil Society has not yet learned to deal with the question of impunity. WHY? The reason being, that it has being ill-trained to understand the local causes for such impunity and for the collapse of Governance. Locally and internationally, the mode of action is based on the behavior of the more developed democracies. And unfortunately, these do not work within a framework where the basic infrastructure of the State is extremely poor. Law enforcement is at the lowest level even including petty crimes and other forms of criminal activities. There is no sensitivity, within the Government or the public sector, of a respect for human rights

That lack of respect is reflected in the absence of a concern for the value of life. The occurrence of an enormous amount of suffering, due to economic deprivation and disease situations, does not attract any kind of moral response from the State or the Society. Furthermore, it is also rather numb and passive on these issues.

The Civil society needs to be able to report in detail about all that happens to ordinary people in their day-to-day lives. Three examples are cited here: their rights are violated daily, poverty is widespread, and the consequences of poverty, such as suicides, malnutrition et al. The extremely dampening situation developing in the country regarding Covid-19 needs to be properly

documented. It needs to be discussed in a way that the whole issue of the collapse of Governance becomes a central part of the human rights discourse. And - this is something that could only be done by organizations and people who know their country well. It is those who know the details and are committed to assist their own people by learning the art of proper communication of what is taking place NOW.

Accordingly, the lesson to be learned from Sri Lanka is this. There needs to be a new learning. How to deal with the issue of impunity of bad systems in public institutions in developing countries. And, in addition, developing methodologies by which impunity could be fought. Mere dependence on experiences from more developed countries will not be of much use under these circumstances. Doing the same thing over and over and expecting different results is the height of stupidity. Civil Society Organizations have to be aware that there is some kind of absurdity going on which paralyzes their own capacity to give genuine assistance to their own people.

NEPAL: Covid -19 and governance, collapse of a conscience

Nepal on 13 May 2021 reported 8,842 new Coronavirus cases in the last 24 hours, taking the nationwide infection tally to 431,191. Nepal on 12 May reported 9,238 new cases and 168 Covid-19 related fatalities. Similarly, 9,317 new cases and 225 Covid-19 related deaths were recorded on 11 May and 9,127 new cases and 139 Covid-19 related deaths were reported on 10 May. It reported 214 Covid-19-related fatalities on 13 May, and the countrywide death toll has now reached 4,466. The number of active cases stands at 105,207. These are the statistics provided by the Government and picked up from the media. Without any doubt, one can easily guess that exact numbers are much more than this.

The situation has drastically changed overnight in Nepal. The health care system is on the verge of collapse. Patients and their family members are begging for help. They are begging for beds, and running around from hospital to hospital seeking it. But very few are getting it. The Covid-19 infected are laying around hospital gates seeking treatment. And, most of them only need oxygen. Nepalese are dying due to the lack of oxygen. Seriously. Dying due to the lack of oxygen. There is something deeply wrong here. Doctors are giving up and pleading for help. They are using social media, asking for the Government to provide oxygen. Many doctors and nurses who are themselves infected have been forgetting about their conditions and are treating Covid-19 patients. They are the true angels for some handfuls of lucky Nepalese who were able to get a bed at hospitals, who are able to receive the basic facility of getting oxygen.

And coming back to the State. Where is the Government? Where is the governance facility and mechanism? Looking at the current dance of death, and the lack of governance has been exposed to its fullest.

What was the Government doing for the last one year? The answer is that it was playing musical chairs. It was embroiled into dirty politics and trying to hold on to its position. The K.P. Sharma led Government was busy claiming that the Covid-19 pandemic was merely a Viral influenza and sneeze, and advised to drink lukewarm turmeric water, as a domestic remedy. Instead of building oxygen plants, instead of investing in increasing hospital beds, instead of building makeshift hospitals, instead of making isolation centres at the local level, and instead of purchasing and securing Covid-19 vaccines, the Government spent time and money on building view towers, making idols of Hindu gods and goddesses, telling Lord Pashupati will save us all.

What is this? Good governance or the height of stupidity? When people are dying due to the lack of oxygen and hospital beds, the Ministry of Health has been busy issuing statements warning doctors and nurses not to scare the public by telling that they do not have any further capacity to admit new patients and that they do not have any oxygen left. This is the arrogance of the Government which pretends that all is well in Nepal and that there is no Covid-19 emergency.

So videos and pictures of Covid-19 deaths and cries and pleadings for help must be dramas played by common Nepalese who do not have access to anything.

