

## **UNDERSTANDING EMERGENCY: EASTER SUNDAY ATTACKS 2019**

Following the terrorist attacks of 21 April 2019, President Maithripala Sirisena declared a State of Emergency on 23 April in order to address the security situation unfolding in the country. Extensive Emergency Regulations setting out the extraordinary powers claimed by the government were also issued on 24 April. This short document has been prepared by the Centre for Policy Alternatives (CPA) to help understand basic information regarding the State of Emergency currently in force, and key provisions contained in the Emergency Regulations that may have implications for fundamental rights and democratic governance.

### **PART I – STATE OF EMERGENCY**

#### **1. What is a ‘State of Emergency’?**

The Public Security Ordinance (PSO) describes an emergency as a clear situation of exceptional threat, danger or disaster where the government can be given powers not permitted during normal times to deal with the threat. A situation like this allows the President to proclaim a state of emergency in order to ensure national security, public order and maintain essential services.

#### **2. Where does the power to declare a ‘State of Emergency’ come from, and who can declare it?**

The President has the sole discretion to declare a State of Emergency, by way of a Proclamation (Article 155 of the Constitution). The Proclamation must be communicated to Parliament, which must be summoned for that purpose. A declaration of a State of Emergency cannot be challenged in the Courts. The Proclamation of the State of Emergency brings into operation the provisions of the PSO including the power of the President to make Emergency Regulations. These may override any other law but cannot override the Constitution.

### **3. How long can a State of Emergency last?**

The President can issue a Proclamation that is valid for one month (though he may revoke it earlier). Parliament must approve this Proclamation within 14 days – if it does not then the Proclamation expires. A State of Emergency can be extended every thirty days, but only with Parliamentary approval. Parliament approved the Emergency Regulations on 24 April without a vote for a period of one month.

### **4. What effect do Emergency Regulations have on citizens' rights?**

Emergency Regulation may impose restrictions on certain fundamental rights guaranteed by the Constitution and a number of rights stemming from other laws. There is no constitutional requirement that the restrictions be proportionate to the harm sought to be averted, and it falls entirely to the goodwill of the executive to act responsibly.

The fundamental rights that may be restricted are:

- the presumption of innocence,
- the burden of proof, and retroactive penal sanctions;
- equality before the law and non-discrimination;
- the ordinary procedure for arrests and judicial sanction for detention;
- the fundamental rights to freedom of expression, assembly, association, movement, occupation, religion, culture and language.

Emergency Regulations cannot restrict:

- the freedom of thought and conscience;
- the freedom from torture;
- the right to be heard at a fair trial by a competent court (excluding pre-trial detention which can be imposed by Emergency Regulations)

Independent of emergency powers, the government also has recourse to the Prevention of Terrorism Act (PTA). These anti-terrorism powers are extensive, and their use is not subject to the formal requirement of continuous parliamentary approval as in the case of emergency powers.

## PART II – EMERGENCY REGULATIONS

### 5. What Emergency Regulations have been Gazetted following the 21 April 2019 Attacks?

- [Gazette No 2120/3](#) – Proclamation by the President invoking section 2 of the PSO
- [Gazette No 2120/4](#) – Calling out of the Armed Forces for the maintenance of public order in specified areas (under section 12 of the PSO).
- [Gazette No 2120/5](#) – Regulations made by the President under Section 5 of the PSO

### 6. How do the Emergency Regulations impact ordinary citizens?

There are several ways in which the day to day life of ordinary citizens, who are not suspects or involved in acts of terrorism, may be impacted while these Emergency Regulations are in place. This includes how citizens would be expected to cooperate with authorities.

- If the building or premises a person is residing in is alleged to have been used in the commission or in connection of the commission of an offence under the regulations, then they can be evicted by the Superintendent of Police of that area. If this happens, you are entitled to make an order to the High Court for the release of the building. In any event, the premises have to be returned to the owner in six months. **(Reg 8).**
- Any vehicle in Sri Lanka can be requisitioned by a competent authority (in this case the commander of one of the Armed Forces, IGP or District Secretary), if they are of the opinion that it is necessary or expedient to do so in the interest of national security, preserving public order or maintaining supplies and services essential to the life of the community. The competent authority can also order that a vehicle should not be removed from a particular premise until permitted by the order. **(Reg 9).**
- Any person can be required to do any work or render a personal service in aid, or in connection with national security or for the maintenance of essential services, either by the President or an authority to which he delegates the power. The failure to do so is an offence. **(Reg 10).**
- Unauthorised persons may be prevented from entering restricted areas, places or premises if a competent authority is of the opinion that such special precautions should be taken. If a person enters such place, they can be removed by an authorised person. **(Reg 12).**
- The holding of public processions or meetings can be prohibited by the President, though by the same order or by a subsequent order there can be exceptions to this. The President can also give a direction to prohibit any processions or meetings which

he is of the opinion that it is likely to cause a disturbance of public order or promote dissatisfaction. **(Reg 13)**.

