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article 2

2(3). Each State Party to the present Covenant undertakes:

a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

c) To ensure that the competent authorities shall enforce such remedies when granted.

of the International Covenant on Civil and Political Rights

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International Covenant on Civil and Political Rights (ICCPR)

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

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Prominent Korean human rights advocate joins *article 2*

Editorial Board, *article 2*

Article 2 is pleased to announce that Prof Kwak Nohyun has become the newest member of its editorial board. Prof Kwak is an Associate Professor of Law at the Korean National Open University renowned for his work in the field of human rights law, labour law and social issues in Korea.

Prof Kwak is presently a non-standing member of the National Human Rights Commission of Korea and an adjudicating member of the Metro-Seoul Labor Commission, which addresses cases of unfair dismissals and unfair labour practices. He is also involved in the advisory boards of many civic and non-governmental organizations pertaining to labour and human rights issues. He has in the past played leading roles in a number of nationally organized NGO campaigns directed towards ensuring an open and democratic society in Korea.

Prof Kwak has written extensively about labour, human rights, and corporate issues. He is now busy developing his thick lecture notes into labour law textbooks and writing a standard textbook on human rights law, which will be made available by next March. Prof Kwak has attended many international human rights conferences and NGO fora, starting from the UN Conference on Human Rights in Vienna in 1993.

For his work on the Kwangju Massacre, Prof Kwak was awarded the May 18th Citizens Award in 1997. He has also received accolades from his peers, the media, non-government organisations and the public for his work in the human rights field.

It is a great honour for *article 2* to have Prof Kwak join its board. Readers can look forward to articles by Prof Kwak in coming editions.

Police reform: The imperative for efficiency in criminal justice

N R Madhava Menon, Vice-Chancellor,
National University of Judicial Sciences, Calcutta

Policing in democratic societies is governed by the rule of law and is indeed a difficult and challenging task. Given the fact that the Indian police force was trained in the past to serve the objectives of colonial rule and has not yet been granted the autonomy, resources and training for professionalisation in a democratic milieu, its performance has not been entirely disappointing. Compared with many other departments of the government, the police by and large have served the public good even in adverse circumstances. What is disconcerting today is the steady deterioration of standards of policing, the increasing lawlessness amongst the policemen themselves and the attitude of complacency and complicity amongst the leadership in police organisations. Given the prevailing attitudes and approaches in the police force, there is not much hope that the people will get better services from the police in the immediate future. Since the purity and efficiency of the criminal justice system is largely dependent on the police who feed the system, the future seems bleak for criminal justice in general.

Causes for popular dissatisfaction with the police

What are the causes for popular dissatisfaction with the police and who is responsible for it? What follows are examples of popular discontent against the police. The issue is not whether all of these are absolutely true or not but whether they exist in the public mind and whether there is any justification for them.

1. Police are the principal violators of the law and they get away with impunity.
2. Some sections of the police are in league with anti-social elements. Consequently they indulge in selective enforcement of the law.
3. Police exhibit rude behaviour, abusive language and contempt towards courts and human rights; they indulge in all forms of corruption.
4. Depending on the socio-cultural status, economic power and

political influences of people who approach them, police adopt differential attitudes, violating equality and human dignity.

"Unlike other departments of the government, if policing tends to become lawless, the very foundations of democracy are in jeopardy"

5. Police are either ignorant of the precepts of human rights or they deliberately disregard them in the matters of arrest, interrogation, searching, detention and preventive policing.
6. Given the dismal record of prevention and successful investigation of crimes, the police lack accountability in protection of life and property.
7. While crimes are getting sophisticated, the police are becoming less professional. There is no evidence of a collective desire within the police organisation to redeem its public image.
8. The police are insensitive towards victims of violent crimes. They sometimes behave rudely with victims, as if they are responsible for their fate.
9. At least a section of policemen think of human rights as antithetical to effective law enforcement. They blame the law, lawyers and courts for their own inefficiency.
10. Of late, some policemen have publicly shown leniency towards fundamentalists and terrorists, manifesting a dangerous threat to security and constitutional governance.

It is not my intention to proffer evidence or arguments to prove or disprove any of above perceptions. That said, no honest person within or outside the police could totally deny the charges. Of course, they can give alibis and explanations that may or may not be acceptable to the public. Well thinking persons should acknowledge the existence of such perceptions in a wide spectrum of the citizenry and must work out strategies to remove them progressively in the interests of public service and professionalism. Those who do not want the situation to change will continue to provide excuses and explanations accusing others in society or in the criminal justice system for the malady. The tragedy is that unlike other departments of the government, if policing tends to become lawless, the very foundations of democracy are in jeopardy, development subverted and the country's integrity compromised. Hence the urgency to reform the police and their style of functioning.

What can be done and by whom?

The police, the government and society each have a role to play in improving the law enforcement situation and in developing human rights oriented police in the country. If the government had accepted the recommendations of the National Police Commission and set up state security commissions, the work of coordinating action among the three constituents could have been undertaken. In the absence of an independent state security commission, the initiative must come from the government as well as from the police department. The public naturally will be

eager to respond adequately and give momentum to the reform process, which will be welcomed by everybody except the corrupt and criminal elements thriving on police inefficiency.

Reforms within the police

A lot can be achieved towards change in public perceptions and to improve the standards of policing if the leadership within the police organisation is fully committed to reform. After all, every profession has the primary responsibility to discipline its members and maintain a code of ethical behaviour by internal mechanisms and by peer groups. The police are intrinsically disciplined and superiors command a lot of power and control over their subordinates. If this situation is to be put to good use, the superiors should be aboveboard and transparent in their dealings. It is essential that reforms in the organisation start from above and clear signals of good behaviour are sent down to all the ranks.

> "Every profession has the primary responsibility to discipline its members and maintain a code of ethical behaviour by internal mechanisms"

Organisational behaviour is largely the outcome of training and continuing education. Police training is archaic in content and methods. The emphasis is still more on muscle than on the mind. Human rights, if at all, form an insignificant module in the training programme and there is hardly any emphasis on human rights in the training of constables, who form 85 percent of the force. A subculture inimical to democratic policing pervades the organisation and is perpetrated due to indifference or connivance of seniors. Respect for human rights is not rewarded. If the leadership itself is doubtful about the imperatives of human rights in policing, and if they disregard its importance in the training of subordinate officers, it is pointless to expect change in the behaviour of ordinary sub-inspectors and constables.

Another reform that can be brought about by the police themselves is with respect to the adoption of fair, quick and responsible methods of redress for complaints against the police. The system has to be institutionalised and integrated with police roles and responsibilities. Why not hold regular "police adalats" at every police station to receive and respond to public grievances? Transparency brings efficiency and popular support. Without public participation, no police force, however well equipped and trained, can fight crime in any society. As such, the police have to take the initiative to build bridges with all sections of society and solicit their cooperation. It is possible for an inspector general to appoint honorary police officers from amongst respectable members of the public, in different areas who can augment police efforts in crime prevention and detection.

Reforms that the government has to undertake

No government can plead paucity of funds for its inability to protect the life and property of its citizens. Therefore, the reason for governmental neglect of police reforms is not lack of funds but its desire to misuse the force for narrow partisan ends. This is the character of every government irrespective of whichever party is in power. People have begun to comprehend the misuse of the

police by the politicians to perpetuate sectarian interests and conceal their illegal actions. There is decreasing reliance on the state police and increasing dependence on private police, private detective agencies and protection from mafia gangs or self-help. "Senas" [private armies] are being trained and armed to defend particular interests, legitimate or otherwise, and the state is a silent spectator in the rise of such power centres attempting to control the lives of people in different areas. The rule of law is being undermined and people's faith in the police has been eroded.