And surprisingly, the civil society who were very vocal and active a year ago are very much silent after a year. They may be helpless and trying to protect themselves and their families first. Or they

may be trying to protect themselves from the wrath of the State as they know that K.P. Oli, a Nepalese version of Nero is enjoying the deaths and still claiming that all is well and that everything is under control. It is time for the civil society to wake up, advocate, protest and overthrow the authoritarian K.P. Sharma Oli who is not the Prime Minister, but merely a propagandist. To borrow the famous words by Arundhati Roy, a famous author, this is a crime against humanity. And it is true, when people are dying because of the lack of oxygen, it is indeed a crime against humanity, and maybe more than that. The only one responsible is the K.P. Sharma Oli Government. He must be overthrown, and punished for its crimes.

<http://www.humanrights.asia/news/ahrc-news/AHRC-STM-009-2021/>

Human dignity and livelihoods

By Basil Fernando

One significant distinction must be made when we discuss about human dignity in the context of a developed country where generally the people have adequate means of living their normal lives, and in developing countries where many people do not have such possibilities. In other words, the problem of livelihoods and the problem of human dignity cannot be divorced.

In an abstract sense, all human beings are equal and therefore all of them are entitled to be treated with dignity. From that sense, human dignity is an inherent quality of a human being.

However, in the actual circumstances of living, things do not work that way. If a person does not have a livelihood by which he/she could guarantee for himself/herself and his/her family to have their basic needs such as food, health care, education and such basic needs, he or she is not in a position to assert their dignity and remain as equals among others who may not have similar difficulties.

A person who does not have enough to eat for himself/herself or for his/her family including children, they simply have to suppress whatever feelings of dignity he/she may have had and will have to humble himself or herself in order to get these basic needs to some extent or the other. In the failure to get that, they will die and for many, before dying, they will be faced with all kinds of illnesses and other problems for which also they can find no solutions.

Perhaps this question is better discussed under the present circumstances in terms of the spread of Covid-19. These weeks, we are hearing the most shocking and saddening tales as to what happens to many and in particular to the poor in the context of Covid-19. Not only do they die in large numbers but also even the basic human dignities which are observed after death cannot be provided for many of them. The stories of bodies thrown into rivers in India in the recent weeks have been seen as an expression of very sad situations where people cannot even afford the funeral expenses. This is symbolic of the problem we are discussing here about the link between human dignity and the availability of the most basic needs of people to live and even to be buried with dignity.

This brings us to the whole issue of governance. The very purpose of the State at the most minimum level is to protect lives. The protection of life involves the creation of possibilities for people to have their very basic needs which are essential to remain alive. If the State is unable even to provide for this, then the whole purpose of the State is lost.

The above statement has profound implications. For very large sections of people in developing countries, the existence of the State do not mean much, simply because the existing State in their context is unable to provide for them even the minimum possibility of having a livelihood which makes it possible for them to attend to their basic needs.

What usually applies to the poorer sections of society applies even to the entire population in a situation such as Covid-19. We have seen this in the richest country in the world, the United States and also other rich and powerful countries in Europe as well as countries like India. In these

countries, due to various philosophies that prevail and the systems of governance that have been created, the provision for basic health care is not regarded as a State obligation. The result is that many people have had to pay with their lives and also often with the lives of their loved ones.

Thus, the whole issue of governance needs to be understood differently when looked at from the point of view of human dignity. The international laws on human rights recognize the right to life as the most basic of all rights. Many of the Constitutions in most countries also include the right to life directly or indirectly within their supreme law. However, the basic obligation of the State to act in a manner that it is able to create basic livelihoods to meet at least the minimum requirements for survival is not being recognized as an obligation of the State.

The problem associated with this is that while the ideas of human dignity, human rights, State obligations and the like have been developed mostly by the involvement of persons from more developed countries, no work has been done to understand the implications of this concept in less developed countries. The result creates quite an absurd situation. The absurd situation is that a lot of documentation is produced asserting the problems of human dignity and human rights while for quite a sizable section of society, most of the time and even for the entire society on some special occasions, the possibilities do not exist to get treatment that is deserving of respect for their human dignity.

The conclusion that arises from this is that it is very essential to bring in the issue of the right to livelihood and the right to minimum care for the protection of life as a State obligation which needs to be brought to focus when discussing about the issues relating to human dignity and what flows from that concept.

Thus, particularly from the point of view of developing countries, a certain absurdity that at present exists within the discourse on human dignity and human rights needs to be resolved by way of serious studies, reflections, and discourses which would lead to a different level of understanding of this problem which may in turn result in finding solutions to extremely difficult conditions of life which contradict the very notion of human dignity.

