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SRI LANKAN POLICING - FROM A SOUTH ASIAN PERSPECTIVE

LAW & SOCIETY TRUST

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Law & Society Trust
3 Kynsey Terrace, Colombo 8, Sri Lanka
(+94)11-2691228, 2684845 | fax: 2686843
lst@eureka.lk
www.lawandsocietytrust.org

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Editor's Note

Encouraging effective and independent policing in Sri Lanka has often been focussed on in the *LST Review*, in past Issues.

Much of the essential problems that negatively affect the functioning of the police in this country are common to the rest of Asia. This Issue publishes a reflective essay by *Sumant Balakrishnan* written on invitation of the *Review*, which draws upon the discussions emerging from recent South Asian conference discussions hosted by the New Delhi based Commonwealth Human Rights Initiative (CHRI), to illustrate the daunting tasks facing reformers of policing systems in the region.

One key point in his extraction of the relevant issues is the extent to which training of police officers is able to address the problem. The consensus of South Asian lawyers, retired and serving police officers, (many holding command level positions in the police hierarchy in India) and activists was that training by itself, is of little use. As was pertinently warned by one delegate who is himself a trainer;

"We need to see training being complimented by other activities and independent police oversight is one of those. But it is also important to have strong management and supervisory structures in a police organisation. Since there are severe disparities in training at various ranks, once cannot expect rank and file to implement what they learn in training unless there is managerial oversight to ensure and encourage it to happen. So there is a need for strong internal disciplinary and oversight mechanisms to ensure that this will happen."

A further focus of the discussions was the role that community policing could play in bringing about better policing in a particular area with illustrations taken from some initiatives in India and Pakistan. Such efforts are at a preliminary stage in Sri Lanka.

Underpinning the discussions was the acknowledgement that, at least where Sri Lanka was concerned, the basic loss of the independence of the police and its increased militarization which has culminated in the Department of the Police continuing under the Ministry of Defence even in the post war period, has resulted in discussions about civilian oversight being rendered largely farcical. The following question has peculiar resonance therefore;

"We are talking about good oversight systems but that should come once systems of policing are actually in place. In Sri Lanka, the 1865 Police Ordinance is still in place. It had some form of complaints mechanism and those complaints mechanisms were based on the judicial system. But now, judicial oversight has failed. When judicial oversight fails do you really think civilian oversight will work?"

The failure of judicial oversight, as pointed out in the above observation is well documented in Sri Lanka. Judges themselves have remarked on the cynical bypassing by the police and government establishments, of directions issued in their judgments even though they emanate from the highest court in the land.

It is therefore a fact that obstacles facing police reforms in Sri Lanka are many. In a most classic sense, the fate that befell the National Police Commission symbolizes this best of all. Even the most minimal attempts by the Commission to discipline the police force, (during 2002-2005 when it was constitutionally functioning), were met with stiff resistance by the political establishment as well as by the police department. Thereafter, the Commission was systematically stripped of even a modicum of its public integrity by the unconstitutional appointment of its members from 2005. It could not fulfill its constitutional mandate to initiate a dramatic—albeit avowedly difficult—process towards change within the Sri Lankan police force. In late 2009, with the lapsing of terms of its members, the Commission itself lapsed to all intents and purposes.

Under the 18th Amendment to the Constitution, it is difficult to see as to how the independence of this body could be restored even if new members are appointed during the coming months.

In this background, it may however be recalled that these problems are not limited to a particular political era in Sri Lanka but instead, have characterized all administrations. The concluding contribution, consisting of extracts from a forthcoming book, by *Tassie Seneviratne*, a retired senior police officer, indicates the nature of the problems faced by officers who attempt to perform their duties independent of pressure from politicians.

Kishali Pinto-Jayawardena

THE NETWORK FOR IMPROVED POLICING IN SOUTH ASIA – POSSIBILITIES OF ENGAGEMENT IN SRI LANKA

*Sumant Balakrishnan**

1. Introduction

Good policing is a vital arm of a civil state. Any functioning modern democratic society requires an effective police force. Recently, the police in South Asia have been facing immense challenges such as domestic and international terrorism, as well as ethnic and religious conflicts; and their response to the same is largely held to be inadequate and at best inefficient. From a regional perspective, it is the day to day functioning of the police which reveals the extent of the degeneration of the system. Police functioning suffers mostly because of inadequate resources, political and bureaucratic interference, lack of training, and shortage of manpower. The police themselves are subjected to working long shifts for minimal pay and have little or no modern equipment needed to perform their duties. These are just some of the nagging issues that commonly plague police forces in the region.

0.1. What is meant by Police Reforms?

Undoubtedly, the police in South Asia require reform and the case is no different when it comes to Sri Lanka. There needs to be a clear understanding of what kind of policing is required by a democracy. Policing in South Asia requires reform of the relationship between the police and the political executive, improvement in the management and leadership of the police, attitudinal changes of all stakeholders, improvements in provisioning and, most of all, much better external oversight and accountability. These issues have to be considered and kept at the forefront of any discussion on reform. A sign of progress of any developed/developing modern society is a democratic police force. Democratic policing means that the police are to:

- protect the democratic rights of citizens;
- provide safety and security;
- establish effective systems of governance and management;

* The author is Consultant, Police Reforms Programme at the Commonwealth Human Rights Initiative (CHRI). Contributions made to this paper by Sanjay Patil, formerly Consultant, CHRI is acknowledged. The CHRI is an independent, non-partisan, international non-governmental organisation (NGO) working for the practical realisation of human rights in the countries of the Commonwealth (www.humanrightsinitiative.org). The paper captures the discussions engaged in by experts, civil society representatives, retired or serving police officers and members of the media at a Regional Roundtable on “*Police Reforms in South Asia – Role of Civil Society*” hosted by CHRI on 31st October and 1st November, 2009, referred to in this paper as CHRI Roundtable Conference on Police Reforms, 2009. As a consequence of the conference discussions, it was decided to create the Network for Improved Policing in South Asia (NIPSA) accessible at <http://www.nipsa.in>. NIPSA attempts to build a network of like-minded groups and individuals across the region to work together on the issue of better policing. NIPSA’s partners in Sri Lanka include the Law & Society Trust, The Asian Human Rights Commission (Hong Kong) and Transparency International, Sri Lanka.

- conduct themselves in the appropriate manner; and
- enjoy the same rights and privileges as other members of society.¹

Police reforms may also mean a variety of different aims and objectives:

“Police reform means different things to different stakeholders. To police this means more manpower, better stations, more transport, advancement in weaponry and nothing to do with objectives of police reform. To civil society it means a humane and aware police force, which involves a cultural change, a change of mindset, a distinct change in objectives because unless they keep that in mind, the increase in resources will only increase the suppressive capacity of the police”²

“Reform is about setting the police free from the influence of the state. There is a need for mechanisms by which the state’s authority over the police is curtailed”³

Efforts to reform the police in South Asia share similarities because of a common history and shared approach to the issue. For instance, the colonial and feudal nature of police conduct is very much rooted in the police legislation enacted by the British which in letter and spirit continues to govern most of South Asia. In addition, numerous Commissions/Councils had been created in each of these countries to investigate the deficiencies in their respective police forces and most have reached the same conclusions. Finally, the absence of political will to properly reform the police is evident throughout the region.

1.2 History of Police Reform in Sri Lanka

These issues are particularly pertinent to Sri Lanka as policing throughout the country is in need of reform. The first in-depth examination of police reforms in Sri Lanka was the 1946 Soertsz Commission Report. This report covered such topics as the composition of the force; the conditions of the service and selection of officers for promotion and transfer; procedure for investigations of complaints made by the public against the police; the powers and duties of the police; and amendment of the police ordinance to give effect to the recommendations of the commission. Another commission report published by the government publication bureau in October 1970 was as a result of the deliberations of the Basnayake Commission. This Commission was mandated to examine the nature and the scope of the functions of the police; the measures that should be taken to secure the maximum efficiency of law enforcement agencies; the measures that should be taken to reorganise the police; the structure and composition of the police force, including methods of recruitment, training of personnel and the selection of officers for promotion and transfer; and the procedure that

¹ CHRI Roundtable Conference on Police Reforms, 2009, Sean Tait (Coordinator, African Policing Civilian Oversight Forum).

² Ibid, K.S. Dhillon, *Indian Police Service (Retd.)*.

³ Ibid, Sankar Sen, *Indian Police Service (Retd.)*.

should be adopted for the investigation of complaints made by the public against members of the police service. The Basnayake Commission went to great lengths to analyse the issues facing the police and in fact even reworked the existing 1865 law in order to remedy its many shortcomings. However, nothing ultimately came out of this effort.

The report of a further commission was published in 1995, generally known as the Justice D.G. Jayalath Commission Report. This Commission was to examine and report on the structure and composition of the police force; the methods of recruitment and training of personnel; the selection of officers for promotions and transfer; the nature and scope of policing functions; measures that should be taken to secure the maximum efficiency with respect to the maintenance of law and order; measures that should be adopted to encourage better relations with the general public; and the establishment of a Permanent Police Commission to administer recruitment, promotions and disciplinary control in the Police Service.

2. Professional Policing

Police professionalism has many meanings. It could mean the ability for an officer to be able to talk himself out of a dangerous situation instead of resorting to the use of force. It could also mean the ability to establish relationships with members of the community, or to carry oneself in a manner that exudes fairness and respects the civil rights of the citizenry. Increasingly there is a demand that the police service be made more professional if it is to acquire the confidence of the public it serves. In the South Asian context, this kind of professionalism does not seem so easily achievable when measured against the difficulties that the police face. Illegitimate political interference, heavy bureaucratic control, budgetary constraints, lack of basic facilities, increasing threat of violent extremism and inefficient methods of investigation are just a few of the obstacles that prevent police professionalism and democratic policing from taking root.

By way of example, the Sri Lanka Police (SLP) is generally perceived as an unprofessional force and, like other police forces in the region, the SLP sometimes relies on torture when conducting criminal investigations.⁴ The current atmosphere prevailing in Sri Lanka is one of fear and intimidation, whereby the police continue to be given extraordinary powers under emergency provisions. However, while the unprofessional nature of police in the region needs to be recognised, the difficulties in having the state under “police professionalism” in the same way as civil society is also relevant.

“We are discussing professionalism, but from whose point of view? One is the state’s point of view, and I can only speak in light of my own experience in Pakistan. To the state this means getting a person out of prison and shooting them in the street in such a manner that you can not get caught. Professionalism means getting rid of an opposition politician or putting the

⁴ Anderson M.K., and Fernando B. (2009), *The Phantom Limb – a study of police torture in Sri Lanka*, 1 December 2009, p.5: <http://www.ahrchk.net/pub/pdf/ThePhantomLimb.pdf> as on 1 May 2010.

fear of God in him. That is the level of professionalism expected by the state.”⁵

In order to improve police conduct, certain key issues need to be addressed comprehensively.