"People have to be vigilant and demand lesser interference from their governments in the day to day functioning of the police"

What the government needs to do *vis-à-vis* the police, if it wants to govern according to the Constitution, is spelt out in great detail in the National Police Commission reports and it is unnecessary to repeat them here. All that one can say is that the people have to be vigilant and demand lesser interference from their governments in the day to day functioning of the police and greater accountability on decisions concerning the police and the law and order situation in the states.

Reforms that people can initiate

According to an old adage, every society gets the police it deserves. After all, policemen come from the same society and reflect the attitudes and behaviour that are found in society. How respectful is the average citizen with regard to human rights of fellow citizens? In a society where doctors cheat their patients, lawyers exploit their clients, teachers indulge in politics instead of teaching and even the clergy is corrupt, one cannot expect any better from policemen. The evidence they collect is doubted and their status is worse than that of other comparable positions in government.

All sections of society, particularly the media, can help improve the status and efficiency of the police force. They can attempt not to disparage the police without justification. If they cooperate in law enforcement, there is bound to be a welcome response from the other side that eventually will result in greater social defense and better law and order situation. People and police ought not to maintain an adversarial relationship as it harms both of them. There are black sheep in every organisation. To isolate and cultivate the talented is the challenge that has to be faced by the community, the media and the NGOs. Such a partnership guarantees human rights protection, the security of life and property and a credible system of criminal justice in the country.

This article reproduced by courtesy of Dr P J Alexander, Editor, Policing India in the New Millennium *(Allied Publishers, 2002).*

Institutionalized communalism in the police force: The breakdown in the criminal justice system

Colin Gonsalves, Advocate, Supreme Court of India

The events unfolding in Gujarat and the shameful role of the police force there once again bring into focus the need for India to squarely confront the issue of institutionalized communalism.

Commissions

From 1961, commission after commission has indicted the police. The Justice Shrivastava Commission of Inquiry Report of 1961 on the riots in Jabalpur, Sagar, Damoh and Narasinghapur, found "the intelligence department...[was] entirely inefficient and the law and order authorities were responsible for a laxity in investigation and prosecution which resulted in large [numbers of] acquittals".

The Justice Dayal Commission of Inquiry into the riots in Ranchi, Solapur, Malegaon, Ahmednagar, Sursand, Jaipur and Suchetpur in 1967 found "that either there was no police force to deal with the mischief makers or it had no directions to act".

The Justice Reddy Commission investigating the Ahmedabad riots of 1969 found the law enforcement agencies passive, even though they "could not but have known that the communal atmosphere had become tense".

The Justice Madon Commission looking into the distuburances at Bhiwandi, Jalgaon and Mahad in 1970 found that

> policemen either did not prevent Hindu rioters from indulging in rioting, looting and arson or showed communal discrimination in dealing with the rioting mobs, or gave incorrect information to the control rooms, or lodged incorrect FIRs [First Information Reports]* in order to make out that the persons who were responsible for looting and arson were Muslims, not Hindus, or to assist Hindu rioters in burning and looting Muslim properties... The working of the Special Investigation Squad is a study in

> communal discrimination. The officers of the squad systematically set about implicating Muslims and exculpating Hindus irrespective of whether they were innocent or guilty.

"The N C Saxena inquiry into the Meerut riots of 1982 summarized the orders of senior police officers in one phrase: Muslims must be taught a lesson"

The Justice Vithyatlul Report of the Commission of Inquiry into the Tellichery disturbances in 1971 set out the evidence of the Deputy SP [Superintendent of Police] who said that

> he had to curb his rank and file who could not restrain themselves when they met Muslims on the road... many yelled at them to go to Pakistan... They were infected by the virus of communalism.

The Justice Narain, Gliosh and Rizvi Commission of Inquiry into the Jamshedpur riots in 1979 received wide ranging complaints regarding the anti Muslim behaviour of the Bihar Military Police.

The N C Saxena inquiry into the Meerut riots of 1982 summarized the orders of senior police officers in one phrase: "Muslims must be taught a lesson." The police and the PAC faithfully implemented this policy. Looting and arson in this context was considered legitimate and necessary and was therefore ignored.

The Sixth Report of the National Police Commission, 1981 found several instances when policemen have shown an unmistakable bias against a particular community while dealing with communal situations.

The National Integration Council found that the most disquieting feature in recent times is the loss of credibility of the police in the effective tackling of communal disturbances.

Delhi (1984)

Pioneering work has been done by Vrinda Grover, an advocate from Delhi, on the precise role of the police during the Sikh massacre of 1984. A similar study was done by Jyoti Punwani and Shakil Ahmed in Bombay, on the massacre of Muslims in 1992.

The Justice Mishra Commission looking into the Sikh massacre in 1984 censured the police for not only failing to control the violence, but also in some instances instigating it, creating conditions conducive for its spread and for botching investigations afterwards. It noted that the police were actively involved in the violence. It censured their actions in taking away arms from Sikhs who were trying to defend themselves. Allegations regarding police officers were dropped from the First Information Reports (FIRs). The emergency police telephone number remained non-responsive. The police were seen mingling and marching with the mobs. FIRs were either not recorded, or wrongly recorded, or vague omnibus types of FIRs were recorded. The investigations were casual, perfunctory and faulty. Most statements recorded would end with a declaration that the witness was unable to identify any person among the mob. No attempts were made to obtain corroboration. Accordingly, charge sheets were filed with the complainant as the solitary witness.

After the Justice Mishra report, the Delhi Administration appointed the Justice Kapur and K L Mittal Committee. The latter in a detailed report identified officers for good conduct, dismissal, departmental inquiries or further investigations. The government did not release the report to the public and took no action.

> "The Jain-Aggarwal Committee report expressed shock in finding lapses by the police at every stage of the investigation"

There was also evidence before the Commission (including Police Commissioner Tandon's statement) which showed that whenever the police took action, the situation did not deteriorate.

Thereafter, the Jain-Aggarwal Committee report expressed shock in finding lapses by the police at every stage of the investigation. The Committee got the impression that senior police officers abdicated their responsibilities: "Investigation had abruptly stopped for no good reason." Accused people, though named in the FIR, were left out of the charge sheets without convincing grounds.

In his deposition before the Nanavati Commission, Ram Jethmalani stated that when he called on the then Home Minister P V Narasimha Rao to appraise him of the situation, he found him "listless and unconcerned". Kushwant Singh's deposition includes an account of a sub-inspector of the Delhi Police who stood by watching the looting. Jaya Jaitley deposed that the rioters "were not afraid of the police who were standing by".

Observation by the courts

In *State v. Abdul Azis*, the sessions court dealing with a Sikh massacre characterized the police action as "grossly negligent and a grave dereliction of duty". In a similar case, *State v. Kanak Singh*, the Judge observed that "the police were not at all interested in investigation but [were] interested in hushing up things". In *State v. Ashok*, the court acquitted the accused, noting that the police had not conducted the test identification parade properly. In *State v. Ram Pal Saroj*, the sessions court observed that in most cases "in order to help the accused persons police had given wrong facts." He then went on to say,

> The criminal law system in this country has totally failed. The manner in which the trial of the riot cases proceeded [would be] unthinkable in any civilized country. It amounts to [a] total wiping out of [the] rule of law.