SRI LANKA: Covid-19 & The Constitution

By Basil Fernando

Arundhati Roy, prominent writer and social activist in India has written several important articles in the recent few days on the problem of the spread of Covid-19 and the vast numbers of deaths that are taking place in India. In an article written just a few days back, Roy directly addresses the Prime Minister of India, Narendra Modi and points to the fact that the Covid-19 crisis in India is a problem of governance in India. The system of governance has failed and it is now threatening the lives of the people. She asked the Prime Minister to leave his post and hand over the management of this crisis to persons who are competent to do so.

I thought of those comments when I was listening last Sunday (9th May) to a discussion on the Judiciary organized by the Movement For A Just Society, where a few senior lawyers spoke and where there were also some comments made. I could not help feeling that the entire discussion was like talking about a cure for a cold or a minor fever when the actual disease is something like the Covid-19. The problem of the Constitution of Sri Lanka is not primarily about the various very genuine practical problems that are faced by the lawyers and the litigants as they come or do not come in search of justice. Such problems as the powers of the Attorney General, judicial delays, the role of the prosecutor and the like are of course important issues but these have remained important issues for a long time. Any bona fide discussion on trying to solve such problems should necessarily address the root causes which have caused these problems and aggravated these problems in recent times.

The question that needs to be asked first is as to whether by a new Constitution do we mean merely making some amendments to the existing 1978 Constitution. Such attempts were made by way for the 17th Amendment to the Constitution and later the 19th Amendment to the Constitution and even later with the 20th Amendment to the Constitution. None of these Amendments addressed what has actually gone wrong within the constitutional system of Sri Lanka which in turn has created a crisis of the management of the society in order to resolve the problems that affects the society. The 1978 Constitution has caused the kind of mismanagement and the loss of governance in Sri Lanka, as pointed out by Roy in her recent articles on India..

As we speak, the Covid-19 crisis is causing almost a panic situation throughout Sri Lanka. Everyone we speak to lives with great anxiety and without any belief that something significant would be done in order to save the country from a major catastrophe. However, the problem is not one about Covid-19 per say. It is about the fact that the country's system of management has destroyed all the basic infrastructures which could push a Government to action in normal times as well as in moments of crisis.

Judicial crisis in Sri Lanka is part of this overall crisis that the public institutions have been facing in Sri Lanka ever since the narrow minded approaches were adapted for constitutional change both by the 1972 Constitution and the 1978 Constitution.

The 1978 Constitution is not a Constitution of a liberal democracy. The issue of the independence of the Judiciary and also the independence of institutions such as the prosecutors Department, and all the other public institutions associated with the administration of justice such as the policing system and the civil service are all intertwined.

The 1978 constitution wanted to dismantle the entire infrastructure of the public institutions in Sri Lanka in favour of an envisaged system where the all powerful President will control the Parliament and the Judiciary and all other public institutions. Thus, the notional foundation of a liberal democracy and the notional foundation of the 1978 Constitution are completely different.

One of the speakers at this seminar rightly pointed out that what the people are feeling about the system of justice is that they do not want to get involved with that and want to keep out of it as much as possible. That is a part of the popular wisdom arising out of the experience of the actually existing system. The popular perception is that there is no system. Anything can be done within this system whether it is legal or illegal or good or bad. That is a matter of mere chance. People faced with grave problems do not want to take chances. The essence of any good system of justice is its predictability. In the system we have within Sri Lanka, this quality of predictability was removed deliberately. The idea was that it should be a system that can be manipulated and handled by the Executive President in any manner he or she wishes.

When the very notion of legality is removed, then what remains of the idea of justice or the idea of the independence of the Judiciary? It simply is an illusion even to think that there is a foundation for the achievement of justice within the constitutional framework that exists in Sri Lanka as of now.

A discussion that does not touch this fundamental problem of the need for the abolition of the existing Constitution is simply what we might call the discussion about the phantom limb where it means that it is like the situation of an amputee who keeps on believing that his amputated body part, whether it be a leg or an arm or anything else, still exists. For a long period of time, the doctors and psychologists have identified this problem.

I could not help feeling when listening to this discussion that we are so attached to our lost limbs that we keep on talking about how better it would be to re-adjust our ideas to that situation and to keep on believing that we are living under an acceptable constitutional framework.