2.1 Training and Measuring its Impact

Training is a critical part of the reform process. However, concerns arise as to the actual impact of this training – whether or not it can be institutionalised, whether or not it has practical application, how resource allocation affects training, how training has to include an element of human rights sensitisation, and how this is needed to become a part of police training manuals.

By way of example relevant to Sri Lanka, the Swedish Government attempted to help improve the functioning and processes of the SLP in 2005. This collaborative effort, entitled “Enhancing the Capacity of Civilian Policing in Sri Lanka”, commenced when the ceasefire between the Government of Sri Lanka (GoSL) and the Liberation Tigers of Tamil Eelam (LTTE) was still in place. The objective was to:

- improve crime investigations, including crime scene examinations;
- strengthen the respect and promotion of ethnic integration and human rights in SLP; and
- increase the management capacity of SLP.⁶

However, the increased hostility between the GoSL and the LTTE made the program untenable. It was found that

“the interest in fundamentally reforming SLP and shifting the focus from national security to civilian policing dwindled with the onset of the war. The change of government as well as of the higher management of SLP also contributed to a decreased interest in reform.”⁷

The Swedish Government found that the interest and political space within SLP for any substantial pro-peace and pro-human rights reform in the context of civil war was extremely limited. The Swedish Government subsequently pulled out of the project and training assistance ended. Now that the war is over, there is an opportunity for the GoSL to give serious thought on how better training can be given to the SLP so as to improve their performance and functioning.

⁵ CHRI Roundtable Conference on Police Reforms, 2009, I. A. Rehman, Secretary General, Human Rights Commission of Pakistan.

⁶ Edrisinha, R., Olander, K., and Orjuella, C. (December 2007), *Review of Development Cooperation between Sri Lanka Police and Swedish National Police Board*, p. 3.

⁷ *Ibid.*, p. 4.

An emphasis on human rights education in police training must result in these values being reflected throughout the rank and file of the police organisation.

*"Training should take into account aspects such as sociology etc... to humanise the police. They need a change from within."*⁸

How to assess the impact of such training is of utmost importance in this context. Many training initiatives are conducted, but what remains unclear is whether that training becomes ingrained in the policing culture.

*"It is not sufficient to say that we need to train better. It is how to get that training embedded so it does not fade away."*⁹

*"In the UK, we transferred training to the workplace, so that it ceases to be an intelligence exercise."*¹⁰

*"The main question we should be asking is, how do we build up an enabling environment and operational culture where values of the training are sustained? The paradigm shift to a community safety model is necessary to convince the police that observance of human rights norms, some of the guidelines, etc... will help the police to do their job better; not by saying that these are rules/law's and you must adhere to them."*¹¹

*"What is important is to measure the impact of training. What are the parameters to measure these things and in what terms? Impact evaluation is something that is a difficult and long process, and it needs set parameters to be able to achieve success."*¹²

*"We did an evaluation of the Rajasthan police regarding the impact of training. We had two types of trainings – professional and soft skill training. This was done with two sets of people, one being a control group and the other a treatment group. We found that the victim satisfaction level (registration of FIRs, arrests, patience with people who come to police station) has increased tremendously – up to 30% between the two groups."*¹³

However, training cannot be effective on its own. For training to truly have an impact, it must be accompanied by other measures to make that impact measurable.

⁸ CHRI Roundtable Conference on Police Reforms, 2009, Justice Mohandas, Chairman, District Police Complaints Authority – Kerala.

⁹ Ibid, Maja Daruwala, Director, Commonwealth Human Rights Initiative.

¹⁰ Ibid, Leonard Gill, Delegate, International Committee of the Red Cross.

¹¹ Ibid, Sankar Sen, Indian Police Service (Retd.).

¹² Ibid, Kamal Kumar, Indian Police Service (Retd.).

¹³ Ibid, Nina Singh, Inspector General of Police, Rajasthan Police.

*"We need to see training being complimented by other activities and independent police oversight is one of those. But it is also important to have strong management and supervisory structures in a police organisation. Since there are severe disparities in training at various ranks, one cannot expect rank and file to implement what they learn in training unless there is managerial oversight to ensure and encourage it to happen. So there is a need for strong internal disciplinary and oversight mechanisms to ensure that this will happen."*¹⁴

The concept of a "training trap" is relevant in this respect.

*"How do you avoid the training trap? Do not focus on numbers of police officers you have trained, because it does nothing. I have been a trainer for years, but have hardly ever seen it make an impact. But this is done by a lot of organisations because it is simply measurable. Some organisations also conduct police public relations (PR) exercises without any sincere commitment. Very often, police officers will forget about the training once they re-enter the force. Hence, the impact on future police behaviour is very small. The police themselves are usually against training. But this training by itself is not going to do anything. There is a need to follow up, to have institutional checks and balances etc... Too often this is not done, cynically, because it might actually have an impact."*¹⁵

2.2 Police Mindset and the Culture of Impunity

One important hindrance to achieving police professionalism is the failure of law enforcement agencies in South Asia to eliminate and/or punish wrongdoing perpetrated by its members. For instance, Sri Lanka's Human Rights Commission reported that in 2006 there were "345 instances countrywide of politically motivated disappearances at the hands of the security forces or by paramilitary forces allegedly tied to the government, or the LTTE."¹⁶ In March 2007, the Inspector General of Police (IGP) in Sri Lanka officially recognised the role of the police and army in disappearances when he announced that more than 400 people including "ex-soldiers, serving soldiers, police officers and underworld gangs and other organised elements" had been arrested since September 2006 on charges of abduction.¹⁷

The South Asian policing mindset of being a "force" rather than a "service" is exemplified by the Special Task Force (STF) of Sri Lanka. Formed in 1983, the STF is a paramilitary unit

¹⁴ Ibid, Sean Tait (Coordinator, African Policing Civilian Oversight Forum).

¹⁵ Ibid, Anneke Osse, Consultant and Expert on Police Reforms.

¹⁶ Human Rights Committee (2002), *Fourth Periodic Report: Sri Lanka*, State Part report submitted to the Human Rights Committee under Article 40 of the ICCPR, p. 37, CCPR/C/LKA/2002/4: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.LKA.2002.4.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.LKA.2002.4.En?Opendocument) as on 5 May 2010.

¹⁷ Asian Centre for Human Rights (2007), "Sri Lanka: Spectre of abductions by the security forces officially admitted", *ACHR Weekly Review*, March 2007.

that specialises in counterterrorist and counter-insurgency operations. Primarily involved in fighting the LTTE, the STF became notorious for its human rights violations, including “disappearances” and extrajudicial killings. The Sri Lankan Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Northern and Eastern Provinces concluded in 1997 that the STF was the arresting agency in 5% of the 1,219 “disappearance” cases that took place in the North Eastern Batticaloa district between 1988 and 1996.¹⁸ Despite well-documented allegations of abuse, STF members have managed to avoid accountability for their actions and continue to function with impunity.¹⁹

Experience from around the world shows that a culture of impunity does not improve the security situation but rather increases political and social tensions and can therefore deepen the security crisis. The following must be considered by every police officer:

- bad policing exacerbates crime and insecurity;
- community support is a key to fighting crime;
- policing outside of human rights and the rule of law weakens the police’s authority and legitimacy;
- when the police need to hide what is going on they start to feel besieged and this strains relations between officers and subordinates;
- it strains community – police relations; and
- it puts officers’ lives at risk.²⁰

Much of what is described above was echoed by the Supreme Court of Sri Lanka in *M.D Nandapala v. Sergeant Sunil and others (2009)*²¹ (hereinafter referred to as the “Nandapala case”). The Court held the following:

“We see the growing loss of faith by the public in a force that has come to be seen as an organisation to be feared due to the aberrant behaviour of a small minority of police officers – rather than a supportive service for which they can look for protection and help.”²²

¹⁸ Commission of Inquiry into Involuntary Removal or Disappearance of Persons in the Northern and Eastern Provinces (1997), *Final Report*, Sessional Paper No.7:

http://www.disappearances.org/news/mainfile.php/frep_sl_ne/ as on 1 May 2010.

¹⁹ Human Rights Watch (2008), *Recurring Nightmare: State Responsibility for “Disappearances” and Abductions in Sri Lanka*, v.20, no.2(c), pp. 48-50:

<http://www.hrw.org/en/reports/2008/03/05/recurring-nightmare-0> as on 1 May 2010.

²⁰ CHRI Roundtable Conference on Police Reforms, 2009, *Leonard Gill, Delegate, International Committee of the Red Cross*.

²¹ S.C. (FR) Application No. 224/2006 – *M.D Nandapala v. Sergeant Sunil (R 11834) and others*, SCM 27th April 2009.

²² *Ibid.*

Conversations regarding this culture of impunity would generally agree that in all South Asian countries, as in Sri Lanka, the impetus for reforms emerges from the higher ranks of officers and rarely trickles down to the lower rungs of the police organisation. Some opine that this culture must be weeded out at the recruitment stage itself, as a kind of moral screening for candidates before their induction to the police force.

*"When judging criminality, you look at the state of mind. When looking at policing culture, more than the physical act we need to combat the reason behind it. When we recruit a person, some physical fitness is taken into account. What of their dedication to society – their morals? Whether or not they are willing to serve people as their masters? At the recruitment stage, a person of moral quality must be preferred, and training should be amended accordingly."*²³

*"The problem is of a mindset. This is why when you go to the higher level police officers they are receptive but at the grassroots level are not. This is also because higher level officers have, right from the beginning, been trained to work like police officers – to maintain law and order and the control, prevention and detection of crime. The community aspect has not become a part of their entire frame of mind. So the orientation of the police from the beginning, the initial training itself, should be given with a view of community participation. The urge for reform comes from top police officers or from people outside the police, not from the frontline police who constitute more than 90 per cent of the force who are unaware of all these issues. Generally we have seen the internal push for reform – and they are successful because they came mostly from the top. So far none of the urge for police reform (improvement in public relations etc...) has come from the lower rungs. There should be awareness at the grassroots level to know and understand these issues – until and unless there is the appreciation of these issues at that level, they will not take it seriously. This has to come from the recruitment stage itself."*²⁴

*"We have signed an MOU [Memorandum of Understanding] with the Police Department of Mumbai and have talked to their officials from the lowest constabulary level to DCPs etc... to try and make them understand that they are not the masters of the people, they are in fact, the servants. Today the whole problem is they do not realise they are part of a service."*²⁵

²³CHRI Roundtable Conference on Police Reforms, 2009, Justice Mohandas, Chairman, District Police Complaints Authority – Kerala.