Mumbai (1992)

Justice B N Srikrishna's report found specific police officers to be "utterly trigger happy", "guilty of unnecessary and excessive firing resulting in the deaths of innocent Muslims", "extremely communal" and "guilty of inhuman and brutal behaviour". They had been "responsible for allowing a violent mob to hack to death one Abdul Razak, [and] actively aided and connived with the mob". It accused them of going on a "rampage" and "attempting to shield miscreants belonging to the Shiv Sena", and "openly indulging in riots while carrying a naked sword along with Shiv Sena activists". They had also all but handed over one Babu Abdul Shaik to the mob "resulting in his being hacked to death" and "stood by... while assaults took place". Some of these officers had "suppressed

evidence", "mislead senior police officers," "looted articles and furniture" and "allowed kidnapping of an 18 year old girl and brutal murder of a handicapped person". In short they were "communally biased against Muslims."

"The reports of the commissions of inquiry were treated like waste paper"

Advocate Shakil Ahmad and Jyoti Punwani found, on looking into the Action Taken Report of the Maharashtra Government, that most of the officers against whom severe strictures were passed by Justice Srikrishna were in fact promoted. Many were granted anticipatory bail. All were released on bail with the public prosecutor often not arguing for their detention. Not a single policeman spent a single day in police lock up or jail. In the few instances where the departmental inquiries were completed the punishments imposed were farcical, such as reduction in rank or cut in increments; a few were compulsorily retired. Despite Justice Srikrishna's detailed inquiry and strictures, most were exonerated departmentally. On the criminal prosecution front it was the same dismal story. FIRs were not registered in many cases. Charge sheets were not filed.

The outcome of the departmental inquiries and criminal prosecutions was obvious. Most departmental inquiries result in exoneration or minor punishments; all criminal prosecutions result in acquittals.

Commissions ignored

The reports of the commissions of inquiry were treated like waste paper. Though headed by senior judges of the high courts or senior administrators, their meticulous findings were ignored. The fact that under the Commissions of Inquiry Act (1952) the reports are not binding was wrongly taken to mean that governments could do as they like with the reports, rejecting sound suggestions and findings. Not only the provisions of the Commissions of Inquiry Act, but a higher power, Article 14 of the Constitution, informs government action, requiring governments to act rationally and not arbitrarily. The findings are indeed not binding, but from there to the proposition that the government can disregard commission reports at will is a long jump. What the section means is that governments can depart from the Commission findings, but only for good reason. Once the findings are accepted by a government, and no good reason can be shown for departure, going by Article 14 the government is bound to act in accordance with the Commission's Report.

Article 311 (2)

This article of the Constitution confers an extraordinary power on the government to dismiss a government servant without a departmental inquiry where it is not reasonably practicable to hold such an inquiry, or where the President or Governor are satisfied that it is not expedient to hold such an inquiry.

The time has come now to bring this article into full play against police officers who engage in communal crimes. On a commission of inquiry finding them guilty, they must be dismissed forthwith and the charade of a departmental inquiry should be dispensed with. In most cases commission reports come at the end of a lengthy inquiry, where the policemen concerned are also heard. After such a lapse of time it is futile to expect witnesses to depose once again before a hostile police inquiry officer. It is, therefore, not reasonably practicable to hold a departmental inquiry.

In cases where departmental inquiries are to be conducted, the government should not leave this task to the delinquent's superior officer, but establish special and autonomous disciplinary boards with senior police and non-police personnel. The proceedings of such boards should be open to the public. For the prosecution of police officers, the Central Government should establish a special and autonomous cell of senior police officers devoted exclusively to the prosecution of policemen.

Conclusion

The seriousness of this crisis lies not just in the fact that there has been a breakdown in the administration of justice. More importantly, there has been a breakdown in the constitutional machinery itself. The principal law enforcement agency has emerged as the single biggest threat to democracy.

The time to act is now. The ball is in the court of the judges. Only they, by judicial pronouncement, can lay down a new law for the effective and immediate prosecution of police officers who engage in communal crime.

This is edited text of an article originally published in Combat Law: Human Rights Magazine*, vol. 1, no. 1, April–May 2002. Colin Gonsalves is also the editor of that publication.*

End Note

* First Information Reports are covered by section 154 of the Code of Criminal Procedure. The plain reading of the section is as follows:

Sec. 154. Information in cognizable cases [where the police may arrest without warrant]

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer

subordinate to him, in the manner provided by this code and such officer shall have all the powers of an officer in of a police station in relation to that offence.

An FIR should contain the time of reporting, the police station, the relevant provisions of the Penal Code under which the offences are punishable, the address of the informant, that of the accused if available, the crime number, date and all other elementary details.

Various courts have interpreted this section of the code time and again. Many matters concern its effective utilization: information can be given over telephone or even in reported speech; no person need personally go to the police station to give this report. It can even be an anonymous telephone call. Although a copy of the recorded version is required, many times the police fail to do this so as to facilitate their subsequent malpractices. In many cases, the delay in filing the FIR is detrimental to the successful prosecution of the case. However the courts have held, and it is a settled position of law, that in cases of rape and the like where the informant is reluctant to lodge a complaint, even a delay of years could be excused given the situation and nature of the offence reported.

(Grateful acknowledgement to Bijo Francis, Advocate, Kerala, for additional comments in end notes to articles on India in this edition.)

First Information Report or 'First Insulting Response'?

Bijo Francis, Advocate, Kerala

The criminal justice system of India, though it has manifold arms for execution and delivery, derives much of its authority through the tenets provided by the Code of Criminal Procedure, 1973. It is through the seamless authority flowing from this code that the criminal justice delivery system of this country functions.

Early under the British regime, criminal procedures for courts in the Presidency Towns and in the Mofussil (a district subdivision of the time) were not the same. To implement a uniform pattern of criminal procedure for all courts in India the Criminal Procedure Code (Act 10) of 1882 was handed down. This was superseded by Act 5 of 1898, and further substantial changes were brought in by Act 18 of 1923 and Act 26 of 1955. Local Amendment Acts of the state legislatures were also introduced to separate the judiciary from the executive.

But the country had to wait until 1955 for the Central Law Commission to be set up, which attempted a comprehensive revision of the old code. The new code is based on the recommendations of the Law Commission as contained in its Forty-First Report presented in 1969, which also took into account the earlier reports dealing in specific maters. The changes made were substantive and numerous.

The code as it stands now professes to deal exhaustively with the law of procedure and tries to provide in the minutest detail the steps to be followed in all matters pertaining to general administration of criminal law. Over time, the code has lost much of its initial glory and it is high time that, in light of the advancement of science and technology and perplexing complexity of the criminal mind in this advanced society, it be subject to revision.

In this article I am not attempting to comprehend the code as such, or to comment on its entire provisions so as either to suggest a modification or possible mode of revision. That would be a highly exhaustive task demanding meticulous attention to detail. Instead I would like to limit my reflections to a particular section of the

code that provides for the initiation of police enquiry into any given crime. This section is contained in Chapter XII of the code and is titled Information to Police and Their Power to Investigate. It reads as follows.

"The First Information Report is the key to a successful criminal investigation"

Sec. 154. Information in cognizable cases.

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under sub-section (1) shall be given for with, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this code and such officer shall have all the powers of an officer in of a police station in relation to that offence."