The only result of that kind of discussion is to delay the recognition of the actual problem and that delay will only help those who benefit from this terrible system that we call our constitutional system. It may be that for the lawyers and a few litigants, there is no way out except to go on playing this same game. After all, there is a system of courts and people are forced into some problem where they cannot altogether avoid going to court and some kind of release has to be found. However, talk about that kind of situation as a way of solving the constitutional problem is to miss the point altogether.

There are countries like Sri Lanka in which there is no place for a liberal democratic approach to justice and all that goes with it. Cambodia for example is one such example. There, if a client comes to a lawyer with a problem, all that he could do is to find some form of a method to find

him some relief. Often, the more workable solution is bribery or by some corrupt practice such as developing all kinds of relationships with some officer or another, along the way. For example, many questions relating to criminal law could easily be settled these days even in Sri Lanka by dealing with the Police in the way the Police expect these things to be dealt with. However, that kind of problem we do not call as a constitutional issue or as matters of justice.

As much as Sri Lanka has been unable to develop a proper system of defense against a disease like Covid-19, we also have not yet even touched the issue of how to deal with the complete crisis (for the lack of a better word) that is faced in the system of justice. While the discussions on the Constitution is very much needed and welcome, we also owe a duty not to mislead people to the idea that what is involved as constitutional issues are some minor problems of administration which could be dealt with some way or another.

In fact, today, the people are more aware of the constitutional crisis than the people who are closer to the system like the lawyers, judges, prosecutors, law educators, the Police and the like. It is out of their wisdom that they try to keep out of this problem in order to avoid facing more trouble by getting involved in the problem of justice. Just ask anybody who has made a serious complaint of torture or extra-judicial killing against the Police. Did they benefit by making that complaint or did they not get into more and more problems as a result of it? The years that may go even up to 20 years or more where the Police will do everything to protect the people who have been accused of these crimes and a Judiciary which very often does not show any urgency in dealing with these problems are the common experiences of the people. The same thing can be asked about a rape victim even if the rape victim is a foreigner.

The system simply cannot work because it is meant to and designed to not work. Until such time this problem is addressed in this way, there is no way out of the problems that the speakers' mention in their discussion.

<https://www.themorning.lk/covid-19-and-the-constitution/>

<http://www.humanrights.asia/news/ahrc-news/AHRC-ART-027-2021/>

SRI LANKA: Won the “War” but Lost the Law

By Basil Fernando

Calling a civil conflict or a civil war, a war itself, is very misleading. Wars are fought with external enemies. However, civil conflict or a civil war is a fight that takes place among the brethren, with the people who should in fact be living together as a nation. What the ties of blood means within a family is politically and socially speaking what exists among everyone who belongs to a nation. Civil war is a tragedy that destroys the very foundation of a society and of a nation. The primary responsibility of all concerned is to avoid a situation that could lead to bloodletting between those who, whether they like it or not, are part of the same body called the nation. While avoiding such a situation is a primary responsibility of all, the greater burden falls on the hands of those who are running the State. The primary purpose of a State is to create the necessary condition for everyone, despite their various differences, to live together within a framework of mutual trust leading to mutual benefits.

Thus, when we talk about winning a “war” we are in fact talking about a failure that has profound implications. At the end of such an unfortunate situation, the most elementary common sense obligation for everyone and particularly the State is to ask where we failed. The only meaningful question that could lead to a positive result for the present and the future is about the causes of the failure that created the civil war.

It is easy to engage in blame games. However, such blame games are childish and foolish. They belittle the gravity of what is meant by a civil war and trivialize the heavy cost in terms of lives and material losses that individuals as well as the whole of society suffered as a consequence. Claims of triumphalism are a manifestation of a degenerate moral sentiment. It is said that the defining quality of civilization is the capacity for empathy. If even a tragic situation such as a civil war does not evoke feelings of empathy for those who have suffered and who continue to suffer, the result is a dead nation – dead psychologically, dead socially, dead emotionally and dead institutionally. Nothing has been won. The truth is that we continue to lose.

To be continuing to lose and not being able to recognize this continuing loss creates further distancing among people, paralyzing of all forms of creativity within the society and the nation. This is happening in Sri Lanka not only in terms of a particular group of persons against whom “the war” was directed but also to everyone in the society.

Every major crisis that exists can be traced to some extent to the civil wars that happened in the South, the North and the East from 1971 to 2009. Sri Lanka during this time became a place of great instability and ever increasing poverty.