- The President may also make curfew orders, directing that persons shall not be on any public road, railway, public park, recreation ground or any other ground, or any other building or premises specified. The President can make exceptions to this by way of a subsequent order or persons can get permission from persons specified in the order to be in such places. **(Reg 14)**.
- A competent authority may restrict the publication of certain matters in all of or a specified area of the country, or the transmission from Sri Lanka to a place outside. Such direction can contain incidental provisions the authority considers necessary or expedient, such as for securing that documents, pictures, photographs and films, or the transmission of matters relating to the operations of security forces including news reports, editorials, articles, letters to editors, cartoons and comments need to be submitted or exhibited to the competent authority prior to publication. **(Reg 15(1))**.
- A householder can be required to furnish a list of those in their house (distinguishing family members from servants and other residents) by a Police Officer not below the rank of ASP. The householder can also be required to report any increase or decrease in such persons, or be ordered not to harbour a stranger without giving notice to the OIC in the Police Station in the area. **(Reg 23)**.

#### **7. What effect do these regulations have on the media?**

In addition to the restrictions on what citizens can publish, Regulation 15 (Control on Publications) can have an impact on the media.

In the event that the restrictions in Reg 15(1) (described above) are contravened by a newspaper, the competent authority, after issuing one or more warnings, may order that no person shall print, publish or distribute such newspaper, or be involved in the same for a duration of time specified in the order, or that the printing press in which that newspaper is printed may not be used for all or limited purposes. **(Reg 15(3))**.

The competent authority can also impose the same orders in the event that they are of the opinion that there is, has been or is likely to be a publication in a newspaper that is, in the opinion of the authority, calculated to be prejudicial to the interest of national security or the preservation of public order or the maintenance of supplies and services essential to the life of the community, or contains matters inciting or encouraging persons to mutiny, riot or civil commotion.

There are to be one or more Advisory Committees, appointed by the President, to which persons dissatisfied with an order can make their objections to (**Reg 15(8)**), and the competent authority must ensure that the affected proprietor of the newspaper or owner of the printing press can also make representations directly to the President. (**Reg 18(9)**).

## **8. Which authorities have decision making powers under the Regulations?**

### **Competent Authority**

Which authority has powers varies between the different regulations. The definition provided for “Competent Authority” is “any person appointed by name, or by office, by the President to be a competent authority for the purpose of such regulation”. (**Reg 2(1)**). Some regulations provide for who the relevant competent authority is for the purpose of that regulation (for instance, Reg 9(5)), but in other cases, it would be a person that the President appoints for that purpose. In the cases that an authority is to be appointed, they can be appointed for the whole of the country or a specified part of it, and even the purposes for which they are a competent authority can be limited. (**Reg 5(1)**).

### **Advisory Committees**

The powers and functions of Advisory Committees varies between different regulations. **Reg 15(8)** provides that any person dissatisfied with an order made under 15(2)(b) ,15(3) and 15(7) can make objections to one or more Advisory Committees consisting of persons appointed by the President. **Reg 16** titled “Advisory Committees” stipulate that every Divisional Secretary of a Division shall appoint for that Division a committee consisting of public servants, office bearers of trade unions, and other recognised persons in the community. It is stated that it is the duty of every such committee to advise the relevant authorities on the preservation of public order and the maintenance of essential services, in that Division. Similarly, an Advisory Committee consisting of persons appointed by the President is also established under **Reg 19(4)**. Any person aggrieved by a detention order made against him under regulation 19(1) can make objections to such Committee.

## **9. What are the new offences brought in through the regulations?**

Many broad new offences and penalties have been introduced by Part V of the Emergency Regulations. It is also concerning that the Emergency Regulations have introduced the death penalty for offences under regulation 25 and regulation 45. Some of the broad offences that can have a sweeping impact on the rights of the people are:

- **Regulation 25**
  - Offence of causing destruction or damage to property
  - Causing or attempts to cause death or injury to any other person with fire or any explosive substance/missile/weapon or instrument

- Commits theft of any article in any premises left vacant or unprotected
- Commits any offence under sections 427–446 of the Penal Code
- Is a member of the unlawful assembly as per section 138 of the Penal Code
- Dishonestly receives or retains any articles or goods knowing or having reasons to believe, an offence had been committed in respect of such articles or goods

Any person on the conviction before High Court shall be *liable to suffer death* or imprisonment of either description for life for the offences committed above.