The First Information Report (FIR) is the key to a successful criminal investigation. It is the trigger that sets into motion the investigation mechanism in a given crime. It is interesting to note, however, that the term 'first information' is not mentioned in the code. It merely says 'information recorded under Sec.154'.

The details to be recorded in the FIR are exhaustive. It contains the date and time of giving the information, police station where it is recorded, place, date and time where the offence has taken place, the names of the persons who have committed the offence, probable provisions under the Indian Penal Code or any other enactment under which the offences are punishable, the information in detail, name and address of the informant and the action taken.

The object of the FIR from the point of view of the informant is to set the criminal law in motion, whereas for the investigator it is to gather information regarding the offence so as to take appropriate action to book the offender. It acts as a record book. In either case it aims to record the information as early as possible and for future reference. The law stipulates that the information has to be recorded immediately on receipt. Here the nature of the offence is also important. Only when information is received regarding a cognizable offence can the police investigate without the order of a magistrate; in the case of a non-cognizable offence, the informant has to be referred to a magistrate.

The law, is clear and it has been reinforced by the decisions of the courts. Even if the information regarding a crime is received over the telephone, and even if the call is anonymous, it has to be put into writing as an FIR (*Criminal Law Journal 1980,* p. 1397).

But this doesn't mean that any vague or cryptic information can be treated as information for recording an FIR. Whether it amounts to 'first information' or not is essentially a question of fact depending on the circumstances in each case (*All India Reporter 1961 Kerala 99*). Therefore, in determining whether a report amounts to an FIR or not, regard should be had to the following:

"First Information report should not be vague or indefinite but give facts showing commission of a cognizable offence"

1. It should not be vague or indefinite but give facts showing commission of a cognizable offence enabling the police, or give a scent to allow police to take up investigation.
2. It may be given by anyone, not merely the person aggrieved or by someone on his behalf.
3. It need not name anyone as the offender or witness; nor need it state the circumstances of the commission of the crime. It is simply the first information that sets the police in motion.

In a case where the first information is in fact given by the accused, it stands on a similar footing as information by any other person except that the confessional part, if any, must be excluded. This is because such statements, if taken with the confessional part, fall under Sec. 25 & 26 of the Indian Evidence Act. However, there is no bar to a confession in an FIR being used in favour of the accused. Where a person lodging an FIR is subsequently accused of the offence, it is an admission of certain facts that have a bearing on the question to be determined by the court. When the accused gives the first information, that fact is admissible against the accused as evidence of conduct under Sec. 8 of the Indian Evidence Act. Where the information is not confessional, it is still admissible against the accused under Sec. 21 of the Indian Evidence Act (*All India Reporter 1966 Supreme Court 119, All India Reporter 1964 Supreme Court 1850*).

Other details in the section are also important. The information provided has to be reduced into writing. This is a mandatory condition. The information being taken down has to be read over to the informant, and the signature of the informant obtained. A copy of the statement has to be served free of cost to the informant. This is also mandatory. The matter further has to be entered in the General Diary or the Station Diary and the FIR has to be forwarded to the local magistrate for the court records as well. Omitting information from the station diary will not necessarily vitiate the trial, but it will have important bearing if the date and time of lodging the FIR is questioned during trial.

The FIR is a highly valuable and vital piece of evidence in a criminal trial. It is necessary to corroborate the oral evidence in the case (*All India Reporter 1973 Supreme Court 501*). It is the first version of the incident and is of considerable value as it reveals the materials that the investigation commenced with and what the original version of the story was. It has high practical value since the information is from the earliest instance, when the memory is clear and vivid.

So given the law, what happens in practice? Even though the contents of the FIR and the details therein are very explicit, the instances of misusing these entries and inadequate entering of the necessary details are rampant. Often, even if information is given, with graphic details, the police fail to record a statement and to initiate any action. It is the duty of the police officer in charge of a station to record the information and take appropriate action. But often the officer in charge fails to perform his duty. The reasons are manifold—lack of responsibility, corruption, nepotism etc. Whatever the reason, the mechanism that ought to be set in motion simply does not work, resulting in failure of justice. Cognizable offences are reported to the police, yet are not recorded, are recorded carelessly, or falsely recorded on purpose to permit the accused an easy walk through in the trail.

"The Criminal Procedure Code has laid down provisions for reporting the offences and the modus of recording, but it has failed to foresee the possibility of an officer committing errors either willfully or accidentally"

The Criminal Procedure Code has laid down provisions for reporting the offences and the modus of recording, but it has failed to foresee the possibility of an officer committing errors either willfully or accidentally. The only safeguard is to address the superior officer on the dereliction of duty by a subordinate officer. But this is limited to cases when the officer in charge fails to record the information, and not where the information recorded is improper. Under any circumstances, the law again places utmost confidence in the police officers. What if the higher officer is also corrupt or reluctant to act to meet the ends of justice? The only option for the informant is to approach the courts to redress the grievances, which would take at least six to seven months to begin an inquiry, given the number of cases pending disposal before the various courts in this country. Such investigations suffer inordinate delays before being set into motion. Yet the very purpose of recording an FIR is to get a picture of the incident while it is clear and vivid in the informant's memory. That is probably why the law does not even permit a preliminary enquiry into the incident before recording an FIR, because it would destroy its value and pave the way for fabrication of cases (*All India Reporter 1961 Kerala 99*).

At this point it is pertinent to note that the courts have dealt with delays in filing an FIR as to be viewed according to the facts and circumstances in each case. For example, a delay in lodging an FIR in a case of rape is treated differently from a murder in broad daylight. The mindset of the person lodging the information, especially the victim in a rape case, is important, and in such cases a delay of days has been excused. The effect of a delay must fall for consideration on all facts and circumstances of a given case (*All India Reporter 1973 Supreme Court 1*). Whether the delay is so long as to throw a cloud of suspicion on the seeds of the prosecution case depends upon several factors, including the defense.

However the delay in many FIR submissions is caused not by the informants, but by the police themselves. For the ordinary person, the business of lodging an FIR can often turn out to be a disgusting if not insulting experience. Instances are many when

the police accuse the person lodging the information of making unnecessary work for them and order the informant out of the police station. There are reported cases where women who went to lodge information were raped or other wise molested by police officers. The Apex Court has on various occasions condemned such acts and has held the police responsible and awarded compensation to the victims. So for an ordinary citizen without power and influence, the FIR sometimes turns out to be nothing more than the First Insulting Response.

"For the ordinary person, the business of lodging an FIR can often turn out to be a disgusting if not insulting experience"

The police have their own way of circumventing the provisions of any given enactment so as to facilitate their needs. The FIR is one example of where they have ample opportunities to make space to wet their beaks in future. For instance, the code does not insist that the accused be named while recording the FIR. The police have various ways of exploiting this provision. They can simply record a known person or persons in the column provided and later arrest them for committing the crime. Having made the arrests, they can stage-manage the trial and give evidence congenial for an acquittal after accepting bribes or other undue gratification.

Now the Central Government has embarked upon an attempt to revise the Criminal Procedure Code of this country so as to contain the rampant misuse of these procedures. However improved and advanced be the procedural law, it will be of little help if police prosecutions are not properly launched and if the inherent inertia of the police in this country is not promptly tackled to address their indolent methods and the inefficient investigation of crimes wreaking havoc on the criminal justice dispensation system of this country.