All these conflicts have contributed to Sri Lanka becoming one of the most indebted nations in the world where debt payments exceed the annual income. This indebtedness is a product of having to make extreme expenditures for the war. And that is going to continue for a long time. So long as the economic crisis deepens, there will be more internal conflicts of all sorts. As the poverty

increases, the discontent of all sectors of society will grow and with that, there will be more conflicts. The kind of State structure we have has no other solution to conflict other than to resort to harsher security measures to repress the people. Social control by extreme forms of repression will become a permanent part of life until and unless the causes that made Sri Lanka incapable of settling its disputes through internal discourse and conversation are rectified.

Already there are manifestations of the abuse of the powers to use administrative detentions in order to suppress every kind of dissent. As we know from past experiences, the abuse of the detention processes under the pretext of national security has been the major cause of dictatorship that we have known in history. The concentration camps and gas chambers during Nazi leader Adolf Hitler's regime started with the use of this idea of preventive detentions. When that process of preventive detention starts, where it will end is anybody's guess. Every form of evil has its own logic. This logic also has its implications on administrative detention.

When more and more repression is needed, there is something that the authorities will find necessary to displace, and that is the law. The law in its normal sense begins to disappear and is replaced with what would normally be considered illegal and even criminal. Administrative detention itself is such a measure. However, judging from the past few decades, it could go much further. It was not long ago that the disposal of dead bodies without following the normal legal procedures such as the provision for post mortems in the case of suspicious deaths were allowed.

That was nothing more than the legalization of murder. Such highly planned systems of murder achieved through gazette notifications could happen at any time under these circumstances. In order to displace the law and to make the abuse of power legalized, it is necessary to weaken the judiciary as much as possible. If the judiciary remains strong, then the people will resort to the courts when they are threatened. When the courts are weakened, people have nowhere to go to and therefore are in a helpless situation. And such a situation is created by design.

One of the most important aspects of a civilized social life is a well functioning criminal justice system. One of the major results of "the war" was the destruction of Sri Lanka's criminal justice system to a very great extent. Successive Governments have admitted that the police were used during the conflict times for military purposes. That meant that the police function was defeated. With large scale deaths that have never been investigated, the criminal investigation function suffered a great decline from which it would find it most difficult to rise again. However, after the conflict periods, instead of trying to restore the criminal justice system, it has been greatly undermined by interferences into the investigative mechanism, the prosecutorial mechanism and the adjudication systems. It has gone to the extent of a Government appointed commission calling for the withdrawal of indictments filed according to the law and to punish those who investigated those crimes and even those who prosecuted them. A culture of extreme fear has been spread throughout the entirety of the system of the administration of justice.

Unable to control even the prisons in a decent manner, the use of inhumane treatment and torture has become part of the way the prisons are run as pointed out in a report published by the Human Rights Commission. The conditions created by the war continue and are aggravated each day. The system that allowed an internal conflict to degenerate into a civil war is still the supreme law of Sri Lanka, and that is the 1978 Constitution. At the root of all the major conflicts in recent decades

is the introduction of the abrogation of the principles of constitutional law by the Constitution. The negation of constitutionalism is considered the Constitution of Sri Lanka in that all power has been given to a single person. While Sri Lanka's situation cannot be compared to that of Germany in the Second World War because Sri Lanka has not been engaging either in a civil war or any external war, nor have we done crimes against humanity to the extent of the extermination of Jews and other such evils, in one respect Sri Lanka and its constitutional situation is the same as was created by Hitler for his advantage. He took all the power into his hands. Everyone had simply to obey. No independent institutions were allowed to function in any way. That situation is similar to the situation created through the 1978 Constitution and it has become worse.

Thus the 12th anniversary of the end of the war is a moment at which we cannot say the same thing as Abraham Lincoln did at the end of the American civil war in his Gettysburg address:

“That this nation, under God, shall have a new birth of freedom, and that government of the people, by the people, for the people, shall not perish from the earth.”

<https://groundviews.org/2021/05/12/won-the-war-but-lost-the-law/>

<http://www.humanrights.asia/news/ahrc-news/AHRC-ART-028-2021/>

Why do Sri Lankan police officers torture suspects?

By Basil Fernando

“Police officer” refers mostly to persons working for the Sri Lanka Police Service. But in the context of custodial torture, it also includes others who at times are called upon to do police-related duties such as conduct interrogations, similar to the military and other agencies. Another aspect, relevant to this discourse, generally speaking, concerns persons from low income-earning groups. They are the ones who are tortured. There are rare instances where someone outside that social group may be tortured. The latter are few in number as compared to the vast majority of the cases where the victim is from a low-income group. Observations contained herein are made based upon actual case studies, and while one case may be mentioned under each heading, it is only a sample of very many similar cases.