- **Regulation 29** – No person is to provide any information that is detrimental or prejudicial to national security to any person/group/groups of person or an organization. A person guilty of this offence can be sentenced to a term of imprisonment for a period of five to ten years
- **Regulation 30** – advocates the necessity/desirability of overthrowing or overpowering the government of Sri Lanka using words either spoken/written/sings/visible representation/conduct/or any other act
- **Regulation 31** – Affixing in any place visible to the public/distribute among the public any posters/handbills/leaflets contents which are prejudicial to public security/public order/maintenance of supplies and service that are essential
- **Regulation 32** – By word of mouth or by any other means a person communicates/disseminate/spread any rumour which can cause public disorder
- **Regulation 33** – Printing and publishing any document recording or giving information/commenting/any pictorial representation/photograph/cinematography of any of the matters specified in the regulations.
- **Regulation 35** – Makes any statement or furnishes any information which he knows/has reasonable cause to believe to be false
- **Regulation 36** – Without lawful excuse has in custody or possesses any map, plan, sketch, drawing or outline, or other particulars relating to any office/organisation/institution/ establishment of the Government/public corporation/deployment disposition of members of the police/armed services
- **Regulation 37** – Without lawful authority or reasonable excuse has in his possession any book/ document/ paper containing any writing or representation which is likely to be prejudicial to the interests of national security/ public order or promote hatred

or contempt of the Government or which is likely to incline any person to directly/indirectly take step to overthrow the Government.

- **Regulation 45** – Without lawful authority has in possession/prints/publishes/distributes any documents containing any statement or pictorial representation that constitutes a threat of death or bodily harm to any person/by threat of death or bodily harm endeavors to induce any other person to resign from any political party or trade union/by threat or bodily harm induce any public officer or person engaged in the performance of any essential service to do or omit to do anything in breach of his duty shall be guilty of an offence and shall on conviction after trial before High Court *be punished with death.*

#### **10. When can a person be detained under Emergency Regulations?**

The Secretary to the Ministry Defence can order that a person be taken into custody when he is of the opinion that it is required to prevent any person from, acting in a manner prejudicial to national security or for the maintenance of public order and maintenance of essential services or a person is acting in contravention of Regulations 44 or 25 these regulations (**Reg 19 (1)**). Further, an order made under this provision cannot be called into question in any court on any ground (**Reg 19 (10)**)

Any person detained under 19(1) shall be detained in such a place as may be authorised by the Inspector General of Police and in accordance with instructions issued by him or in a prison established under the Prison Ordinance. (Reg 19 (3))

#### **11. Who can detain a person under the regulations?**

Any police officer or member of the Sri Lankan Army, Sri Lankan Navy or Sri Lankan Air Force (**Reg 19 (2)**)

#### **12. How long can a person be detained under the Emergency Regulation?**

- Any person can be detained under this regulation for a period not exceeding *ninety days* from the date of arrest. At the end of that period, he is to be released by the OIC of that place unless such person has been produced before a competent court before the expiry of that period and is detained in a prison established under the Prison Ordinance. (**Reg 21(2)**)
- A person can be detained for a maximum *period of one year*. (**Reg 19(1)**)

#### **13. What is the procedure to object to a detention order?**

Under **Reg 19(4)** a person detained can make objections to one or more Advisory Committees consisting of persons appointed by the President. The report of the Advisory Committee with respect to such objections is then submitted to the Secretary to the Ministry

of Defence who may after consideration of such report revoke the order. It is important to note that this provision does not provide any guidelines as to who can be appointed to the Advisory Committee or the manner in which such persons are selected.

It is the duty of the Secretary to the Ministry of Defence to “afford at the earliest practicable opportunity”, to any person against whom an order is made to make representations in writing to the President **(Reg 19 (5))**.

However, if the Secretary to the Ministry of Defence certifies in writing that any person whom an order under 19(1) is made is a member of an organisation proscribed under regulation 75, the safeguards provided for in 19(4), 19 (5) 19(6), 19(7) and 19 (8) do not apply. **(Reg 19 (9))**

#### **14. Who has the power of search seizure and arrest under the Emergency Regulations?**

Any public officer or any member of the Sri Lankan Army, the Sri Lankan Navy or the Sri Lankan Air Force or any other person authorised by the President to act under this regulation can search, detain for purposes of search, or arrest without warrant, any person committing/ has committed or is reasonably suspected of committing an offence under these regulations. Further any vehicle, vessel or thing whatsoever used in the commission of the offence can be searched, seized, removed and detained. **(Reg 20 (1))**