²⁴Ibid, Nina Singh, Inspector General of Police, Rajasthan Police.

²⁵Ibid, J.F. Ribeiro, Indian Police Service (Retd.).

2.3 Budgetary Restraints and Lack of Facilities

Budgetary deficiencies and a lack of basic facilities are major factors which undermine the effectiveness and accountability of the police, and consequently the rule of law. As analytical studies in Sri Lanka have pointed out, the police often lack basic facilities such as means of transportation, lack of road connectivity, and facilities for scientific analysis of evidence.²⁶ This deficiency is mirrored in police forces around the region. To have an effective police force in place the budget allocation for the police must be commensurate. Police officers remain underpaid and overworked and this is a factor in their propensity to accept bribes and/or abuse their powers.

*"The biggest contribution of the Sri Lankan Police is in terms of employment; they have so far employed over 70,000. The issue of resource allocation was debated but it is something that is mainly external because it is generally done by Parliament. When we look at the parliamentary allocation for the police, it is being reduced when compared to other institutions. Because resource allocation is generally not done in South Asia it is very hard to look at the efficiency or accountability of the police. In the USA, for example, they need to show relevancy for further resources; otherwise, authorities will be told by the people not to pay for them."*²⁷

*"Very often improving policing does not target the police, it targets factors around the police. Maybe laws need to be changed first, also a change in the prosecution services, judges, and other partners might make it more effective. Very often the human rights of police themselves are seriously violated, often by their own superiors. If their rights are not being properly respected then how do you expect them to respect others?"*²⁸

*"The attitude that one wants to affect in policing is definitely dependent on resource allocation. Having a photocopier, or giving someone a place to sit, even these basic needs are not found. There are as many chairs as there are police officers. There are no chairs for the public. So, this can be changed by extra resource allocation. There are many accusations regarding the morale of police force in the region. This is not abstract, as this is a product of the environment, which all boils down to resource allocation. A greater need for extra resource allocation should be a priority for a forward looking police."*²⁹

²⁶Pinto-Jayawardena, Kishali 'The Rule of Law in Decline: Study on Prevalence, Determinants and Causes of Torture and other Forms of Cruel, Inhuman or Degrading Treatment or Punishment in Sri Lanka', The Rehabilitation and Research Centre for Torture Victims (RCT) Denmark, 2009.

²⁷CHRI Roundtable Conference on Police Reforms, 2009, J.C. Weliamuna, Director, Transparency International – Sri Lanka.

²⁸Ibid, Anneke Osse, Consultant and Expert on Police Reforms.

²⁹Ibid, Nur Ul Huda, Former Inspector General of Police, Bangladesh.

2.4 Obstacles Arising from Inadequate Legislation

Professionalism in policing is often impeded by governing legislation that is outdated and does not take into account the exigencies of modern-day policing. For example, the governing police legislation in Sri Lanka is the Police Ordinance No. 16 of 1865. While Section 56 enumerates duties that are relevant in contemporary Sri Lankan society (i.e. try to prevent all crimes, offences, and public nuisances; preserve the peace; apprehend disorderly and suspicious characters; detect and bring offenders to justice; collect and communicate intelligence affecting the public peace; and promptly obey and execute all orders and warrants lawfully issued and directed to him by any competent authority), the Ordinance is void of any accountability measures.

*"Police laws in the region date back to an era when there were no Community Service Organisations (CSO's), human rights or democracy. Unless the basic law that governs the police changes, you cannot expect the police to change their attitude because of human rights needs and expectations."*³⁰

In 2001, there was a genuine attempt to address the shortcomings of colonial era police legislation and the intense politicisation of government appointments in Sri Lanka. The 17th Amendment to the Constitution, unanimously passed by Parliament, created an apolitical 10-member Constitutional Council (CC). The CC was to be composed of the Prime Minister, Leader of the Opposition, Speaker, a Presidential appointee, five persons appointed by the President on the nomination of both the Prime Minister and the Leader of the Opposition, and one person nominated by the minority parties.³¹

In March 2005, the term of the original members of the CC expired. Although the Prime Minister and the Leader of Opposition provided the President with new names for the Council, the minority parties failed to agree on the name of the member to be nominated by them. When the minority parties continued to fail to nominate a member, President Rajapakse chose to unilaterally appoint members to the Commissions, including the Police Commission, instead of appointing the already nominated members to the CC. With strong allegations that the appointees are the supporters or personal friends of the President, the Commissions lost much of their credibility during 2006-2009. Faced with growing pressure from the opposition and civil society to demonstrate a commitment to the 17th Amendment, President Rajapakse ordered a Parliamentary Select Committee to review the amendment and assess how it can be remedied. Currently, the enactment of the 18th Amendment to the Constitution has done away with the requirement of independent vetting of nominees by a Constitutional Council, replacing the Council by an ineffective Parliamentary Council which has no power to intervene in the presidential act of appointment. Even though new appointments to the constitutional commissions are expected to be made during the coming months, there is little expectation of the independence of these bodies from the executive.

³⁰*Ibid*, K.S. Dhillon, *Indian Police Service (Retd.)*.

³¹ Article 41(A), *Constitution of the Democratic Republic of Sri Lanka, 1978*.

Another example of where legislative/constitutional developments have sought to address the policing situation in Sri Lanka is the 13th Amendment whereby power was seen as devolving to provincial councils instituted throughout Sri Lanka. It contained three lists detailing the powers of government which devolved to the provinces (List I), the powers retained at the centre (the Reserved List — List II) and a Concurrent List (List III) of shared functions which were ultimately controlled by Parliament. Although the 13th Amendment devolves policing to the provincial councils, this has not practically occurred in any jurisdiction. Due to the small size of the country, and taking into account the difficult experiences of police reform in India and Pakistan, de-centralising the police may however, not make the police perform better.

“The interesting question in Sri Lanka is that the 13th Amendment is being mooted as a post-conflict political resolution, to the “Tamil question”. What the 13th Amendment does is make police a provincial subject matter. The real question is, looking at the state of police in India and Pakistan and their fractured nature, will devolution make policing better? Or will it make it worse?”³²

2.5 CSO Engagement with Police

How could CSO's collaborate with the police to improve law enforcement at the grassroots level? The Police Reform Programme in Bangladesh is an example of where the police have actively sought public input on their reform efforts.

“Bangladesh is an example of where the police in South Asia have engaged with the public and held consultations for the drafting of police-related legislation. During the rule of the caretaker government, when the draft police ordinance was mooted, the Bangladesh Police held interactions with the public on several occasions and actively engaged with people from all over Bangladesh. Even though there were flaws with the way this was carried out, the act of engagement is really what ought to happen. I do not think it is sufficient to post something on a website and then wash your hands of it. The Bangladesh Police proved that if you want to do it, you can. Maybe the modalities of how you do it need to be worked out in a democratic way. But, the act of active engagement by the police is a good first step and we can all learn from it in other countries.”³³

Engagement must be holistic, but must also to recognise inherent limitations.

³²CHRI Roundtable Conference on Police Reforms, 2009, Sanjay Patil, Consultant, Commonwealth Human Rights Initiative.

³³Ibid, Sara Hossain, Bangladesh Legal Aid and Services Trust.

*"Civil society and the police together should convince the powers that be that police effectiveness and civil liberties can coexist without prejudicing the democratic aspirations of any society."*³⁴

*"Reducing everything to training is not going to give us an answer. The police should be open to work with the professionals engaged in the field, not just donor-driven programmes."*³⁵

*"Where the policy development is the cause of problems with police, mere engagement with the police does not solve the problem. Where corruption, indiscipline and torture are endemic, engagement does nothing. If CSOs wish to engage with police, they need to widen their scope."*³⁶

*"In South Asia there is little or no interaction between CSOs and the state. The police are, after all, an institution of the state. How can we engage with the police in an environment in which the state does not offer space? The donors' interest should be aligned somewhere between the objectives of CSOs and the objectives of the state. Of course, they would like the police to be efficient in getting hold of criminals, but also to be responsive to CSOs. What I would like to see is that police reform becomes part of the struggle for democratisation."*³⁷

In certain instances, an aggressive stance against the police might not be effective. For instance, in Sri Lanka CSOs could play an active role in assisting the police perform their daily functions as a means of gaining entry and acceptance with entities such as the Sri Lanka Police.

*"What has worked to some extent in Sri Lanka is engagement through pressure wielded by peoples' groups. These are groups of normal people (from villages etc...) who come together around a certain issue such as police torture. They provide aid to abuse victims from the point of abuse all the way to the intervention in a court of law. As is prevalent throughout South Asia, our judiciary has certain problems in its functioning. People's engagement is the only strategy that has worked at some levels, including providing support for victims of torture and victims of police abuse, with genuine help afforded to these victims and exposure through the media."*³⁸

³⁴Ibid, Nur Ul Huda, Former Inspector General of Police, Bangladesh.

³⁵Ibid, Mathews Philip, South India Cell for Human Rights Education and Monitoring, Bangalore.

³⁶Ibid, Basil Fernando, Director, Asian Human Rights Commission.

³⁷Ibid, I. A. Rehman, Secretary General, Human Rights Commission of Pakistan.

³⁸Ibid, Kishali Pinto Jayawardena, media columnist & advocate, Consultant, Law and Society Trust, Colombo.

*"One of the ways in which we can approach police reform is to shift the paradigm. Move from a policing paradigm to community or public safety paradigm, with community safety as the key. It requires a number of stakeholders other than the police and allows us to bring in CSO's in a cooperative relationship."*³⁹

*"Control, information and service delivery are just some of the services expected from police, which are often too onerous for them to handle effectively. CSO's can meaningfully interact with police at the station level to improve service delivery. Training becomes irrelevant when it is only theoretical. It only touches a small percentage of the total population. It is not a solution. The training input must come into modernising certain processes in delivering these services."*⁴⁰

The virtues and benefits of greater collaboration between the police and CSO's were detailed by a number of conference attendees. It was widely held that police professionalism can be greatly improved if CSOs were to be more involved.

