

Protection of Human Rights in the Criminal Investigation Process: Special Reference to Suspects' Right of Freedom from Torture in Sri Lanka

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Background and Objective

The laws governing criminal procedure are based on a compromise between conflicting objectives of policy: on the one hand, effective law enforcement which concerns the security of the community as a whole and on the other, the protection of rights of the suspects. Criminal investigation is vested with the executive. And therefore the enforcement of the current criminal procedure in Sri Lanka is done by officers delegated with such powers. This has resulted in the creation of a tendency of exercising an excessive power during the investigation process. This tendency may get aggravated due to the nature of the criminal procedure adopted in Sri Lanka.

According to the Article 7 of the ICCPR, no one shall be subjected to torture, to cruel, inhuman or degrading treatment or punishment. The Convention against Torture (CAT) strongly discusses the same rights. International instruments as well as the 1978 Sri Lankan Constitutions Section 11 have expressed the same. Despite this setting, we can still see police officers torturing suspects in order to obtain confessions.

The extreme forms of torture used against suspected insurgents have become a habit within police stations and extreme forms of torture are used on persons suspected of petty theft, or even those arrested because of mistaken identity: some examples are Gerald Mervyn Perera case (SC.FR. App. No. 328/2002), the case of B.G. Chamila Bandara Jayaratne (SC. FR.App. No. 484/2003), case of Galappathy Guruge Gresha de Silva, Fr. Aba Costa case, and the case of Mulakandage Lasantha Jagath Kumara (SC. FR. App. No. 471/ 2000). In the case of Gerald Mervyn Perera, the suspected person was arrested because of mistake of identity. He was tortured to such an extent that within a few hours he suffered renal failure and had to be on a life support system for two weeks. Furthermore, there was serious damage to his arms due to hanging from the ceiling of the police station. Moreover, in the well-known case of the murder of 76 years Old Catholic priest Fr. Aba Costa, some suspects were arrested for murder, and within three days it was alleged that they were severely assaulted. Thereafter, they were charged with murder and remanded for a long time. Later on, once the actual criminals had reportedly been found, it was revealed that some senior police officers in the area were involved in the crime. Incidents of this nature happen in the process of Criminal Investigation. For these types of incidents Section 110 (2) of the Code of Criminal Procedure No.15 of 1979 is implicated by indicating police officers for torturing suspects.

Therefore this study seeks to ascertain the nature in which suspects get tortured in the criminal investigation process by police officers and to suggest improvements to the laws relating to this area in order to minimize these types of violations and to protect rights of suspects.

Methodology

The research is mainly based on reviewing literature in the areas of Law of Criminal Procedure and Human Rights law. In Sri Lanka, the research is particularly based on statutes, especially the Code of Criminal procedure No.15 of 1979 and the 1978 Sri Lankan Constitution, Academic Expressions, judicial officers' ideas and recent judicial decisions. Further this study engages with International Human Rights principles as a whole.

Outcomes

This research reveals that we have sufficient legislation, provisions in constitution and signed International instruments. The problem however is that suspects get tortured in the criminal investigation process. Although there are no major lapses in these laws, discrepancies have occurred during the implementation of the law. This is a critical issue in our process. When comparing a suspects' situation in the English law, it is different and advanced. British investigation laws are governed by several statutes, such as 1984 Police and Criminal Evidence Act (PACE), 1996 Criminal procedure and investigation act and 1985 the prosecution of offence act. In the English law suspects' human rights are protected from the above statutes. Especially 1984 PACE; section 58(8), 28 and 58(1) try to maintain a balance between victims and suspects while PACE gives a suspect the right not to answer all the questions asked by police officers with regard to the alleged crime. It impedes the torturing of suspects in the criminal investigation process (*R v. Toney* 1993, 1 WLR 364). In 1996, the Criminal Procedure and Investigation Act also provided progressive legal provisions in this context. Its section 23(1) gave powers to the judge to interfere in the investigation. These types of provisions are an encouragement to protect the suspect and to be safe from torturing. There are several reasons for suspects' torture: inadequate of laws, problems occurring in the implementation of laws, politicization of the police, lack of competence in criminal investigations, lack of awareness and as well as other social cultural and political issues.

Conclusion

To establish a sustainable community it is important to strike a balance between the rights of the society and the rights of the individual suspects. In this scenario, law has a significant role to play. Therefore the rights of the suspect in the criminal investigation process have to be discussed as well. But currently we can see suspects tortured in the criminal investigation process. Therefore, this paper makes certain recommendations in order to avoid such violations: minimizing the impact of other laws and regulations interfering with the investigation process(intended to be conducted by the main code), moving to an inquisitorial system which entails granting more powers to Magistrates for interfere in the investigations, and taking practical actions to protect the rights of suspects.

References

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