Gujarat, a crime against humanity

Justice H Suresh, Bombay High Court (retired)

What we have witnessed in Gujarat—where hundreds of men, women and children were burnt alive by organized communal gangs—is one of the worst violations of human rights in recent years. It is worse than what happened in Bombay during the riots in 1992-93. There, there were certain incidents of dehumanized killings, such as the stoning of victims and burning alive of people with the crowd clapping and dancing around the body. There were also instances of victims being cut into pieces and thrown into *nullahs* [water channels]. But in Gujarat almost all the attacks have been systematically inhuman. People have been locked up in houses and roasted alive. In many cases the victims have been cut into pieces, or pierced with *trishuls* [tridents] and set on fire. The nature of the killings, and the way the savagery spread and continued for eight days, overshadowed even the WTC incident of September 11. While George W Bush reacted strongly and called for a concerted attack on terrorism, our Prime Minister—who was too eager to cooperate and be a partner of the "international coalition" against "terrorism"—did not offer a word against this carnage let loose on the minority community.

It was not a communal riot. There was no clash of two communities. It was a well-planned attack on Muslims. Even the High Court judges, top police officers—including an Inspector General of Police—the rich and the poor shop owners, hoteliers and industrialists were attacked. There was no resistance so as to cause even a semblance of a riot. In fact quite a number of Muslims were not even allowed to escape.

The government displayed a totally partisan attitude. It could have controlled the entire situation within a short time. Instead it deliberately delayed taking steps to prevent the carnage. In all probability, the Government did not want to prevent this concerted attack on the minority. It acted on the dictum of the Chief Minister, that "every action has a reaction", indicating his approval for what happened in Godhra. In this, the State Government had the implicit backing from the Central Government. The state Chief Minister declared that what happened in Godhra was a terrorist

act carried out by a terrorist group. This was a deliberate lie, an excuse for attacking innocent Muslims elsewhere. Evidence is now coming forth relating to the incident at Godhra, showing that there was provocation by the so-called *karsevaks*, which prompted the violence.* Nothing, however, should have provoked the mindless burning of the 60 *karsevaks*. And that was no justification either for the attack on innocent Muslims in Gujarat.

"The whole criminal justice system in Gujarat has failed"

The official death toll is about 700 people. Unofficially, those who have gone round in Gujarat say that the figure could be anywhere between 3000 to 4000 people. It is estimated that property belonging to the minority community worth about Rs.3000 crores was lost. It is doubtful that the government will do anything in terms of compensation and rehabilitation. The government is a BJP [Bharatiya Janatha Party] government; nurtured by elements like the Bajrang Dal and VHP [Vishwa Hindu Parishad], who are all patently anti-minority. The administration is also corrupted by RSS [Rashtriya Sayawam-Sevak Sangh]-oriented men occupying key positions.

It is important that justice be done towards the minority community members, ensuring security of life and property for them. It is unlikely the Central government will do anything on this front. It is a misnomer to call the Central Government an NDA [National Democratic Alliance] government. It is not. It is a BJP government. It has systematically carried out every agenda they have.

At present, there is no political process in Gujarat that can guarantee the right to life and liberty of the Muslims. There is hardly any judicial process that can come to their rescue. The police have done little to act against the perpetrators of this crime against humanity. Cases have not been registered, the First Information Reports have not been filed, and the real criminals have not been arrested. The whole criminal justice system in Gujarat has failed.

The worst culprits are those who are in power in Gujarat: the people who are responsible for the situation in Gujarat are in Delhi. They have betrayed the Constitution. They have acted with no sense of responsibility. Those who have taken oath on the Constitution should realize that there can be no compromise between secularism and communalism. Any such compromise would only perpetuate communalism and damage the secular fabric of this country.

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End Note

* *Karsevaks* are 'servants of *karma*', where *karma* is 'work'. The term is used to denote volunteers who dedicate themselves for temple construction at the disputed temple site at Ayodhya.

Dark clouds of state repression: Police excesses have broken Punjab

Arunleev Singh Walia, General Secretary,
Lawyers for Human Rights International

Even after 50 years of India's independence, the people of Punjab still suffer the wrath of police brutality and the indifference of the state machinery towards the economic and political development of the state. What began as a struggle for self-determination and political freedom took an ugly turn: it resulted in the killing of thousands of people in armed violence that can justifiably be called the genocide of Sikhs by the Indian Government. The government gave the Punjab police excessive powers, so much so that they became a law unto themselves. The continuing excesses of security forces in Punjab have broken the backbone of the once peaceful and prosperous state.

Many human rights lawyers and activists paid with their lives for treading the path of political justice. While the official figures put the total number of people killed in Punjab during the period from 1984 to 1996 at 15,000, according to various investigating agencies and human rights groups more than 25,000 people have been killed by the Punjab police. This includes persons "missing" from their homes, killed in "encounters," cremated as "unidentified" and "escaped from police custody". This will haunt the mind of every Punjabi and be remembered as the most sordid era in the history of the state.

The Congress Government under Chief Minister Beant Singh created a situation where even subordinate police officers became the judge, jury and executioner of innocent people. Sikh boys were picked up from their houses or fields and taken blindfolded to isolated places and told to run. A burst of AK-47 rifle-fire ended their lives. Such was the terror that nobody dared ask why not even a single member of the police force was hit in crossfire. Many members of the police force in Punjab got out-of-turn promotions, gallantry awards and monetary rewards for killing "militants".

Sadly, the state machinery and the judiciary remained mute spectators to these dastardly acts. Even the High Court of Punjab and Haryana dismissed hundreds of Habeas Corpus petitions filed by the parents of the "missing" youths after receiving a police report that the detainee was killed in an encounter or that the detainee was not in their custody. A writ petition was filed by the Punjab and Haryana High Court Bar Association, Chandigarh, seeking an independent inquiry into the killing of a lawyer and human rights activist, Kulwant Singh of Ropar, his wife and two-year-old child at the hands of the Punjab police. It met the same fate, dismissed by a five-judge bench with objectionable remarks against the lawyers for observing long strikes to protest the killing of the lawyer. Later, the Supreme Court passed unprecedented strictures on the highhandedness of the High Court, and ordered a CBI [Central Bureau of Investigation] inquiry into the killings. The CBI in its report submitted to the Supreme Court found the Ropar police responsible for the heinous crime of killing the lawyer and his family. This resulted in the trial of one DSP [Deputy Superintendent of Police] and four police inspectors of the Punjab police. According to latest reports, more than 15 prosecution witnesses have turned hostile due to police pressure.

"The manner in which the Punjab police acted beyond the pale of the law has put civilization to shame"

The Punjab police's role in eliminating a particular religious community—Sikhs in this case—in their own homeland, is unheard of. The manner in which the Punjab police acted beyond the pale of the law has put civilization to shame. But the State Government was on a long vacation of sorts, with its eyes and ears closed to the unending woes of the victims. On the one hand, police excesses and administrative failures broke the backbone of the state. On the other hand, the poor condition of the farmers due to the discriminatory policies of the State Government in ignoring their demands for adequate water and cheap fertilizers added to the state's problems.

The assassination of the Chief Minister Beant Singh on 31 October 1995 brought a halt to the corrupt and anti-people rule in the state. The Shiromani Akali Dal-Bhartiya Janata Party alliance that came into power promised to end the 'Police Raj,' and assured justice to the victims of state repression. They also promised to release all the innocent people arrested and lodged in different jails in Punjab under TADA [Terrorist and Disruptive Activities (Prevention) Act].* But to date, not a single police officer responsible for human rights violations has been hauled up for his/her acts of commission and omission.