*"The problem with training is that there is an elaborate syllabus in police manuals that include all these issues about human rights, sensitivity, etc... but which the police treat differently when in the field. CSOs have an important role here, not merely confined to finger pointing. CSO's major role is to create public opinion for the need for police reform because even after 10 years of struggle through public awareness and judicial intervention, there is a strong resistance from the government and the police to change. So despite the Supreme Court directives and despite other media interventions, the police have not changed and mindsets are still indifferent to the process."*⁴¹

*"From my long experience in the NHRC, NGOs and police have to work in tandem. We've seen how NGOs have helped the police in getting information, perform checks etc... There is enormous scope for doing this work, particularly now with reform stalled; civil society can play an important role."*⁴²

*"Civil Society in India has to go full throttle constantly because we need people with credibility to join us to force the government's hand in pushing for reform."*⁴³

³⁹Ibid, Sean Tait, Coordinator, African Policing Civilian Oversight Forum.

⁴⁰Ibid, Jacob Punnoose, Director General of Police, Kerala Police.

⁴¹Ibid, K.S. Dhillon, Indian Police Service (Retd.).

⁴²Ibid, Sankar Sen, Indian Police Service (Retd.).

⁴³Ibid, J.F. Ribeiro, Indian Police Service (Retd.).

Critical factors or challenges need to be assessed prior to such engagement by CSO's:

*"In our (South Asian) societies, there is a happy assumption that the Government has a lot of public support for activities like extra-judicial killings, torture and such. Society does not support these activities, but I do not think we have any empirical evidence one way or the other, and certainly not on occasions of ordinary cases, non-terrorist cases and such."*⁴⁴

*"The various levels at which civil society can engage include the executive, Parliament, independent oversight agencies and the judiciary. There are skills that civil society needs to acquire to move this forward – technical, legal, budgeting, and the ability to build an organisation with credibility. They also require process skills which I think are critical, such as recognising the importance of dialogue, build confidence, resolve conflicts, conceptualise rights and norms, and facilitate expertise. The CSO must go beyond denouncing and seek to be an ongoing source of influence. If you are able to gain ground on one issue you must keep it sustained. Local ownership is desirable in the security sector reform and explicitly involves civil society."*⁴⁵

What is the best way to engage? Does a CSO gain easier access by being non-confrontational? Engagement must be purposive and continual to make changes happen and to create a harmonious relationship between the CSOs and the police. The police most often do not take kindly to human rights jargon so it is imperative that the CSO engaging with them has the requisite technical knowledge of what better policing actually entails in order for them to have credibility with policing organisations. This was found to be true in the Maldivian context.

*"Recently we have decided to change our stance from confrontational and try to cooperate with the police and engage with them to ensure that there is a better cooperation between the two. We have asked the Maldives Police Service to join us to celebrate Human Rights Day this year with the public. The police also invited the Maldivian Detainee Network to make a presentation. They have expressed an interest in trying to bring the police to the public and being a CSO, we can also take the public to the police and bring those together. This is a good way of getting the police to open their doors to us."*⁴⁶

Any engagement must however be entered into with prior careful planning and CSO's should remain true to their role whilst this engagement is ongoing.

⁴⁴Ibid, Sara Hossain, Bangladesh Legal Aid and Services Trust.

⁴⁵Ibid, Sean Tait, Coordinator, African Policing Civilian Oversight Forum.

⁴⁶Ibid, Xienna Saeed, Maldivian Detainee Network.

*"It is important to make sure that this engagement is done in a fair way. In many countries there are CSO's that focus on victims of crime and those that focus on human rights. For the police it is a lot easier to deal with those who focus on victims of crime; CSO's that do general work are pro-police and anti-perpetrator so it's easier for police to engage with those CSO's than it is to deal with the CSO's that are critical of them. Should NGOs be a part of policing? There are parts of the world with high crime rates where NGOs carry out policing functions as part of community policing. My opinion is against that – a police officer is trained to be a police officer and has powers and authorities to do this work and he/she should be held accountable. The public does not have these powers and training, so they should be very clear about what the role of an NGO is and what the role of the police is."*⁴⁷

2.6 Lack of Political Will for Police Reform

The success of police reform in the entire South Asian region is directly linked to the political will to effect such changes. In Sri Lanka, the power of the President to issue regulations, emergency acts and provisions has created a political environment where almost complete impunity exists for the actions of security and law enforcement agencies.⁴⁸

*"The government itself is involved in exploiting the police for their own purposes and much of the violence that the police have engaged in recently has been done for political ends in favour of the local politicians of the ruling party. The political patronage that the government has granted the police remains the major cause of their indiscipline and their engagement in serious crime."*⁴⁹

On the question of political interference, the Jayalath Committee reiterated the concerns and recommendations of the Basnayake Commission. However, nothing was done in the aftermath of these reports to minimise the illegitimate political interference in police functioning.

"There needs to be some political direction to steer towards police reform. In certain countries the police are expected to behave in a certain way (i.e. they are not expected to investigate into a crime because politicians are involved and they are subsequently prevented from carrying on

⁴⁷Ibid, Anneke Osse, Consultant and Expert on Police Reforms.

⁴⁸ Anderson M.K., and Fernando B. (2009), *The Phantom Limb – a study of police torture in Sri Lanka*, 1 December 2009, p.19: <http://www.ahrchk.net/pub/pdf/ThePhantomLimb.pdf> as on 1 May 2010.

⁴⁹ Asian Human Rights Commission (2010), Press release, 28 April 2010: *Sri Lanka: Anger about policing and unconvincing government excuses.*

investigations). *Corruption investigations are usually prevented for obvious reasons.*"⁵⁰

This problem of political interference, or lack of political will to effect reform, is endemic throughout the South Asian region.

*"Why does policing remain a less than respectable profession in this part of this world? The police do not have powerful friends, they have more powerful enemies. In Bangladesh, there is nobody now to steer police reform. It so happened that the Caretaker Government took the initiative for police reform. The recently elected 10-month old government does not talk about police reform – it is not a priority."*⁵¹

*"The reason why reforms are not taking shape is because the political leadership is not compelled to do it because there is no public pressure to do so. In a democracy, without public pressure, nothing will happen."*⁵²

*"The Police Commissioner is not running the police force any longer, the Home Minister is! The Home Minister should be in uniform because he is telling the police who to prosecute and who not to prosecute."*⁵³

3. Oversight

Democratic policing requires that the police in South Asia become more transparent, accountable for any wrongdoing, make filing a complaint easier, and take steps to ensure better performance. Countries across the world have sought to augment internal accountability systems with external or civilian oversight mechanisms to complement existing mechanisms. CSOs can assist in monitoring, overseeing and reviewing police misconduct. Oversight initiatives that have been successful elsewhere may be relevant for South Asia. Where Sri Lanka is concerned, the SLP is in desperate need of such oversight due to the demands of modern day Sri Lanka. While having to account for the actions of the past, it is also incumbent on the SLP to look towards the future and open its doors to the public so that better policing can be the outcome.

3.1 Police Accountability Mechanisms

External accountability mechanisms and/or non-partisan oversight bodies are imperative because their independence ensures a certain level of objectivity when reviewing police conduct.

⁵⁰CHRI Roundtable Conference on Police Reforms, 2009, *Basil Fernando, Director, Asian Human Rights Commission.*

⁵¹*Ibid, Nur Ul Huda, Former Inspector General of Police, Bangladesh.*

⁵²*Ibid, Kamal Kumar, Indian Police Service (Retd.).*

⁵³*Ibid, J.F. Ribiero, Indian Police Service (Retd.).*

"On the question of oversight, independent oversight does not exist in 90% of the world. Human Rights Commissions, Ombudsmen etc... are supposed to be independent but in practice, this is quite rare. The United Kingdom is an example often referred to. The Nigerian Police Service Commission, the Northern Ireland Ombudsman and the South African body are good examples but they are very few. You have to be realistic. So how realistic is it to call for an independent body if such a thing is so rare?"⁵⁴

The process that occurred in Hong Kong, could serve as a model for South Asian countries:

"Hong Kong had the standards of policing we have in South Asia, but not since 1974. This is because of the development of an independent commission against corruption which was an institution outside the police that effectively controlled the police on the issue of corruption. When the rules regarding corruption changed, behaviour of the police changed and now you can engage with them on various issues. But in lots of countries, the possibility of such engagement does not yet exist."⁵⁵

In Sri Lanka, the 17th Amendment provided for the creation of a National Police Commission (NPC). Composed of seven civilians selected by the President from recommendations made by the CC, the mandate of the NPC is to insulate the police from political interference and investigate public complaints against the police. The NPC appointments are for a three-year term and members will be required to step down if they decide to hold a political office.⁵⁶ The powers of the NPC include the appointment, promotion, transfer, disciplinary control and dismissal of police officers other than the Inspector General of Police (a power that shall be exercised in consultation with the Inspector General of Police). Although the NPC robustly utilised this power during its first term, the NPC largely abdicated this oversight role when new members during the second term were political rather than independent appointees.

In the 2009 *Nandapala Case*, the Supreme Court of Sri Lanka criticised the NPC for its failure to investigate the complaint initially made by the petitioner. It was held that,

"It is inexplicable to this Court, given their receipt of a copy of the Petition and the existence of this self-imposed mandate to investigate all such complaints, why the National Police Commission failed to appoint an independent inquiring officer to investigate this case. This failure on the part of the Commission, the ultimate disciplinary authority of the Police, is an unacceptable 'abdication of responsibility

⁵⁴Ibid, Anneke Osse, *Consultant and Expert on Police Reforms*.

⁵⁵Ibid, Basil Fernando, *Director, Asian Human Rights Commission*.

⁵⁶ Article 155(A), *Constitution of the Democratic Republic of Sri Lanka, 1978*.

* Ed Note; this quote is by Juvenal not Plato.

which leads us to repeat (sic)*Plato's timeless question: "Quis custodiet ipsos custodes?" or "Who will guard the guardians?"⁵⁷

Article 155G(2) of the Constitution requires that the NPC establish a procedure for entertaining, investigating and redressing complaints against police personnel and the police service. However, an effective public complaints mechanism did not initially exist because the NPC referred complaints to the IGP, who in turn referred the cases to the Special Investigation Unit.⁵⁸ Instead, during its first term, the NPC appointed nine district coordinators (mostly retired policemen) to deal with complaints.⁵⁹ During that year the NPC registered 1078 complaints; only thirteen were charge sheeted and one was interdicted.⁶⁰

At the beginning of 2007, the NPC finally gazetted rules for the Police Complaints Investigation Division (PCID). However, the rules were not nearly as progressive as had been hoped. Rule 17 stipulated that officers found responsible in the investigations will continue to remain in the hands of the IGP "in accordance with applicable departmental procedures" rather than referred for rigorous legal sanctions.⁶¹ After the creation of the necessary rules, the NPC received 1,216 complaints from the public against police officers between January and June 2007. However, only in four cases were the suspects formally charged with crimes, and in seven instances policemen were given warnings.⁶² Although the institutions are in place and the requisite rules have been established, it appears that there is little political will to aggressively pursue the cases brought before the NPC.