Reasons for torture

Obtaining rewards

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

Why was he tortured? Was it as part of a criminal investigation? If it is part of a 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 such, the teacher should have been asked about the details, such as where the money was kept as well as the particulars which would lead to an understanding of when and how the loss took place. The complainant teacher should have been asked as to 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 been taken for the recording of the statement should be based on the law, as laid down in the Code of Criminal Procedure (CCP).

However, that procedure is valid only if the OIC or any other police officer was sincerely interested in conducting an inquiry as per the criminal law, 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 a criminal investigation takes 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 an 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, wields 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 this 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 the police officers ignore all that they are officially bound to do as acting investigators? One could postulate yes to these. 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 the recovery of the money, they brutally assaulted the boy, which finally led to his death. Now, this instance cannot be in any way explained as an overenthusiastic criminal investigator's act, the result 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. The recovery of the money and the handing over of the money to the complainant under the CCP could only take place 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 – which is to 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, so as to resolve a person's problem. It is not within the legal function of a police officer to engage in such 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 matters, 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 fashion, uses the police officers to accomplish the same objective. When the Police, in their uniforms and with 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 this process in a majority of theft and robbery cases; against complainants or 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 in order to understand the kind of policing that has developed in Sri Lanka – and also 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, particular activities done by the Police towards the low-income groups, happen to take place.

In order to gain promotions

A young man of about 20 or so is brought by the Police to a Magistrate's 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. Altogether, there are about 15 charges of theft and robbery. 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 court. 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 court, 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 far-away village, travelling a long distance by bus, and 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 relieve himself, he goes to a place behind a big stone and was urinating when a police officer passes by. The police officer is a sergeant in a nearby police station. The police officer inquires 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 promises made, 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 this young man as 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 lenient attitude towards him. Because of his honesty and because he is young, he would be given a mild suspension sentence and be allowed to return home. To assure him that what they were saying was true, he was given Rs. 10 to go back home after the hearing that day. Believing in all this, the young man pled guilty to all the charges, notwithstanding that he was a person from a far-away village, knowing nothing about all these thefts and robberies that took place in a particular area he had never been to before. It was only when he goes back to his cell that the prisoners experienced about these matters told him this: That he will be in jail for a very long time, as he had pled guilty to some 15 crimes. It was at that point that the boy started crying. The lawyers, having all the details, approached the Magistrate. They used the powers available to them, under the CCP, to request a withdrawal of the plea he made. The Magistrate postpones the case and asks 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 an innocent person and that unless he withdraws these cases against him (the young man), they will proceed to take action against him. It was a letter of demand assigned by a lawyer. The 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 OIC wants to let you know that you have prevented his imminent promotion.”

This particular story is purely one among many similar cases that surface in the magistrate’s courts quite often. When the Police receive complaints of unresolved petty thefts and/or even robberies, they usually look for a defenceless and poor young person to blame. He/she is charged in all the cases, and given promises of sorts to create confidence that no significant consequences will follow.

“Police officer” refers mostly to persons working for the Sri Lanka Police Service. But in the context of custodial torture, it also includes others who at times are called upon to do Police-related duties such as conduct interrogations, similar to the military and other agencies.

Another aspect, relevant to this discourse, generally speaking, concerns persons from low-income earning groups. 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.

Observations contained herein are made based upon actual case studies, and while one case may be mentioned under each heading, it is only a sample of very many similar cases.

Reasons for torture

Sharing fees with the lawyers

In almost all Police stations in recent decades, there has 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 offenses 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 offenses where bail could be given immediately. Next, the people look for lawyers. The general opinion that is created in the particular courthouse premises is that only certain lawyers practicing in the said regional bar are able to secure a 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 does not appear, the objection is taken against their bail request. Often, the Magistrate allows the request, the persons are detained and could be further detained on several occasions.

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 bail could be given, it should be given. The principle established in law is to give bail, and that 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 pertaining to the filing of charges and the nature of the 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 concerning which the Magistrate cannot offer bail. When that happens, a person has to wait until the proceedings are taken up in the High Court and 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. They use the approach to intervene quite early with lawyers so as to ensure that the suspects are not charged with non-bailable offences.

Furthermore, even when people are charged with serious offences initially, the Police may later alter such reports.