There is no change in the situation. No doubt, the number of casualties has come down. But the Punjab police even today torture people in illegal custody, kills them in fake encounters, maintain private goons, patronize criminals, grab land belonging to the poor and the weak, and generally use muscle to crush opposition.

What is more humiliating for the citizens of the state is that the loud promises by the Chief Minister of the state to uphold the rule of law and give opportunities to the released militants to

rehabilitate themselves have remained empty and unfulfilled. This is not to say that crimes should not be checked. But when the basic human right to life and liberty is eroded on a mass scale by the state's forces, no words of sympathy can heal. Even lawyers, human rights activists and media people are being attacked and falsely implicated on the alleged grounds that 'most human rights bodies are funded by militant organizations abroad'. The Chief Minister of the state declared on 2 October 1997 that the cases of all those prisoners who were languishing in jails under TADA and other offences would be considered, and that they would be released within a short period. But the promise was forgotten, and many people who had nothing to do with militant activities are still languishing in jails.

"When the basic human right to life and liberty is eroded on a mass scale by the state's forces, no words of sympathy can heal"

It becomes the onerous duty of every human rights activist to strive to establish the rule of law, and prosecute policemen guilty of human rights violations in the state. The state needs a new type of police force, one that will protect the citizens against crime, and ensure that human rights are not violated. The people of the state should take a fresh decision and strive for a tomorrow without any police brutality and an administration that is free of corruption.

This is edited text of an article originally published in Combat Law: Human Rights Magazine*, vol. 1, no. 1, April–May 2002.*

End Note

* The Terrorist and Disruptive Activities (Prevention) Act, 1987, had a period of enforceability fixed as five years. Since it expired in 1992, the Criminal Law Amendment Bill, 1995, intended to replace TADA, was pending the consideration of Parliament. Since the government felt that it was not likely to be cleared, it promulgated the Prevention of Terrorism Ordinance on 24 October 2001. During the winter session of Parliament in December 2001 steps were taken for the introduction of the Prevention of Terrorism Bill, 2001. However, the Bill could not be introduced and considered since the Parliament adjourned *sine dine* on 19 December 2001. Due to the terrorist attack on Parliament House on 13 December 2001, the President promulgated the Prevention of Terrorism (Second) Ordinance 2001, which has been highly criticized by human rights activists in India and abroad.

The National Human Rights Commission of Sri Lanka and its role in ensuring the enforcement of the Convention Against Torture under Act 22 of 1994

Asian Human Rights Commission

1. The Asian Human Rights Commission (AHRC) is aware that many cases of torture and other cruel, inhuman or degrading treatment or punishment come before the National Human Rights Commission (NHRC) of Sri Lanka, almost on a daily basis.

2. The AHRC is also aware of the extremely useful work done by the officers of the NHRC in visiting the police stations or detention centres at initial stages of arrests, their timely intervention in initial stages in alleged torture cases, their assistance to victims to gain medical treatment and medical certificates. All these aspects of the NHRC interventions have added a new element to the legal practices prevailing in the country and are likely to give rise to new practices, ensuring the protection of human rights. AHRC has spoken to many persons, who are involved in cases as lawyers, human rights defenders and victims themselves, who have many ideas as how to improve this aspect of initial intervention of the NHRC.

3. The purpose of this report however is to draw the attention of the NHRC to a very worrying aspect of its work, which in fact seems to undermine the enforcement of the existing law against torture set out in Act 22 of 1994, and the obligations the Sri Lankan government has undertaken as a party to several international instruments. The practices of the NHRC that we refer to are settlements arrived at by the NHRC and inquiries regarding cases of torture and other cruel, inhuman or degrading treatment or punishment.

4. Under Act 22 of 1994, Sri Lanka has made an attempt to incorporate the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment into the law of Sri Lanka. There is some criticism that the Act is deficient in

some respects, and is not fully incorporating the international law on torture and other cruel, inhuman or degrading treatment or punishment.

"Act 22 of 1994 has recognized torture as a crime in Sri Lanka"

5. Act 22 of 1994 has recognized torture as a crime in Sri Lanka. Thus by the promulgation of this Act, the legal position of torture and other cruel, inhuman or degrading treatment or punishment has changed drastically. In the past torture had been treated only as a breach of discipline by the police or the state officers and was dealt with by way of disciplinary actions, such as dismissal, demotions, transfers, reprimand and the like. Under the 1978 Constitution, torture had to be treated as a violation of a fundamental right, warranting a declaration against a violation by the Supreme Court and the payment of compensation.

6. With the adoption of Act 22, torture was treated as a very serious crime, warranting a minimum of seven years imprisonment and a fine of not less than 50,000 rupees. The Act also recognizes extra-territorial jurisdiction and does not recognise any circumstance as an excuse for committing the crime of torture. This crime can be tried only in a High Court.

7. The powers of the NHRC are derived from Act 22 of 1994. Under this Act NHRC has some powers to settle cases, where parties agree to do so. However, these provisions must be used together with the relevant criminal law and also the international law relating to violations of various rights.

8. The Criminal Procedure Code sets only compoundable offences. Thus, the law recognises a difference between less serious crimes that cannot be compounded or settled between parties and those that can be. For example murder is not compoundable. In the same way, there is no doubt that crimes of torture and other cruel, inhuman or degrading treatment or punishment are not compoundable.

9. Thus any settlement arrived at by NHRC inquiries relating to complaints of torture cannot have a binding effect. It cannot deprive a person from pursuing his complaint with the aim of ensuring prosecution under the Act. Thus there cannot be any free and fair settlements preventing such prosecutions.

10. The NHRC is under obligation to explain these legal provisions to the parties. Particularly, it owes an obligation to the alleged perpetrators, since they may enter into settlements and even payments of money with the view to prevent prosecution in the future. They may thus make commitments that may be used against them in future. On the other hand, victims who are unaware of the legal provisions regarding torture may agree to settlements thinking that there is no other redress in law.

11. It is the moral aspects of such settlements that are most appalling. Development of the international law against torture has been a very difficult one. Since Cesare Beccaria wrote *An Essay on Crimes and Punishments* in 1764, it has been long

and arduous struggle to develop the human rights law against torture. Today international law recognizes torture as one of the most heinous of crimes, falling within the category of *jus cogens*. Allowing such a crime to be dealt with on the basis of bargains for small sums of money is morally repugnant.

12. The more useful functions that the NHRC may undertake regarding torture cases include to

a) Intervene at the earliest possible stage of incidents of torture and take all steps to record the evidence and prevent torture;

b) Take actions to guarantee the security of victims;

c) Instruct the victims of their rights and the prevailing legal provisions regarding torture; particularly to explain Act 22 of 1994;

d) Make initial investigations to gather and protect evidence;

e) Inform the Attorney General (AG) of all the complaints NHRC receives regarding torture and cooperate with the Special Unit existing under the AG's department. NHRC can monitor the progress of the cases undertaken by the AG's department;

f) Follow up on cases filed by the AG in courts and review progress;

g) Make recommendations on the prosecution of torture cases to the Government on a regular basis;

h) Report to UN agencies on the progress of implementation of Act 22 of 1994;

i) Assist with physical, psychological and other treatment of victims of torture: rehabilitation needs to become a prime consideration;

j) Educate the society by useful media (particularly state media) on the Sri Lankan and international law on torture;

k) Help to establish funds and facilities for torture victims and their families;

l) Take initiative to establish proper legal aid to victims of torture.