"I have a lot of meetings like this where people come from all over Asia and I constantly ask, can any of you give me one example of a working oversight system in your country? So far, I have not come across anyone who says, with a sense of confidence, yes we have this system. We are talking about something that does not exist. We can study models but the problem we have is to create a police that is fundamentally credible who will begin the function of policing that will later be subject to oversight."⁶³

⁵⁷Supra n21.

⁵⁸ Weliamuna, J. C. (2006), *In Pursuit of 'Absolute Integrity': Identifying Causes for Police Corruption*, Transparency International – Sri Lanka, p. 76.

⁵⁹ Pinto-Jayawardena, K. (2007), "An Unfulfilled Promise: Critical Scrutiny of the National Police Commission of Sri Lanka", *LST Review*, Volume 18, Issue 238, August 2007, p. 17.

⁶⁰ National Police Commission (2006), *Annual Report 2006*, p. 37.

⁶¹ The precise wording of Rule 17: "At the conclusion of an investigation, if it recommended that disciplinary action or prosecution against a police officer shall be instituted, the IG or DIGG, as the case may be, shall be notified along with evidence recorded at the investigations and draft charges, to initiate forthwith such disciplinary action according to departmental procedure or prosecution against such police officer". See Gazette Extraordinary 1480/8 – 17 January 2007.

⁶² Human Rights Watch (2008), *Recurring Nightmare: State Responsibility for "Disappearances" and Abductions in Sri Lanka*, v.20, no.2(c), p. 101: <http://www.hrw.org/en/reports/2008/03/05/recurring-nightmare-0> as on 1 May 2010.

⁶³ CHRI Roundtable Conference on Police Reforms, 2009, Basil Fernando, Director, Asian Human Rights Commission.

When complaints of police misconduct are initiated by lawyers or human rights organisations in Sri Lanka, they are usually investigated by high-ranking officers belonging to the same areas where the abuses have taken place. In the unusual event that a matter relating to a complaint against a police officer is actually taken to court, the judiciary frequently fails to hold the wrongdoers accountable. A trend has developed in Sri Lanka, whereby the senior police officers allow officers of the junior ranks to go unpunished for their indiscretions and at the same time officers of the junior ranks continue to ascend within the system through promotions. In the *Nandapala Case* the Court was dismayed at the fact that the main accused, even after the Superintendent of Police of the area concluded that he was unfit to continue as a police officer, was only relegated to the reserve police (and there too, permitted to ascend in rank). The Court stated,

*"That to this day, the first Respondent is serving as a Police Sergeant in Maharagama and no action has been taken with respect to any of his transgressions is a testament to the systematic failure of the police force to police themselves"*⁶⁴

The Court was of the view that supervisory failure is an inevitable result of the lack of practical and effective guidelines to regulate the upper echelons of the police force.

3.2 International Models for Monitoring Custodial Detention

Two models of visiting those in detention are primary in this regard. The importance of these models lies in their independent nature and the methodology employed.

The International Committee of the Red Cross (ICRC) Model – Visiting Scheme

- Upon entry to a police station, an introductory meeting is held with the detaining authority where visitors explain their role.
- The complete tour is taken with the authorities so they see that visitors have not made any false claims.
- Visitors are entitled to private and confidential talks with detainees.
- At the end of the visit, a second meeting is held with the detaining authority to explain what has been found, what is going to be reported, and any constructive comments the visitors wish to make.
- Written confidential report created and furnished to the detaining authority. What was said in person is what is written down and will not be amended later.

This model has been in effect since the 1950s and has been tried in over 70 countries. It has been found to work in many different contexts. This is a tried and tested model.

⁶⁴ Supra n21.

The Lambeth Model – Lay-Visiting Scheme

First recommended in the 1981 Scarman Report following a period of intense riots during the 1970's and 80's, a pilot scheme was floated in 1983. In 1985 the Lambeth Model was adopted where members of the public would visit police stations. In 1992, according to the Home Office Circular 4192, the scheme became a National Guidance. In 2001, fully independent custody visiting was instituted followed by the 2002 Statutory Obligation on Police Authorities (Police Reform Act 2002) to implement this scheme.

The main aims of the scheme are the following:

- Protection to detainees (independent scrutiny of practice).
- Community reassurance of good practices.
- Improve community understanding of police procedures.
- Strengthen confidence in police practice and professionalism.
- Visitors are independent and drawn from local community.
- Visitors have no involvement in the criminal justice system.
- No interference in the investigation or judicial process.
- Complete access to all areas and detainees.
- Fully funded scheme including reasonable expenses.
- Visitors receive both practical and theoretical training and serve a probationary period.
- Entry by official ID card.
- Regular visits by pairs of visitors.
- Visits only in their local area.
- No interference in investigation.
- Unhindered access to all areas and facilities.
- Reports made of each visit.

The following was the discussion that delegates had on the lay-visiting scheme.

"The NHRC created such a scheme (similar to the lay visiting scheme), recommended it to the government and even tried to introduce it. The police vehemently opposed this scheme with the justification that political leaders may try to interfere in police matters through these schemes, thereby we suggested that only NHRC members are allowed to visit the lockups and check on the conditions of detainees. Police stations may be in a terrible

state but that does not justify human rights abuses, thereby an unannounced visit may just serve the purpose."⁶⁵

*"All visits are surprise visits. If you are the supervising officer and you do not know when someone is going to come in, that is even better"*⁶⁶

The success of a scheme like the lay-visiting model will depend upon the vigilance of the police and CSO's, especially in regards to the criteria laid down for being a visitor under the scheme. The scheme of lay-visitors should be applied but only after careful consideration because even a scheme like this can become a racket. Ideally, the non-official visitors should be self-elected, but in terms of representation they should be representatives of institutions (for example, journalists, lawyers etc...). Long term non-official visitors lead to corruption, as they develop vested interests in the area they are supposed to monitor. They should therefore apply for a shorter period, say three or six months."⁶⁷

*"When you have this lay visitor system, what is the criteria you set down for choosing these visitors? In a society as diverse as in South Asia, there are complexities that are not present in other societies. What do you do to get the right people?"*⁶⁸

The models illustrated above are applicable in almost any context as they are very simple and straightforward schemes. However, there were still challenges in implementing this scheme in India.

*"In Western societies, the principle of equality permeates at every level. In India this concept of equality does not exist. No one here believes we are all equal at birth. Thus, in order for us to have a scheme similar to the lay visiting model, then we need to have that sense of equity for it to work."*⁶⁹

Similarly, such schemes would be very difficult to implement in Sri Lanka since there are few systems in place for such an undertaking to operate in and the deep divisions between the Sinhala and Tamil communities almost guarantee that cross-cultural participation in lay visiting schemes would not occur.

"In Sri Lanka we have what I have termed the 'phantom limb complex', whereby amputees imagine that they still have their lost arm. Sometimes they get pains in the arm that they no longer have, so doctors have to treat it

⁶⁵ibid, Sankar Sen, *Indian Police Service (Retd.)*.

⁶⁶ibid, Leonard Gill, *Delegate, International Committee of the Red Cross*.

⁶⁷ibid, I.A. Rehman, *Secretary General, Human Rights Commission of Pakistan*.

⁶⁸ibid, Maja Daruwala, *Director, Commonwealth Human Rights Initiative*.

⁶⁹ibid, Jacob Punnoose, *Director General of Police, Kerala Police*.

*and give an injection in the reflected arm so they get a mirror image and some respite. Are these not the exercises we are engaging in? The systems do not exist. We are talking about good oversight systems but that should come once systems of policing are actually in place In Sri Lanka, the 1865 Police Ordinance is still in place. It had some form of complaints mechanism and those complaints mechanisms were based on the judicial system. But now, judicial oversight has failed completely. When judicial oversight fails do you really think civilian oversight will work?"*⁷⁰

3.3 Performance Indicators

The value of conducting an independent crime survey as a form of oversight in the region is also important. This kind of survey could be part of an independent oversight mechanism to monitor the basic functioning of police organisations in South Asia, including the SLP.

*"The British crime survey is an independent exercise in the U.K. Independent crime reporting has been found to be much more effective than the FIR system. So if I say in England that my car was broken into, I do not need to know who did it. I simply report it to the police and they will decide whether to investigate the matter or not. That gives you a more reliable baseline on how you become more or less efficient."*⁷¹

The majority of the constabulary in South Asia are not familiar with performance indicators, benchmarks, baselines etc.... In the region generally, the efficiency of the police in the region is measured by the crime rate of the area concerned. A higher crime rate could be construed to mean that the supervising officer has been more diligent in registering complaints. However, it is more likely to be viewed by local politicians as evidence of poor policing. These indicators and baselines are geared more toward a crime-prevention format and if followed, can have a positive impact on police performance.

*"In Sri Lanka, the police have never been independent. This is very unfortunate. Even performance auditing is never done. We never know what happens to the money earmarked for policing."*⁷²

"At the moment, I suspect that (in Asia) you will get a pat on the head and a better job if you solve crime in a particular way. But that may not be the crime society wants you to solve. So you need to have performance indicators. If the government decides it wants officers to be more community-oriented, then a performance indicator will give more value to beat officers. If beat officers improve within the overall budget, any initiative at the local level to involve the community in oversight is rewarded

⁷⁰Ibid, Basil Fernando, Director, Asian Human Rights Commission.

⁷¹Ibid, Leonard Gill, Delegate, International Committee for the Red Cross.

⁷²Ibid, J.C. Weliamuna, Director, Transparency International – Sri Lanka.