Often, the excuse is this: After the inquiry, they found that their initial findings are not accurate, and reduced the charges to enable the Magistrate to grant bail. Again, these kinds of charges occur purely on the basis of the existing 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 the lawyers who object for various reasons to 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 persons 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 from using the services of lawyers who try to honestly defend their clients. This creates an environment within the Magistrate's Courts. Fair play, on the basis of carrying out professional duties, gets 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. These practices include those such as pleading guilty for offenses, 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 the 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.

Torture for obtaining a ransom

Two sons of a relatively well-off family from a remote area are arrested by the Police. It is alleged that they have stolen two buffalos. Both of them are assaulted by the Police in civilian clothing at the Police station. Having heard about this treatment, the family intervenes on behalf of the two boys.

The Officer-In-Charge (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 Rs. 1 million to the OIC, and that on that condition, the boys will be released and no charges will be filed against them.

That is a very recent incident that took place within the last two months.

A few years back, 11 young persons were abducted by unknown persons. They were all from relatively affluent families. After abduction, a request for ransom was made. However, in each of the cases, due to various obstacles, the attempts 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 that certain high ranking officers were involved in the crime. As the ransom demands were not met on time, the boys were killed. The parents made complaints about their disappearance despite clear evidence of abduction 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 have also been complaints from persons of Tamil origin. 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.

For unjust enrichment

A young man, around the age of 20, was charged with eight to 10 car robberies. After investigation, the suspect has been identified and kept in the custody of a certain Police station.

In the beginning, he is beaten by the Police in civilian clothes. He reveals some details about a few stolen cars. With that admission, the treatment of the subject softens. The OIC of the Police station makes inquiries 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 the terms based on which they 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 the 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 against the suspect, initially, no charges were subsequently filed against him. The OIC was able to convince the car owners that if the suspect was 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 the 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 the inquiry, the Police discovered that he was the owner of some jewellery 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 detention, for several months.

During this time, they were able to acquire for themselves the value of the jewellery and the gold items which were in his possession. In doing that, the Police also had the co-operation of the lawyer who appeared for the suspect.

A Deputy Inspector General of Police (DIG) lost some gold items. 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.

The HQI kept all the gold for himself and did not file any charges against the thief. However, the story of what had taken place leaked out. The DIG came to know that the HQI had 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, as a means of enriching themselves, is widespread and frequently practiced.

Institutional theories about the use of torture

There are a number of entrenched beliefs which have become institutional doctrines within the policing system which contribute to the continuing practice of torture.

No suspect will ever tell the truth; therefore, it is better not to waste time asking questions before torturing

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 cases pertaining to people from low-income groups. However, the same assumption is not applied when the suspects are from more affluent classes or are persons that wield some political or social influence. For example, there have been many cases in recent years against politicians and high-ranking officials relating to corruption charges. However, none of these persons made any complaints that they were tortured or harassed in any way. As opposed to that, there are thousands of complaints from persons from lower income-earning groups who are often arrested for very petty crimes. The interrogation takes place, accompanied by torture and ill treatment along with the use of very harsh language against the suspect. This issue was discussed before the Supreme Court (SC) in the case of Sanjeewa, Attorney-at-Law (on behalf of Gerald Mervin Perera) v. Suraweera, Officer-In-Charge (OIC), Police Station, Wattala, and Others (SC FR 328/2002) (per President's Counsel [PC] and Justice Mark Damien Hugh Fernando joined by Justices Punyadasa Edussuriya and Canagasabapathy Visuvalingam Wigneswaran PC). G.M. Perera 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 Wattala Police Station. At the police station, no questions were asked from him. He was taken to an isolated room where he was hung (from the ceiling). Here, the police officers beat him with wooden poles and iron rods. As he was beaten, he was told to reveal what he knows about a triple murder case that had taken place 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 Perera knew nothing about this case. Due to his injuries, Perera suffered kidney failure, remaining unconscious for nearly two weeks. This is what the SC 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, police officers, particularly OICs of police stations, have been questioned on this issue by 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 that they will never tell the truth. The only way to get the truth out is to treat them in a rough way, meaning, through the use of force.

Not possible to develop sophisticated means of criminal investigation in a poor country

Among the higher ranking 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.

Institutional agreement

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

Their evidence can be presented before 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 the discovery of details about the commission of a crime. Thus, the inquiries do not begin generally with an independent investigation into the evidence. It is on 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 in the case of an actual suspect who may divulge what he knows with the hope of avoiding torture.