13. A further issue that needs to be addressed is regarding the cases, that have already been settled during NHRC inquiries. These settlements should not be treated as obstacles for prosecution under Act 22 of 1994. All these cases should be referred to the AG's department for prosecution. Any payment that may have been made can be taken into consideration at a later stage, in a civil case for damages. Such payments do not in any way affect the prosecutions under Act 22 of 1994. All evidence available to NHRC must be given to the investigators functioning under the AG's department. NHRC investigators can provide all the support needed for such prosecutions.

"International law recognizes torture as one of the most heinous of crimes. Allowing such a crime to be dealt with on the basis of bargains for small sums of money is morally repugnant"

14. As for the future, the NHRC can seek amendment to its statute, to gain greater power for prosecution on human rights related issues, particularly under the Act 22 of 1994. With better resources it can develop its own legal teams for investigations and prosecution of crimes falling under the Act.

15. In conclusion, the Asian Human Rights Commission strongly recommends the immediate cessation of the prevailing practice of pursuing settlements in torture cases. We also urge the NHRC to adopt the recommendations made in paragraphs 12 to 14.

The Asian Human Rights Commission released the above statement on 2 June 2002.

Between the blinds: Torture and the human reed

Dr Nalin Swaris, ALRC Associate Member,
Sri Lanka

The College of Anaesthesiologists of Sri Lanka and the Ethics Committee of the Sri Lanka Medical Association held a symposium on Ethical Issues in Critical Care on June 26, 2002 in Colombo. The symposium addressed some of the challenges and ethical dilemmas that today's advanced medical technologies pose to the medical profession. I was invited towards the end of May, to read a paper on the philosophico-ethical aspects of critical care. Experts in the field spoke on the sophisticated technologies available today, in particular, of life support systems that can take over the functions of the heart, the lungs and kidneys of critically ill patients.

I was aware of the issues and the medico-ethical dilemmas of critical care, as this is a subject discussed by students of social work in the Netherlands, whom I taught for 17 years. To get more up to date information I called a couple of Roman Catholic priest friends to inquire if they had any recent literature on the subject. None had. But one of them told me: "If you want to get first hand experience of the new technologies, you could visit a patient lying in the Intensive Care Unit of Private Hospital 'X'. He is now on a life support system after having been savagely beaten and tortured by the police in my area."

I went to the hospital, introduced myself and was allowed a brief visit to see this victim of police torture. There were tubes in just about every orifice of his body. A ventilator kept his lungs working. He was fed nasally with liquids. He was given oxygen through a funnel attached to another tube. In the police station, his hands had been tied behind his back and he had been suspended by them from a roof beam, and beaten with rods for more than an hour. He had lost the use of both hands. The beatings had severely damaged his muscle tissue. Enzymes from the damaged tissue cells had flowed into the blood stream and clogged his kidneys, which were now only 10% functional. A dialysis machine was doing their work. Fluid was fillings his lung, making breathing impossible. They had to be drained regularly. A few days after he was admitted the victim became unconscious.

He was laid out on his side when I saw him, head turned to a side, eyes closed, unconscious—a vegetal adjunct to machines. The sight reminded me of those medieval paintings of the limp and twisted body of Jesus lying on the ground after having been brought down from the cross. Jesus is history's most famous victim of torture. He was whipped, crowned with thorns and crucified to death. He was innocent.

The paper on medical ethics I was preparing ceased being an abstract disquisition. The patient-object is a 38-year-old person with dreams and hopes like you and me. He is a loving husband and father of two little children aged five and three. He had clocked in for work at the Colombo Dockyard using his bar code card at 12noon on June 2. Around 2:30pm that day, there had been a gangland killing in the village where he had grown up. He finished his shift and clocked out at 9am the next morning. This is known, as the arrivals and departures of Colombo Dockyard workers are computer registered. If the criminals in khaki had asked him where he was the previous afternoon, he had a watertight alibi: a bar code registration and the testimony of several workmates who did the shift with him. But most of these 'investigators' are unintelligent beef-heads who have their own methods.

Meanwhile, the police had received information that one of the murderers was a notorious hired killer called Jeyraj. When the police asked the brother of one of the murdered men, whether he knew a Jeyraj, the man had heard 'Gerard', the name of the torture victim, and said he knew the person as he grew up in the village but that he had married and moved to the Gampaha area. The police obtained his address and went in a civilian jeep, which was in police custody in relation to an earlier murder case. They took the suspect's 32-year-old wife and three year old son hostage, locked them in the jeep and waited for him to come home, just as predatory beasts wait for their prey.

The morning after the goons in uniform had battered and wrecked an innocent man, the officer in charge of the station told him: "*Samaavende kollo baduwa maattu* (Sorry boy, we trapped the culprit). Your people are here. You can go home." The victim was brought to an Ayurvedic hospital, because he complained of unbearable pain throughout his body. The doctor, shocked by his condition, said he must be admitted without delay to a hospital with good emergency care. The Colombo Dockyard provides up to Rs.50,000 medical coverage for their minor employees. So his workmates had him admitted to one of the best-equipped private hospitals in Colombo.

On Saturday June 29, 2002, the day of the Symposium on Critical Care, the torture victim was still on life support. The team of doctors, full of compassion and concern for the tragic waste of a life were doing their best to save the victim of police brutality. Today is July 9. The victim was taken off the life support system five days ago. Yesterday he was moved to a ward in the National Hospital. The dark and dreadful side of human nature produces tragedies like this. They sometimes also bring out its fine and

noble side. Whether the hospital security guards, nurses, doctors in attendance, or specialists, each in their own way battled to protect and save a poor working class man, even though they knew his family would never be able to meet the medical costs. When the victim was moved to the National Hospital and the final tally was made, the costs had soared to above one million and two hundred thousand. The team of specialists waived their fees for more than a month of treatment. This brought the costs down by a couple of lakhs. A poor man was 'wasted' by agents of the state. In any decent nation the state would pay the medical bills. The victim's lawyer has written to the President, the Prime Minister and the Minister of the Interior, requesting such an act of decency. Appeals have also been made to the ambassadors of Western countries.

"Our society has lost respect for the sanctity of life. Torture, sometimes unto death, is an integral part of our 'system of justice'"

On the day of the symposium, I departed from my prepared script. I spoke of my confrontation with life-support systems and reflected on the irony of the day's deliberations. Here we are, I said, discussing our moral scruples about a single patient whose life hangs on a wire. Are we not incongruities, I asked, in a moral wilderness? Our society has lost respect for the sanctity of life. We are living a frighteningly necrogenic and necrophilic culture, I said. Torture, sometimes unto death, is an integral part of our 'system of justice'. Must the Attorney General's Office wake up only when a crime of torture receives international notoriety and questions are asked? Sri Lanka has ratified the UN Convention Against Torture. Has any torturer been prosecuted and punished under Act 22 of 1994, which incorporated this Convention into Sri Lankan law? None has, so far as I am aware.