*by the system. In a sense, to rely on the judiciary is literally a case of last resort. I suspect there is a lot of evidence that the judiciary could ignore to a large extent, whatever the reason may be. I would argue a local solution to a local problem based on accurate baseline and performance indicators will have a more positive effect at the local level than piling on more cases in the judicial system."*⁷³

*"The other point I want to make is about victim surveys. Crime statistics are important to deploy resources accurately, but what we have seen in South Africa (given the crime rates we do face in the region) is that direct responsibility is placed on the police to resolve all crimes even when some of those crimes cannot be resolved solely by the police (such as domestic violence, economically driven crimes, drug addiction etc...). These crimes need different strategies. We need to move away from crime statistics. We need to find a way to reengage ideas related to community safety and consider other issues wherever the criminal justice system is broken."*⁷⁴

An example of a crime survey conducted in the region is the one conducted by the Police Reform Programme (PRP) of Bangladesh. From May to December 2006, in eleven model police stations established under the PRP, the survey was conducted in seven districts, two metropolitan units and in two other randomly selected areas. More than 6,000 respondents were included in the public attitude baseline survey which comprised of households, police personnel and other professional groups like lawyers, teachers, doctors, business persons, women leaders/professionals, elected local representatives, civil society, youth and media representatives. The majority of respondents from households (72-77%) and the police (72-75%) opined that external influences obstruct the performance of the police. About 50-71% of police persons consider hoodlums, fear of being transferred, political leaders/cadres, local pressure groups, fear of being implicated in cases, and pressure from groups like doctors, lawyers, trade unions, as the most frequent sources of influence or interference.⁷⁵

"Crime statistics should not simply relate to counting the numbers of reported crimes to police, but should be done in a more sophisticated way that uses methodologies, official crime statistics, and interviews/surveys about whether a person has been a victim of crime (but has not reported the same to the police). In Holland they simply ask people in a completely confidential survey whether they have committed a crime. A crime survey is not just about how many crimes are reported but needs a diverse methodology. There have not been any independent crime surveys in South Asia as such, but in Thailand and Nepal they've been done. What do we mean by independent? Is it a guarantee for quality? In some countries,

⁷³Ibid, Leonard Gill, *Delegate, International Committee for the Red Cross.*

⁷⁴Ibid, Sean Tait, *Coordinator, African Policing Civilian Oversight Forum.*

⁷⁵Police Reform Programme website, *Public Attitude Baseline Survey. Major Achievements:* <http://www.prp.org.bd/MenuMA.htm> as on 17 May 2010.

police do their surveys in a qualitatively good way. It should not just be about crimes because those statistics can be easily manipulated; it should rather be about the public's confidence in the police."⁷⁶

Ideally, the framework for performance indicators should encompass four main areas of policing:⁷⁷

1. Service response.
2. Public reassurance and community safety.
3. Criminal justice and tackling crime.
4. Sound governance and efficiency.

The main aim should be to improve accountability at local and national levels through the publication of consistent and transparent performance information. This will support politicians, police authorities and the general public in their understanding of policing performance.

3.4 Possible Remedies

In order to properly mitigate police corruption, the opportunity cost for malfeasant conduct must rise.

*"If we want to improve oversight we first have to reduce corruption and malfunctioning. How am I going to stop the misconduct if the present opportunity cost of corruption is so low in countries like ours?"*⁷⁸

Where already established bodies such as the Police Complaints Authorities and the NHRC in India are concerned, there may be concerns that the creation of new independent bodies may not work since even the existing systems do not work.

*"The more realistic thing to do is to improve existing bodies so they become fair and effective. Maybe it is a more achievable goal in India to improve the NHRC than it is to establish a new body that is unlikely to come to existence. If existing bodies cannot function, what is the likelihood that new bodies will function effectively?"*⁷⁹

⁷⁶CHRI Roundtable Conference on Police Reforms, 2009, *Anneke Osse, Consultant and Expert on Police Reforms.*

⁷⁷The Scottish government website, *Scottish Police: Performance indicators for police:* <http://www.scotland.gov.uk/News/Releases/2007/03/20092548> as on 5 May 2010.

⁷⁸CHRI Roundtable Conference on Police Reforms, 2009, *Nur Ul Huda, Former Inspector General of Police, Bangladesh.*

⁷⁹*Ibid, Anneke Osse, Consultant and Expert on Police Reform.*

Should police engage first in this process or should civil society? What prevents the police, on its own initiative, to open their doors to civil society when it comes to oversight? Many police officers say that the law does not allow this, and that only a good personal rapport with police officers can push the process.

*"Who has to change first, the police or the public? It is not as simple as that. Police have to be consistent in what they do and there are enough sensible forward thinking police officers in South Asia who understand the concept of reassurance (i.e. police starting to do things that reassure the public and the public responding to that in a gradual way). It will not happen next week or the next year. But this is a generational process where police must make the first step."*⁸⁰

Since police reform is a long and winding road, where reforms mostly occur in fits and starts, it is very critical for CSO's to identify and cultivate allies on this issue of police oversight.

*"We have had a mega donor driven project in Bangladesh for over 6 years, now into its second 5-year stage. We have brilliant people working on it like our former IGP. But they are working with the political reality which is completely hostile, and as civil society we have to acknowledge that within that space our role becomes increasingly critical at this stage. Who are our allies in this? Maybe there could be allies within the media. We need the media to highlight the difficulties in the political environment, but also to highlight that people are not okay with this kind of brutalised policing and that it affects the society directly. I think the problem now is that we, as CSO's, reflect these sort of hardcore human rights views and we stand by our views without enough public resonance. We are not communicating to the police and the government that there are actually people behind us. Instead, we are marginalised as a bunch of civil society types who have their own agenda without public support. So I think we need to look at what we are speaking and which face we are speaking from. In Bangladesh, we had the benefit of human rights organisations which had worked very closely with development organisations, peoples groups with a wide reach taking up issues of day-to-day abuses that go on. We have to make what we do fit in with the constitution of those who want reforms."*⁸¹

⁸⁰Ibid, Leonard Gill, Delegate, International Committee for the Red Cross.

⁸¹Ibid, Sara Hossain, Bangladesh Legal Aid and Services Trust.

4. Community Policing

Community policing initiatives have gained currency across the world and are becoming the norm in many democratic countries. Community policing is intended to build public confidence in the police and ensure that the police are accountable to the law and to the community it serves.

What does community policing really mean?

- Is it a public relations exercise by the police?
- Is it just an intelligence gathering mission?
- Who is it for? Is it for the community or for the police?
- Is it just another donor driven project?
- What are we trying to achieve through community policing?

Two examples of successful community policing initiatives in South Asia were discussed during this session.

4.1 Janamaithri Project – India

The Janamaithri project is an initiative by the Kerala police in association with the Home Department of the Government of Kerala.⁸² This project is currently in its second phase.

There are three main components to this project.

1) Janamaithri Suraksha Samithi

In every police station under the project, a “Janamaithri Suraksha Samithi” is formed. The “Samithies duty” is to implement the Janamaithri Suraksha project within the limits of the respective police station. With the help of the Station House Officer, the Circle Inspector may suggest the names of persons to be included in the Samithi. The Sub-Divisional Police Officer may examine the names and the same list will be submitted to the District Police Superintendent (SP). After due consideration, and such consultation as may be deemed proper by the SP, he/she will constitute the Samithi and inform the concerned persons. The Samithi should reflect a proportional representation from among women and the Scheduled Castes and Tribes within the area. Respectable citizens from the locality who are active in the educational and cultural field should be included in the committee. Those that may be asked to sit on the committee include high school/college headmasters, teachers, retired officers, ex-servicemen, corporation or ward councillors, merchants, NGOs, workers’ representatives, residents’ association office-bearers, postmen etc.

⁸² Kerala Police website - *Janamaitri Proejct*: <http://www.keralapolicehistory.com/jmat1.html> as on 5 May 2010.

The Samithi should have at least ten members and preferably should not exceed twenty five members. From amongst the Samithi members, the SP may nominate one member as the Convener. The meetings of the Samithi will be chaired by the Circle Inspector of Police and the Station House Officer will officiate as its Secretary. An Additional Sub Inspector or an Assistant Sub-Inspector from the Police Station may be designated as the Community Relations Officer(s) by the Station House Officer. The Samithi should meet at least once in a month, at a pre-announced date and place. In the meeting, the public residing in the beat area (or of other areas, if they so desire) can attend and give their suggestions. The minutes of such meetings should be prepared by the Station House Officer (Secretary) and a copy of the minutes should be sent to the Deputy Superintendent of Police and the SP. The supervisory officers should examine the minutes, assess the quality of the meeting, and in case it is felt necessary, provide advice to the Station House Officer. The Sub-Divisional Police Officers may attend such meetings once in three months and the SP may attend such meetings at least once in a year. Apart from the monthly meetings, the Samithi may hold such other meetings as and when need arises.

2) Janamaithri Beat

A local area which includes around one thousand houses may be considered as a "Janamaithri Beat". A police station jurisdiction may be divided into as many Janamaithri beats as required. One beat area should not exceed three square kilo meters. A beat officer should be able to cover a beat within a few hours time. The beat officer should know not only the households but also other establishments in the area. He should constantly interact with service providers in the area like postmen, linemen, and milkmen because they are the persons who frequent the area practically on a daily basis and should have constant channels of communications open with them at a personal level. Each Janamaithri beat will be in the charge of an Assistant Sub-Inspector or a Head Constable. The serving of summons, execution of warrant, locating the address, handling the complaint box and all other duties to be performed by the police in the area will be coordinated and done by the beat officer, subject to the supervision by the Station House Officer. At least thrice a week the beat officer should reach a pre-announced place at a pre-announced time so as to remain in contact with the public (as well as to receive complaints from them).

3) District Level Advisor Committee

At the District level, an Advisory Committee headed by the District Superintendent of Police should be formed to ensure proper supervision regarding the functioning of Janamaithri project in association with local politicians, who may be included in this committee. The committee may convene a meeting once in three months and review the working of Janamaithri Suraksha Samithies of the concerned District and give necessary suggestions and instructions to improve their performance.

The project has resulted in improved perception of the police and has made the Janamaithri constables a real part of the community in their beat areas. The concept is presently being

implemented in 41 police stations across the state. The government has decided to extend this project to 100 police stations and will strengthen the system in the existing 41 stations.⁸³

4.2 Citizen Police Liaison Committee (CPLC) – Pakistan

Initially constituted to deal with rampant kidnappings that took place in Karachi in the late 1980s and early 1990s, the CPLC has evolved into an entity that helps citizens register FIRs, tracks lost/stolen mobile phones and vehicles, and conducts its own patrols in demarcated areas.⁸⁴ Expansion of the CPLC took place at the District Level in January 1993. Initially five district level committees were established in Karachi through Notification No.VIII(3)SOJ/90 dated 4 January 1993, with seven members each drawn from a cross-section of apolitical citizens as recommended by the Chief of the CPLC to the Governor of Sindh. The District members were conferred the power of Justice(s) of Peace (J.P.). Since its inception, the CPLC has handled over 700 cases of kidnapping for ransom with the application of modern techniques and scientific methods of investigation. The CPLC is expected to:

- Assist the police in investigating matters of kidnapping for ransom.
- Help citizens in registering a First Information Report (FIR) when facing difficulty.
- Record and relay information pertaining to car thefts, dacoity, kidnappings, accidents and all other matters which require police assistance.
- Monitor the return of recovered stolen vehicles to their legal owners.
- Obtain Final Report Certificate (FRC) for insurance claims on stolen property.
- Obtain medico-legal reports from medico-legal officers and police surgeons in government hospitals and to follow-up on investigations/citizens complaints.