#### **15. What is the procedure for arrest?**

- When the arresting officer is a police officer he is to report the arrest to the Superintendent of Police of the Division within which the arrest is made and if the arresting officer is the member of Armed Forces to the Commanding Officer of the area of which the arrest is made within twenty-four hours of the arrest. **(Reg 20 (8))**
- The arresting officer must issue the spouse, father, mother or any other close relative a document in such form as specified by the Secretary acknowledging the arrest. However, where it is not possible to issue such a document, it is the duty of the arresting officer if he is a police officer to make an entry in the information book, if a member of the armed forces reports to the OIC of the police station why it's not possible to issue such document which is to be recorded in the information book. **(Reg 20 (9))**
- If a person without reasonable cause fails to issue a document acknowledging the arrest as required by (9) above or wilfully omits to, make such entry as stipulated in that provision in the information book, he shall be guilty of an offence and upon conviction after trial before High Court be liable to a term of imprisonment extending to two years and fine **(Reg 20(10))**



- A person arrested and detained under Reg 19 is to be produced before any Magistrate within a reasonable time, having regard to the circumstances of each case and not later than *thirty days of such arrest*. Magistrate cannot release any person on bail unless with the prior written approval of the Attorney- General. **(Reg 21 (1))**

### **16. What powers are provided to the Attorney General under the Emergency Regulations?**

The regulations have given wide powers to the Attorney General. Some of these powers mentioned below, especially the requirement that the Magistrate can release a suspect only after obtaining the prior approval of the Attorney General, is a serious encroachment on the power of the judiciary. “The Attorney General” includes Solicitor-General, Senior Additional Solicitor- General, Additional Solicitor-General, Senior Deputy Solicitor General, Deputy Solicitor-General, Senior State Counsel, State Counsel or any Counsel authorised by the Attorney-General. **(Reg 2(1))**

- A Magistrates cannot release a suspect on bail unless with the prior written approval of the Attorney- General (Reg 21(1))
- When the Attorney General receives the record of evidence and other documents under paragraph (9) of regulation 59, he shall
  - (a) call for any further material or information as he may require;
  - (b) if he is satisfied that the commission of any offences has been disclosed
    - (i) direct the institution of proceedings under Chapter XIV or XV of the Code of Criminal Procedure Act, No. 15 of 1979; or
    - (ii) proceed under the provision of sub-section (7) of section 393 of the Code of Criminal Procedure Act. **(Reg 62)**
- No prosecution can be instituted in the Magistrate’s Court except by or with the written sanction of the Attorney General for:
  - (a) an offence against any emergency regulation: or,
  - (b) an offence against any other written law where the act or omission constitution such offence was consequent on/ arose out of/was done or committed to be done in, whether directly or indirectly the exercise or performance, of any power or duty under such regulation **(Reg 65)**
- Further, no action or other legal proceeding civil or criminal, can be instituted in any court in respect of any matter or thing done or purported to be done in good faith, under any provisions of any Emergency Regulation or of any order or direction made or given thereunder, without the written consent of the Attorney-General. **(Reg 77)**

**17. What statements made by the accused are admissible as evidence?**

**Reg 67(1)** provides that at the trial of any person for an offence committed under any emergency regulation a statement made by such person whether or not it amounts to a confession and whether or not such person was in the custody of police officer at the time the statement was made and whether or not such statement was made in the immediate presence of a Magistrate, the statement may be proved against such person.

However, such statements are admissible only if they are not irrelevant under section 24 of the Evidence Ordinance which states that a confession obtained by inducement, threat or promise is irrelevant. Further, no such statement can be proved as against such person if such statement was made to police officer below the rank of Assistant Superintendent of Police. The burden of proving that any statement is irrelevant under section 24 of the Evidence Ordinance is on the person asserting it to be irrelevant. **(Reg 67(3))**

**18. How can an organisation be proscribed under Emergency Regulations?**

**Reg 75(1)** states that where the President is of the opinion that there is a danger of action by, or of the utilisation of the organisation or its members:

- a) for purposes prejudicial to national security, the maintenance of public order or the maintenance of essential services; or
- (b) for any of the purposes referred to in sub-paragraph (b) of paragraph (2) of regulation 42, or sub-paragraph (a) to (g), of regulation 25

the President can by Order published in the *Gazette* declare that organisation to be a proscribed organisation.

**19. Does the Emergency Regulations provide for any oversight or monitoring of the regulations by an independent authority?**

No. The regulation does not contain any oversight by an independent authority such as the Human Rights Commission of Sri Lanka