Crime is solved even with the wrong person as the suspect rather than admitting an investigative failure

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

The belief that fear is a necessary condition for the 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-earning groups. This cultural belief has a long history related to the methods of social control that have been used in Sri Lanka for over 1,000 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 on leading the evidence of confessions and admission was introduced into the Evidence Ordinance itself. However, during the time of 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 extrajudicial killings, including enforced disappearances, was re-introduced on a large scale. This class element relating to torture is a necessary factor. Through that prism, one

can understand the widespread use of torture within the policing system and the institutional justification of and for it.

Treatment of the lower ranks by higher ranking police officers

Another 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. The 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 that the officers who are treated badly in this manner by their seniors, tend to repeat the same pattern of behaviour 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 language used by the Police on persons from low-income groups is of a harsh nature. 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.

Protected by an effective system of impunity

There is a firm conviction that torture and ill treatment and other forms of the use of violence will be protected by an effective system of impunity. High-ranking officers collaborate in attempts to hush up the instances of the use of force by police officers in two ways. They do not conduct inquiries as soon as possible (creating various kinds of harassment to the complainants). They even alter documents to eliminate any kind of evidence that may be in those records.

Torture and the change of institutional mentality

As a result of counter insurgencies

The 1971 insurrection virtually changed the course of history in Sri Lanka in the 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 organisation and without any kind of substantial means. Many activities of the insurgency consisted of training some young people in a 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 of coming to 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.

Later documents which came up – for example, the statements given by the organisation before the Criminal Justice Commission – clearly indicated that there was no grand plan of action for

revolution or for the taking over of power. What made the insurgency have a decisive effect was that with 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 documents show 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 the 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 that were needed in order 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 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 which made this event a very prominent event and decisive for a change in the political life as well as the security arrangements in Sri Lanka.

Politically, the Opposition party, which had been very seriously damaged by an electoral defeat in the 1970s, found a way to regain their strength within a short time. It was particularly through the shock and unrest caused within the population as a result of the large-scale killings that took place during the short period of the insurgency. The exploitation of this unusual situation was perhaps the major reason for the defeat of the coalition government of the 1970s and the election of the United National Party (UNP) Government with nearly 80% of the seats in Parliament in 1977. That became decisive in 1978, seven years after the insurgency.

The Constitution 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/Parliament or on the Judiciary. Both these institutions were undermined in favour of an Executive-led government.

Change of mentality due to erosion of discipline and traditions of policing

As far as the policing system was concerned, the counter insurgency measures eroded the traditions of adherence to the legal principles within the system, as the Police were used for military purposes during the time of the insurgency. The Police were mobilised 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. When a person is arrested, the protection of that person is the primary duty of the Police. This was completely abandoned. The killing of arrested persons was authorised. The arrest itself did not take place on the basis of any reliable evidence, but more on petitions and on information obtained

through torture. As a result of that, many who were killed could not be in any way characterised as persons who were involved in serious insurgencies.

The theory for allowing such arrests was that in a situation of a conflict of this nature, it is not correct to find out who is involved and who is not involved. Now, the Police were given the liberty to act on the basis of their own judgment. The power of killing passed into the hands of the Police and other security personnel and 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 such as arrests, detentions, and the killings were the lower ranks of the Police. The higher ranks were silent. Some co-operated in the scheme of carrying out deaths.

The information collection at that time was about those who were engaged in the insurgency, and the main source of that were those who were arrested allegedly for insurgency-related issues. So, this was a severe, extremely serious situation where the idea was to gain more information about other insurgents. The culture of the use of torture underwent a drastic change during this period of the 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 show the following. It is only those units that would have the power to use extra legal means that are used, while the basic institution is kept out of such activities so that the normal rule of law-related 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 the killing of persons and the disposal of their bodies.

There was no real attempt to undo the damage that was done to the institution during this kind of police mobilisation for such illegal and basically criminal activities. Instead, the situations which unfolded in the later decades increased the use of the Police for military purposes. This had been acknowledged by persons like a former Secretary to the Ministry of Justice, and later a former President of Sri Lanka. Now the problem of the Sri Lankan Police is that it is not usable for the enforcement of the law according to the 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 at seriously reforming the institution. Instead, many actions that have been taken have 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 then President Mahinda Rajapaksa Government. Thus, out of the 75,000-strong police force, over 30,000 persons were those who were recruited without any basic training. They gradually gained additional persons within the organisation through promotions.

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. The supervisory capacity at the top has deteriorated to such a level 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 commonplace in dealing with the ordinary people of the country.