The CPLC also worked at upgrading neighbourhood security schemes. The CPLC is sometimes regarded as a positive development since affluent neighbourhoods are able to effectively manage their own policing needs by providing resources to the police who are then able to focus their attention on less affluent areas of the city. However, the CPLC Karachi has often been criticised for catering to the upper middle class of Karachi and doing very little for the vulnerable sections of society. The success of the CPLC in Karachi resulted in its inclusion in the Police Order 2002 and the Sindh Police Rules.⁸⁵

⁸³ (2010) *Jana Maitri to be extended to more police stations*, *The Hindu*, 2 April: <http://beta.thehindu.com/news/states/kerala/article381614.ece> as on May 5 2010.

⁸⁴ Citizen Police Liaison Committee (Karachi) website, *Home page*: <http://www.cplc.org.pk/> as on 4 May 2010.

⁸⁵ Notification No. VIII (3)/SOJ/90, Police Rules, 1990 (Sri Lanka).

4.3 Community Policing in Sri Lanka

The creation of Citizen's Committees in the Ratnapura district provides a successful template on how to include the community in making neighbourhoods more secure.⁸⁶ In order to assist in better coordination of security, safety, and crime prevention, The Asia Foundation's Colombo office, with financial support from the British High Commission and the Conflict Prevention Pool of the UK government, has launched a pilot community policing programme in Kandy District.⁸⁷ This first meeting in Pussellawa is one of 12 ongoing district-wide pilot forums, where invited residents and community leaders share their needs for security and protection, and local officers disclose the myriad of challenges they face performing their duties.

4.4 Challenges Confronting Community Policing in South Asia

Imperfections seen in police culture may often be mirrored in society. However, it is the policing culture that requires change.

*"I do not think, and I do not believe, that the police sub-culture in South Asia reflects the ordinary goodness of societies in places like India, Pakistan, Bangladesh or Sri Lanka. I would not like to be clubbed there simply because the sub-culture itself produces people after three years of training, who perhaps entered as ordinary citizens but suddenly became bad. This is my concern, the sub-culture. We cannot believe that entire populations in our countries are of that same grain."*⁸⁸

Community policing initiatives are relatively inexpensive, when measured against other reform measures. However, a sense of trust must be established between the police and their communities and the police should look to prevent crimes, rather than simply detect them.

"Human rights can only exist in a framework where we have a safe society. Crime is an infringement of my human rights. So therefore human rights can only exist in a framework where there is public safety, which can only be ensured by an efficient and effective police force that needs intelligence. And, so how do we get more intelligence? We normally pay for it. We pay informers to give us the best information because the best information is drawn from the community. We must become part of the community, not apart from the community. For example, the U.K. riots show that we must

⁸⁶ Weliamuna, J. C. (2006), *In Pursuit of 'Absolute Integrity': Identifying Causes for Police Corruption*, Transparency International – Sri Lanka, p. 67.

⁸⁷ The Asia Foundation (2010), "Pilot Community Policing programme, media slideshow": <http://asiafoundation.org/in-asia/2010/04/28/sri-lanka-post-civil-war-police-reform-and-public-security/> as on 29 April 2010.

⁸⁸ CHRI Roundtable Conference on Police Reforms, 2009, *Maja Daruwalla, Director, Commonwealth Human Rights Initiative.*

*first culturally change. Let us not talk about police reform but about change in the police culture through increased interaction with the public."*⁸⁹

Community policing is a wonderful way for the police to reach out to the community and gain a much more comprehensive knowledge of the problems at the ground level. The success of any community policing initiative is contingent on the commitment exhibited by concerned parties. However, there is a danger that such efforts can cause damage to the community if it falls prey to politicisation. Politicians should not be encouraged to actively participate in these initiatives. Rather, they should provide an assisting role to contribute towards the institutionalisation of the initiatives and lend their credibility to the projects. The other major threat comes from radical elements in society, who if included, can quickly turn a community policing initiative into a vigilante group which ends up doing more harm than good to the community.

*"The debate on community policing is taking us all over, but this should not mean that this becomes an infringement of people's privacy in the community."*⁹⁰

*"We use this language of deviance and anti-social activity and how are we to make sure that those persons will not be involved in community policing? Is there a risk that community policing will transform to a form of moral policing? In Bangladesh it was an abhorrent example when village tribunals were issuing fatwas to people all around. A couple of reports suggested that community police were active in these incidents, while other reports suggested that some community policing schemes merely stood on the sideline."*⁹¹

*"When you have a committed management who believes in community policing, it is possible for these projects to work. Therefore, I strongly believe that if the police management takes responsibility, they can effect positive change."*⁹²

5. Conclusions

Where Sri Lanka is concerned, the National Police Commission should operate independently and effectively. This would ensure an independent oversight body for the SLP. In fact, the *Nandapala Case*⁹³ outlines specific measures that could be undertaken by the NPC to improve policing. For instance, the judgment refers to the strengthening of the NPC and lays out suggested guidelines to ensure its proper functioning. The Court also recommended that

⁸⁹Ibid, Leonard Gill, Delegate, International Committee of the Red Cross.

⁹⁰Ibid, J.C. Weliamuna, Director, Transparency International – Sri Lanka.

⁹¹Ibid, Sara Hossain, Bangladesh and Legal Aid Services Trust.

⁹²Ibid, Anneke Osse, Consultant and Expert on Police Reform.

⁹³Supra, n21.

the NPC create a division within the SLP labeled “internal affairs” to ensure speedier investigations and quicker review in the event of alleged professional misconduct on the part of members of any rank in the police force.

The ongoing discussions on the future of Sri Lanka’s constitutional arrangements post-conflict will necessarily address the question of devolving police powers to the provincial councils (i.e. whether to do so or not). There are many avenues for police reform in Sri Lanka, and all of South Asia, if there is the requisite political will. However, as in Sri Lanka, there seems to be very little appetite in the region on the part of governments towards facilitating democratic policing.

REMINISCENCES OF MY POLICE DAYS...

*Tassie Seneviratne**

SOME EXCERPTS

First killings in Jaffna – the 1970's

The first victim of political assassination by the Tamil militants was the Mayor of Jaffna Alfred Duraiappah on 27 July 1975. This was followed by a string of assassinations of witnesses in the Duraiappah murder case. Under these circumstances, the investigations that ensued became a major challenge for the police. Inspector Bastiampillai of the Criminal Investigations Department (CID) who was especially assigned to follow up investigations in this case took great pains and incurred many risks to follow up on leads received from informants. He was successful to the point of arresting some key militants and was pursuing investigations with much hope to arrest the main suspects when he and his team was butchered and the mutilated and rotten bodies were found in an abandoned well in the Madhu jungles, weeks later.

Inspector Bastiampillai's killing became an early lesson to all police officers investigating the LTTE outfit. One or two suspects in Inspector Bastiampillai's custody had turned informants and had won his confidence by giving information about terrorist hideouts that led to more arrests and even recovery of incriminating material. On this fateful day in 1978, Inspector Bastiampillai and his team were led by a trusted informant to a meeting place of a group of terrorists who were overpowered and arrested by the police team. Quite exhilarated by his success, Inspector Bastiampillai had been talking to the militants who had been made to sit on the ground surrounded by the armed police team, when a much larger circle of heavily armed terrorists, surrounded the police team, overpowered and brutally massacred them. ...

Communal Violence and the Sixth Amendment – August 1983

In July 1983, thirteen soldiers were killed by the Liberation Tigers of Tamil Eelam (LTTE) in Jaffna and civil riots broke out immediately throughout the country. The Janatha Vimukthi Peramuna (JVP) that had been raring to escalate trouble since the Vaddukodai Resolution, exploited the situation to foment further communal violence. Acting firmly, the Government proscribed the JVP and with a view to appeasing the Sinhala extremists countered the Vaddukodai Resolution by bringing in the Sixth Amendment to the Constitution in August 1983. Article 157A inserted under this amendment "prohibited directly or indirectly, in or outside Sri Lanka, supporting, espousing, promoting, financing, encouraging or advocating the establishment of a separate State within the territory of Sri Lanka". Severe penalties such as civic disability and forfeiture of movable and immovable property were also stipulated. The Sixth Amendment also provided for an oath of allegiance that was required by the

* The writer is a retired Senior Superintendent of Police (SSP), Sri Lanka Police. These extracts are from a forthcoming book due to be published shortly.

Seventh Schedule to the Constitution The TULF members of Parliament declined to take the oath of allegiance in Parliament and upon finding haven in South India (Chennai) gave an opportunity to the Tamil militants to become self-appointed representatives of the Tamil people. The resulting armed conflict and acts of terrorism became a serious threat to peace and order in the country.

During this period, violence escalated on two fronts. The Rule of Law plummeted when President Jayewardene condoned the action of police officers found guilty by the Supreme Court for violating human rights. The President directed the State to pay penalties imposed by the Supreme Court on police officers and even granted them promotions. Worse followed when President Jayewardene openly condoned the stoning of houses of Supreme Court (SC) judges who had delivered judgments against errant police officers. Extra legal action by police officers thus encouraged by the highest executive of the country became rampant and police officers lost their bearings vis-a-vis the rule of law. This set a trend that continues to date with successive Presidents going even further to openly defy the Constitution for political expediency...

The Police as an instrument for striking terror

The Basnayake Police Commission Report of 1970 had pointed to the growing practice of employing the police as a force to strike terror into those who are required to do what does not fall into the ambit of police duties. The Commission was of the view that the police when performing such functions do not enjoy the protection of the law and would lay themselves open to be sued in the courts both in the civil forum and in the criminal forum. With such comments, the Commission had recommended that this practice of using the police as a terror force be forthwith discontinued.

In view of the above observations, a case in Pamunugama in which police officers were penalized for non-compliance with an order to 'strike terror' on a person with a view to induce him to pay-off in a civil transaction, will be of interest.

In April 1986, representations were received by me from influential persons to the effect that the Pamunugama Police had not taken appropriate action in regard to a complaint of 'Rape.' I visited Pamunugama Police and looked into the matter. An entry had been made on 03.04.1986, 'for future reference'. Though the wording of the statement alleged 'Rape', all the relevant evidence pointed to consent on the part of the complainant even if sexual intercourse had, in fact, taken place. The complainant, her father and those who spoke on their behalf, explicitly stated that they were not interested in an investigation with a view to a prosecution in courts, but wanted to obtain what they termed 'compensation'. The incident alleged to have taken place on 02.03.1986, had been reported to police only on 03.04.1986, over a month later. Extorting money from the respondent was clearly the motive. Having got the Office in Charge (OIC) Negombo to hold fresh investigations into the matter, I was in agreement with the OIC Pamunugama IP Cecil de Silva that it was not justifiable to arrest and remand the respondent on such hopelessly bad evidence to maintain a charge of 'Rape'.