The Prophet Isaiah comforted his people with assurance of Yahweh's immense compassion: "He shall not crush the bruised reed or quench the smoking flax". Seeing the twisted frame of an innocent man on a life support system, I was reminded of this verse. We humans are like reeds – vulnerable, crushable and killable. Police torturers bruise and crush the fragile reed of life. Because of the fragility and preciousness of life, the Buddha urged humans to practise mutual self-care, "For in protecting oneself, one protects others and in protecting others, one protects oneself". But what happens when the greatest threat to life and limb comes from the very custodians of the law? Our justice system is in a state of collapse. Class justice is endemic to it. It is cruel to the socially weak. The privileged have caviar and champagne in custody. The consciences of our politicians seem to be quickened or deadened depending on whether a victim of injustice happens to be 'one of ours or one of theirs'. In such a social and political climate one must despairingly ask, with the ancient Roman philosopher Juvenal: "Who will guard the guardians of the law?"

Appendix

In the above article Dr Nalin Swaris has made reference to the case of Gerard Perera. ALRC's sister organization, the Asian Human Rights Commission (AHRC) has made several interventions on this case, some of which are reproduced below. The following websites also contain further information on his case:

AHRC Urgent Appeals Programme [www.ahrchk.net/ua]
[Search for "Sri Lanka"]

World Organisation Against Torture [www.omct.org]
[Search for "Case LKA 170602"]

AHRC MEDIA RELEASE

17 June 2002

MR-13-2002

SRI LANKA: A young man on life-support system after being tortured by eight police officers

Victim: Waragodamudalige Gerard Mervin Perera (39)

AHRC is alarmed by the torture of Waragodamudalige Gerard Mervin Perera, 39, father of two children, by eight police officers at the Wattala Police Station in Sri Lanka. The victim is presently on a life-support system in a hospital due to the injuries caused by the police.

Gerard Perera was arrested by officers of the Wattala Police Station at about 12:45pm on 3 June 2002, in the presence of his wife W P Padma Wickramaratne. Ten officers were present at the time of the arrest and none of them wore police uniforms. Then Gerard Perera was taken into the Wattala Police Station and was brutally assaulted by the officers attached to this station, namely, Sena Suraweera, the Officer In Charge (OIC) of the police station; Sub Inspector (SI) Kosala Navaratne, OIC Crimes; SI Suresh Gunaratne; SI Weerasinghe; SI Renuka; Police Constable (PC) Nalin Jayasinghe; PC Perera and another police personnel.

Gerard Perera's hands were tied behind his back, his eyes were blindfolded and he was hung from a beam and brutally tortured for about one hour. He was questioned about a murder case of which he knew nothing. He was kept at the police station on the night of 3 June 2002 and was later told that it was due to some misinformation that he was arrested. On the morning of 4 June 2002 Ranjit Perera, brother of Gerard Perera, along with the Chairman and the Vice Chairman of the Pradhesiya Sabha

(Provincial Council), visited the police station and inquired about Gerard Perera from the OIC of the police station, who said that he had been taken to custody due to false information.

Gerard Perera was released from the police station on the morning of 4 June 2002. As he was complaining of severe pains he was taken to Yakkala Wickramarachchi Ayurvedic Hospital. The doctor who examined him advised that he should be taken to a good hospital as he was in serious condition. Gerard Perera was then taken to Navaloka Hospital in Colombo and has been there until now. While in the hospital Gerard Perera made a statement to an officer from Grandpass Police Station, Colombo, about the way he came to have the injuries. While all efforts have been made to save Gerard Perera's life, the situation turned worse by 15 June 2002 and the doctors have advised the family that the situation is very critical and that he may not survive.

Basil Fernando, executive director of the Asian Human Rights Commission said,

> The government of Sri Lanka must guarantee that all medical care is supplied to this torture victim. It is quite likely that the life support system may be removed, as the cost of it is very high. As this is a disaster brought about by the state agents it is necessary for the state to take the responsibility for all the costs and do whatever it can to save the life of this unfortunate victim. Meanwhile it is also essential to immediately arrest all the perpetrators (eight police officers) of this crime. This crime falls under Act No.22 of 1994, which prescribes a mandatory seven-year imprisonment for torture by any state officer and if the victim does not survive, the crime will be one of murder.

Asian Human Rights Commission - AHRC

17 June 2002, Hong Kong

ASIAN HUMAN RIGHTS COMMISSION - URGENT APPEALS PROGRAM

Update on Urgent Appeal 21 June 2002

UP-44-2002 (RE: UA/18 and 19/2002 - Torture by police, impunity, denial of proper rehabilitation

(Extract)

Gerard Perera continues to be on a life-support system The police, when asked by the BBC Sinhala Service, said that they used only minimum force on him. Meanwhile, the residents of

the area where he used to live organised a protest from 4pm to 8pm yesterday. About 500 people participated in the protest meeting and the demonstrations. The BBC Sinhala service quoted an organiser of the demonstration who said that complaints have been made to the Prime Minister, Inspector General of Police, Chief Justice, and opposition party leaders, but no action has been taken yet. A fundamental rights violation application has been filed on his behalf with the assistance of the Asian Human Rights Commission (AHRC). Pressure is being brought by some officers to have their names removed from this application.

The Asian Human Rights Charter on enforcement of rights and the machinery for enforcement (www.ahrchk.net/charter)

15.1 Many Asian states have guarantees of human rights in their constitutions, and many of them have ratified international instruments on human rights. However, there continues to be a wide gap between rights enshrined in these documents and the abject reality that denies people their rights. Asian states must take urgent action to implement the human rights of their citizens and residents.

15.4a The judiciary is a major means for the protection of rights. It has the power to receive complaints of the violation of rights, to hear evidence, and to provide redress for violations, including punishment for violators. The judiciary can only perform this function if the legal system is strong and well-organized. The members of the judiciary should be competent, experienced and have a commitment to human rights, dignity and justice. They should be independent of the legislature and the executive by vesting the power of their appointment in a judicial service commission and by constitutional safeguards of their tenure. Judicial institutions should fairly reflect the character of the different sections of the people by religion, region, gender and social class. This means that there must be a restructuring of the judiciary and the investigative machinery. More women, more under-privileged categories and more of the Pariahs of society must by deliberate State action be lifted out of the mire and instilled in judicial positions with necessary training. Only such a measure will command the confidence of the weaker sector whose human rights are ordinarily ignored in the traditional societies of Asia.

15.4.b The legal profession should be independent. Legal aid should be provided for those who are unable to afford the services of lawyers or have access to courts, for the protection of their rights. Rules which unduly restrict access to courts should be reformed to provide a broad access. Social and welfare organizations should be authorised to bring legal action on behalf of individuals and groups who are unable to utilize the courts.

15.4c All states should establish Human Rights Commissions and specialized institutions for the protection of rights, particularly of vulnerable members of society. They can provide easy, friendly and inexpensive access to justice for victims of human rights violations. These bodies can supplement the role of the judiciary. They enjoy special advantages: they can help establish standards for the implementation of human rights norms; they can disseminate information about human rights; they can investigate allegations of violation of rights; they can promote conciliation and mediation; and they can seek to enforce human rights through administrative or judicial means. They can act on their own initiative as well on complaints from members of the public.

15.4d Civil society institutions can help to enforce rights through the organization of People's Tribunals, which can touch the conscience of the government and the public. The establishment of People's Tribunals emphasizes that the responsibility for the protection of rights is wide, and not a preserve of the state. They are not confined to legal rules in their adjudication and can consequently help to uncover the moral and spiritual foundations of human rights.

In this issue of *article 2*

Focus: Police in India

Also

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