In September 1986 a new DIG and a new (Superintendent of Police) SP took charge of the Negombo Police Division. The same old petition in regard to the above subject was now resurrected. It was clear that influential persons were pushing it again, to 'strike police terror', in a bid to settle a civil transaction. In a letter dated 18th September 1986, addressed to SP Negombo, S C Pathirana, Deputy Inspector General (DIG) W B Rajaguru stated *inter alia*, that:

"

3. *I am surprised that a complaint of this nature has not been gone into fully by the OIC of Pamunugama or (assistant superintendent of police) ASP of the District. I see a note made on page 19 of this file by ASP Negombo directing the OIC to produce the complainant before the ASP. I am not at all satisfied with the manner this inquiry has been handled, both by the OIC and the ASP. To me it looks as if an effort has been made by all concerned to suppress this case.....*

5. *To any ordinary Police Officer the first complaint would reveal a prima facie case of Rape and I cannot understand why the Police had failed to go into this complaint in full unless motivated by mala fide intentions.*

6. *I want you to personally go into the (sic) inaction of both the OIC Pamunugama and the ASP District and submit a detailed report with your recommendations regarding the disciplinary action you propose against all concerned."*

The question before me was to toe the line with the presumptions of the DIG and undermine the liberty of the respondent, thus violating the Rule of Law, or to decline the unlawful proposals of the DIG and preserve the Rule of Law. I chose to preserve the Rule of Law and stood my ground explaining the issues at length and quoting relevant provisions of law. Referring to the comment of the DIG alluding *mala fide* intentions to me, I made my observation that it was not a conclusion arrived at in good faith. I also called for further instructions but no further instructions were received by me.

Instead, a long drawn out investigation was held, assisted by the SP Negombo, the Director Special Investigations Unit (SIU) at Police Headquarters, the Personal Assistant (PA) to the DIG and Senior DIG Admin. Thereafter, without obtaining the advice of the Attorney General which had been called for, a charge sheet signed by the Secretary-Defence was served on me. The charge sheet contained two charges. To quote briefly:

"Charge Sheet

(1) Neglect of duty, for not arresting the respondent

(2) Falsehood or Prevarication"

I made a full and complete answer to the charges without availing myself of a formal inquiry. My answer formed a sort of thesis that ran into many pages. Three short paragraphs from my answer to the charges may be reproduced:

"B. MISDIRECTION

I wish to draw your attention to a report of D.I.G. GCR, Mr. Rajaguru to Senior DIG Ranges dated 29.10.86, in this same connection wherein he has stated inter alia that, 'no legal steps have been taken until the period of prescription had passed.' The offence of Rape however is not prescribed. This report of Mr Rajaguru is not included in the extracts sent to you, although it is in the main file..... "

4.4 " Nowhere does Chapter XI of the code of Criminal Procedure Act or any other provision of that Statute or any other Statute require any Police Officer to arrest any person against whom any complaint of rape or of any other offence is made. If a Police Officer was required to arrest any person against whom any allegation of rape or any other offence is made, regardless of the nature and credibility of the complaint and the evidence available, it must necessarily follow that a Police Officer must act as a mere 'automaton' and that the liberty and the reputation of no citizen would be safe from the evil machinations of any person ill disposed towards them. 'The liberty of the subject', in such circumstances, would be a mere meaningless slogan. "

4.5 The provision of Chapter XI of the Code of Criminal Procedure Act makes clear the fact that a Police Officer should arrest a person against whom a complaint of Rape or any other offence is made, if and only if, the complaint and the available evidence is credible and there exists a reasonable possibility of the alleged offender being convicted of the offence in question of such complaint and / or the other available evidence..... "

4.6. For the reasons set out in paragraph 4 above I did not and do not think that "the information was well founded" or that "further investigations were necessary." I believed then and still believe that the evidence in this case is so hopelessly bad that I would have acted in violation of the law, my duty as a Police Officer and a citizen, against the dictates of conscience, if I had ordered the arrest of Gomes, and was therefore responsible for depriving him of his liberty and causing him immeasurable damage to his reputation on such insubstantial material. "

(7) "Charge No. 2. Charge No. 2 is completely and demonstrably baseless in that the matter set out by me at paragraph 5 above make manifest the fact that not only was there ample evidence of consent but that there was also a corresponding lack of evidence of the lack of consent.

In the aforesaid circumstances I trust that you would exonerate me of the charges against me."

Exonerated of charges – Withholding of promotions that were granted

By letter of Secretary-Defence dated 29th September 1988 which was transmitted to me by the IGP, I was informed that my explanation to the charge sheet is accepted and that I am exonerated of the two charges. On 11.11.88 I was promoted to the rank of Superintendent of Police Grade II with effect from 10. 10. 1985 and on 11.10. 1989 it was backdated to 08.06.1984 and I was promoted to rank of Senior Superintendent of Police with effect from 01.01.1989, so much so that I never got to wear the uniform of Superintendent of Police! Although my promotion to rank of Superintendent of Police was eventually backdated, I was effectively deprived from aspiring to fill assignments in keeping with the substantive rank due to me for four and a half years, thus depriving me from gaining experience in such appointments and proving my capabilities, while my colleagues and even juniors gained handicaps over me and rose to the rank of DIG.

OIC Pamunugama Police, the next victim...

Still undaunted even after the order of the Secretary-Defence who had accepted my explanation that covered the action taken by OIC Pamunugama Cecil de Silva as well, the charge sheet against Mr Silva was persisted with, even after he forwarded copies of my explanation and the order of Secretary-Defence. In this connection it is pertinent to mention how a Senior Police Officer interested in the inquiry against me, had tried to prevail on Mr Silva to implicate me stating that it was on my instructions from the very start that no proper action was taken on the complaint of Rape. He had even gone to the extent of telling Mr Silva to think of his future in the service as I will not be getting an extension in service. Such 'complicity of trusty friends' is bewildering. It is to the credit of Mr Silva that he did not succumb to these vile machinations.

The OIC Pamunugama submitted an appeal to the IGP supported with the order of the Secretary-Defence and E E B Perera who succeeded as IGP on 01.08.1988, directed the SIU to obtain the advice of the Attorney General that had been called for (in May 1987). The Attorney General's letter of advice was to the effect that the evidence was not sufficient to institute criminal proceedings for rape against the suspect Arthur Gomes. Therefore, criminal proceedings against the suspect should not be initiated.

It was also advised that, in regard to the conduct of the Assistant Superintendent of Police and Officer-in-Charge of Pamunugama Police, the material made available did not disclose any deliberate attempt to suppress evidence pertaining to the alleged offence. There was no material which suggested that the OIC. and the ASP were deliberately seeking to assist the accused to avoid criminal liability. Importantly, it was observed that whether an investigation has been handled properly or not depends on the facts and circumstances of each case. The Advice ended with the admonition that since there is no material to suggest deliberate misconduct on the part of the police officers, the question as to whether the conduct of the

said police officers, satisfied departmental standards, is a matter within the purview of the Inspector General of Police as the head of the Police Department, (Advice of the Attorney General, 28 February 1989). On receipt of the Attorney General's advice, the charge sheet against Mr Cecil de Silva was withdrawn.

But the irresistible question is as to why the Attorney General's advice was not acted upon for nearly two years after seeking it, and why no criminal proceedings were instituted if a charge was made out? The convenient excuse was the self-imposed misdirection about prescription of the offence of 'Rape' as mentioned above. This all speaks to vindictiveness. The Latin proverb, '*Parturiunt montes, nascetur ridiculus mus,*' which in English means "mountains laboured and produced a ridiculous mouse", says it all.

Political pressure to arrest innocent persons – 1987

A major problem that the police had to contend with in the midst of this turbulent period was the pressure exerted by ruling party politicians to exploit the situation and to have innocent supporters of rival political parties 'neutralized' through police action.

On 9th August 1987, when I visited the Nittambuwa Police station, Head Quarters Inspector (HQI) Dayawansa informed me that the Kaduwela MP (United National Party -UNP), Paul Perera had given him the names and addresses of some youths, whom he alleged, had been involved in the attempt to blast the Attanagalla bridge on 29th July 1987 and that he wanted them arrested. HQI sought my advice. I instructed the HQI to make discreet inquiries and arrest the suspects only if there is credible information or reasonable suspicion against them. I also briefed him on the lines of investigation and made written orders in that regard. Incidentally, MP Paul Perera, who was the husband of Kulaseeli Perera, UNP Organiser for Attanagalla electorate, was the ruling-party heavy weight in Attanagalla.

Investigations about the suspects named by Paul Perera revealed that they were Sri Lanka Freedom Party (SLFP) supporters and not only was there no evidence of their complicity in any attempt to blast the bridge but also that they had not even been seen in the vicinity that day. Their innocence was further established when their alibis were checked and found to be correct. On 14th August, I attended a conference chaired by Minister Ranil Wickremasinghe and attended by SSP Gampaha, Co-ordinating Officer Gampaha, District Minister Gampaha, UNP Organisers of Gampaha and Attanagalla, ASP (I) and ASP (II) of Gampaha and MP Paul Perera. At this conference Paul Perera complained against the HQI Nittambuwa for not arresting the suspects in connection with the incidents of sabotage on 29th July, even though he had furnished the names and addresses of several accomplices to the HQI.

I intervened on behalf of the HQI and explained that the suspects whose names were supplied by Paul Perera were not arrested as a result of my express orders not to arrest them and explained the reasons as narrated above. Paul Perera took up the position that the police should have arrested them on suspicion. When I informed Minister Wickremasinghe that there is no law to say that police should arrest persons on mere suspicion, everybody including the police officers present, laughed.

Elaborating further, I explained that the law clearly lays down that the police are empowered to arrest only persons against whom there is reasonable suspicion of being involved in cognizable offences, and that it is the police officer arresting who has to assess whether the suspicion is reasonable or not, and not the informant. I also added that the police have to be extra careful when the informants are from rival political parties. Paul Perera closed his file saying, "Oh, he is a very conscientious police officer – we will see."

Thereafter I was not called for monthly security committee meetings but was asked by SSP Gampaha to stay back and look after the Division till they returned from the meetings.

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Law & Society Trust

3 Kynsey Terrace, Colombo 8, Sri Lanka
Tel: (+94)11-2691228, 2684845 | Fax: (+94)11-2686843
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